

## **Rule Changes Redlines**

# **1 CCR 101-9 PROCUREMENT RULES**

## **ARTICLE 102 PROCUREMENT ORGANIZATION**

### **PART 2 DIVISION OF PURCHASING**

#### **R-24-102-206 Contract Performance Outside the United States or Colorado**

##### **R-24-102-206-01 Office of the State Architect – Construction Services**

The office of the state architect will collect the data required by this section for state construction contracts and publish on their website.

##### **R-24-102-206-02 State Purchasing Office – Other Services Contracts**

The state purchasing office will collect the data required by this section for all non-construction contracts and post it on the state purchasing website.

##### **R-24-102-206-03 Written Notice and Post of Notice Timeline**

Pursuant to 24-102-206(3) a governmental body will provide written notice to the Department of Personnel within 30 calendar days from the vendor's notice to the governmental body. Pursuant to 24-102-206(5) the Executive Director will post on the official web site of the Department any notice that a vendor provides to a governmental body within 30 calendar days of notice from the governmental body.

## **ARTICLE 103 SOURCE SELECTION AND CONTRACT FORMATION**

### **PART 1 DEFINITIONS**

#### **R24-103-101-01 Terms Defined in This Chapter.**

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

- (a) "Acceptable Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in compliance with the solicitation terms and conditions and within the requirements of the plans and specifications described and required therein.
- (b) "Adequate Competition" exists if a competitive sealed bid or competitive sealed proposal has been conducted and at least two responsible and responsive offerors have independently competed to provide the State's needed product or services. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines, in writing that such competition is not adequate.
- (c) "Alternate Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in essential compliance with the solicitation terms and conditions but which may offer an alternate that does not significantly deviate from the required specifications contained in the solicitation. The soliciting agency would be responsible for determining whether an alternate bid is acceptable.
- (d) "Colorado Labor" shall have the same definition as used in 8-17-101(2)(a), C.R.S.
- ~~(d)~~ (e) "Competitive Negotiation" means the process of discussion and issue resolution between a procurement official and a prospective vendor in order to arrange for the providing of a product or service needed by the State. If more than one vendor is available for such negotiation, the needs of the State must be clearly defined in advance of any negotiations, via a specification that details fully the State's intended procurement.

~~(e)~~ (f) "Cost 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.

~~(f)~~ (g) "Documented Quotation" or "Request for Quotation (RFQ)" is a process of soliciting informally for fulfilling the State's need for a specific product(s) or service(s) and receiving and evaluating vendor responses. The dollar limits for use of documented quotations shall be as stated in the Section on Small Purchases and shall be conducted only by a procurement officer or designee.

~~(g)~~ (h) "Environmentally Preferable Products" -means products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider such factors as the availability of any raw materials used in the product or service being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product or service being purchased.

~~(h)~~ (i) "Nationally Recognized Third-party Certification Entity" means a voluntary, multiple criteria-based program that awards a certification after independently reviewing the product or service on its cost of ownership and life cycle and meets criteria for overall environmental preferability and product function characteristics. The ~~Governor's~~ Colorado Energy Office or any successor office maintains a listing of eligible entities.

(j) "Non-Resident Bidder" shall have the same meaning as in 8-19-102(1), C.R.S.

(k) "Public Works Project" shall have the same definition as "public project" as defined in 8-19-102(2), C.R.S.

~~(i)~~ (l) "Request for Proposals (RFP)" is the commonly used name for competitive sealed proposals. Formal RFPs shall be used in all cases where the total expected cost of the procurement is in excess of the small purchase threshold and the provisions of §24-101-203 apply. Procurements for which the resulting contract is expected to be for more than one fiscal period must take into account the costs for the full life of any resulting contract to determine total expected cost.

(m) "Resident Bidder" shall have the same definition as in 8-19-102(3), C.R.S.

~~(j)~~ (n) "Responsible Vendor" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

~~(k)~~ (o) "Sealed" means that the Bid, Proposal, or Best Value Bid must be submitted in a manner that:

(i) Ensures that the contents of the bid, proposal, or best value bid cannot be opened or viewed before the formal bid opening without leaving evidence that the document has been opened or viewed; and  
(ii) Ensures that the document cannot be changed, once received by the State, without leaving evidence that the document has been changed: and

(iii) Bears a physical or electronic signature evincing an intent by the bidder or offeror to be bound. An electronic signature must comply with the definitions and requirements set forth in the Government Electronic Transactions Act, §24-71.1-101 et seq. C.R.S. and its implementing rules; and

(iv) Records, manually or electronically, the date and time the bid, proposal, or best value bid is received by the state and that cannot be altered without leaving evidence of the alteration.

~~(j)~~ (p) "Substitute Bid" means an offer submitted by any person in response to an Invitation for Bid that is not in substantive compliance with the terms and conditions and specifications of the solicitation as

issued. A substitute bid, by this definition, would generally be considered non-responsive to the requirements of the solicitation and would serve the sole purpose of advising the soliciting agency that a different specification could be used to provide the desired or similar product or service. The soliciting agency would be responsible for determining whether the substitute language would be justification for canceling the bid and re-soliciting.

## PART 2 METHODS OF SOURCE SELECTION

### R-24-103-202b Competitive Sealed Bidding - Construction

#### R-24-103-202b-01 General Provisions.

- (a) Extension of Time for Bid or Proposal Acceptance. After opening bids, the Procurement Officer may request low bidders to extend the time during which the State may accept their bids, provided that no other change is permitted. The reasons for requesting such extension shall be documented.
- (b) One Bid Received. If only one responsive bid is received in response to an Invitation for Bid (including multi-step bidding), an award may be made to the single bidder if the Procurement Officer 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. Otherwise the bid may be rejected pursuant to the provisions of Rule R-24-103-301, (Cancellation of Solicitations; Rejection of Bids or Proposals) and
  - (i) new bids may be solicited;
  - (ii) the proposed procurement may be cancelled; or
  - (iii) if the Director or head of a purchasing agency determines in writing that the need for the construction continues but that the price of the one bid 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 under Rule R-24-103-205 (Sole Source Procurement) or Rule R-24-103-206 (Emergency Procurements), as appropriate.
- (c) Multiple or Alternate Bids. The solicitation shall prohibit multiple or alternate bids unless such bids are specifically provided. When prohibited the multiple or alternate bids shall be rejected although a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.
- (d) Combining Bids or Offers Not Acceptable. Any bid or offer which is conditioned upon receiving award of both the particular contract being solicited and another State contract shall be deemed nonresponsive and not acceptable.
- (e) Affiliates are prohibited from submitting bids for the same contract. Affiliates are defined as any individuals, partnerships, corporations, joint ventures, companies, firms, contractors or other legal entities, if directly or indirectly, either (i) one controls or can control the other, or (ii) a third controls or can control both.
- (f) Purchase of Items Separately from Construction Contract. The Director or head of a purchasing agency is authorized to 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.

(g) Standard Forms. All construction bidding and contracting procedures shall utilize standard State of Colorado forms which are listed below or their revisions and are available from Central Stores, Division of Central Services, Department of Personnel:

- (i) State Form SC-6.11; Advertisement for Bids
- (ii) State Form SC-6.12; Information for Bidders
- (iii) State Form SC-6.13; Proposal
- (iv) State Form SC-6.14; Bid Bond
- (v) State Form SC-6.15; Notice of Award
- (vi) State Form SC-6.21; Agreement
- (vii) State Form SC-6.22; Performance Bond
- (viii) State Form SC-6.221; Labor and Material Payment Bond
- (ix) State Form SC-6.23; The General Conditions of the Contract
- (x) State Form SC-6.26; Notice to Proceed
- (xi) State Form SC-6.27; Notice of Acceptance
- (xii) State Form SC-7.3; Notice of Contractor's Settlement

Any changes or modifications of the printed state forms, including General Conditions of the Contract, shall not be deemed valid unless issued in the form of Supplementary General Conditions and approved by the Principal Representative and the State Buildings Section.

(h) Competitive sealed bidding may be used on projects that have no federal funding involved, pursuant to 24-92-103, C.R.S.

R-24-103-202.3 **COMPETITIVE SEALED BEST VALUE BIDDING.**

**R-24-103-202.3a COMPETITIVE SEALED BEST VALUE BIDDING (other than construction)**

R-24-103-202.3a-01 Definitions.

(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 goods or services being procured by the state.

(c) Options means choices of additional components, services, or products that would serve to provide increased value to the state beyond the base bid.

(d) Alternatives means a choice of a different commodity 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-24-103-202.3a-02 Written Determination.

1096959 When best value bidding selection process is to be used, the State Purchasing Director or head of a purchasing agency shall make a written determination that the use of best value bidding is appropriate for the commodity or service being solicited.

#### R-24-103-202.3a-03 Award

1096961 When the best value bidding process is used, award shall be made to the responsible offeror whose bid results in the best value to the state. The bid, as awarded, must meet the minimum functional requirements in the base bid.

#### R-24-103-202.3a-04 Evaluation.

1096963 Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these specifications shall be determined to be responsive. When a written determination has been made that best value bidding is appropriate for the commodity or service being solicited, the invitation for bids shall expressly allow for enhancements, options, and/or alternatives and shall set forth the objective criteria or formula to be used for evaluation, and the invitation for bid shall require that prices be stated for all options, enhancements, and/or alternatives. 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. 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 providing the best value to the state.

### R-24-103-202.3b COMPETITIVE SEALED BEST VALUE BIDDING – CONSTRUCTION

R-24-103-202.3b-01 Construction Projects - The use of competitive sealed best value bidding shall follow the requirements as used in 24-92-103.5, C.R.S. in construction projects.

R-24-103-202.3b-02 Disclosure – An agency choosing between competitive sealed bidding methods shall disclose the rationale behind its decision in accordance with 24-92-103.7, C.R.S.

R-24-103-203b-03 Evaluation - The criteria for construction projects shall be those in 24-92-103.5 (3), C.R.S.

## PART 4 QUALIFICATIONS AND DUTIES

#### R-24-103-402-01 Requirements.

(a) State construction projects of \$150,000 or more, and under the supervision of the State Buildings Section, Department of Personnel, require the Contractor to be qualified with that Section. Projects under \$150,000 do not normally require pre-qualification. A contractor, to be qualified with the Colorado State Buildings Section, must annually file State Form SC-9.1, "Contractor's Statement of Experience," and be qualified at least two (2) calendar days prior to the date fixed for publicly opening sealed bids. This form can be obtained by writing the Director, State Buildings Section. Filing

instructions are detailed in the form under instructions. The state buildings section will pre-qualify only one entity owned by or controlled by a corporation, an individual, a joint venture or partnership. Under no circumstances will two or more entities owned or controlled by a single corporation, individual, partnership or joint venture submit bids for the same contract. The fact that a prospective contractor has been pre-qualified does not necessarily represent a finding of responsibility.

The Director, or head of a purchasing agency, may develop additional pre-qualification procedures for specific solicitations.

(b) Colorado Labor shall be employed on Public Works unless waiver is allowed pursuant to Section 8-17-101.

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

### **R-24-111-102-02 Preferences**

(a) No provision is made in this Code for preferences or set asides for minority-owned or women-owned businesses.

(b) In the event tie low bids are received in response to solicitations for bids for commodities, pursuant to 24-103-202 C.R.S., preference is given to the resident bidder, pursuant to 24-103-202.5 and 8-18-101, C.R.S.

(c) Non-Resident bidders shall be subject to the same percentage disadvantage as a Colorado bidder would have in their home state as required in 8-19-104(2) and 8-19-104(3), C.R.S.