

CHAPTER 266

GOVERNMENT - STATE

HOUSE BILL 13-1292

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 also SENATOR(S) Kerr and Nicholson, Aguilar, Carroll, Giron, Guzman, Heath, Hodge, Hudak, Jahn, Johnston, Jones, Kefalas, Morse, Newell, Schwartz, Steadman, Tochtrop, Todd, Ulibarri.

AN ACT

CONCERNING MODIFICATIONS TO PROCUREMENT REQUIREMENTS FOR GOVERNMENT CONTRACTS RELATED TO UNITED STATES DOMESTIC EMPLOYMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and may be cited as the "Keep Jobs In Colorado Act of 2013".

SECTION 2. In Colorado Revised Statutes, **amend** 8-17-101 as follows:

8-17-101. Colorado labor shall be employed on public works. (1) Whenever any public works PROJECT financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform AT LEAST EIGHTY PERCENT OF the work. ~~to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on such project or public works.~~ THE GOVERNMENTAL BODY FINANCING A PUBLIC WORKS PROJECT SHALL WAIVE THE EIGHTY PERCENT REQUIREMENT IF THERE IS REASONABLE EVIDENCE TO DEMONSTRATE INSUFFICIENT COLORADO LABOR TO PERFORM THE WORK OF THE PROJECT AND IF COMPLIANCE WITH THIS ARTICLE WOULD CREATE AN UNDUE BURDEN THAT WOULD SUBSTANTIALLY PREVENT A PROJECT FROM PROCEEDING TO COMPLETION. A GOVERNMENTAL BODY THAT ALLOWS A WAIVER PURSUANT TO THIS SUBSECTION (1) SHALL POST NOTICE OF THE WAIVER AND A JUSTIFICATION FOR THE WAIVER ON ITS WEB SITE. A GOVERNMENTAL BODY SHALL NOT IMPOSE CONTRACTUAL DAMAGES ON A CONTRACTOR FOR A DELAY IN WORK DUE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TO THE WAIVER PROCESS.

(2) AS USED IN THIS ARTICLE:

(a) "Colorado labor" ~~as used in this article~~ means any person who is a resident of the state of Colorado, ~~at the time of employment~~ AT THE TIME OF THE PUBLIC WORKS PROJECT, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A RESIDENT OF THE STATE OF COLORADO IS A PERSON WHO CAN PROVIDE A VALID COLORADO DRIVER'S LICENSE, A VALID COLORADO STATE-ISSUED PHOTO IDENTIFICATION, OR DOCUMENTATION THAT HE OR SHE HAS RESIDED IN COLORADO FOR THE LAST THIRTY DAYS.

(b) "PUBLIC WORKS PROJECT" SHALL HAVE THE SAME MEANING AS "PUBLIC PROJECT" AS DEFINED IN SECTION 8-19-102 (1).

SECTION 3. In Colorado Revised Statutes, **repeal** 8-17-103 as follows:

~~**8-17-103. Penalty for violation.** Any officer or agent of the state, counties, school districts, or municipalities of the state of Colorado or any contractor who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.~~

SECTION 4. In Colorado Revised Statutes, **add** 8-17-104, 8-17-105, 8-17-106, and 8-17-107 as follows:

8-17-104. Enforcement - violation - penalties - Colorado labor enforcement cash fund - creation. (1) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL ENFORCE THE REQUIREMENTS OF THIS ARTICLE IN THE EVENT OF A COMPLAINT ALLEGING A POTENTIAL VIOLATION OF THE REQUIREMENTS OF THIS ARTICLE. IN CONNECTION WITH THE DEPARTMENT'S DUTY TO ENFORCE THE REQUIREMENTS OF THIS ARTICLE, THE DEPARTMENT SHALL RECEIVE COMPLAINTS ABOUT POTENTIAL VIOLATIONS OF SUCH REQUIREMENTS, INITIATE INVESTIGATIONS BASED ON SUCH COMPLAINTS, AND IMPOSE PENALTIES FOR THE VIOLATION OF THE REQUIREMENTS OF THIS ARTICLE PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT SHALL NOT INVESTIGATE OR TAKE ANY OTHER ACTION REGARDING A COMPLAINT FILED MORE THAN NINETY DAYS AFTER THE PROJECT HAS BEEN FINALIZED.

(2) (a) AFTER CONDUCTING AN INVESTIGATION OF A COMPLAINT ALLEGING A VIOLATION OF THE PROVISIONS OF THIS ARTICLE, IF THE DEPARTMENT OF LABOR AND EMPLOYMENT DETERMINES THAT A CONTRACTOR HAS KNOWINGLY VIOLATED THE REQUIREMENTS OF THIS ARTICLE BY IMPORTING LABOR IN EXCESS OF THAT PERMITTED PURSUANT TO SECTION 8-17-101 (1), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL IMPOSE A FINE ON SUCH CONTRACTOR AS FOLLOWS:

(1) FOR THE FIRST VIOLATION, FIVE THOUSAND DOLLARS OR AN AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT, WHICHEVER IS LESS;

(II) FOR THE SECOND VIOLATION, TEN THOUSAND DOLLARS OR AN AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT, WHICHEVER IS LESS; OR

(III) FOR THE THIRD VIOLATION AND ANY VIOLATION THEREAFTER, TWENTY-FIVE THOUSAND DOLLARS OR AN AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT, WHICHEVER IS LESS.

(b) WHEN THE DEPARTMENT OF LABOR AND EMPLOYMENT RECEIVES A COMPLAINT, IT SHALL NOTIFY THE CONTRACTOR OF THE COMPLAINT, BUT SHALL COMMENCE THE INVESTIGATION ONLY AT THE COMPLETION OF THE PROJECT. THE DEPARTMENT SHALL COMPLETE ANY INVESTIGATION IN RESPONSE TO A COMPLAINT WITHIN NINETY DAYS OF THE DATE THAT THE DEPARTMENT BEGAN THE INVESTIGATION. COMPLIANCE SHALL BE MEASURED OVER THE ENTIRETY OF THE COMPLETED PROJECT.

(c) IF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS IMPOSED THREE FINES ON A CONTRACTOR PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) WITHIN FIVE YEARS AND FINDS THE VIOLATIONS TO BE EGREGIOUS, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE MAY INITIATE THE PROCESS TO DEBAR THE CONTRACTOR PURSUANT TO SECTION 24-109-105, C.R.S.

(d) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY DISMISS A COMPLAINT IN HIS OR HER DISCRETION IF, AFTER CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION, THE DEPARTMENT DETERMINES THAT THE CIRCUMSTANCES THAT LED TO THE COMPLAINT WERE THE RESULT OF A MINOR PAPERWORK VIOLATION.

(3) A CONTRACTOR WHO IS FOUND TO BE IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE MAY APPEAL SUCH FINDING TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL HOLD A HEARING TO REVIEW SUCH NOTICE OR ORDER AND TAKE FINAL ACTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND MAY EITHER CONDUCT THE HEARING PERSONALLY OR APPOINT AN ADMINISTRATIVE LAW JUDGE FROM THE DEPARTMENT OF PERSONNEL. FINAL AGENCY ACTION IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(4) THE REVENUE COLLECTED FROM THE FINES IMPOSED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE COLORADO LABOR ENFORCEMENT CASH FUND, WHICH IS HEREBY CREATED. THE GENERAL ASSEMBLY SHALL MAKE APPROPRIATIONS FROM THE FUND AS NECESSARY TO COVER THE DIRECT AND INDIRECT COSTS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT IN CONNECTION WITH THE REQUIREMENTS OF THIS ARTICLE. ALL MONEYS NOT EXPENDED OR ENCUMBERED AND ALL INTEREST EARNED ON THE INVESTMENT OR DEPOSIT OF MONEYS IN THE FUND REMAINS IN THE FUND AND DOES NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND AT THE END OF ANY FISCAL YEAR.

(5) THE REQUIREMENTS OF THIS ARTICLE MAY NOT BE ENFORCED THROUGH A PRIVATE RIGHT OF ACTION.

8-17-105. Compliance standard. COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE SHALL BE CALCULATED ON THE TOTAL TAXABLE WAGES AND FRINGE BENEFITS, MINUS ANY PER DIEM PAYMENTS, PAID TO WORKERS EMPLOYED DIRECTLY ON THE SITE OF THE PROJECT AND WHO SATISFY THE DEFINITION OF COLORADO LABOR.

8-17-106. Rules. (1) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS ARTICLE. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., AND MUST INCLUDE, BUT NEED NOT BE LIMITED TO:

(a) A PROCEDURE FOR FILING A COMPLAINT ALLEGING THAT A CONTRACTOR IS IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE;

(b) A PROCEDURE FOR THE UNIFORM INVESTIGATION OF ANY COMPLAINT ALLEGING A VIOLATION OF THE PROVISIONS OF THIS ARTICLE; AND

(c) A PROCEDURE FOR FILING AN APPEAL PURSUANT TO SECTION 8-17-104 (3).

8-17-107. Federal and state law. NOTHING IN THIS ARTICLE APPLIES TO ANY PROJECT THAT RECEIVES FEDERAL MONEYS. IN ADDITION, NOTHING IN THIS ARTICLE CONTRAVENES ANY EXISTING TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES. CONTRACTS ENTERED INTO IN ACCORDANCE WITH ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES DO NOT VIOLATE THIS ARTICLE TO THE EXTENT OF THAT ACCORDANCE. THE REQUIREMENTS OF THIS ARTICLE ARE SUSPENDED IF SUCH REQUIREMENT WOULD CONTRAVENE ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES, OR WOULD CAUSE DENIAL OF FEDERAL MONEYS OR PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE.

SECTION 5. In Colorado Revised Statutes, **amend** 8-19-102 as follows:

8-19-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "NONRESIDENT BIDDER" MEANS A BIDDER THAT DOES NOT SATISFY THE CRITERIA TO BE A RESIDENT BIDDER.

(+) (2) "Public project" means:

(a) Any public project as defined in section 24-92-102 (8), C.R.S., including any such project awarded by any county, including any home rule county, municipality, as defined in section 31-1-101 (6), C.R.S., school district, special district, or other political subdivision of the state;

(b) Any publicly funded contract for construction entered into by a governmental body of the executive branch of this state which is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.; and

(c) Any highway or bridge construction, whether undertaken by the department

of transportation or by any political subdivision of this state, in which the expenditure of funds may be reasonably expected to exceed fifty thousand dollars.

(2) (3) "Resident bidder" means:

(a) A person, partnership, corporation, or joint venture which is authorized to transact business in Colorado and which maintains its principal place of business in Colorado; or

(b) A person, partnership, corporation, or joint venture which:

(I) Is authorized to transact business in Colorado;

(II) Maintains a place of business in Colorado; AND

(III) Has paid Colorado unemployment compensation taxes in at least ~~seventy-five percent~~ SIX of the eight quarters immediately prior to bidding on a construction contract for a public project.

SECTION 6. In Colorado Revised Statutes, **repeal** 8-19-102.5 as follows:

~~**8-19-102.5. Resident bidder - reciprocity.** In addition to any other criteria for awarding a preference under this article, the residence, registration, unemployment compensation, and other preference conditions applied to a Colorado resident bidder doing business in another state or foreign country shall be applied to a resident bidder from that state or foreign country doing business in Colorado in determining whether a preference shall be allowed.~~

SECTION 7. In Colorado Revised Statutes, **add** 8-19-104 and 8-19-105 as follows:

8-19-104. Bid preference - survey - report. (1) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, OR THE EXECUTIVE DIRECTOR'S DESIGNEE, SHALL CONDUCT A SURVEY AND COMPILE THE RESULTS INTO A LIST OF WHICH STATES PROVIDE A BIDDING PREFERENCE ON PUBLIC WORKS CONTRACTS FOR THEIR RESIDENT BIDDERS. THE LIST MUST INCLUDE DETAILS ON THE TYPE OF PREFERENCE PROVIDED BY EACH STATE, THE AMOUNT OF THE PREFERENCE, AND HOW THE PREFERENCE IS APPLIED. THE EXECUTIVE DIRECTOR SHALL COMPLETE THE INITIAL LIST ON OR BEFORE JULY 1, 2014, AND SHALL UPDATE THE LIST PERIODICALLY AS NEEDED BUT AT LEAST ON AN ANNUAL BASIS. ON OR BEFORE JANUARY 1, 2015, THE DEPARTMENT OF PERSONNEL SHALL SUBMIT A REPORT INCLUDING THE LIST COMPILED PURSUANT TO THIS SUBSECTION (1) AND ANY RECOMMENDATION NECESSARY TO IMPLEMENT THIS SECTION TO THE STANDING COMMITTEE OF REFERENCE IN EACH HOUSE OF THE GENERAL ASSEMBLY EXERCISING JURISDICTION OVER MATTERS CONCERNING STATE AFFAIRS AND LABOR. THE DEPARTMENT SHALL ALSO MAKE THE LIST AVAILABLE TO THE PUBLIC ON THE DEPARTMENT'S WEB SITE.

(2) IN ANY BIDDING PROCESS FOR PUBLIC WORKS IN WHICH A BID IS RECEIVED FROM A BIDDER WHO IS NOT A RESIDENT BIDDER AND WHO IS FROM A STATE THAT PROVIDES A PERCENTAGE BIDDING PREFERENCE TO RESIDENT BIDDERS OF THAT STATE, A COMPARABLE PERCENTAGE DISADVANTAGE SHALL BE APPLIED TO THE BID

OF THAT BIDDER.

(3) ANY REQUEST FOR PROPOSALS ISSUED BY A STATE AGENCY OR POLITICAL SUBDIVISION OF THE STATE MUST INCLUDE A NOTICE TO NONRESIDENT BIDDERS THAT IF THE NONRESIDENT BIDDER IS FROM A STATE THAT PROVIDES A BIDDING PREFERENCE TO BIDDERS FROM THAT STATE, THEN A COMPARABLE PERCENTAGE DISADVANTAGE WILL BE APPLIED TO THE BID OF THAT NONRESIDENT BIDDER. THE NOTICE MUST ALSO SPECIFY THAT THE BIDDER MAY OBTAIN ADDITIONAL INFORMATION FROM THE DEPARTMENT OF PERSONNEL'S WEB SITE.

(4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL PROMULGATE RULES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S.

8-19-105. Federal and state law. NOTHING IN THIS ARTICLE APPLIES TO ANY PROJECT THAT RECEIVES FEDERAL MONEYS. IN ADDITION, NOTHING IN THIS ARTICLE CONTRAVENES ANY EXISTING TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES. CONTRACTS ENTERED INTO IN ACCORDANCE WITH ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES DO NOT VIOLATE THIS ARTICLE TO THE EXTENT OF THAT ACCORDANCE. THE REQUIREMENTS OF THIS ARTICLE ARE SUSPENDED IF SUCH REQUIREMENT WOULD CONTRAVENE ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES, OR WOULD CAUSE DENIAL OF FEDERAL MONEYS OR PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE.

SECTION 8. In Colorado Revised Statutes, 24-92-103, **amend** (1) as follows:

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

(1) All construction contracts for public projects ~~shall~~ THAT DO NOT RECEIVE FEDERAL MONEYS MAY BE AWARDED BY COMPETITIVE SEALED BIDDING ~~except as otherwise provided in section 24-92-104~~ PURSUANT TO THIS SECTION.

SECTION 9. In Colorado Revised Statutes, **add** 24-92-103.5 and 24-92-103.7 as follows:

24-92-103.5. Construction of public projects - competitive sealed best value bidding. (1) ALL CONSTRUCTION CONTRACTS FOR PUBLIC PROJECTS THAT DO NOT RECEIVE FEDERAL MONEYS MAY BE AWARDED THROUGH COMPETITIVE SEALED BEST VALUE BIDDING PURSUANT TO THIS SECTION.

(2) AN INVITATION FOR BIDS UNDER COMPETITIVE SEALED BEST VALUE BIDDING SHALL BE MADE IN THE SAME MANNER AS PROVIDED IN SECTION 24-92-103 (2), (3), AND (4); EXCEPT THAT ADEQUATE PUBLIC NOTICE OF THE INVITATION FOR BIDS SHALL BE GIVEN AT LEAST THIRTY DAYS PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF BIDS.

(3) THE INVITATION FOR COMPETITIVE SEALED BEST VALUE BIDS MUST IDENTIFY THE EVALUATION FACTORS UPON WHICH THE AWARD WILL BE MADE. WHEN MAKING THE AWARD DETERMINATION, THE RESPONSIBLE OFFICER SHALL EVALUATE THE FACTORS SPECIFIED IN THE INVITATION FOR BIDS AND SHALL NOT EVALUATE ANY

OTHER FACTORS OTHER THAN THOSE SPECIFIED IN THE INVITATION FOR BIDS. THE FACTORS THAT MUST BE INCLUDED IN THE INVITATION FOR BIDS AND THAT THE RESPONSIBLE OFFICER SHALL CONSIDER INCLUDE, BUT NEED NOT BE LIMITED TO:

(a) THE PROJECT PRICE STATED IN THE BID;

(b) THE BIDDER'S DESIGN AND TECHNICAL APPROACH TO THE PUBLIC PROJECT;

(c) THE EXPERIENCE, PAST PERFORMANCE, AND EXPERTISE OF THE BIDDER AND THE BIDDER'S PRIMARY SUBCONTRACTORS IN CONNECTION WITH PRIOR CONSTRUCTION CONTRACTS, INCLUDING ITS PERFORMANCE IN THE AREAS OF COST, QUALITY, SCHEDULE, SAFETY, COMPLIANCE WITH PLANS AND SPECIFICATIONS, AND ADHERENCE TO APPLICABLE LAWS AND REGULATIONS;

(d) THE BIDDER'S PROJECT MANAGEMENT PLAN FOR THE CONSTRUCTION CONTRACT THAT IDENTIFIES THE KEY MANAGEMENT PERSONNEL THAT WILL BE USED FOR THE PROJECT, THE PROPOSED PROJECT SCHEDULE, THE BIDDER'S QUALITY CONTROL PROGRAM AND PROJECT SAFETY PROGRAM, FINANCIAL RESOURCES, EQUIPMENT, AND ANY OTHER INFORMATION THAT DEMONSTRATES THE BIDDER'S COMPETENCY TO PERFORM THE CONTRACT, INCLUDING TECHNICAL QUALIFICATIONS AND RESOURCES;

(e) THE BIDDER'S STAFFING PLAN;

(f) THE BIDDER'S SAFETY PLAN AND SAFETY RECORD;

(g) THE BIDDER'S JOB STANDARDS, INCLUDING THE BIDDER'S METHOD OF PERSONNEL PROCUREMENT, EMPLOYMENT OF COLORADO WORKERS, WORKFORCE DEVELOPMENT AND LONG-TERM CAREER OPPORTUNITIES OF WORKERS, THE AVAILABILITY OF TRAINING PROGRAMS, INCLUDING APPRENTICESHIPS APPROVED BY THE UNITED STATES DEPARTMENT OF LABOR, THE BENEFITS PROVIDED TO WORKERS, INCLUDING HEALTHCARE AND DEFINED BENEFIT OR DEFINED CONTRIBUTION RETIREMENT BENEFITS, AND WHETHER THE BIDDER PAYS INDUSTRY-STANDARD WAGES; AND

(h) THE AVAILABILITY AND USE OF DOMESTICALLY PRODUCED IRON, STEEL, AND RELATED MANUFACTURED GOODS TO EXECUTE THE CONTRACT.

(4) THE CONTRACT SHALL BE AWARDED WITH REASONABLE PROMPTNESS BY WRITTEN NOTICE TO THE BIDDER WHOSE BID IS DETERMINED IN WRITING TO BE THE MOST ADVANTAGEOUS TO THE STATE AND THAT REPRESENTS THE BEST OVERALL VALUE TO THE STATE, TAKING INTO CONSIDERATION THE PRICE AND OTHER EVALUATION FACTORS SET FORTH IN THE INVITATION FOR BIDS IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. THE CONTRACT FILE MAINTAINED BY THE STATE MUST CONTAIN THE BASIS ON WHICH THE AWARD DETERMINATION WAS MADE.

(5) A REQUEST FOR COMPETITIVE SEALED BEST VALUE BIDS ISSUED PURSUANT TO THIS SECTION MUST OTHERWISE COMPLY WITH THE REQUIREMENTS OF SECTION 24-103-203 CONCERNING COMPETITIVE SEALED PROPOSALS FOR NONCONSTRUCTION CONTRACTS TO THE EXTENT THAT SUCH REQUIREMENTS DO NOT CONFLICT WITH THIS SECTION. IN THE CASE OF A CONFLICT, THE PROVISIONS OF THIS SECTION SUPERSEDE.

(6) TO ENSURE THAT THE BEST VALUE BIDDING PROCESS PURSUANT TO THIS SECTION IS OPEN AND TRANSPARENT TO THE GREATEST POSSIBLE DEGREE:

(a) AFTER SELECTION OF MOST QUALIFIED PARTICIPANTS, ALL STATEMENTS OF QUALIFICATION SHALL BE MADE AVAILABLE TO THE PUBLIC; AND

(b) AFTER THE CONTRACT HAS BEEN AWARDED, ALL REQUESTS FOR PROPOSALS SHALL BE MADE PUBLIC WITH THE SCORE SHEETS USED TO MAKE THE BID SELECTION, OMITTING ANY CONFIDENTIAL CORPORATE INFORMATION.

24-92-103.7. Disclosure - competitive sealed bidding - competitive sealed best value bidding. THE EXECUTIVE DIRECTOR OF AN AGENCY OF GOVERNMENT OR PRESIDENT OF AN INSTITUTION OF HIGHER EDUCATION THAT ENTERS INTO A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT PURSUANT TO THIS ARTICLE THAT IS NOT FUNDED IN ANY PART WITH FEDERAL MONEYS SHALL DISCLOSE TO THE PUBLIC THE AGENCY OF GOVERNMENT'S RATIONALE OR THE INSTITUTION'S RATIONALE FOR SELECTING THE COMPETITIVE SEALED BIDDING PROCESS PURSUANT TO SECTION 24-92-103 OR THE COMPETITIVE SEALED BEST VALUE BIDDING PROCESS PURSUANT TO SECTION 24-92-103.5 FOR THE PUBLIC PROJECT. THE AGENCY OR INSTITUTION SHALL POST THE DISCLOSURE ON ITS WEB SITE.

SECTION 10. In Colorado Revised Statutes, **add** 24-93-109 as follows:

24-93-109. Disclosure. THE EXECUTIVE DIRECTOR OF AN AGENCY OR PRESIDENT OF AN INSTITUTION OF HIGHER EDUCATION THAT ENTERS INTO A CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT PURSUANT TO THIS ARTICLE SHALL DISCLOSE TO THE PUBLIC THE AGENCY'S RATIONALE OR THE INSTITUTION'S RATIONALE FOR SELECTING THE INTEGRATED PROJECT DELIVERY CONTRACTING PROCESS PURSUANT TO THIS ARTICLE FOR THE PUBLIC PROJECT. THE AGENCY OR INSTITUTION SHALL POST THE DISCLOSURE ON ITS WEB SITE.

SECTION 11. In Colorado Revised Statutes, **amend** 24-92-110 as follows:

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~~ **MUST** 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. IN ADDITION, THE RULES MUST INCLUDE CRITERIA TO BE USED BY A RESPONSIBLE OFFICER IN EVALUATING A COMPETITIVE SEALED BEST VALUE BID PURSUANT TO SECTION 24-92-103.5 (3).

SECTION 12. In Colorado Revised Statutes, **amend** 24-102-206 as follows:

24-102-206. Contract performance outside the United States or Colorado - notice - penalty. (1) (a) Prior to contracting or as a requirement for the solicitation of any contract from the state for services, as appropriate, any prospective vendor shall disclose in a WRITTEN statement of work WHETHER IT ANTICIPATES

SUBCONTRACTING ANY SERVICES UNDER THE CONTRACT, where SUCH SUBCONTRACTED services will be performed under the contract, including any subcontracts, and whether any SUBCONTRACTED services under the contract or any subcontracts are anticipated to be performed outside the United States or the state. If the prospective vendor anticipates services under the contract or any subcontracts will be performed outside the United States or the state, the vendor shall provide in its WRITTEN statement of work a provision setting forth why it is necessary or advantageous to go outside the United States or the state to perform the contract or any subcontracts.

(b) EACH CONTRACT ENTERED INTO OR RENEWED BY A GOVERNMENTAL BODY PURSUANT TO THIS CODE MUST CONTAIN A CLAUSE THAT REQUIRES THE VENDOR TO PROVIDE WRITTEN NOTICE TO THE GOVERNMENTAL BODY IF THE VENDOR DECIDES, AFTER THE CONTRACT IS AWARDED, TO PERFORM SERVICES UNDER THE CONTRACT OUTSIDE THE UNITED STATES OR THE STATE OR TO SUBCONTRACT SERVICES UNDER THE CONTRACT TO A SUBCONTRACTOR THAT WILL PERFORM SUCH SERVICES OUTSIDE THE UNITED STATES OR THE STATE. THE CONTRACT MUST SPECIFY THAT THE VENDOR IS REQUIRED TO PROVIDE SUCH WRITTEN NOTICE NO LATER THAN TWENTY DAYS FROM THE TIME THE VENDOR DECIDES TO PERFORM SERVICES UNDER THE CONTRACT OUTSIDE THE UNITED STATES OR THE STATE OR SUBCONTRACTS SERVICES UNDER THE CONTRACT TO A SUBCONTRACTOR THAT WILL PERFORM SUCH SERVICES IN A LOCATION OUTSIDE THE UNITED STATES OR THE STATE.

(2) THE WRITTEN NOTIFICATION REQUIRED BY PARAGRAPHS (a) AND (b) OF SUBSECTION (1) OF THIS SECTION MUST INCLUDE, BUT NEED NOT BE LIMITED TO, A STATEMENT OF THE TYPE OF SERVICES THAT WILL BE PERFORMED AT A LOCATION OUTSIDE THE UNITED STATES OR THE STATE AND THE REASON WHY IT IS NECESSARY OR ADVANTAGEOUS TO GO OUTSIDE THE UNITED STATES OR THE STATE TO PERFORM SUCH SERVICES.

(3) A GOVERNMENTAL BODY SHALL PROVIDE WRITTEN NOTICE TO THE DEPARTMENT OF PERSONNEL IF IT AWARDS A CONTRACT TO A VENDOR THAT HAS PROVIDED WRITTEN NOTICE PURSUANT TO PARAGRAPH (a) OR (b) OF SUBSECTION (1) OF THIS SECTION THAT THE VENDOR OR THE VENDOR'S SUBCONTRACTOR WILL PERFORM SERVICES UNDER THE CONTRACT OUTSIDE THE UNITED STATES OR THE STATE.

(4) IF A VENDOR KNOWINGLY FAILS TO NOTIFY THE GOVERNMENTAL BODY OF ANY OUTSOURCED SERVICES AS SPECIFIED IN THIS SECTION, THE GOVERNMENTAL BODY MAY, IN THE GOVERNMENTAL BODY'S DISCRETION, TERMINATE THE CONTRACT.

(5) THE EXECUTIVE DIRECTOR SHALL POST ANY NOTICE THAT A VENDOR PROVIDES TO A GOVERNMENTAL BODY PURSUANT TO THIS SECTION ON THE OFFICIAL WEB SITE OF THE DEPARTMENT.

~~(2)~~ (6) Nothing in subsection (1) of this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.

(7) NOTHING IN THIS SECTION APPLIES TO ANY PROJECT THAT RECEIVES FEDERAL MONEYS. IN ADDITION, NOTHING IN THIS SECTION CONTRAVENES ANY EXISTING TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES. CONTRACTS ENTERED INTO IN ACCORDANCE WITH ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES DO NOT VIOLATE THIS SECTION TO THE EXTENT OF THAT ACCORDANCE. THE REQUIREMENTS OF THIS SECTION ARE SUSPENDED IF SUCH REQUIREMENTS WOULD CONTRAVENE ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES, OR WOULD CAUSE DENIAL OF FEDERAL MONEYS OR PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE.

SECTION 13. In Colorado Revised Statutes, **add** 24-102-206.5 as follows:

24-102-206.5. Contract performance outside the United States or Colorado - annual report. (1) ON JANUARY 1, 2014, AND ON EACH JANUARY 1 THEREAFTER, A GOVERNMENTAL BODY SHALL SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY IF THE GOVERNMENTAL BODY ENTERED INTO ONE OR MORE CONTRACTS WITH A VENDOR DURING THE PREVIOUS STATE FISCAL YEAR AND RECEIVED WRITTEN NOTICE FROM ONE OR MORE VENDORS PURSUANT TO SECTION 24-102-206 (1) (b), THAT THE VENDOR OR THE VENDOR'S SUBCONTRACTOR WOULD PERFORM SERVICES UNDER THE CONTRACT OUTSIDE THE UNITED STATES OR THE STATE.

(2) (a) THE PURPOSE OF THE REPORT REQUIRED IN SUBSECTION (1) OF THIS SECTION IS TO NOTIFY TAXPAYERS AND THE GENERAL ASSEMBLY REGARDING THE USE OF UNITED STATES AND STATE TAX DOLLARS ON STATE CONTRACTS IN WHICH SERVICES UNDER THE CONTRACT ARE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE. THE GOVERNMENTAL BODY SHALL PROVIDE INFORMATION REQUIRED IN THE REPORT BASED ON THE INFORMATION THAT VENDORS SUBMITTED TO THE GOVERNMENTAL BODY PURSUANT TO SECTION 24-102-206 DURING THE PREVIOUS STATE FISCAL YEAR.

(b) THE REPORT MUST SEPARATE DATA BY STATE CONTRACT TYPE AND PROVIDE INFORMATION REGARDING THE TYPE AND THE PERCENTAGE OF THE TOTAL SERVICES THAT WERE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE BY EACH VENDOR OR A VENDOR'S SUBCONTRACTOR UNDER EACH STATE CONTRACT.

(c) THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION MUST ALSO INCLUDE A DESCRIPTION OF ANY INITIATIVES THAT THE GOVERNMENTAL BODY HAS TAKEN TO ACTIVELY REDUCE THE NUMBER OF CONTRACTS IN WHICH A VENDOR OR VENDOR'S SUBCONTRACTOR PERFORM SERVICES UNDER THE CONTRACT OUTSIDE THE UNITED STATES OR THE STATE.

(d) A GOVERNMENTAL BODY THAT IS REQUIRED TO SUBMIT A REPORT PURSUANT TO SUBSECTION (1) OF THIS SECTION MAY INCLUDE THE REPORT IN ITS ANNUAL REPORT TO THE GENERAL ASSEMBLY REQUIRED BY THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT".

SECTION 14. In Colorado Revised Statutes, **add** 24-103-210 as follows:

24-103-210. Use of foreign-produced goods - iron, steel, and related manufactured products - disclosure - definitions. (1) THE CONTRACTOR FOR ANY

PUBLIC WORKS PROJECT THAT IS FUNDED BY A STATE AGENCY AS DEFINED IN SECTION 24-30-1301 (12), THAT DOES NOT RECEIVE ANY FEDERAL MONEYS, AND THAT COSTS MORE THAN FIVE HUNDRED THOUSAND DOLLARS SHALL, UPON COMPLETION OF THE PROJECT, MAKE A GOOD FAITH EFFORT TO DISCLOSE TO THE DEPARTMENT OF PERSONNEL THE FIVE MOST COSTLY GOODS INCORPORATED INTO THE PROJECT, INCLUDING IRON, STEEL, OR RELATED MANUFACTURED GOODS; EXCEPT THAT, FOR PUBLIC PROJECTS UNDER THE SUPERVISION OF THE DEPARTMENT OF TRANSPORTATION, THE CONTRACTOR SHALL DISCLOSE SUCH INFORMATION TO THE DEPARTMENT OF TRANSPORTATION.

(2) (a) IN THE CASE OF AN IRON OR STEEL PRODUCT, THE PRODUCT WILL BE CONSIDERED MANUFACTURED IN THE UNITED STATES IF ALL OF THE MANUFACTURING PROCESSES FOR THE FINAL PRODUCT TAKE PLACE IN THE UNITED STATES.

(b) IN THE CASE OF A MANUFACTURED GOOD, A GOOD WILL BE CONSIDERED MANUFACTURED IN THE UNITED STATES IF ALL OF THE MANUFACTURING PROCESSES FOR THE FINAL PRODUCT TAKE PLACE IN THE UNITED STATES IRRESPECTIVE OF THE ORIGIN OF THE MANUFACTURED GOOD'S SUBCOMPONENTS.

(c) IN ORDER FOR A MANUFACTURED GOOD TO BE CONSIDERED SUBJECT TO DISCLOSURE UNDER THIS ARTICLE, THE PRODUCT MUST BE MANUFACTURED PREDOMINANTLY OF STEEL OR IRON. THE MANUFACTURED GOOD IS DEEMED A PRODUCT MANUFACTURED PREDOMINANTLY OF STEEL OR IRON IF THE PRODUCT CONSISTS OF MORE THAN FIFTY PERCENT STEEL OR IRON CONTENT WHEN IT IS DELIVERED TO THE JOB SITE FOR INSTALLATION.

(3) THE DISCLOSURE MUST STATE THE TOTAL COST AND COUNTRY OF ORIGIN OF THE FIVE MOST COSTLY GOODS USED ON A PROJECT, INCLUDING IRON, STEEL, AND RELATED MANUFACTURED GOODS DESCRIBED PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION. THE CONTRACTOR MAY RELY ON DOCUMENTS PROVIDED BY THIRD-PARTY VENDORS WHEN DISCLOSING THE COUNTRY OF ORIGIN OF IRON, STEEL, OR RELATED MANUFACTURED GOODS. IN ADDITION, THE DISCLOSURE MUST STATE WHETHER THE PUBLIC WORKS PROJECT WAS SUBJECT TO ANY EXISTING DOMESTIC CONTENT PREFERENCE, INCLUDING 41 U.S.C. SEC. 8301 TO 8305, 23 U.S.C. SEC. 313, 49 U.S.C. SEC. 5323, 49 U.S.C. SEC. 24305, 49 U.S.C. SEC. 24405, AND 49 U.S.C. SEC. 50101 TO 50105. THE CONTRACTOR SHALL DISCLOSE THE INFORMATION IN A MANNER TO BE DETERMINED BY THE DEPARTMENT.

(4) THE DEPARTMENT SHALL ISSUE AN ANNUAL REPORT DETAILING THE INFORMATION THAT CONTRACTORS SUBMITTED TO THE DEPARTMENT AND TO THE DEPARTMENT OF TRANSPORTATION PURSUANT TO SUBSECTIONS (1) TO (3) OF THIS SECTION. THE REPORT MUST INCLUDE AGGREGATE DATA COLLECTED FOR THE CALENDAR YEAR AND ANALYSIS OF THE DATA BROKEN DOWN BY PRODUCT AND PUBLIC WORKS PROJECT TYPE. THE REPORT SHALL NOT PUBLICLY DISCLOSE ANY PROPRIETARY INFORMATION PROVIDED BY THE CONTRACTOR THAT IS NOT SUBJECT TO DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE. THE DEPARTMENT SHALL MAKE THE REPORT AVAILABLE TO THE PUBLIC ON THE DEPARTMENT'S WEB SITE.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COUNTRY OF ORIGIN" SHALL HAVE THE MEANING ASCRIBED TO IT UNDER 19 U.S.C. SEC. 1304 AND 19 CFR 134.

(b) "PUBLIC WORKS" SHALL HAVE THE SAME MEANING AS "PUBLIC PROJECT" AS DEFINED IN SECTION 24-92-102 (8) (a), C.R.S.

(c) "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(6) NOTHING IN THIS SECTION APPLIES TO ANY PROJECT THAT RECEIVES FEDERAL MONEYS. IN ADDITION, NOTHING IN THIS SECTION CONTRAVENES ANY EXISTING TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES. CONTRACTS ENTERED INTO IN ACCORDANCE WITH ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES DO NOT VIOLATE THIS SECTION TO THE EXTENT OF THAT ACCORDANCE. THE REQUIREMENTS OF THIS SECTION ARE SUSPENDED IF SUCH REQUIREMENTS WOULD CONTRAVENE ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES, OR WOULD CAUSE DENIAL OF FEDERAL MONEYS OR PRECLUDE THE ABILITY TO ACCESS FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE.

SECTION 15. In Colorado Revised Statutes, 24-109-105, **add** (2) (f) as follows:

24-109-105. Debarment and suspension. (2) A person may be debarred for any of the following reasons:

(f) THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS IMPOSED THREE FINES ON A CONTRACTOR WITHIN FIVE YEARS PURSUANT TO SECTION 8-17-104, C.R.S., FOR FAILURE TO SATISFY COLORADO LABOR REQUIREMENTS.

SECTION 16. In Colorado Revised Statutes, **amend** 40-2-129 as follows:

40-2-129. New resource acquisitions - factors in determination - local employment - "best value" metrics. When evaluating electric resource acquisitions AND REQUESTS FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR CONSTRUCTION OR EXPANSION OF GENERATING FACILITIES, INCLUDING BUT NOT LIMITED TO POLLUTION CONTROL OR FUEL CONVERSION UPGRADES AND CONVERSION OF EXISTING COAL-FIRED PLANTS TO NATURAL GAS PLANTS, the commission shall consider, on a qualitative basis, factors that affect employment and the long-term economic viability of Colorado communities. To this end, the commission shall require utilities to request the following information regarding "best value" employment metrics: The availability of training programs, including training through apprenticeship programs registered with the United States department of labor, office of apprenticeship and training; employment of Colorado workers as compared to importation of out-of-state workers; long-term career opportunities; and industry-standard wages, health care, and pension benefits. When a utility proposes to construct new facilities of its own, the utility shall supply similar information to the commission.

SECTION 17. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund, not otherwise

appropriated, to the department of labor and employment, for the fiscal year beginning July 1, 2013, the sum of \$98,519 and 1.0 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$63,757 and 1.0 FTE for personal services and operating expenses in the division of labor; and

(b) \$34,762 for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$34,762 and 0.3 FTE, or so much thereof as may be necessary, for the provision of legal services for the department of labor and employment related to the implementation of this act. Said sum is from reappropriated funds received from the department of labor and employment out of the appropriation made in paragraph (b) of subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund, not otherwise appropriated, to the department of personnel, for the fiscal year beginning July 1, 2013, the sum of \$36,588, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$25,000 for computer programming costs; and

(b) \$11,588 for the purchase of legal services.

(4) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$11,588, or so much thereof as may be necessary, for the provision of legal services for the department of personnel related to the implementation of this act. Said sum is from reappropriated funds received from the department of personnel out of the appropriation made in paragraph (b) of subsection (3) of this section.

SECTION 18. Applicability. This act applies to new contracts for which the invitation for bids or the request for proposals was issued on or after January 1, 2014.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 24, 2013