

entity pursuant to law or the terms of the contract, and, to the extent there are excess funds resulting from said negotiation, the balance shall be returned to the contractor. Such acceptable securities so deposited at all times shall have a market value at least equal in value to the amount so withdrawn. If at any time a public entity determines that the market value of the acceptable securities theretofore deposited has fallen below the amount so withdrawn, the public entity shall give notice thereof to the contractor, who forthwith shall deposit additional acceptable securities in an amount sufficient to reestablish a total deposit of securities equal in value to the amount so withdrawn.

Source: L. 79: Entire article added, p. 996, § 1, effective July 1. L. 86: Entire section amended, p. 972, § 3, effective July 1. L. 2004: Entire section amended, p. 227, § 2, effective August 4.

24-91-106. Escrow agreement - authority to enter into - effect on acceptable securities. (1) A public entity and the contractor may enter into an escrow contract or escrow contract and security agreement with any national bank, state bank, trust company, or savings and loan association located in this state and designated by mutual agreement of the public entity and the contractor, after notice to the surety, to provide as escrow agent for the custodial care and servicing of any acceptable securities deposited with him pursuant to this section. Such services shall include the safekeeping of the acceptable securities and the rendering of all services required to effectuate the purposes of this section and section 38-26-107, C.R.S.

(2) Any acceptable securities deposited with an escrow agent pursuant to this section shall be deemed to be in the possession of the public entity, and the public entity shall be deemed to have a perfected security interest in the acceptable securities for purposes of article 8 or 9 of title 4, C.R.S.

(3) The deposit of acceptable securities with a state or national bank, or a state or federal savings and loan association, shall not be deemed a holding of public deposits for purposes of article 10.5 or 47 of title 11, C.R.S.

Source: L. 79: Entire article added, p. 997, § 1, effective July 1. L. 86: Entire section amended, p. 972, § 4, effective July 1. L. 96: (2) amended, p. 246, § 24, effective July 1.

24-91-107. Custodian for acceptable securities - collection of interest income - payable to contractor. The public entity or any national bank, state bank, trust company, or savings and loan association located in this state and designated by mutual agreement of the public entity and the contractor to serve as custodian for the acceptable securities pursuant to section 24-91-106 shall collect all interest and income when due on the acceptable securities so deposited and shall pay them, when and as collected, to the contractor who deposited the acceptable securities. If the deposit is in the form of coupon bonds, the escrow agent shall deliver each coupon, as it matures, to the contractor. Any expense incurred for this service shall not be charged to the public entity.

Source: L. 79: Entire article added, p. 997, § 1, effective July 1. L. 86: Entire section amended, p. 972, § 5, effective July 1.

24-91-108. Retained payments - amount deducted by a public entity. Any amount deducted by a public entity, pursuant to law or the terms of a contract, from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no acceptable securities have been substituted and then from the proceeds of any deposited acceptable securities, in which case, the contractor shall be entitled to receive the interest, coupons, or income only from those acceptable securities which remain on deposit after such amount has been deducted.

Source: L. 79: Entire article added, p. 997, § 1, effective July 1. L. 86: Entire section amended, p. 973, § 6, effective July 1.

24-91-109. Retained payments - disbursement. All retained payments and interest thereon disbursed to any contractor under any contract with a public entity covered under this article shall be disbursed to each subcontractor by the contractor. The disbursement of such retained payments and interest shall be in proportion to the respective amounts of retained payments, if any, which the contractor theretofore has withheld from his subcontractors if the subcontractor has performed under his contract with the contractor.

Source: L. 79: Entire article added, p. 997, § 1, effective July 1.

24-91-110. Contracts excepted from article. The provisions of this article shall not apply in the case of a contract made or awarded by any public entity if a part of the contract price is to be paid with funds from the federal government or from some other source and if the federal government or such other source has requirements concerning retention or payment of funds which are applicable to the contract and which are inconsistent with this article.

Source: L. 79: Entire article added, p. 998, § 1, effective July 1.

ARTICLE 92

Construction Bidding for Public Projects

24-92-101.	Short title.	24-92-107.	Prequalification of contractors.
24-92-102.	Definitions.	24-92-108.	Types of contracts.
24-92-103.	Construction of public projects - competitive sealed bidding.	24-92-109.	Agency of government to submit cost estimate.
24-92-104.	Exemptions - applicability.	24-92-110.	Rules and regulations.
24-92-104.5.	Solicitation of bids by electronic on-line access - department of transportation.	24-92-111.	Audit.
24-92-105.	Cancellation of invitations for bids.	24-92-112.	Finality of determinations.
24-92-106.	Responsibility of bidders and offerors.	24-92-113.	Reporting of anticompetitive practices.
		24-92-114.	Prohibition of dividing work of public project.

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 or in an electronic medium approved by the executive director of the department of personnel.

(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. L. 2009: (3) amended, (SB 09-290), ch. 374, p. 2041, § 7, effective August 5.

Editor's note: Subsection (3) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

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.

24-92-107. Prequalification of contractors. 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.

ARTICLE 93

Construction Contracts

24-93-101.	Short title.		participating entities - apprentice training.
24-93-102.	Legislative declaration.		
24-93-103.	Definitions.	24-93-106.	Requests for proposals - evaluation and award of integrated project delivery contracts.
24-93-104.	Integrated project delivery contracts - authorization - effect of other laws.		
24-93-105.	Integrated project delivery contracting process - prequalification of partici-	24-93-107. 24-93-108.	Supplemental provisions. Types of contracts.

24-93-101. Short title. This article shall be known and may be cited as the "Integrated Delivery Method for Public Projects Act".

Source: L. 2007: Entire article added, p. 1805, § 1, effective August 3.

24-93-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

- (a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.
- (b) Competition exists not only in the costs of goods and services, but also in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.
- (c) Timely and effective completion of public projects may be achieved through a variety of methods when procuring goods and services for public projects.
- (d) In enacting this article, the general assembly intends to establish for any agency of state government an optional alternative public project delivery method.

Source: L. 2007: Entire article added, p. 1805, § 1, effective August 3.

24-93-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Agency" means any agency, department, division, board, bureau, commission, institution, or other agency of the executive, legislative, or judicial branch of state government that is a budgetary unit exercising construction contracting authority or discretion.
- (2) "Contract" means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project. For purposes of this article, "contract" includes capital construction as defined in section 24-30-1301 (1).
- (3) "Cost-reimbursement contract" means a contract under which a participating entity is reimbursed for costs that are allowable and that is allocable in accordance with the contract terms and provisions of this article.
- (4) "Integrated project delivery" or "IPD" means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.
- (5) "IPD contract" means a contract using an integrated project delivery method.
- (6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning,

architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "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 operation or maintenance programs for the operation and upkeep of such projects.

Source: L. 2007: Entire article added, p. 1806, § 1, effective August 3.

24-93-104. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, any agency may award an IPD contract for a public project in accordance with the provisions of this article upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this article is intended to affect or limit the applicability of article 91 or 92 of this title to the extent the provisions of said articles are not inconsistent with the provisions of this article. To the extent there is a conflict between the provisions of article 91 or 92 of this title and this article, the provisions of this article shall control.

(3) Nothing in this article shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, rules, resolutions, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is granted under such legal authority or created by necessary implication from such legal authority.

Source: L. 2007: Entire article added, p. 1806, § 1, effective August 3.

24-93-105. Integrated project delivery contracting process - prequalification of participating entities - apprentice training. (1) An agency may prequalify participating entities for IPD contracts by public notice of its request for qualifications prior to the date set forth in the notice. Any such request for qualifications may contain the following elements and such additional information as may be requested by the agency:

- (a) A general description of the proposed public project;
 - (b) Relevant budget considerations;
 - (c) Requirements of the participating entity, including:
 - (I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of the submission of qualifications;
 - (II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;
 - (III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and
 - (IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential;
 - (d) The criteria for prequalification.
- (2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.
- (3) Where an apprentice training program certified by the office of apprenticeship located in the employment and training administration in the United States department of labor exists in the state, or a comparable program for the training of apprentices is available in the state:

- (a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and
- (b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

Source: L. 2007: Entire article added, p. 1807, § 1, effective August 3.

24-93-106. Requests for proposals - evaluation and award of integrated project delivery contracts. (1) An agency shall prepare and publish a request for proposals for each IPD contract that complies with the requirements of this section. Requests for proposals for IPD contracts shall, at a minimum, include the following evaluation factors and subfactors that shall be used to evaluate the proposals and capabilities of participating entities:

- (a) Price;
- (b) Design and technical approach to the project;
- (c) Past performance and experience;
- (d) Project management capabilities, including financial resources, equipment, management personnel, project schedule, and management plan; and
- (e) Craft labor capabilities, including adequacy of craft labor supply and access to federal or state-approved apprenticeship programs, if available.

(2) The agency responsible for the IPD contract shall select, on the basis of these factors, and any other factors and subfactors included in the request for solicitation as authorized by this section, the participating entity whose proposal is most advantageous and represents the best overall value to the state.

(3) Requests for proposals may contain additional relevant factors and subfactors as determined by the agency, which may include:

- (a) The procedures to be followed for submitting proposals;
- (b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;
- (c) The procedures for making awards;
- (d) Required performance standards as defined by the participating entity;
- (e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

- (g) The proposed scheduling for the project; and
- (h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 24-93-105 (2) but whose proposals are not selected for award of the IPD contract.

(4) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements specified in subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(5) With respect to performance under each IPD contract, the agency and participating entity shall comply with all laws applicable to public projects.

(6) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract shall not be required to be licensed or registered to provide professional services, as defined in section 24-30-1402 (6), if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire article added, p. 1808, § 1, effective August 3.

24-93-107. Supplemental provisions. The executive director of the department of personnel may establish supplemental provisions that are designed to implement the provisions of this article; except that the executive director of the department of transportation may establish supplemental provisions relating to bridge and highway construction contract procurement practices, including, notwithstanding any other provision of this article, provisions governing debarment of participating entities.

Source: L. 2007: Entire article added, p. 1809, § 1, effective August 3.

24-93-108. Types of contracts. Subject to the requirements of this section, any agency making use of the provisions of this article may award any type of contract that will promote the best interests of the agency; except that the use of a cost-plus-a-percentage-of-cost contract under this article is prohibited. An agency may award a cost-reimbursement contract only when a determination is made in writing that such contract is either likely to be less costly to the agency than any other type of contract or that it is impracticable to obtain the required construction or other services authorized under this article unless the cost-reimbursement contract is used. Operation and maintenance elements may be procured on a cost-reimbursement basis under or in connection with an IPD contract.

Source: L. 2007: Entire article added, p. 1810, § 1, effective August 3.

PROCUREMENT CODE

ARTICLE 101

Procurement Code - General Provisions

PART 1		PART 3	
PURPOSES, CONSTRUCTION, AND APPLICATION		DEFINITIONS	
24-101-101.	Short title.	24-101-301.	Definitions.
24-101-102.	Purposes - rules of construction.	PART 4	
24-101-103.	Supplementary general principles of law applicable.	PROCUREMENT RECORDS AND INFORMATION	
24-101-104.	Requirement of good faith.	24-101-401.	Public access to procurement information.
24-101-105.	Application of this code.	24-101-402.	Retention of procurement records.
PART 2			
DETERMINATIONS			
24-101-201.	Determinations.		

PART 1

PURPOSES, CONSTRUCTION, AND APPLICATION

24-101-101. Short title. Articles 101 to 112 of this title shall be known and may be cited as the "Procurement Code", referred to in said articles as the "code".

Source: L. 81: Entire article added, p. 1259, § 1, effective January 1, 1982.

24-101-102. Purposes - rules of construction. (1) This code shall be construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

Source: L. 97: Entire part added, p. 1623, § 2, effective June 4.

PART 14

DESIGN-BUILD CONTRACTS

Law reviews: For article, "Design-Build Contracts for Colorado Highway Construction: New Contractual Issues—Part I", see 29 Colo. Law. 49 (February 2000); for article, "Design-Build Contracts for Colorado Highway Construction: New Contractual Issues—Part II", see 29 Colo. Law. 53 (March 2000).

43-1-1401. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The increased population growth and economic activity within the state has resulted in the significant and growing demand for increased construction and reconstruction of highways and other transportation projects within the state to facilitate the movement of people, goods, and information;

(b) As a result of the increased federal and state funding provided to the department of transportation in recent years for transportation projects, together with the increasing number, size, and complexity of planned transportation projects, the department will benefit from the use of a faster, more efficient, and more cost-effective contractor selection and procurement process to design and construct transportation projects;

(c) A design-build selection and procurement process will provide the department of transportation with: A savings of time, cost, and administrative burden; improved quality expectations with respect to the schedule and budget of transportation projects, as well as completion of such projects; and a reduction in the risks associated with transportation projects, including reduced duplication of expenses and improved coordination of efforts to meet the transportation needs of Colorado.

(2) The general assembly intends that this part 14 authorize the department of transportation to enter design-build contracts and to use an adjusted score design-build selection and procurement process for particular transportation projects regardless of the minimum or maximum cost of such projects, based on the individual needs and merits of such projects, and subject to approval by the transportation commission. The general assembly also intends that the department's use of an adjusted score design-build contract process shall not prohibit use of the low bid process currently used by the department pursuant to part 1 of article 92 of title 24 and part 14 of article 30 of title 24, C.R.S.

Source: L. 99: Entire part added, p. 256, § 1, effective April 9.

43-1-1402. Definitions. As used in this part 14:

(1) "Adjusted score design-build contract process" means a process to award contracts based on the lowest adjusted score of proposals submitted to the department.

(2) "Best value" means the overall maximum value of a proposal to the department after considering all of the evaluation factors described in the specifications for the transportation project or the request for proposals, including but not limited to the time needed for performance of the contract, innovative design approaches, the scope and quality of the work, work management, aesthetics, project control, and the total cost of the transportation project.

(3) "Design-build contract" means the procurement of both the design and the construction of a transportation project in a single contract with a single design-build firm or a combination of such firms that are capable of providing the necessary design and construction services. A design-build contract may also include in the contract the procurement of the financing, operation, or maintenance of the project.

(4) "Design-build firm" means any company, firm, partnership, corporation, association, joint venture, or other entity permitted by law to practice engineering, architecture, or construction contracting in the state of Colorado.

(4.5) "Force majeure" means fire, explosion, action of the elements, strike, interruption of transportation, rationing, shortage of labor, equipment, or materials, court action, illegality, unusually severe weather, act of God, act of war, or any other cause that is beyond the control of the party performing work on a design-build transportation or utility relocation project and that could not have been prevented by the party while exercising reasonable diligence.

(4.7) "Project specific utility relocation agreement" means an agreement entered into by the department and a utility company for the purpose of performing utility relocation work necessitated by a design-build transportation project. The agreement may incorporate reasonable and appropriate conditions, including, but not limited to, conditions for ensuring:

(a) The prompt performance of utility relocation work by either the utility company or the contractor for the design-build transportation project, as specified in the agreement;

(b) The cooperation of the utility company with the contractor for the design-build transportation project;

(c) The timely repayment of any funds advanced to the utility company for the relocation construction, including interest based on the costs incurred by the department for advancing the funds; and

(d) The payment by the utility company of any damages caused by the company's delay in the performance of the relocation work or interference with the performance of the project by any other contractor, except when such delay or interference is caused by a force majeure.

(5) "Transportation project" means any project that the department is authorized by law to undertake including but not limited to a highway, tollway, bridge, mass transit, intelligent transportation system, traffic management, traveler information services, or any other project for transportation purposes.

(6) "Utility company" or "utility" shall have the same meaning as set forth in 23 CFR 645.105.

Source: L. 99: Entire part added, p. 257, § 1, effective April 9. L. 2000: (4.5), (4.7), and (6) added, p. 1610, § 1, effective June 1. L. 2007: (6) amended, p. 2050, § 103, effective June 1. L. 2009: (3) amended, (SB 09-108), ch. 5, p. 55, § 17, effective March 2.

43-1-1403. Authority to use a design-build contract process. Notwithstanding any other provision of law to the contrary, the department may select a design-build firm and award a design-build contract for a transportation project as provided in this part 14. The department may include a warranty provision in any design-build contract that requires the design-build firm to perform maintenance services on the completed transportation project.

Source: L. 99: Entire part added, p. 258, § 1, effective April 9.

43-1-1404. Criteria. (1) The department may use a design-build contract for a transportation project if the design work for such project must be performed before a potential bidder can develop a price or cost proposal for such project and if the chief engineer of the engineering, design, and construction division determines that using a design-build contract is appropriate. The chief engineer shall consider the following factors in making a determination pursuant to this subsection (1):

(a) The extent to which the transportation project requirements are adequately defined;

(b) The time constraints for completing the transportation project;

(c) The capability and experience of potential design-build firms;

(d) The suitability of the transportation project to a design-build contract; and

(e) The capability of the department to manage the design-build contract.

(2) The department may use a design-build contract regardless of the estimated minimum or maximum cost of a transportation project.

Source: L. 99: Entire part added, p. 258, § 1, effective April 9.

43-1-1405. Public notice procedures. At least forty-five days prior to the anticipated date of selecting a design-build firm for a transportation project, the department shall publish a public notice at least twice in one or more daily newspapers of general circulation in the state. The public notice shall set forth a general description of the transportation project.

Source: L. 99: Entire part added, p. 258, § 1, effective April 9.

43-1-1406. General procedures. (1) The department shall describe in the specifications for the transportation project the particular design-build contract and selection procedures to be used in awarding such contract, including but are not limited to the following:

(a) A scope of work statement that defines the transportation project and provides prospective design-build firms with sufficient information regarding the department's requirements for the transportation project;

(b) If the department uses an adjusted score design-build contract process to select a design-build firm, a scope of work statement that is flexible and that identifies the end result that the department wants to achieve. The department may determine the adjustment factors and methods it will use to adjust scores and shall state such factors and methods in the specifications for the transportation project. The department may also provide a general concept of the transportation project to potential design-build firms. Adjusted score design-build procedures shall consist of the following two phases:

(I) In the first phase, the department shall issue a request for qualifications within the time specified in section 43-1-1405 to solicit proposals that include information on the design-build firm's qualifications and its technical approach to the proposed transportation project. The department shall include appropriate evaluation factors in the request for qualifications, including the factors set forth in section 24-30-1403 (2), C.R.S. The department shall not include cost-related or price-related factors in the request for qualifications. In accordance with the time requirements specified in the department's rules, the department shall develop a short list of the highest qualified design-build firms from the proposals submitted in response to the request for qualifications.

(II) In the second phase, the department shall issue a request for proposals to the design-build firms included on the short list developed pursuant to subparagraph (I) of this paragraph (b) in accordance with the time requirements specified in the department's rules. The request for proposals shall include:

(A) A request to separately submit a sealed technical proposal and a sealed cost proposal for the transportation project;

(B) The required content of the technical proposal to be submitted by the design-build firm, including design concepts for the transportation project, the proposed solutions to the requirements addressed in the department's scope of work statement, or both;

(C) Any other evaluation factors the department considers appropriate, including the estimated cost of the transportation project; and

(D) Any formula the department determines is appropriate to adjust the total score of a design-build firm's proposal.

(2) Except as provided in this subsection (2), the department shall allow the preference to Colorado residents provided in section 8-19-101, C.R.S., in awarding an adjusted score design-build contract pursuant to this part 14. In evaluating and selecting a proposal for a design-build contract under this part 14, the department shall assign greater value to a proposal in proportion to the extent such proposal commits to using Colorado residents to perform work on the transportation project. If, however, the department determines that compliance with this subsection (2) may cause the denial of federal moneys that would otherwise be available for the transportation project or if such compliance would otherwise be inconsistent with the requirements of federal law, the department shall suspend the

preference granted under this subsection (2) only to the extent necessary to prevent denial of federal moneys or to eliminate the inconsistency with federal law.

(3) The department may use any basis for awarding a design-build contract pursuant to this part 14 that it deems appropriate so long as the basis for awarding such contract is adequately described in the specifications for the transportation project or the request for proposals. Such basis may include awarding a contract to the design-build firm whose proposal provides the best value to the department.

(4) The department may cancel any request for qualifications, request for proposals, or other solicitation issued pursuant to this part 14 or may reject any or all proposals in whole or in part when the department determines that such cancellation or rejection is in the best interest of the department.

(5) If the department awards a design-build contract pursuant to this part 14, the department shall execute a design-build contract with the successful design-build firm and shall give notice to said firm to commence work on the transportation project.

Source: L. 99: Entire part added, p. 258, § 1, effective April 9.

43-1-1407. Stipulated fee. At its discretion, the department may award a stipulated fee to the design-build firms that submit responsive proposals but that are not awarded the design-build contract for a transportation project. The department shall not be required to award such stipulated fee, but if it elects to award such fee for a transportation project, the department shall identify the availability and the amount of such fee in its request for proposals.

Source: L. 99: Entire part added, p. 260, § 1, effective April 9.

43-1-1408. Commission approval required. The department shall obtain approval from the transportation commission prior to using an adjusted score design-build contract process for any transportation project.

Source: L. 99: Entire part added, p. 260, § 1, effective April 9.

43-1-1409. Rule-making authority. (1) The department may adopt rules in accordance with sections 43-1-110 and 24-4-103, C.R.S., to:

(a) Establish requirements for the procurement of design-build contracts that it determines necessary or appropriate, including but not limited to rules implementing the design-build selection and contract procedures, subcontracting, and the warranty provisions of this part 14; and

(b) Further define and implement the processes and procedures for the performance of utility relocation work necessitated by a design-build transportation project, including, but not limited to, the allocation of responsibility for damages due to delay among the department, the design-build contractor, and utility companies that do not enter into project specific utility relocation agreements, and the creation of a forum and process to resolve changes in the conditions of the design-build transportation project that impact utility relocation work when the department and a utility company have not entered into a project specific utility relocation agreement.

Source: L. 99: Entire part added, p. 260, § 1, effective April 9. L. 2000: Entire section amended, p. 1611, § 2, effective June 1.

43-1-1410. Utility relocation - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The department is authorized by law to use a design-build process for transportation projects that allows for the improved coordination, scheduling, and timely performance of transportation projects, resulting in time and cost efficiency;

(b) The scheduling and timely performance of design-build transportation projects partially depend upon the coordination with utility companies for the prompt performance of utility relocation work necessitated by the project;

(c) Increased coordination between the department and utility companies is in the public interest and the encouragement and requirement of prompt performance of utility relocation work within the design-build transportation project performance schedule will reduce delays and costs of the projects;

(d) The preferred approach for utility relocation work in a design-build transportation project is for the utility company to authorize the department's design-build contractor to engage the services of the utility company's prequalified contractors for the design and construction of the relocation work because it places the responsibility for the timely performance of the utility relocation work on the design-build contractor and removes the risk of utility relocation delays from multiple utility companies;

(e) Current law limits the department's authority in relation to payment for utility relocation, and nothing in this part 14 is intended to alter the department's obligation to pay for utility relocations pursuant to section 43-1-225 or to pay for utility relocations when utility facilities are located on easements owned by the utility;

(f) Allowing the department to fund the design of the utility relocation work necessitated by a design-build transportation project will foster the coordination of the utility relocation work, which is in the public interest;

(g) In the interest of the public, the department, the design-build contractor, and the utility company should coordinate their efforts, perform the utility relocation work in accordance with the design-build transportation project performance schedule, and allocate the responsibility for any damages caused by a party's failure to timely perform the relocation work, except when such failure is due to a force majeure;

(h) The review and approval of the utility company of any design work prior to the commencement of any utility relocation construction in relation to a design-build transportation project will assure that such work meets the quality standards and construction methods of the utility company. The department also recognizes the obligation of utility companies to maintain service to their customers, and the department agrees to work within utility company terms and conditions to maintain service continuity.

(i) For purposes of design-build transportation projects, allowing the department to provide and condemn, when necessary, a replacement easement for a utility company to relocate its facilities when the utility company's facilities are located in an easement owned by the utility company and to pay for the future relocation of a utility company's facilities if no replacement easement is provided is in the public interest.

Source: L. 2000: Entire section added, p. 1611, § 3, effective June 1.

43-1-1411. Project specific utility relocation agreements. (1) Notwithstanding any other provision of law, if a utility company enters into a project specific utility relocation agreement with the department, the department may:

(a) Pay for the performance of the design work to relocate a utility company's facilities that are affected by the scope of the design-build transportation project;

(b) Advance funds for the performance of the construction work to relocate a utility company's facilities affected by the scope of the design-build transportation project; except that any advance of funds pursuant to this paragraph (b) shall be subject to full repayment by the utility company with interest based on the cost incurred by the department for advancing the funds; and

(c) Perform any utility relocation work through the contractor for the design-build transportation project in accordance with the utility company's specifications for the relocation work and subject to the utility company's prior review and written approval of the relocation work to assure that the work meets the quality standards and construction methods of the company. The performance of any relocation work shall also be subject to inspection and approval by the utility company, during the performance of the work and prior to completion of the relocation work, and the department shall take appropriate measures to ensure service continuity.

(2) It is the intent of the general assembly that the department work with the utility company to come to a mutually satisfactory agreement with the utility company so that the design-build transportation project may proceed to be constructed in an efficient manner without causing interruption of utility services. If the utility company is unable to reach a project specific utility relocation agreement with the project manager negotiating such agreement for the department, the utility company shall be provided the opportunity to address its concerns with the department's district engineer, who shall give due consideration to all issues raised by the utility company and shall strive to accommodate reasonable modifications requested by the utility company to the department's proposed project specific utility relocation agreement. If an agreement cannot be reached between the district engineer and the utility company, the executive director of the department shall review the disputed issues and seek to resolve the dispute. If the executive director is unable to reach agreement with the utility company, the executive director shall prepare a written report setting forth the reasons that the dispute could not be resolved and shall provide such report to the utility company within three business days.

(3) For any utility company that chooses not to enter into a project specific utility relocation agreement with the department for the performance of utility relocation work:

(a) The department may direct the utility company to perform or allow the performance of the utility relocation work within the performance schedule for the design-build transportation project;

(b) The utility company shall pay for damages caused by the company's delay in the performance of the utility relocation work or interference with the performance of the design-build transportation project by other contractors, including, but not limited to, payments made by the department to any third party based on a claim that performance of the design-build transportation project was delayed or interfered with as a direct result of the utility company's failure to timely perform the utility relocation work; except that damages resulting from delays in the performance of the utility relocation work caused by a force majeure shall not be charged to the utility company; and

(c) The department may withhold issuance of a permit for the location or installation of other facilities to a utility company until the company pays the department damages caused by the company's delay in the performance of the relocation work or interference with the performance of the design-build transportation project by any other contractor. Any person aggrieved by an action of the department in denying a permit may apply to a court of competent jurisdiction for appropriate relief pursuant to the Colorado rules of civil procedure or section 24-4-106, C.R.S.

(4) The department shall provide written notice to any utility company of a design-build transportation project that will require the relocation of the company's facilities as soon as practicable following the environmental clearance for the project. The notice shall include all available and relevant information concerning the project, including the performance schedule for the project within which the utility relocation work must be completed in order to coordinate with and avoid delay in the performance of the project.

(5) When feasible, the department shall provide a replacement easement for a utility company whose facilities are to be relocated from an easement owned by the utility company to accommodate a design-build transportation project, and the department shall condemn the replacement easement when necessary. If no replacement easement is provided, the department shall fund the initial relocation of the easement owner's facilities and shall also fund all future relocations of those utility companies whose facilities occupy the easement at the time of the design-build transportation project at the department's sole expense in lieu of compensating the utility companies for the loss of the easement. The utility company shall quitclaim to the department that portion of the easement that is replaced or extinguished.

(6) Nothing in this section or in section 43-1-1412 shall change the authority, rights, responsibilities, or obligations of the department or of any owner of real or personal property in an eminent domain proceeding or any existing statutory or case law applicable to eminent domain proceedings.

Source: L. 2000: Entire section added, p. 1613, § 3, effective June 1.

build transportation project to the department's contractor for the project pursuant to a project specific utility relocation agreement, the utility company shall not be responsible to the department for any damages caused by the delay in the performance of the relocation work or the interference by the department's contractor in the performance of any part of the project by another contractor.

(2) (a) When a utility company chooses to perform any utility relocation work necessitated by a design-build transportation project, the utility company shall complete the relocation work within the time specified in the project specific utility relocation agreement or in the performance schedule for the project as set forth in the written notice provided to the company by the department in accordance with section 43-1-1411 (4). The company shall not interfere with the performance of the design-build transportation project by any other contractor.

(b) Notwithstanding the provisions of section 43-1-1411 (3) (b), a utility company shall not be liable for damages caused by the failure to timely perform the relocation work or the interference with the performance of the design-build transportation project by any other contractor when the failure to perform or the interference is caused by a force majeure.

Source: L. 2000: Entire section added, p. 1615, § 3, effective June 1.

PART 15

PROVISION OF RETAIL OR COMMERCIAL GOODS AND SERVICES AT PUBLIC TRANSPORTATION TRANSFER FACILITIES ON DEPARTMENT-OWNED PROPERTY

Cross references: For the legislative declaration contained in the 1999 act enacting this part 15, see section 1 of chapter 88, Session Laws of Colorado 1999.

43-1-1501. Definitions. As used in this part 15, unless the context otherwise requires:

- (1) "Public entity" includes, but is not limited to, a public body, as that term is defined in section 32-9-103 (11), C.R.S., and any other governmental entity, agency, or official.
- (2) "Retail goods and services" means all goods and services sold to the public.
- (3) "Transfer facility" means a public park-n-ride, bus terminal, light rail station, or other bus or rail transfer facility operated on property that is owned by the department.

Source: L. 99: Entire part added, p. 263, § 5, effective April 9.

43-1-1502. Provision of retail and commercial goods and services at transfer facilities on department property. Any public entity other than the department shall obtain the approval of the executive director of the department before negotiating and entering into any agreement with any person or public entity for the provision of retail and commercial goods and services to the public at a transfer facility that is located on property that is owned by the department and leased to the regional transportation district or such other public entity for the operation of such transfer facility.

Source: L. 99: Entire part added, p. 263, § 5, effective April 9.

43-1-1503. Department transfer facilities - provision of retail and commercial goods and services. (1) Notwithstanding the provisions of section 43-3-101, the executive director shall have the authority to negotiate and enter into agreements with any person or public entity for the provision of retail and commercial goods and services to the public at any transfer facility that is owned, leased, or operated by the department.

(2) Any person or public entity obtaining the use of any portion of a transfer facility that is owned, leased, or operated by the department for the provision of retail or

to the department include the provision of real property, services, or capital improvements to facilities used in transit services.

(3) Any use of a transfer facility that is owned, leased, or operated by the department for the provision of retail or commercial goods or services shall not be implemented if the use would reduce transit services or the availability of adequate parking for the public or would result in a competitive disadvantage to a private business reasonably near a transfer facility engaging in the sale of similar goods and services. The provision of retail and commercial goods and services at transfer facilities that are owned, leased, or operated by the department shall be designed to offer convenience to transit customers and shall not be conducted in a manner that encourages automobile traffic from nontransit users.

(4) Any development of any portion of a transfer facility owned, leased, or operated by the department and made available by the department for the provision of retail or commercial goods or services shall be subject to all applicable laws, ordinances, and regulations of any municipality, county, or city and county in which the transfer facility is located, including planning and zoning regulations.

Source: L. 99: Entire part added, p. 263, § 5, effective April 9.

43-1-1504. Possessory interests in transfer facilities - taxation. Any person obtaining a possessory interest in any portion of a transfer facility located on property that is owned by the department for the provision of retail or commercial goods or services pursuant to this section shall be deemed in control of that portion of the facility and shall be subject to property taxation to the extent of the person's possessory interest in that portion of the facility.

Source: L. 99: Entire part added, p. 264, § 5, effective April 9. L. 2002: Entire section amended, p. 1009, § 5, effective August 7.

PART 16

SAFE ROUTES TO SCHOOL

43-1-1601. Safe routes to school program. (1) The commission shall establish and the department shall administer a safe routes to school program to distribute federal funds received by the state to political subdivisions of the state for projects to improve safety for pedestrians and bicyclists in school areas.

- (2) Projects funded by grants under the safe routes to school program may include:
- (a) Construction of paved shoulders to be used as bike routes;
 - (b) Construction of multiple-use bicycle and pedestrian trails and pathways;
 - (c) Construction, replacement, and improvement of sidewalks;
 - (d) Installation and improvement of pedestrian and bicycle crossings;
 - (e) Construction and improvement of on-street bicycle facilities, including bike lanes;
 - (f) Installation of safety signs, including, but not limited to, traffic signals;
 - (g) Educational programs;
 - (h) Implementation of traffic-calming programs in neighborhoods near schools;
 - (i) Traffic diversion improvements;
 - (j) Construction or improvement of bicycle parking facilities; and
 - (k) Other projects authorized by applicable federal laws or regulations.
- (3) Grants shall be awarded under the safe routes to school program based on:
- (a) The demonstrated need of the applicant;
 - (b) The potential of the proposed project to reduce injuries and fatalities among children;

