



PROPOSED COLORADO PROCUREMENT CODE

Prepared
by
Colorado Model Procurement Code
Study Task Force

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This proposed procurement code for the State of Colorado was prepared by the Colorado Model Procurement Code Study Task Force appointed by State Purchasing Director E. R. Roor. The drafting of this proposed code was undertaken as part of Colorado's Cooperative Agreement for Technical Assistance from the American Bar Association's Fund for Public Education and its Model Procurement Code Project.

This proposed Colorado Procurement Code was drafted by the Colorado Model Procurement Code Study Task Force. The Task Force held a series of six meetings covering ten full days between December 14, 1979, and May 19, 1980.

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Article 1
Proposed Colorado
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ARTICLE 1 -- GENERAL PROVISIONS

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Article 1
Proposed Colorado
Procurement Code

ARTICLE 1 -- GENERAL PROVISIONS

Part A -- Purposes, Construction, and
Application

§1-101 Purposes, Rules of Construction.

(1) Interpretation. This Code shall be construed and applied to promote its underlying purposes and policies.

(2) Purposes and Policies. The underlying purposes and policies of this Code are:

- (a) to simplify, clarify, and modernize the law governing procurement by the State of Colorado;
- (b) to provide for increased public confidence in the procedures followed in public procurement;
- (c) to ensure the fair and equitable treatment of all persons who deal with the procurement system of the State of Colorado;
- (d) to provide increased economy in State procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the State of Colorado;
- (e) to foster effective broad-based competition within the free enterprise system; and
- (f) to provide safeguards for the maintenance of a procurement system of quality and integrity.

11-102 Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code.

§1-103 Requirement of Good Faith.

This Code requires all parties involved in the negotiation, performance, or administration of State contracts to act in good faith.

§1-104 Application of this Code.

(1) General Application. This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Application to State Procurement. This Code shall apply to all publicly funded contracts entered into by all governmental bodies of this State. Except as provided in Section 11-501 (Compliance with Federal Requirements), it shall also apply to contracts funded in whole or in part with federal assistance monies. However, this Code shall not apply to the awarding of either grants or contracts between the State and its political subdivisions or other

1 governments except as provided in Article 10 (Intergovern-
2 mental Relations). It shall apply to the transfer or
3 disposal of State supplies. This Code shall not apply to
4 procurement of public printing as defined in Section
5 24-70-201, C.R.S. 1973, as amended, except that the pro-
6 visions of Article 9 (Legal and Contractual Remedies) of
7 this Code shall apply to such procurements. Upon request of
8 a governmental body purchasing items for resale to the
9 public, the Director of the Division of State Purchasing or
10 the head of the appropriate Purchasing Agency may, by
11 written determination, provide that this Code shall not
12 apply to items acquired for such resale. Nothing in this
13 Code or in rules promulgated hereunder shall prevent any
14 governmental body or political subdivision from complying
15 with the terms and conditions of any grant, gift, bequest,
16 or cooperative agreement.

17 (3) Political Subdivisions and Other Local Public
18 Agencies Authorized to Adopt This Code. All political
19 subdivisions and other local public agencies of this State
20 are authorized to adopt all or any part of this Code and
21 its accompanying rules.

22 §1-105 Effective Date.

23 This Code shall become effective at 12:01 A.M. on

24 [], 19[].

25

COMMETARY:

The effective date of this Code should be set at least six months after enactment to allow time for development of rules and the other administrative matters necessitated by its enactment.

Part B -- Determinations

§1-201 Determinations.

Written determinations required by this Code shall be retained in the appropriate official contract file of the Division of Purchasing or the Purchasing Agency administering the procurement.

Part C -- Definitions of Terms Used in this Code

§1-301 Definitions.

The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless:

(a) the context in which they are used clearly requires a different meaning; or

(b) a different definition is prescribed for a particular Article or provision.

(1) Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(2) Change Order means a written order signed by the Procurement Officer, directing the contractor to make

1 changes which the Changes clause of the contract authorizes
2 the Procurement Officer to order without the consent of
3 the contractor.

4 COMMENTARY:

5 This definition does not preclude the
6 Procurement Officer from seeking consent
of a contractor to a change order.

7 (3) Construction means the process of building
8 altering, repairing, improving, or demolishing any public
9 structure or building, or other public improvements of any
10 kind to any public real property. For purposes of this
11 Code, this term includes capital construction and controlled
12 maintenance as defined in Section 24-30-1301, C.R.S. 1973,
13 as amended.

14 (4) Contract means all types of State agreements,
15 regardless of what they may be called, for the procurement
16 or disposal of supplies, services, or construction.

17 (5) Contract Modification means any written alteration
18 in specifications, delivery point, rate of delivery, period
19 of performance, price, quantity, or other provisions of
20 any contract accomplished by mutual action of the parties to
21 the contract.

22 (6) Contractor means any person having a contract
23 with a governmental body.

24 (7) Director means the person holding the position
25 created in Section 2-201 (Creation of the Division of

Purchasing), as the head of the Division of Purchasing.

(8) Employee means an individual drawing a salary from a governmental body, elected officers of the State, and any noncompensated individual performing personal services for any governmental body.

(9) Governmental Body means any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official of the executive branch of this State.

(10) Head of a Purchasing Agency means the director of a Purchasing Agency created pursuant to Section 2-203 (Delegation of Authority by the Director) or Section 2-302 (2) (Creation of Purchasing Agencies, Creation by the Executive Director) of this Code; the principal representative authorized to enter into contracts for capital construction or controlled maintenance pursuant to Section 24-30-1301 et seq., C.R.S. 1973, as amended; the principal representative authorized to enter into contracts for special services pursuant to Article 5, Part E (Architect-Engineer, Landscape Architect and Land Surveying Services) of this Code; and the chief engineer of the state department of highways authorized to enter into contracts for bridge and highway construction pursuant to Section 43-1-106, C.R.S. 1973, as amended.

1 (11) May denotes the permissive.

2 (12) Person means any business, individual, union,
3 committee, club, other organization, or group of individuals.

4 (13) Procurement means buying, purchasing, renting,
5 leasing, or otherwise acquiring any supplies, services, or
6 construction. It also includes all functions that pertain
7 to the obtaining of any supply, service, or construction,
8 including description of requirements, selection and
9 solicitation of sources, preparation and award of contract,
10 and all phases of contract administration.

11 (14) Procurement Officer means any person duly authorized
12 to enter into and administer contracts and make written
13 determinations with respect thereto. The term also includes
14 an authorized representative acting within the limits of
15 authority.

16 (15) Purchasing Agency means any governmental body
17 other than the Division of Purchasing which is authorized
18 to enter into contracts by Section 2-301(1) (Creation of
19 Purchasing Agencies, Construction), by way of delegation
20 from the Executive Director of the Department of Adminis-
21 tration pursuant to Section 2-302(2) (Creation of Pur-
22 chasing Agencies, Creation by the Executive Director),
23 or by the way of delegation from the Director of the Di-
24 vision of Purchasing pursuant to Section 2-203 (Delegation
25 of Authority by the Director).

1 (16) Rule has the same meaning as provided in Sec-
2 tion 24-4-102(15), C.R.S. 1973, as amended.

3 (17) Services means the furnishing of labor, time, or
4 effort by a contractor not involving the delivery of a
5 specific end product other than reports which are merely
6 incidental to the required performance.

7 COMMENTARY:

8 This definition of services includes, but
9 is not limited to: consulting, personal,
10 professional, technical, purchase-of-client,
concession, and vending services.

11 (18) Shall denotes the imperative.

12 (19) Supplies means all property, including but not
13 limited to equipment, materials, and insurance. It does not
14 include land, the purchase of interest in land, water or
15 mineral rights, workmen's compensation insurance, or benefit
16 insurance for State employees.

17 (20) Using Agency means any governmental body of the
18 State which utilizes any supplies, services, or construction
19 procured under this Code.

20 SUMMARY DEFINITIONAL CROSS-REFERENCES:

21	"Blind Trust"	Section 12-101(1)
22	"Confidential Information"	Section 12-101(2)
	"Conspicuously"	Section 12-101(3)
23	"Continuing Contract"	Section 5-101(1)
	"Cooperative Purchasing"	Section 10-101(1)
24	"Cost-Reimbursement Contract"	Section 3-101(1)
	"Department"	Section 5-101(2)
25	"Direct or Indirect Participation"	Section 12-101(4)

1	"Economically Disadvantaged Individuals	Section 11-101(1)
2	"Established Catalogue Price"	Section 3-101(2)
3	"Excess Supplies"	Section 8-101(1)
4	"External Procurement Activity"	Section 10-101(2)
5	"Financial Interest"	Section 12-101(5)
6	"Gratuity"	Section 12-101(6)
7	"Immediate Family"	Section 12-101(7)
8	"Invitation for Bids"	Section 3-101(3)
9	"Local Public Procurement Unit"	Section 10-101(3)
10	"Minority Business Enterprise"	Section 11-101(2)
11	"Official Responsibility"	Section 12-101(8)
12	"Practice of Landscape Architecture"	Section 5-101(3)
13	"Principal Representative"	Section 5-101(4)
14	"Public Procurement Unit"	Section 10-101(4)
15	"Purchase Description"	Section 3-101(4)
16	"Purchase Request"	Section 12-101(9)
17	"Request for Proposals"	Section 3-101(5)
18	"Responsible Bidder or Offeror"	Section 3-101(6)
19	"Responsive Bidder"	Section 3-101(7)
20	"Socially Disadvantaged Individuals"	Section 5-101(1)
21	"Special Services "	Section 11-101(3)
22	"Specification"	Section 5-101(5)
23	"State Public Procurement Unit"	Section 4-101(1)
24	"Surplus Supplies"	Section 10-101(5)
25		Section 8-101(2)

Part D -- Procurement Records and Information

§1-401 Public Access to Procurement Information.

Except as provided in §3-202(4) (Competitive Sealed Bidding, Bid Opening), procurement information shall be a public record and shall be available to the public as provided in Section 24-72-204, C.R.S. 1973, as amended (Open Records Law).

§1-402 Retention of Procurement Records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and

- 1 schedules as provided in Section 80-103, C.R.S. 1973,
- 2 as amended (State Records Law).

Article 2

Procurement Organization

ARTICLE 2 -- PROCUREMENT ORGANIZATION

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ARTICLE 2 -- PROCUREMENT ORGANIZATION

Part A -- Executive Director of the Department
of Administration

§2-101 Authority and Duties of the Executive Director
of the Department of Administration.

The Executive Director of the Department of Administration (hereinafter referred to as the "Executive Director") shall have the authority and responsibility to promulgate rules, consistent with this Code, governing the procurement and disposal of any and all supplies, services, and construction to be procured by the State. The Executive Director shall consider and decide matters of policy within the provisions of this Code, including those referred to him or her by the Director of the Division of Purchasing.

COMMENTARY:

Examples of the type of rules that may be promulgated include:

- (a) conditions and procedures for delegations of procurement authority;
- (b) prequalification, suspension, debarment, and reinstatement of prospective bidders and contractors;
- (c) small purchase procedures;
- (d) conditions and procedures for the procurement of perishables and items for resale;
- (e) conditions and procedures for the use of source selection methods authorized by this Code, including emergency procurements;
- (f) the opening or rejection of bids and offers, and waiver of informalities in bids and offers;

- (g) confidentiality of technical data and trade secrets submitted by actual or prospective bidders or offerors;
- (h) partial, progressive, and multiple awards;
- (i) the management, transfer, sale, or other disposal of publicly owned supplies;
- (j) definitions and classes of contractual services and procedures for acquiring them;
- (k) rules providing for conducting price analysis;
- (l) use of payment and performance bonds in connection with contracts for supplies and services;
- (m) guidelines for use of cost principles in negotiations, adjustments, and settlements.

The Executive Director may also adopt such other rules as he or she may deem desirable to carry out the provisions of this Code, such as rules applicable to cooperative purchasing agreements between the State and other jurisdictions. This Section is not, however, intended to give the Executive Director power to promulgate rules governing the management and operation of Using Agencies.

Part B -- Division of Purchasing

§2-201 Creation of the Division of Purchasing.

There is hereby created in the Department of Administration the Division of Purchasing, headed by the Director of Purchasing (hereinafter referred to as the "Director"). The Director shall be a full-time employee of the State. The Director shall be appointed and may be removed from office only as provided in Article XII, Section 13 of the State Constitution.

§2-202 Authority of the Director.

(1) Power to Adopt Operational Procedures. Consistent with the provisions of this Code, the Director may adopt operational procedures governing the internal functions of the Division of Purchasing.

(2) Duties. Except as otherwise specifically provided in this Code, the Director shall, in accordance with rules:

(a) procure or supervise the procurement of all supplies, services, and construction needed by the State;

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the State;

(c) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction; and

(d) examine each requisition submitted by a Using Agency and approve, disapprove, or revise it as to quantity or quality.

(3) Special Duties Regarding State-Owned Vehicles.

(a) The Director shall:

(i) establish policies governing the use, custody, care, and maintenance of all state-owned motor vehicles;

(ii) provide approval for all vehicles purchased and approve optional items

1 determined to be necessary for safety which
2 are installed on state-owned vehicles; and
3 (iii) whenever in his opinion the best interest
4 of the state will be served, with the exception
5 of state patrol vehicles, order the transfer
6 or sale of any state-owned motor vehicle in
7 possession of or used by any governmental body
8 with reimbursement at appraised value to the
9 governmental body having possession of the
10 vehicle before such transfer or sale.

11 (b) Energy consumed by vehicles shall be con-
12 sidered in determining the lowest responsive
13 and responsible bidder. The size of any
14 passenger vehicle shall not be greater than nec-
15 essary to accomplish its purposes.

16 (c) Except in the case of the governor's automo-
17 bile and Colorado state patrol passenger
18 vehicles, no state-owned motor vehicle may be
19 traded in as a part payment on a new motor
20 vehicle sold or otherwise disposed of before
21 it has reached the age of four years or
22 before it has seventy thousand miles of
23 service, whichever occurs first, unless such
24 motor vehicle has been wrecked or otherwise
25 disabled to the extent that, in the opinion

1 of the insurance company involved, it is not
2 advisable to make repairs.

3 (d) Governmental bodies requesting funds for the
4 replacement of motor vehicles shall report
5 the operational cost per mile of all vehicles
6 owned by the governmental body. The opera-
7 tional cost shall include such items as gas,
8 oil, tires, and repair work; however, it
9 shall not include the original purchase cost
10 of the vehicle. When the operational cost
11 of a state vehicle is in excess of the
12 state mileage allowance, it shall constitute
13 a basis for selling or salvaging such vehicle.

14 (e) Notwithstanding the provisions of Subsections
15 (a)(ii) and (b) of this Section and Section
16 3-202 (Competitive Sealed Bidding), the
17 Director shall purchase those vehicles manu-
18 factured or assembled in the United States
19 which produce levels of air pollutants from
20 exhaust emissions which are equal to or lower
21 than the exhaust emissions standards adopted
22 by the air pollution control commission for
23 vehicles purchased for State use; except that
24 Colorado state patrol vehicles and such
25 other vehicles as the Director may reasonably

1 determine must be purchased on the basis of
2 extraordinary performance requirements shall
3 be exempt from the provisions of this Sub-
4 section (e).

5 §2-203 Delegation of Authority by the Director.

6 Subject to rules, the Director may delegate authority
7 to designees or to any department, agency, or official.

8 Part C -- Organization of Public Procurement

9 §2-301 Centralization of Procurement Authority.

10 Except as otherwise provided in this Part, all rights,
11 powers, duties, and authority relating to the procurement of
12 supplies, services, and construction, and the sale and dis-
13 posal of supplies, services, and construction now vested in
14 or exercised by any governmental body under the several
15 statutes relating thereto are hereby transferred to the
16 Division of Purchasing.

17 §2-302 Creation of Purchasing Agencies.

18 (1) Construction. The following types of construction
19 shall be procured by the appropriate Purchasing Agencies:

- 20 (a) bridge and highway construction under the
21 responsibility of the Chief Engineer of the
22 State Department of Highways, as provided in
23 Section 43-1-106 et seq., C.R.S. 1973, as
24 amended; and
25 (b) capital construction and controlled maintenance

1 as defined and delegated to Principal Repre-
2 sentatives by Section 24-30-1301 et seq.,
3 C.R.S. 1973, as amended, and special services
4 as defined and delegated by Article 5 (Pro-
5 curement of Construction, Architect-Engineer,
6 Landscape Architect, and Land Surveying
7 Services) of this Code.

8 (2) Creation by the Executive Director. If the
9 Executive Director is of the opinion and so certifies in
10 writing that the needs of any governmental body, including
11 but not limited to penal institutions, the state department
12 of highways, the state hospital, or institutions of higher
13 education, are of such specialized nature and sufficient
14 volume to warrant a Purchasing Agency for such governmental
15 body, he or she may authorize the creation of same; provided
16 that all such Purchasing Agencies shall operate under the
17 provisions of this Code and the rules promulgated by the
18 Executive Director and under the supervision and control of
19 the Director of the Division of Purchasing.

20 (3) Authority of Heads of Purchasing Agencies. The
21 heads of Purchasing Agencies responsible for procuring the
22 supplies, services, or construction delegated to them by
23 Subsections (1) and (2) of this Section shall conduct such
24 procurements in accordance with the provisions of this Code
25 and its implementing rules.

Part D -- State Procurement Rules

§2-401 State Procurement Rules.

(1) Rules. Rules shall be promulgated in accordance with the applicable provisions of the Section 24-4-103, C.R.S. 1973, as amended (Administrative Procedures Act).

(2) Executive Director Shall Not Delegate Power to Promulgate Rules. The Executive Director shall not delegate his or her power to promulgate rules.

(3) Rules Shall Not Change Existing Contract Rights. No rules shall change any commitment, right, or obligation of the State or of a contractor under a contract in existence on the effective date of such rule.

Part E -- Coordination

§2-501 Collection of Data Concerning Public Procurement.

All Using Agencies shall furnish such reports as the Director may require concerning usage, needs, and stocks on hand, and the Director shall have authority to prescribe forms to be used by the Using Agencies in requisitioning, ordering, and reporting of supplies, services, and construction.

§2-502 Procurement Advisory Council.

The Governor shall establish a Procurement Advisory Council to be composed of seven members. The Council, upon adequate public notice, shall meet at least twice a year for the discussion of problems and the making of recommendations,

1 such as on proposed purchasing rules. The Council shall con-
2 sist of representatives from purchasing and using agencies,
3 and from the business community. The term of office of each
4 member shall be three years, except that in making the initial
5 appointments the Governor shall appoint three members for a
6 term of three years, two members for a term of two years, and
7 two members for a term of one year. The Director shall be
8 an ex officio member of the Council.

9 Part F -- Duties of the Attorney General

10 §2-601 Duties of the Attorney General.

11 The Attorney General or his or her designee shall serve
12 as legal counsel and provide necessary legal services to the
13 Executive Director and the Director. No contract for the
14 services of legal counsel may be awarded without the approval
15 of the Attorney General.

16 COMMENTARY:

17 The Attorney General should serve as the
18 legal counsel to advise and assist the
19 Executive Director and the Director on legal
20 matters. Such legal counsel should appoint
21 such assistants as may be deemed necessary to
22 act as advisors to personnel in the Director's
23 organization and in the Purchasing Agencies.
24 In addition, the legal counsel or assistant
25 counsel should provide prompt legal advice to
their clients as each occasion demands, so
that the procurement process, where speed is
so often necessary, can move ahead promptly.

DEFINITIONAL CROSS-REFERENCES:

1			
2	"Construction"	Section	1-301(3)
3	"Contract"	Section	1-301(4)
4	"Contractor"	Section	1-301(6)
5	"Director"	Section	1-301(7)
6	"Employee"	Section	1-301(8)
7	"Governmental Body"	Section	1-301(9)
8	"Head of a Purchasing Agency"	Section	1-301(10)
9	"May"	Section	1-301(11)
10	"Person"	Section	1-301(12)
11	"Procurement"	Section	1-301(13)
	"Purchasing Agency"	Section	1-301(15)
	"Rule"	Section	1-301(16)
	"Services"	Section	1-301(17)
	"Shall"	Section	1-301(18)
	"Special Services"	Section	5-101(5)
	"Specification"	Section	4-101(1)
	"Supplies"	Section	1-301(19)
	"Surplus Supplies"	Section	8-101(2)
	"Using Agency"	Section	1-301(20)

Article 3

Source Selection and
Contract Formation

ARTICLE 3 -- SOURCE SELECTION AND CONTRACT FORMATION

STATUTORY PROVISIONS

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1 ARTICLE 3 -- SOURCE SELECTION AND CONTRACT FORMATION

2 Part A -- Definitions

3 §3-101 Definitions of Terms Used in this Article.

4 (1) Cost-Reimbursement Contract means a contract under
5 which a contractor is reimbursed for costs which are allowable
6 and allocable in accordance with the contract terms and the
7 provisions of this Code, and a fee, if any.

8 (2) Established Catalogue Price means the price included
9 in a catalogue, price list, schedule, or other form that:

10 (a) is regularly maintained by a manufacturer
11 or contractor;

12 (b) is either published or otherwise available
13 for inspection by customers; and

14 (c) states prices at which sales are currently or
15 were last made to a significant number of any
16 category of buyers or buyers constituting the
17 general buying public for the supplies or
18 services involved.

19 (3) Invitation for Bids means all documents, whether
20 attached or incorporated by reference, utilized for soliciting
21 bids.

22 (4) Purchase Description means the words used in a
23 solicitation to describe the supplies, services, or con-
24 struction to be purchased, and includes specifications
25 attached to, or made a part of, the solicitation.

(5) Request for Proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) Responsible Bidder or Offeror 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.

(7) Responsive Bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

DEFINITIONAL CROSS-REFERENCES:

"Change Order"	Section 1-301(2)
"Construction"	Section 1-301(3)
"Contract"	Section 1-301(4)
"Contract Modification"	Section 1-301(5)
"Contractor"	Section 1-301(6)
"Director"	Section 1-301(7)
"Head of a Purchasing Agency"	Section 1-301(10)
"May"	Section 1-301(11)
"Person"	Section 1-301(12)
"Procurement"	Section 1-301(13)
"Procurement Officer"	Section 1-301(14)
"Purchasing Agency"	Section 1-301(15)
"Rule"	Section 1-301(16)
"Services"	Section 1-301(17)
"Shall"	Section 1-301(18)
"Specification"	Section 4-101(1)
"Supplies"	Section 1-301(19)

Part B -- Methods of Source Selection

§3-201 Methods of Source Selection.

Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding,

pursuant to Section 3-202 (Competitive Sealed Bidding),
except as provided in:

- (a) Section 3-203 (Competitive Sealed Proposals);
- (b) Section 3-204 (Small Purchases);
- (c) Section 3-205 (Sole Source Procurement);
- (d) Section 3-206 (Emergency Procurements); or
- (e) Part E, Article 5 (Architect-Engineer,
Landscape Architect and Land Surveying
Services).

COMMENTARY:

(1) The purpose of this Part is to provide procurement officials with adequate authority to conduct procurement transactions by fair and open competition under varying market conditions in order to satisfy public needs for supplies, services, and construction at the most economical prices.

(2) Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Since the marketplace is different for various supplies, services, and construction, this Code authorizes a variety of source selection techniques designed to provide the best competition for all types of procurements. It also permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved. Competitive sealed bidding (Section 3-202), competitive sealed proposals (Section 3-203), and simplified small purchase procedures (Section 3-204), therefore, are recognized as valid competitive procurement methods when used in accordance with the criteria and conditions set forth in this Article.

(3) Subsection (c) lists sole source procurements (Section 3-205) as an exception to

1 other methods only when it is determined in
2 writing that there is only one source for the
required supply, service, or construction item.

3 §3-202 Competitive Sealed Bidding.

4 (1) Conditions for Use. Contracts shall be awarded by
5 competitive sealed bidding except as otherwise provided in
6 Section 3-201 (Methods of Source Selection).

7 (2) Invitation for Bids. An Invitation for Bids shall
8 be issued and shall include a purchase description and all
9 contractual terms and conditions applicable to the procurement.

10 (3) Public Notice. Adequate public notice of the Invita-
11 tion for Bids shall be given a reasonable time prior to the
12 date set forth therein for the opening of bids, in accordance
13 with rules. Such notice may include publication in a
14 newspaper of general circulation a reasonable time prior to
15 bid opening.

16 COMMENTARY:

17 Public notice required by Subsection (3)
18 should be given sufficiently in advance of
19 bid opening to permit potential bidders to
20 prepare and submit their bids in a timely
21 manner. It should include as a minimum the
22 mailing of Invitations for Bids to all
parties on any applicable bidders mailing
list. Rules should provide criteria and
general guidelines for the method and dura-
tion of public notice.

23 (4) Bid Opening. Bids shall be opened publicly in the
24 presence of one or more witnesses at the time and place
25 designated in the Invitation for Bids. The amount of each

1 bid, and such other relevant information as may be specified
2 by rules, together with the name of each bidder, shall
3 be entered on a record and the record shall be open to
4 public inspection. After the time of award all bids and bid
5 documents shall be open to public inspection in accordance
6 with the provisions of Section 24-72-204, C.R.S. 1973, as
7 amended (Open Records Law).

8 (5) Bid Acceptance and Bid Evaluation. Bids shall
9 be unconditionally accepted except as authorized by Subsection
10 (7) of this Section. Bids shall be evaluated based on the
11 requirements set forth in the Invitation for Bids, which may
12 include criteria to determine acceptability such as inspec-
13 tion, testing, quality, workmanship, delivery, and suit-
14 ability for a particular purpose. Those criteria that will
15 affect the bid price and be considered in evaluation
16 for award shall be objectively measurable, such as dis-
17 counts, transportation costs, and total or life cycle
18 costs. The Invitation for Bids shall set forth the evalua-
19 tion criteria to be used. No criteria may be used in bid
20 evaluation that are not set forth in the Invitation for
21 Bids.

22 COMMENTARY:

23 (1) Subsection (5) makes clear that judg-
24 mental evaluations of products, particularly
25 where bid samples or product descriptions are
submitted, may properly be used in determining
whether a product proffered by a bidder meets

1 the specification requirements of the procure-
2 ment. Such judgmental evaluations as appear-
3 ance, workmanship, finish, taste, and feel all
4 may be taken into consideration under this
5 Subsection. Additionally, the ability to make
6 such determinations, and to reject as nonre-
sponsive any bid which does not meet the
purchase description, is inherent in the
definition of responsive bidder in Section
3-101(7) (Definitions, Responsive Bidder).

7 (2) The bid evaluation may take into
8 account not only acquisition costs of sup-
9 plies, but the cost of their ownership which
10 relates to the quality of the product, in-
11 cluding life cycle factors such as maintain-
ability and reliability. Any such criteria
must be set forth in the Invitation for Bids
to enable bidders to calculate how such
criteria will affect their bid price.

12 (3) This Subsection does not permit a
13 contract to be awarded to a bidder submitting
14 a higher quality item than the minimum requir-
15 ed by the purchase description unless that
16 bidder also has the bid price evaluated lowest
in accordance with the objective criteria set
forth in the Invitation for Bids. This
procedure also does not permit discussions or
negotiations with bidders after receipt and
opening of bids.

17 (6) Withdrawal of Bids. Withdrawal of inadvertantly
18 erroneous bids before award may be permitted in accordance
19 with rules, provided that the bidder submits proof of
20 evidentiary value which clearly and convincingly demon-
21 strates that an error was made. Except as otherwise pro-
22 vided by rules, all decisions to permit the withdrawal of
23 bids based on such bid mistakes shall be supported by a
24 written determination made by the Director or head of the
25 Purchasing Agency.

COMMENTARY:

(1) Withdrawal of bids before contract award requires careful consideration to maintain the integrity of the competitive bidding system, to assure fairness, and to avoid delays or poor contract performance. While bidders should be expected to be bound by their bids, circumstances may arise where withdrawal of bids is proper and should be permitted.

(2) After bid opening an otherwise low bidder should not be permitted to delete exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

(3) A suspected bid mistake can give rise to a duty on the part of the State to request confirmation of a bid, and failure to do so can result in a nonbidding award. Where there is an appearance of mistake, therefore, the bidder should be asked to reconfirm the bid before award. In such instance, a bidder should be permitted to withdraw the bid when the bidder acknowledges that a mistake was made.

(4) Nothing in this Section is intended to prohibit the State from accepting a voluntary reduction in price from a low bidder after bid opening; provided that such reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the Invitation for Bids.

(7) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all bids for a construction project exceed available funds

1 as certified by the appropriate fiscal officer, and the low
2 responsive and responsible bid does not exceed such funds by
3 more than seven percent, the Director or the head of the
4 Purchasing Agency is authorized, in situations where time or
5 economic considerations preclude resolicitation of work of a
6 reduced scope, to negotiate an adjustment of the bid price,
7 including changes in the bid requirements, with the low
8 responsive and responsible bidder, in order to bring the bid
9 within the amount of available funds.

10 COMMENTARY:

11 (1) The successful bidder must be respon-
12 sive as defined in Section 3-101(7) and
13 responsible as defined in Section 3-101(6),
and the bid must be the lowest bid determined
under criteria set forth in the Invitation for
Bids.

14 (2) Subsection (7) also provides authority
15 to negotiate changes in construction project
16 bid requirements with a low bidder in order to
arrive at a price not in excess of available
17 funds. This authority would be limited to
situations where the excess is less than 7
18 percent over the available funds. It should
be noted that even where the bids exceed the
19 percentage limitation on the discretionary
authority to negotiate with the low bidder,
20 if circumstances warrant an emergency de-
termination, the procurement can be handled
21 under Section 3-206 (Emergency Procurements).

22 (3) When all bids are determined to be
unreasonable or the lowest bid on a construc-
23 tion project exceeds the amount specified
in Subsection (7), and the public need does
24 not permit the time required to resolicit
bids, then a contract may be awarded pursuant
to the emergency authority in Section 3-206
25 (Emergency Procurements) in accordance with
rules promulgated by the Executive Director.

1 (8) Multi-Step Sealed Bidding. When it is considered
2 impractical to initially prepare a purchase description to
3 support an award based on price, an Invitation for Bids may
4 be issued requesting the submission of unpriced offers
5 to be followed by an Invitation for Bids limited to those
6 bidders whose offers have been qualified under the criteria
7 set forth in the first solicitation.

8 §3-203 Competitive Sealed Proposals.

9 (1) Conditions for Use. When, under rules, the
10 Director, the head of a Purchasing Agency, or a designee of
11 either officer above the level of the Procurement Officer
12 determines in writing that the use of competitive sealed
13 bidding is either not practicable or not advantageous to the
14 State, a contract may be entered into by competitive sealed
15 proposals. Competitive sealed proposals may be used for
16 the procurement of professional services as defined by rules
17 whether or not the determination described by this Subsection
18 has been made. The Executive Director may provide by rules
19 that it is either not practicable or not advantageous to the
20 State to procure specified types of supplies, services, or
21 construction by competitive sealed bidding.

22 COMMENTARY:

23 (1) Competitive sealed bidding, as defined
24 in this Code, is the preferred method of
25 procurement. "Although the formal sealed bid
process should remain a standard in public
purchasing, there is a place for competitive

1 negotiation" (State and Local Government
2 Purchasing, The Council of State Governments
3 (1975) at 2.2). The competitive sealed proposal
4 method (similar to competitive negotiation) is
5 available for use when competitive sealed
6 bidding is either not practicable or not
7 advantageous.

8 (2) Both methods assure price and product
9 competition. The use of functional or per-
10 formance specifications is allowed under both
11 methods to facilitate consideration of alter-
12 native means of meeting State needs, with
13 evaluation, where appropriate, on the basis of
14 total or life cycle costs. The criteria to be
15 used in the evaluation process under either
16 method must be fully disclosed in the solici-
17 tation. Only criteria disclosed in the so-
18 licitation may be used to evaluate the items
19 bid or proposed.

20 (3) These two methods of source selection
21 differ in the following ways:

- 22 (a) Under competitive sealed bidding,
23 judgmental factors may be used only to
24 determine if the supply, service, or
25 construction item bid meets the pur-
26 chase description. Under competitive
27 sealed proposals, judgmental factors
28 may be used to determine not only if
29 the items being offered meet the
30 purchase description but may also be
31 used to evaluate competing proposals.
32 The effect of this different use of
33 judgmental evaluation is that under
34 competitive sealed bidding, once the
35 judgmental evaluation is completed,
36 award is made on a purely objective
37 basis to the lowest responsive and
38 responsible bidder. Under competitive
39 sealed proposals, the quality of com-
40 peting products or services may be
41 compared and trade-offs made between
42 price and quality of the products or
43 services offered (all as set forth
44 in the solicitation). Award under
45 competitive sealed proposals is then
46 made to the responsible offeror whose

1 proposal is most advantageous to the
2 State.

- 3 (b) Competitive sealed bidding and compe-
4 titive sealed proposals also differ in
5 that, under competitive sealed bidding,
6 no change in bids is allowed once they
7 have been opened. The competitive
8 sealed proposal method, on the other
9 hand, permits discussions after
proposals have been opened to allow
clarification and changes in
proposals provided that adequate
precautions are taken to treat each
offeror fairly and to ensure that
information gleaned from competing
proposals is not disclosed to other
offerors.

10 (4) The words "practicable" and "advan-
11 tageous" are to be given ordinary dictionary
12 meaning. In general, "practicable" denotes a
13 situation which justifies a determination that
14 a given factual result can occur. A typical
15 determination would be whether or not there
is sufficient time or information to prepare a
specification suitable for competitive sealed
bidding. "Advantageous" connotes a judgmental
assessment of what is in the State's best
interest. Illustrations include determining:

- 16 (a) whether or not to utilize a fixed-
17 price or cost-type contract under
the circumstances;
18 (b) whether quality, availability or
19 capability is overriding in relation
to price in procurements for research
20 and development, technical supplies,
or services (for example, developing
a traffic management system);
21 (c) whether the initial installation
needs to be evaluated together with
22 subsequent maintenance and service
capabilities and what priority should
23 be given these requirements in the
best interests of the State; or
24 (d) whether the marketplace will respond
25 better to a solicitation permitting
not only a range of alternative pro-
posals but evaluation and discussion

1 of them before making the award
2 (for example, computer software
3 programs).

4 What is practicable (that is possible) may not
5 necessarily be beneficial to the State. Con-
6 sequently, both terms are used in this Section
7 to avoid a possibly restrictive interpretation
8 of the authority to use competitive sealed pro-
9 posals.

10 (5) Whenever it is determined that it is
11 practicable but not advantageous to use
12 competitive sealed bidding, the basis for the
13 determination should be specified with
14 particularity.

15 (6) The Task force recognizes that, because
16 of the unique nature of professional services,
17 the use of competitive sealed proposals should
18 be allowed for the procurement of professional
19 services without making a determination that
20 competitive sealed bidding is not practicable
21 or not advantageous.

22 (2) Request for Proposals. Proposals shall be soli-
23 cited through a Request for Proposals.

24 (3) Public Notice. Adequate public notice of the
25 Request for Proposals shall be given in the same manner as
26 provided in Section 3-202(3) (Competitive Sealed Bidding,
27 Public Notice).

28 (4) Receipt of Proposals. Proposals shall be opened
29 so as to avoid disclosure of contents to competing offerors
30 during the process of negotiation. A Register of Proposals
31 shall be prepared in accordance with rules and shall be open
32 for public inspection after contract award subject to the
33 requirements of Section 24-72-204, C.R.S. 1973, as amended

1 (Open Records Law).

2 (5) Evaluation Factors. The Request for Proposals
3 shall state evaluation factors.

4 COMMENTARY:

5 Subsection (5) requires that the Request
6 for Proposals set forth the factors in
7 addition to price that will be considered in
8 awarding the contract. Specific numerical
9 weighting is not required. A fair competi-
10 tion necessitates an understanding on
11 the part of all competitors of the basis upon
which award will be made. This is also
essential to assure that the proposals will
be as responsive as possible so that the
State can obtain the optimum benefits
of the competitive solicitation.

12 (6) Discussion with Responsible Offerors and Revisions
13 to Proposals. As provided in the Request for Proposals
14 and under rules, discussions may be conducted with respon-
15 sible offerors who submit proposals determined to be rea-
16 sonably susceptible of being selected for award for the
17 purpose of clarification to assure full understanding
18 of, and responsiveness to, the solicitation requirements.
19 Offerors shall be accorded fair and equal treatment with
20 respect to any opportunity for discussion and revision of
21 proposals, and such revisions may be permitted after submis-
22 sions and prior to award for the purpose of obtaining best
23 and final offers. In conducting discussions, there shall be
24 no disclosure of any information derived from proposals
25 submitted by competing offerors.

1 COMMENTARY:

2 (1) Subsection (6) provides the procurement
3 official an opportunity to make certain that
4 offerors fully understand the solicitation
5 requirements; it provides offerors an opportu-
6 nity to clarify proposals where necessary so
as to assure responsiveness to the solicitation.
Price discussions can best be conducted when
there is a mutual understanding of the
contractual requirements.

7 (2) Fair and equitable treatment of compe-
8 titors dictates that negotiations be conducted
9 in accordance with ethical business standards.
10 Auction techniques shall be prohibited in
11 discussions with offerors under the competi-
12 tive sealed proposal method. There must be a
13 cut-off for the submission of final offers.
14 Both Subsection (4) and Subsection (6) provide
15 that prices or other aspects of proposals
submitted by one offeror must not be disclosed
to competing offerors. Safeguards against
abuse in the conduct of negotiations must be
strictly observed to maintain the essential
integrity of the process. Procedures should
be specified in rules in order to achieve
these objectives.

16 (7) Award. Award shall be made to the responsible
17 offeror whose proposal is determined in writing to be the
18 most advantageous to the State taking into consideration
19 price and the evaluation factors set forth in the Request
20 for Proposals. No other factors or criteria shall be used
21 in the evaluation. The contract file shall contain the
22 basis on which the award is made.

23 COMMENTARY:

24 The file should show with particularity
25 how the pertinent factors and criteria were
applied in ascertaining that the successful

proposal is most advantageous to the State
in order to assure offerors that their propo-
sals were evaluated fairly and to minimize
protests and litigation.

§3-204 Small Purchases.

Any procurement not exceeding the amount established by
rules may be made in accordance with small purchase proce-
dures established in rules, provided, however, that
procurement requirements shall not be artificially divided
so as to constitute a small purchase under this Section.

COMMENTARY:

This Section recognizes that certain
public purchases do not justify the admin-
istrative time and expense necessary for
the conduct of competitive sealed bidding.
Streamlined procedures, to be set forth in
rules, will make small purchases adminis-
tratively simpler to complete and yet ensure
competition. The appropriate dollar limita-
tions for the use of these procedures
are left to the discretion of the Executive
Director. Care must be taken to ensure that
purchase requirements are not fragmented in
order to fall within the authority contained
in this Section, thus circumventing the
source selection procedures required by
either Section 3-202 (Competitive Sealed
Bidding) or Section 3-203 (Competitive
Sealed Proposals).

§3-205 Sole Source Procurement.

A contract may be awarded for a supply, service, or
construction item without competition when, under rules, the
Director, the head of a Purchasing Agency, or a designee of
either officer above the level of the Procurement Officer

determines in writing that there is only one source for the required supply, service, or construction item.

COMMENTARY:

(1) This method of procurement involves no competition and should be utilized only when justified and necessary to serve State needs. This Code contemplates that the Executive Director promulgate rules which establish standards applicable to procurement needs that may warrant award on a sole source basis.

(2) The power to authorize a sole source award is limited to the Director and the head of an agency with purchasing authority, or their designees above the level of Procurement Officer. The purpose in specifying these officials is to reflect an intent that such determinations will be made at a high level. The permission for these officials to authorize a designee to act for them should be subject to rules.

§3-206 Emergency Procurements.

Notwithstanding any other provision of this Code, the Director, the head of a Purchasing Agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in rules; provided that such emergency procurements 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.

COMMENTARY:

(1) This Section authorizes the procurement of supplies, services, or construction where the urgency of the need does not permit the delay involved in utilizing more formal competitive methods. This Code contemplates that the Executive Director will promulgate rules establishing standards for making emergency procurements and controlling delegations of authority by the Director or the head of a Purchasing Agency. Such rules may limit the authority of such officials to delegate the authority to make procurements above designated dollar amounts.

(2) While in a particular emergency an award may be made without any competition, the intent of this Code is to require as much competition as practicable in a given situation. When the amount of the emergency procurement is within that adopted for Section 3-204 (Small Purchases)*, the competitive procedures prescribed under that Section should be used when feasible.

(3) Use of this Section may be justified because all bids submitted under the competitive sealed bid method are unreasonable and there is no time to resolicit bids without endangering the public health, welfare, or safety. As with other emergency conditions, rules will further define these circumstances, and any procurements conducted pursuant to this authority must be done so as to treat all bidders fairly and to promote such competition as is practicable under the circumstances.

Part C -- Cancellation of Invitations for
Bids or Requests for Proposals

§3-301 Cancellation of Invitations for Bids or Requests
for Proposals.

An Invitation for Bids, a Request for Proposals, or

1 other solicitation may be cancelled, or any or all bids or
2 proposals may be rejected in whole or in part as may be
3 specified in the solicitation, when it is in the best
4 interests of the State in accordance with rules. The
5 reasons therefor shall be made part of the contract file.

6 Part D -- Qualifications and Duties

7 §3-401 Responsibility of Bidders and Offerors.

8 (1) Determination of Nonresponsibility. A written
9 determination of nonresponsibility of a bidder or offeror
10 shall be made in accordance with rules. The unreasonable
11 failure of a bidder or offeror to promptly supply informa-
12 tion in connection with an inquiry with respect to respon-
13 sibility may be ground; for a determination of nonrespon-
14 sibility with respect to such bidder or offeror.

15 (2) Right of Nondisclosure. Information furnished by
16 a bidder or offeror pursuant to this Section shall not be
17 disclosed outside of the Division of Purchasing or the
18 Purchasing Agency without prior written consent by the
19 bidder or offeror.

20 COMMENTARY:

21 (1) To obtain true economy, the State must
22 minimize the possibility of a subsequent default
23 by the contractor, late deliveries, or other
24 unsatisfactory performance which would result in
25 additional administrative costs. Subsection (1)
recognizes that it is important that the bidder
or offeror will be a responsible contractor --
that the contractor has the financial ability,
resources, skills, capability, and business
integrity necessary to perform the contract.

1 (2) An inquiry is not required in every
2 case. The extent to which a review or
3 investigation should be conducted will depend
4 on the value and size of the procurement and
5 the bidder's or offeror's past record of
6 contract performance in the public and
7 private sectors. Since the information
8 solicited from the bidder or offeror for such
9 evaluation may be of a privileged or a
10 proprietary nature, Subsection (2) prohibits
11 the disclosure of such information without
12 the consent of the bidder or offeror.

13 §3-402 Prequalification of Suppliers.

14 Prospective suppliers may be prequalified for particular
15 types of supplies, services, and construction, and the method
16 of compiling and soliciting from such mailing lists of potential
17 contractors shall be in accordance with rules.

18 §3-403 Cost or Pricing Data.

19 (1) Contractor Certification. A contractor shall,
20 except as provided in Subsection (3) of this Section, submit
21 cost or pricing data and shall certify that, to the best of
22 his or her knowledge and belief, the cost or pricing data
23 submitted was accurate, complete, and current as of a
24 mutually determined specified date prior to the date of:

- 25 (a) the pricing of any contract awarded by com-
 petitive sealed proposals (Section 3-203) or
 pursuant to the sole source procurement
 authority (Section 3-205), where the total
 contract price is expected to exceed an amount
 established by rules; or

(b) the pricing of any change order or contract modification which is expected to exceed an amount established by rules.

(2) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(3) Cost or Pricing Data Not Required. Except as provided in Section 5-504 (Certification; Contract Adjustments), the requirements of this Section need not be applied to contracts:

- (a) where the contract price is based on adequate price competition;
- (b) where the contract price is based on established catalogue prices or market prices;
- (c) where contract prices are set by law or rules; or
- (d) where it is determined in writing in accordance with rules that the requirements of this Section may be waived, and the reasons for such waiver are stated in writing.

COMMENTARY:

This Section requires the submission of cost or pricing data in connection with an award not made by competitive sealed bids and in situations when analysis of the proposed price is essential to determine that the price is reasonable and fair. The data submitted provides the State with information to make its own assessment of the proposed costs or prices in negotiating the final contract price. The Executive Director is authorized to set monetary levels below which cost or pricing data is not required in recognition of the administrative burden to both contractors and the State in developing and analyzing such data. In addition, cost or pricing data is not required in situations where prices are based on adequate competition or established catalogue or market prices, are regulated, or the requirement is waived. However, Section 5-504 (Certification; Contract Adjustments) requires application of similar requirements for all lump-sum or cost-plus-a-fixed-fee contracts for special services.

Part E -- Types of Contracts

§3-501 Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interests of the State may be used; provided 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 State than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

COMMENTARY:

(1) The intent of this Section is to authorize any type of contract which best suits the interest of the State except that a cost-plus-a-percentage-of-cost contract is prohibited. Other types of cost-reimbursement contracts may be used when uncertainties involved in the work to be performed are of such magnitude that the cost of performance is too difficult to estimate with reasonable certainty and use of a fixed-price contract could seriously affect a contractor's financial stability or result in payments by the State for contingencies that never occur. Use of cost-type contracts are also authorized when it is impracticable to contract on any other basis.

(2) Article 7 (Cost Principles) requires that only those costs recognized as allowable under the contract will be reimbursed.

(3) It is contemplated that the rules will contain guidelines or requirements for the review and/or approval of subcontracts awarded by cost-reimbursement contractors as deemed appropriate to protect the financial interests of the State.

§3-502 Approval of Accounting System.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Director, the head of a Purchasing Agency, or a designee of either officer that:

- (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (b) the proposed contractor's accounting system

is adequate to allocate costs in accordance
with generally accepted accounting principles.

COMMENTARY:

This Section does not require any particular
accounting method and leaves to the State's
discretion the determination of the adequacy
of any given accounting system.

§3-503 Multiyear Contracts.

(1) Specified Period. Unless otherwise provided by
law, a contract for supplies or services may be entered into
for any period of time deemed to be in the best interests of
the State, provided that the term of the contract and conditions
of renewal or extension, if any, are included in the solicita-
tion and that funds are available for the first year at the time
of contracting. Payment and performance obligations for
succeeding fiscal years shall be subject to the availability
and appropriation of funds therefor.

(2) Determination Prior to Use. Prior to the utilization
of a multiyear contract, it shall be determined in writing:

(a) that estimated requirements cover the period
of the contract and are reasonably firm and
continuing; and

(b) that such a contract will serve the best
interests of the State by encouraging
effective competition or otherwise promoting
economies in State procurement.

1 (3) Cancellation Due to Unavailability of Funds in
2 Succeeding Fiscal Periods. When funds are not appropriated
3 or otherwise made available to support continuation of
4 performance in a subsequent fiscal year, the contract shall
5 be cancelled and the contractor may be reimbursed for the
6 reasonable value of any non-recurring costs incurred but not
7 amortized in the price of the supplies or services
8 delivered under the contract.

9 Part F -- Inspection of Plant and Audit of Records

10 §3-601 Right to Inspect Plant.

11 The State may, at reasonable times, inspect the part
12 of the plant or place of business of a contractor or any
13 subcontractor which is related to the performance of any
14 contract awarded or to be awarded by the State.

15 §3-602 Right to Audit Records.

16 (1) Audit of Cost or Pricing Data. The State may,
17 at reasonable times and places, audit the books and
18 records of any person who has submitted cost or pricing
19 data pursuant to Section 3-403 (Cost or Pricing Data) to
20 the extent that such books and records relate to such cost
21 or pricing data. Any person who receives a contract,
22 change order, or contract modification for which cost or
23 pricing data is required shall maintain such books and
24 records that relate to such cost or pricing data for
25 three years from the date of final payment under the

1 contract, ~~unless a~~ shorter period is otherwise authorized
2 in writing.

3 (2) Contract Audit. The State shall be entitled
4 to audit the books and records of a contractor or any
5 subcontractor under any negotiated contract or sub-
6 contract other than a firm fixed-price contract to the
7 extent that such books and records relate to the per-
8 formance of such contract or subcontract. Such books and
9 records shall be maintained by the contractor for a period
10 of three years from the date of final payment under the
11 prime contract and by the subcontractor for a period of
12 three years from the date of final payment under the
13 subcontract, unless a shorter period is otherwise
14 authorized in writing.

15 Part G -- Determinations and Reports

16 §3-701 Finality of Determinations.

17 The determinations required by Section 3-202(6)
18 (Competitive Sealed Bidding, Withdrawal of Bids); Section
19 3-203(1) (Competitive Sealed Proposals, Conditions for
20 Use), Section 3-203(7) (Competitive Sealed Proposals,
21 Award), Section 3-205 (Sole Source Procurement), Section
22 3-206 (Emergency Procurements), Section 3-401(1) (Res-
23 ponsibility of Bidders and Offerors, Determination of
24 Nonresponsibility), Section 3-403(3) (Cost or Pricing Data,
25 Cost or Pricing Data Not Required), Section 3-501 (Types of

1 Contracts), Section 3-502 (Approval of Accounting System),
2 and Section 3-503(2) (Multiyear Contract, Determination
3 Prior to Use) are final and conclusive unless they are
4 clearly erroneous, arbitrary, capricious, or contrary to
5 law.

6 §3-702 Reporting of Anticompetitive Practices.

7 When for any reason collusion or other anticompetitive
8 practices are suspected among any bidders or offerors, a
9 notice of the revelant facts shall be transmitted to the
10 Attorney General.

Article 4
Specifications

ARTICLE 4 -- SPECIFICATIONS

STATUTORY PROVISIONS

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ARTICLE 4 -- SPECIFICATIONS

Part A -- Definitions

§4-101 Definitions of Terms Used in this Article.

(1) Specification means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

DEFINITIONAL CROSS-REFERENCES:

"Construction"	Section 1-301(3)
"Director"	Section 1-301(7)
"May"	Section 1-301(11)
"Purchasing Agency"	Section 1-301(15)
"Rule"	Section 1-301(16)
"Services"	Section 1-301(17)
"Shall"	Section 1-301(18)
"Supplies"	Section 1-301(19)
"Using Agency"	Section 1-301(20)

Part B -- Specifications

§4-201 Duties of the Executive Director.

The Executive Director shall promulgate rules governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the State.

§4-202 Duties of the Director.

The Director shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the State.

COMMENTARY:

(1) The preceding two Sections emphasize the importance of proper specification preparation. The Executive Director is directed to issue rules governing the preparation and content of specifications. Primary responsibility for implementing these rules and issuing specifications is centralized in the Director of State Purchasing. Such centralization will enhance the State's capabilities to effectively produce, maintain, and revise specifications to ensure that they are cogent and current. Centralization of drafting responsibility helps insulate specification preparation from influence from outside sources, provides continuity, facilitates development of drafting skills, and provides a single location for the collection and dissemination of information on specifications throughout the State.

(2) Proper specification drafting requires experienced persons with superior writing skill, supported by adequate resources. The major goals of the drafters should be to encourage competition and prevent favoritism in the preparation of specifications for items which economically meet the needs of the State. Although the Code centralizes authority, it is presumed that the Director will recognize the Using Agencies' unique needs in developing and maintaining specifications, and maintain close communications to ensure that these needs are met.

§4-203 Exempted Items.

Specifications for supplies, services, or construction items to be procured by Purchasing Agencies exempted pursuant to Section 2-302 (Exemptions) may be prepared by those Purchasing Agencies in accordance with the provisions of this Article and rules promulgated hereunder.

1 §4-204 Relationship With Using Agencies.

2 The Director may obtain expert advice and assistance from
3 personnel of Using Agencies in the development of specifi-
4 cations and may delegate in writing to a Using Agency the
5 authority to prepare and utilize its own specifications.

6 §4-205 Maximum Practicable Competition.

7 All specifications shall seek to promote overall eco-
8 nomy for the purposes intended and encourage competition
9 in satisfying the State's needs, and shall not be unduly
10 restrictive.

11 §4-206 Ownership Considerations.

12 When feasible, specifications shall incorporate the
13 concepts of energy efficiency, value analysis, and life-cycle
14 costing.

15 §4-207 Specifications Prepared by Architects and Engineers.

16 The requirements of this Article regarding the purposes
17 and nonrestrictiveness of specifications shall apply to all
18 specifications, including, but not limited to, those prepared
19 by architects, engineers, designers, and draftsmen for public
20 contracts.

Article 5

Procurement of Construction,
Architect-Engineer, Landscape Architect,
and Land Surveying Services

ARTICLE 5 -- PROCUREMENT OF CONSTRUCTION,
ARCHITECT-ENGINEER, LANDSCAPE
ARCHITECT, AND LAND SURVEYING
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ARTICLE 5 -- PROCUREMENT OF CONSTRUCTION, ARCHITECT-
ENGINEER, LANDSCAPE ARCHITECT, AND
LAND SURVEYING SERVICES

Part A -- Definitions

§5-101 Definitions of Terms Used in this Article.

(1) Continuing Contract means a contract for special services entered into pursuant to this Article between a governmental body and a person, whereby the person provides special services to the governmental body for work of a specified nature as outlined in the contract required by the state agency with no specific time limitation. Any such contract shall provide a termination clause.

(2) Department means the Department of Administration.

(3) Practice of Landscape Architecture means the performance of services such as consultation, investigation, reconnaissance, research, planning, design, or reasonable supervision in connection with the development of land areas or land use, where and to the extent that the dominant purpose of any such service is the preservation and development of existing and proposed land features, ground surface, planting, naturalistic features, and esthetic values.

"Practice of landscape architecture" includes the design, location, and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this Subsection, but the term does not include the making of land surveys or final engineered plats for

1 official recording, integration of design of structures of
2 earth, or other construction materials.

3 (4) Principal Representative means the governing board
4 of a state department, institution, or agency, or, if there is
5 no governing board, the executive head of a state department,
6 institution, agency, or institution of higher education as
7 designated by the governor or the general assembly.

8 (5) Special Services for purposes of this Article
9 means those services within the scope of the following:

- 10 (a) the practice of architecture, as defined
11 in Section 12-4-102(5), C.R.S. 1973, as
12 amended;
- 13 (b) the practice of engineering, as defined
14 in Section 12-25-102(13), C.R.S. 1973, as
15 amended;
- 16 (c) the practice of land surveying, as defined
17 in Section 12-25-201(3), C.R.S. 1973, as
18 amended;
- 19 (d) the practice of landscape architecture, as
20 defined in Subsection (3) of this Section.

21 DEFINITIONAL CROSS-REFERENCES:

22	"Change Order"	Section 1-301(2)
	"Construction"	Section 1-301(3)
23	"Contract"	Section 1-301(4)
	"Contract Modification"	Section 1-301(5)
24	"Contractor"	Section 1-301(6)
	"Governmental Body"	Section 1-301(9)
25	"Head of a Purchasing Agency"	Section 1-301(10)

"Invitation for Bids"	Section 3-101(3)
"May"	Section 1-301(11)
"Procurement Officer"	Section 1-301(14)
"Purchasing Agency"	Section 1-301(15)
"Rules"	Section 1-301(16)
"Services"	Section 1-301(17)
"Shall"	Section 1-301(18)

Part B -- Management of Construction Contracting

§5-201 Responsibility for Selection of Methods of
Construction Contracting Management.

The Executive Director shall promulgate rules providing for as many alternative methods of construction management as he or she may determine to be feasible. These rules shall:

- (a) set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;
- (b) grant to the Director of the State Buildings Division or the head of the Purchasing Agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and
- (c) require the Procurement Officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management

1 for each project.

2 COMMENTARY:

3 It is recognized that at least the following
4 methods currently are being used for control
5 and coordination of construction projects:

- 6 (a) a single prime contractor (in-
7 cluding a turnkey or design-build
8 contractor);
9 (b) multiple prime contractors managed by:
10 (i) a designated general contractor;
11 (ii) a construction manager; or
12 (iii) a State Procurement Officer
13 or a Purchasing Agency.

14 A contract clause which simply requires separate
15 prime contractors to cooperate and coordinate
16 with each other without a central planning and
17 management coordinator is not considered an
18 acceptable method of construction contracting
19 management.

20 Part C -- Bonds

21 §4-301 Bid Security.

22 (1) Requirement for Bid Security. Bid security
23 shall be required for all competitive sealed bidding for
24 construction contracts when the price is estimated by the
25 Procurement Officer to exceed \$50,000. Bid security shall
be a bond provided by a surety company authorized to do
business in this State, the equivalent in cash, or
otherwise supplied in a form satisfactory to the State.
Nothing herein prevents the requirement of such bonds on
construction contracts under \$50,000.

(2) Amount of Bid Security. Bid security shall be

1 in an amount equal to at least 5% of the amount of the
2 bid.

3 (3) Rejection of Bids for Noncompliance with Bid
4 Security Requirements. When the Invitation for Bids requires
5 security, noncompliance requires that the bid be rejected
6 as nonresponsive.

7 (4) Withdrawal of Bids. After the bids are opened,
8 they shall be irrevocable for the period specified in
9 the Invitation for Bids, except as provided in Section
10 3-202(6) (Competitive Sealed Bidding, Withdrawal of Bids).
11 If a bidder is permitted to withdraw his or her bid before award,
12 no action shall be had against the bidder or the bid security.

13 §5-302 Contract Performance and Payment Bonds.

14 (1) When Required -- Amounts. When a construction
15 contract is awarded in excess of \$50,000, the following
16 bonds or security shall be delivered to the State and shall
17 become binding on the parties upon the execution of the
18 contract:

19 (a) a performance bond satisfactory to the State,
20 executed by a surety company authorized to do
21 business in this State or otherwise secured in
22 a manner satisfactory to the State, in an
23 amount equal to 100% of the price specified in
24 the contract; and

25 (b) a payment bond satisfactory to the State,

1 executed by a surety company authorized
2 to do business in this State or otherwise
3 secured in a manner satisfactory to the
4 State, for the protection of all persons
5 supplying labor and material to the contractor
6 or its subcontractors for the performance of
7 the work provided for in the contract. The
8 bond shall be in an amount equal to 100% of
9 the price specified in the contract.

10 (2) Reduction of Bond Amounts. The Executive Director
11 may promulgate rules that authorize the Director of the
12 State Buildings Division or head of a Purchasing Agency
13 to reduce the amount of performance and payment bonds to 50%
14 of the contract price for each bond.

15 (3) Authority to Require Additional Bonds. Nothing
16 in this Section shall be construed to limit the authority
17 of the State to require a performance bond or other security
18 in addition to those bonds, or in circumstances other than
19 specified in Subsection (1) of this Section.

20 (4) Suits on Bonds. Suits on payment bonds and labor
21 and payment bonds shall be brought in accordance with
22 Sections 38-26-105 through 38-26-107, C.R.S. 1973, as amended.

23 §5-303 Bond Forms and Copies.

24 (1) Bond Forms. The form of bonds required by this
25 Part shall be as provided in Sections 38-26-105 through

1 38-26-107, C.R.S.1973, as amended.

2 (2) Certified Copies of Bonds. Any person may request
3 and obtain from the State a certified copy of a bond upon
4 payment of the cost of reproduction of the bond and postage,
5 if any. A certified copy of a bond shall be prima facie
6 evidence of the contents, execution, and delivery of the
7 original.

8 Part D -- Construction Contract Clauses
9 and Fiscal Responsibility

10 §5-401 Contract Clauses and Their Administration.

11 (1) Contract Clauses. Rules shall be promulgated
12 requiring the inclusion in State construction contracts of
13 clauses providing for adjustments in prices, time of perfor-
14 mance, or other contract provisions, as appropriate,
15 and covering the following subjects:

16 (a) the unilateral right of the State to order
17 in writing:

18 (i) changes in the work within the scope
19 of the contract; and

20 (ii) changes in the time of performance of
21 the contract that do not alter the scope
22 of the contract work;

23 (b) variations occurring between estimated quantities
24 of work on a contract and actual quantities;

25 (c) suspension of work ordered by the State; and

(d) site conditions differing from those indicated
in the contract or ordinarily encountered,
except that differing site conditions clauses
promulgated by the Executive Director need
not be included in a contract:

(i) when the contract is negotiated; or

(ii) when the contractor provides the site
or design;

COMMENTARY:

The phrase "or other contract provisions"
of this Section is not intended to alter the
price adjustment provisions set forth in Sub-
section (2) of this Section. This Subsection
is intended to enable the parties to deal
with the effects of changes, variations in
estimated quantities, suspension of work,
and differing site conditions on matters
other than price or time for performance.
For example, where a change order revises the
specification, not only price or time for
performance may be affected, but other terms
or conditions such as insurance or inspection
may also be affected.

(2) Price Adjustments.

(a) Adjustments in price pursuant to clauses
promulgated under Subsection (1) of this Section
shall be computed in one or more of the
following ways:

(i) by agreement on a fixed price adjustment
before commencement of the pertinent
performance or as soon thereafter as

1 practicable;

2 (ii) by unit prices specified in the contract
3 or subsequently agreed upon;

4 (iii) by the costs attributable to the events
5 or situations under such clauses with
6 adjustment of profit or fee, all as
7 specified in the contract or subsequently
8 agreed upon;

9 (iv) in such other manner as the contracting
10 parties may mutually agree; or

11 (v) in the absence of agreement by the
12 parties, by a unilateral determination
13 by the State of the costs attributable
14 to the events or situations under such
15 clauses with adjustment of profit or
16 fee, all as computed by the State in
17 accordance with applicable sections of
18 any rules issued under Article 7 (Cost
19 Principles) and subject to the provisions
20 of Article 9 (Legal and Contractual
21 Remedies).

22 (b) A contractor shall be required to submit cost
23 or pricing data if any adjustment in contract
24 price is subject to the provisions of Section
25 3-403 (Cost or Pricing Data).

1 (3) Additional Contract Clauses. The Executive
2 Director shall promulgate rules requiring the inclusion in
3 State construction contracts of clauses providing for
4 appropriate remedies and covering the following subjects:

5 (a) liquidated damages as appropriate;

6 (b) specified excuses for delay or nonperfor-
7 mance;

8 (c) termination of the contract for default; and

9 (d) termination of the contract in whole or in
10 part for the convenience of the State.

11 (4) Modification of Required Clauses. The Director of
12 the State Buildings Division or the head of a Purchasing
13 Agency may vary the clauses promulgated by the Executive
14 Director under Subsection (1) and Subsection (3) of this
15 Section for inclusion in any particular State construction
16 contract, provided that any variations are supported by a
17 written determination that states the circumstances justify-
18 ing such variations, and provided that notice of any such
19 material variation be stated in the Invitation for Bids
20 or Request for Proposals.

21
22 COMMENTARY:

23 (1) This Section directs the Executive
24 Director to issue contract clauses that call for
25 adjustment of price, time for performance, or
other contract provisions as appropriate with
respect to situations that continually develop
on construction projects. It does not require

1 these situations to be treated in any particular
2 way, but it does require that they be anticipated
 and addressed.

3 (2) Subsection (2) permits price adjustments
4 pursuant to any clauses promulgated under
5 Subsection (1) to be determined in accordance
6 with the contract terms or by agreement. Absent
7 an agreement, the Procurement Officer will make a
 unilateral determination of the price adjustment
 which is subject to appeal under Article 9 (Legal
 and Contractual Remedies).

8 (3) In using unit prices it must be remembered
9 that great variations in the number of units
 required may necessitate adjustments in the unit
 price.

10 (4) Other clauses not normally subject to the
11 pricing formulas of Subsection (2) are also
12 required to be included in the contract as
 appropriate by Subsection (3).

13 §5-402 Fiscal Responsibility.

14 Every contract modification, change order, or contract
15 price adjustment under a construction contract with the
16 State in excess of an amount specified in the contract
17 shall be subject to prior written certification by the
18 State Controller or other official responsible for monitor-
19 ing and reporting upon the status of the costs of the
20 total project budget or contract budget, as to the effect of
21 the contract modification, change order, or adjustment in
22 contract price on the total project budget or the total
23 contract budget. In the event that the certification of the
24 State Controller or other responsible official discloses a
25 resulting increase in the total project budget and/or the

1 total contract budget, the Procurement Officer shall not
2 execute or make such contract modification, change order, or
3 adjustment in contract price unless sufficient funds are
4 available therefor, or the scope of the project or contract
5 is adjusted so as to permit the degree of completion
6 that is feasible within the total project budget and/or
7 total contract budget as it existed prior to the contract
8 modification, change order, or adjustment in contract price
9 under consideration; provided, however, that with respect to
10 the validity, as to the contractor, of any executed contract
11 modification, change order, or adjustment in contract price
12 which the contractor has reasonably relied upon, it shall be
13 presumed that there has been compliance with the provisions
14 of this Section.

15 Part E -- Architect-Engineer, Landscape
16 Architect, and Land Surveying
Services

17 §5-501 Legislative Declaration.

18 The purpose of this Part is to provide managerial
19 control by the State over competitive negotiations for the
20 acquisition of architect, engineer, landscape architect, and
21 land surveying services. It is hereby declared to be the
22 policy of this State to publicly announce requirements for
23 such special services, to encourage all qualified persons to
24 put themselves in a position to be considered for a contract,
25 and to negotiate contracts for such special services on the

1 basis of demonstrated competence and qualification for the
2 types of special services required and on the basis of the
3 furnishing of such special services at fair and reasonable
4 fees.

5 §5-502 Listings and Preliminary Selection.

6 (1) Submission of Information. Any person desiring
7 to provide special services to a governmental body shall
8 annually submit to the Department a statement of qualifica-
9 tion and performance data and such other information as may
10 be required by the Department. The Department may request
11 such person to update such statement before the anniversary
12 date in order to reflect changed conditions in the status of
13 such person.

14 (2) Preliminary Selection. For each proposed project
15 for which special services are required, the Principal
16 Representative of the state agency for which the project is
17 to be done shall evaluate current statements of qualifica-
18 tions and performance data on file with the Department
19 together with those that may be submitted by other persons
20 regarding the proposed contract in response to the public
21 notice issued under Section 5-505 (Public Notice). The
22 Principal Representative shall conduct discussions where
23 possible with no less than three persons regarding their
24 qualifications, approaches to the project, abilities to
25 furnish the required special services, anticipated design

1 concepts, and use of alternative methods of approach for
2 furnishing the required special services. The Principal
3 Representative shall then select the persons deemed to be
4 qualified to perform the required special services after
5 considering, and based upon, such factors as the ability of
6 professional personnel, past performance, willingness to
7 meet time and budget requirements, location, current and
8 projected work loads, the volume of work previously awarded
9 to the person by the governmental body, and the extent to
10 which those persons have and will involve minority subcon-
11 tractors, with the object of effecting an equitable dis-
12 tribution of contracts among qualified persons as long as
13 such distribution does not violate the principle of select-
14 ion of a qualified person. In selection as mentioned in
15 this Section, Colorado firms shall be given preference when
16 qualifications appear to be equal.

17 §5-503 Contract Negotiation.

18 The principal representative shall solicit competitive
19 sealed proposals from no less than three qualified persons,
20 if three are available, and shall negotiate a contract with
21 the responsible offeror whose proposal is determined in
22 writing to be the most advantageous to the State. In making
23 such determination, the Principal Representative shall take
24 into account, in the following order of importance, the
25 professional competence of offerors, the technical merits

1 of offers, and the price for which the special services are
2 to be rendered.

3 §5-504 Certification; Contract Adjustments.

4 For all lump-sum or cost-plus-a-fixed-fee special
5 service contracts, the Principal Representative shall
6 require the person receiving the award to execute a certi-
7 ficate stating that wage rates and other factual unit costs
8 supporting the compensation to be paid by the governmental
9 body for the special services are accurate, complete, and
10 current at the time of contracting. Any special service
11 contract under which such a certificate is required shall
12 contain a provision that the original contract price and any
13 additions thereto shall be adjusted to exclude any signi-
14 ficant sums by which the Principal Representative determines
15 the contract price had been increased due to inaccurate,
16 incomplete, or noncurrent wage rates and other factual unit
17 costs. All such contract adjustments shall be made within
18 one year following the end of the contract.

19 §5-505 Public Notice.

20 When special services are required to be contracted for,
21 public notice shall be given by the governmental body if
22 the basic construction cost of the project is estimated by
23 the governmental body to be more than one hundred thousand
24 dollars or if the fee for those special services is esti-
25 mated to exceed ten thousand dollars. Such public notice

1 shall be given at least thirty days prior to the selection
2 of the most highly qualified persons. Public notice shall
3 be given by publication three times in one or more daily
4 newspapers of general circulation in this State, shall
5 contain a general description of the proposed project, and
6 shall indicate the procedure by which interested persons may
7 apply for consideration for the contract.

8 §5-506 Clause Regarding Contingent Fees.

9 (1) Contract Clause. Each contract for special
10 services entered into by the Principal Representative shall
11 contain a prohibition against contingent fees as follows:

12 "The architect, or registered land surveyor,
13 or professional engineer, or landscape architect,
14 as applicable, warrants that he has not employed
15 or retained any company or person, other than a _____
16 bona fide employee working solely for him, to
17 solicit or secure this contract and that he has
18 not paid or agreed to pay any person, company,
19 corporation, individual, or firm, other than a
20 bona fide employee working solely for him, any
21 fee, commission, percentage, gift, or other
22 consideration contingent upon or resulting from
23 the award or the making of this contract."

24 (2) Civil Remedies. Upon any violation of the clause
25 required in Subsection (1) of this Section, the Principal

1 Representative shall have the right to terminate the con-
2 tract without liability and, at his or her discretion, to
3 deduct from the contract price, or otherwise recover, the
4 full amount of such fee, commission, percentage, or consid-
5 eration.

6 §5-507 Criminal Liability.

7 (1) Receipt of a Fee. Any person, other than a
8 bona fide employee working solely for a person providing
9 special services, who offers, agrees, or contracts to
10 solicit or secure for any other person State contracts for
11 special services and who, in so doing, receives any fee,
12 commission, gift or other consideration contingent upon or
13 resulting from the making of the contract commits a class 3
14 felony and shall be punished as provided in Section 18-1-105,
15 C.R.S. 1973, as amended.

16 (2) Payment of a Fee. Any person providing special
17 services who offers to pay or does pay any fee, commission,
18 gift, or other consideration contingent upon or resulting
19 from the making of a contract for special services with a
20 governmental body commits a class 1 misdemeanor and shall be
21 punished as provided in Section 18-1-106, C.R.S. 1973, as
22 amended.

23 (3) Payment to State Official or Employee. Any
24 state official or employee who solicits or secures or
25 offers to solicit or secure a contract for special services

1 with a governmental body and who is paid any fee, commis-
2 sion, gift, or other consideration contingent upon the
3 making of such contract commits a class 1 misdemeanor and
4 shall be punished as provided in Section 18-1-106, C.R.S.
5 1973, as amended.

6 §5-508 Continuing Contracts.

7 Nothing in this Part shall be construed to prohibit
8 continuing contracts between persons providing special
9 services and governmental bodies. All selections, cont-
10 racts, and negotiations undertaken pursuant to this Part and
11 all processes and procedures in connection with such matters
12 shall be in conformity with this Part.

13 §5-509 Prior Existing Design Plans.

14 Notwithstanding any other provision of this Part
15 or of part 13 of Article 30, there shall be no public notice
16 requirement or utilization of the selection process as
17 provided for in this Part or in part 13 of Article 30 for
18 projects in which the governmental body is able to reuse
19 existing drawings, specifications, designs, or other docu-
20 ments from a prior project.

Article 6

Modification and Termination of
Contracts for Supplies and Services

Article 6
Proposed Colorado
Procurement Code

ARTICLE 6 -- MODIFICATION AND TERMINATION OF CONTRACTS
FOR SUPPLIES AND SERVICES

STATUTORY PROVISIONS

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1 ARTICLE 6 -- MODIFICATION AND TERMINATION OF CONTRACTS
2 FOR SUPPLIES AND SERVICES

3 §6-101 Contract Clauses and Their Administration.

4 (1) Contract Clauses. The Executive Director may pro-
5 mulgate rules permitting or requiring the inclusion of clauses
6 providing for adjustments in prices, time of performance, or
7 other contract provisions as appropriate covering the
8 following subjects:

9 (a) the unilateral right of the State to
10 order in writing:

11 (i) changes in the work within the scope
12 of the contract; and

13 (ii) temporary stopping of the work or
14 delaying performance; and

15 (b) variations occurring between estimated
16 quantities of work in a contract and actual
17 quantities.

18 COMMENTARY:

19 The phrase "or other contract provisions"
20 of this Subsection is not intended to alter
21 the price adjustment provisions set forth
22 at Subsection (2) of this Section. It is
23 intended to enable the parties to deal with the
24 effects of changes, temporary work stoppages,
25 and variations in estimated quantities. For
example, where a change order requires the
delivery of alternate products, not only price
or time of performance may be affected, but
other terms or conditions such as insurance
or inspection may be affected.

1 issued under Article 7 (Cost
2 Principles) and subject to the
3 provisions of Article 9 (Legal
4 and Contractual Remedies).

5 (b) A contractor shall be required to submit cost
6 or pricing data if any adjustment in contract
7 price is subject to the provisions of Section
8 3-403 (Cost or Pricing Data).

9 (3) Additional Contract Clauses. The Executive Director
10 may promulgate rules, including, but not limited to, rules per-
11 mitting or requiring the inclusion in State contracts of clauses
12 providing for appropriate remedies and covering the following
13 subjects:

- 14 (a) liquidated damages as appropriate;
15 (b) specified excuses for delay or nonperformance;
16 (c) termination of the contract for default; and
17 (d) termination of the contract in whole or in
18 part for the convenience of the State.

19 (4) Modification of Clauses. The Director or the
20 head of a Purchasing Agency may vary the clauses promul-
21 gated by the Executive Director under Subsection (1) and Sub-
22 section (3) of this Section for inclusion in any particular
23 State contract; provided that any variations are supported by a
24 written determination that states the circumstances justifying
25 such variation and provided that notice of any such material

variation be stated in the Invitation for Bids or Request
for Proposals.

COMMENTARY:

(1) This Section permits the Executive Director to issue contract clauses covering situations that frequently develop. It does not require these situations to be treated in any particular way.

(2) Subsection (2) permits price adjustments to be determined in accordance with the contract terms or by agreement. Absent an agreement, the Procurement Officer will make a unilateral determination of the price adjustment which is subject to appeal under Article 9 (Legal and Contractual Remedies).

(3) In using unit prices it must be remembered that great variations in the number of units required may necessitate adjustments in the unit price.

(4) Other useful clauses not normally subject to the pricing formulas of Subsection (2) may be promulgated under Subsection (3).

DEFINITIONAL CROSS-REFERENCES:

"Contract"	Section 1-301(4)
"Contractor"	Section 1-301(6)
"Director"	Section 1-301(7)
"Head of a Purchasing Agency"	Section 1-301(11)
"Invitation for Bids"	Section 3-101(3)
"May"	Section 1-301(11)
"Purchasing Agency"	Section 1-301(15)
"Request for Proposals"	Section 3-101(5)
"Rule"	Section 1-301(16)
"Shall"	Section 1-301(18)

Article 7

Cost Principles

.

ARTICLE 7 -- COST PRINCIPLES

STATUTORY PROVISIONS

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Article 7 - Page

§7-101

Cost Principles Rules
Permitted.

1

1 ARTICLE 7 -- COST PRINCIPLES

2 §7-101 Cost Principles Rules Permitted.

3 The Executive Director may promulgate rules setting
4 forth cost principles which may be used to determine the
5 allowability of incurred costs for the purpose of reimburs-
6 ing costs under contract provisions which provide for the
7 reimbursement of costs, provided that if a written determina-
8 tion is approved at a level above the Procurement Officer,
9 such cost principles may be modified by contract.

10 COMMENTARY:

11 (1) The cost principles rules promulgated
12 by the Executive Director may be authorized
13 for use by State officials as guidelines when
14 negotiating estimated costs or fixed prices
15 when the absence of open market competition
16 precludes the use of competitive sealed
17 bidding; when negotiating adjustments for
18 State-directed changes or modifications in
19 contract performance; when negotiating
20 settlements of contracts which have been
21 terminated; or as appropriate in other
22 situations where the determination of esti-
23 mated or incurred costs is involved. They
24 should not be construed as establishing
25 requirements to be used when negotiating. In
26 such negotiations, the basic consideration
27 should be whether the cost information
28 used to determine prices, adjustments, and
29 settlements is based on generally accepted
30 accounting principles.

31 (2) In cost-reimbursement contracts the cost
32 principles may be modified by contract as a matter
33 of legislative right.

34 (3) The authority to promulgate rules
35 conferred in Section 2-101 (Authority and
36 Duties of the Executive Director of the
37 Department of Administration) includes the

1 power to promulgate rules providing for price
2 analysis and using cost principles for
3 guidance in negotiations, adjustments
and settlements.

4
5 DEFINITIONAL CROSS REFERENCES:

6 "Contract"	Section 1-301(4)
"May"	Section 1-301(11)
"Procurement Officer"	Section 1-301(14)
7 "Rule"	Section 1-301(16)
8 "Shall"	Section 1-301(18)

Article 8

Supply Management

Article 8
Proposed Colorado
Procurement Code

ARTICLE 8 -- SUPPLY MANAGEMENT

STATUTORY PROVISIONS

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1 ARTICLE 8 -- SUPPLY MANAGEMENT

2 Part A -- Definitions

3 §8-101 Definitions of Terms Used in this Article.

4 (1) Excess Supplies means any supplies having a
5 remaining useful life but which are no longer required by
6 the Using Agency in possession of the supplies.

7 (2) Surplus Supplies means any supplies no longer
8 having any use to the State.

9 DEFINITIONAL CROSS-REFERENCES:

10 "Director"	Section 1-301(7)
11 "Employee"	Section 1-301(8)
12 "Governmental Body"	Section 1-301(9)
13 "Rule"	Section 1-301(16)
14 "Shall"	Section 1-301(18)
15 "Supplies"	Section 1-301(19)
16 "Using Agency"	Section 1-301(20)

17 Part B -- Rules Required

18 §8-201 Supply Management Rules Required.

19 The Executive Director shall promulgate rules governing:

- 20 (a) the sale, lease, or disposal of surplus
21 supplies by public auction or competitive
22 sealed bidding, provided that no state
23 employee shall be entitled to purchase any
24 such supplies; and
25 (b) the transfer of excess supplies.

1 Part C -- Proceeds

2 §8-301 Allocation of Proceeds from Sale or Disposal

3 of Surplus Supplies.

4 The proceeds from the sale, lease, or disposal of
5 surplus supplies shall be paid over to the state treasurer
6 and credited to the general fund; except that upon the
7 recommendation of the Director and with the approval of the
8 State Controller, such proceeds shall be credited to the
9 capital outlay account of the owning governmental body.

Article 9

Legal and Contractual Remedies

ARTICLE 9 -- LEGAL AND CONTRACTUAL REMEDIES

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1 ARTICLE 9 -- LEGAL AND CONTRACTUAL REMEDIES

2 Part A -- Prelitigation Resolution of
3 Controversies

4 §9-101 Authority to Resolve Protested Solicitations
5 and Awards.

6 (1) Right to Protest. Any actual or prospective
7 bidder, offeror, or contractor who is aggrieved in connection
8 with the solicitation or award of a contract may protest to
9 the Director or head of a Purchasing Agency. The protest
10 shall be submitted in writing within seven working days
11 after such aggrieved person knows or should have known of
12 the facts giving rise thereto.

13 (2) Authority to Resolve Protests. The Director, head
14 of a Purchasing Agency, or a designee of either officer shall
15 have the authority, prior to the commencement of an action
16 in court concerning the controversy, to settle and resolve a
17 protest of an aggrieved bidder, offeror, or contractor,
18 actual or prospective, concerning the solicitation or award
19 of a contract. This authority shall be exercised in ac-
20 cordance with rules.

21 COMMENTARY:

22 (1) It is essential that bidders, offerors, and
23 contractors have confidence in the procedures for
24 soliciting and awarding contracts. This can best
25 be assured by allowing an aggrieved person to pro-
test the solicitation, award, or related decision.
This Section, Section 9-201 (Authority of the
Executive Director) and Section 9-301 (Waiver of

Sovereign Immunity in Connection with Contracts)
would permit actual or prospective bidders or
offerors, or contractors, to:

- (a) promptly protest the solicitation
or award to the Director, head of
a Purchasing Agency, or either
person's designee;
- (b) have the protest decision reviewed
by the Executive Director; or
- (c) promptly seek relief in the State
courts.

(2) Nothing in this Section is intended to
affect the power of the Attorney General to
settle actions pending before the Executive
Director or the courts.

§9-102 Stay of Procurements During Protests.

In the event of a timely protest under Subsection (1)
of this Section, or under Section 9-401(1) (Waiver of Sovereign
Immunity in Connection with Contracts, Solicitation and Award of
Contracts), the State shall not proceed further with the solici-
tation or with the award of the contract unless the Executive
Director, after consultation with the Director and Using
Agency or head of a Purchasing Agency, makes a written
determination that the award of the contract without delay
is necessary to protect substantial interests of the State.

COMMENTARY:

In order to allow essential government functions
to continue, this Section provides that the State
may proceed with the solicitation or award of the
contract, despite the protest, upon a determination
in writing by the Executive Director that such
action is necessary. It is expected that such a
determination will occur only in those few circum-
stances where it is necessary to protect a substan-
tial interest of the State.

1 §9-103 Entitlement to Costs.

2 When a protest is sustained administratively or upon
3 administrative or judicial review and the protesting bidder
4 or offeror should have been awarded the contract under the
5 solicitation but is not, the protestor, in addition to any
6 other relief, shall be entitled to the reasonable costs
7 incurred in connection with the solicitation, including
8 bid preparation costs.

9 COMMENTARY:

10 The award of costs under this Section is
11 intended to compensate a party for reasonable
12 expenses incurred in connection with a sollicita-
13 tion for which that party was wrongfully denied
14 a contract award. No party can recover profits
15 which it anticipated would have been made if
that party had been awarded the contract. The
prevailing party may be awarded attorney's fees
and related costs at the discretion of the
court.

16 §9-104 Authority to Debar or Suspend.

17 (1) Authority. After reasonable notice to the person
18 involved and reasonable opportunity for that person to be
19 heard, the Director or head of a Purchasing Agency, after
20 consultation with the Using Agency and the Attorney General,
21 shall have authority to debar a person for cause from
22 consideration for award of contracts.

23 The debarment shall not be for a period of more than
24 three years. The same officer, after consultation with the
25 Using Agency and the Attorney General, shall have authority

1 to suspend a person from consideration for award
2 of contracts if there is probable cause to believe that
3 such person has engaged in activities that may lead to
4 debarment. The suspension shall not be for a period
5 exceeding three months unless an indictment has been
6 issued for an offense which would be a cause for debarment
7 under Subsection (2) of this Section, in which case the
8 suspension shall, at the request of the Attorney General,
9 remain in effect until after the trial of the suspended
10 person. The authority to debar or suspend shall be
11 exercised in accordance with rules.

12 (2) Causes for Debarment. The causes for debarment
13 include the following:

- 14 (a) conviction of a criminal offense as an
15 incident to obtaining or attempting to
16 obtain a public or private contract or
17 subcontract, or in the performance of
18 such contract or subcontract;
- 19 (b) conviction under State or federal
20 statutes of embezzlement, theft, forgery,
21 bribery, falsification or destruction
22 of records, receiving stolen property,
23 or any other offense indicating a lack
24 of business integrity or business honesty
25 which currently, seriously, and directly

1 affect responsibility as a State

2 contractor;

3 (c) conviction under State or federal antitrust
4 statutes arising out of the submission of
5 bids or proposals;

6 (d) failure without good cause to perform in
7 accordance with the terms of any contract;

8 (e) any other cause the Director or head of a
9 Purchasing Agency determines to be so serious
10 and compelling as to affect responsibility as
11 a State contractor, including debarment by
12 another governmental entity for any cause
13 listed in rules; and

14 (f) for violation of the ethical standards set
15 forth in Article 12 (Ethics in Public
16 Contracting).

17 §9-105 Authority to Resolve Contract and Breach of
18 Contract Controversies.

19 (1) Applicability. This Section applies to controversies
20 between the State and a contractor and which arise under, or
21 by virtue of, a contract between them. This includes without
22 limitation controversies based upon breach of contract, mistake,
23 misrepresentation, or other cause for contract modification
24 or rescission.

25 (2) Authority. The Director, head of a Purchasing

Agency, or a designee of either officer is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (1) of this Section. This authority shall be exercised in accordance with rules.

COMMENTARY:

(1) The word "controversy" is meant to be broad and all-encompassing. It includes the full spectrum of disagreement from pricing of routine contract changes to claims of breach of contract.

(2) Subsection (2) gives the Director or head of the Purchasing Agency the authority to settle all contract claims and controversies prior to the filing of a suit. This may avoid unnecessary litigation and often is essential for fair treatment of parties contracting with the State. On the other hand, some safeguards are needed. Limitation upon the power to settle, including prerequisite approvals, should be established by appropriate rules.

§9-106 Issuance and Appeal of Decision.

(1) Issuance. The Director, head of a Purchasing Agency, or a designee of either officer shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, prospective contractor, or contractor of the right to judicial or administrative review as provided in this Article.

1 (2) Effect of Decision; Appeal. A decision shall
2 be effective unless stayed or until reversed on appeal,
3 except to the extent provided in Section 9-102 (Stay of
4 Procurements During Protests). A copy of the decision
5 under Subsection (1) of this Section shall be mailed or
6 otherwise furnished immediately to the protestor, pro-
7 spective contractor, or contractor. The decision shall
8 be final and conclusive unless the protestor, prospective
9 contractor, or contractor appeals administratively to the
10 Executive Director in accordance with Section 9-201 (Authority
11 of the Executive Director) or the protestor, prospective
12 contractor, or contractor commences an action in court in
13 accordance with Section 9-301 (Waiver of Sovereign Immunity
14 in Connection with Contracts). Any appeal from a decision
15 under this Section shall not be subject to the provisions of
16 Title 24, Article 4, C.R.S. 1973, as amended (Administrative
17 Procedure Act).

18 (3) Failure to Render Timely Decision. If the Director,
19 head of a Purchasing Agency, or a designee of either
20 officer does not issue a written decision regarding a
21 contract controversy within 20 working days after written
22 request for a final decision, or within such longer period
23 as may be agreed upon by the parties, then the contractor
24 may proceed as if an adverse decision had been received.
25

1 Part B -- Appeals to the Executive Director

2 §9-201 Authority of the Executive Director.

3 Unless an action has been initiated previously in the
4 District Court of the City and County of Denver, the Execu-
5 tive Director shall have the authority to review and determine
6 de novo, independently of the provisions of Title 24, Article 4,
7 C.R.S. 1973, as amended, any appeal by an aggrieved person from
8 a decision of the Director or head of a Purchasing Agency
9 which is authorized by Section 9-106 (Issuance and Appeal of
10 Decision).

11 §9-202 Rules of Procedure.

12 The Executive Director shall adopt rules of procedure
13 which, to the fullest extent possible, will provide for the
14 expeditious resolution of controversies.

15 §9-203 Decision of the Executive Director.

16 On each appeal submitted, the Executive Director shall
17 promptly decide the contract controversy, debarment, or sus-
18 pension, or whether the solicitation or award was in accordance
19 with the Constitution, statutes, rules, and the terms and con-
20 ditions of the solicitation. The decision shall be in writing.
21 A copy of any decision shall be provided to all parties.

22 §9-204 Time Limitation on Appeals.

23 (1) Protest of Solicitation or Award. For an appeal
24 from a decision regarding a protested solicitation or award,
25 the aggrieved person shall file an appeal within seven

1 working days of a decision rendered pursuant to Section
2 9-106 (Issuance and Appeal of Decision).

3 (2) Suspension, Debarment, or Contract Controversy.

4 For an appeal from a decision regarding a debarment, suspension,
5 or contract controversy, the aggrieved person shall file an
6 appeal within 20 working days of receipt of a decision
7 rendered or deemed to be rendered pursuant to Section
8 9-106 (Issuance and Appeal of Decision).

9 §9-205 Standard of Review for Factual Issues.

10 A determination of an issue of fact by the Executive
11 Director under Section 9-203 (Decisions of the Executive
12 Director) shall be final and conclusive unless arbitrary,
13 capricious, fraudulent, or clearly erroneous.

14 §9-206 Appeal and Review of Decisions.

15 Any person receiving an adverse decision under this
16 Part may appeal from a decision of the Executive Director to
17 the District Court of the City and County of Denver as
18 provided in Section 9-301 (Waiver of Sovereign Immunity in
19 Connection with Contracts).

20 Part C -- Waiver of Sovereign Immunity;
21 Limitations on Actions

22 §9-301 Waiver of Sovereign Immunity in Connection
23 with Contracts.

24 The District Court of the City and County of Denver
25 shall have jurisdiction over an action, whether the

1 action is at law or in equity, between the State and:

- 2 (a) a bidder, offeror, or contractor,
3 prospective or actual, who is aggrieved
4 in connection with the solicitation or
5 award of a contract;
6 (b) a person who is subject to a suspension
7 or debarment proceeding; and
8 (c) a contractor, for any cause of action which
9 arises under or by virtue of a contract.

10 §9-302 Limited Finality for Administrative Determinations.

11 Any judicial action under this Part shall be de novo
12 except to the extent provided in:

- 13 (a) Section 3-701 (Finality of Determination);
14 and
15 (b) Section 9-205 (Standard of Review for
16 Factual Issues).

17 §9-303 Time Limitation on Actions.

18 (1) Protested Solicitations and Awards. Any action
19 under Section 9-301(a) (Waiver of Sovereign Immunity in
20 Connection with Contracts) shall be initiated as follows:

- 21 (a) within 20 working days after the aggrieved
22 person knows or should have known of the
23 facts giving rise to the action; or
24 (b) within 10 working days after receipt of a
25 final administrative decision pursuant

1 to either Section 9-106 (Issuance and Appeal of
2 Decision) or Section 9-203 (Decision of the
3 Executive Director), whichever is applicable.

4 (2) Debarments and Suspensions for Cause. Any action
5 under Section 9-301(b) (Waiver of Sovereign Immunity in
6 Connection with Contracts), shall be commenced within six
7 months after receipt of the decision of the Director or head
8 of the Purchasing Agency under Section 9-106 (Issuance and
9 Appeal of Decision) or the decision of the Executive Director
10 under Section 9-203 (Decisions of the Executive Director),
11 whichever is applicable.

12 (3) Actions Under Contracts or for Breach of Contract.
13 The statutory limitation on actions between private persons on a
14 contract or for breach of contract shall apply to any action
15 commenced pursuant to Section 9-301(c) (Waiver of Sovereign
16 Immunity in Connection with Contracts), except notice of
17 appeals from the decision of the Director or the head of a
18 Purchasing Agency pursuant to Section 9-106 (Issuance and
19 Appeal of Decision) or from the decision of the Executive
20 Director pursuant to Section 9-203 (Decisions of the Execu-
21 tive Director) concerning actions on a contract or for
22 breach of contract shall be filed within 20 working days
23 after the date of the decision.

24 COMMENTARY:

25 The requirement that lawsuits be filed
within a stipulated time is necessary to guard

4 §9-401 Interest.

Part E -- Solicitations or Awards in Violation
of Law

14 The provisions of this Part apply where it is determined
15 judicially or administratively, or upon administrative or
16 judicial review, that a solicitation or award of a contract is
17 in violation of law.

19 If prior to award it is determined that a solicitation
20 or proposed award of a contract is in violation of law, then
21 the solicitation or proposed award shall be:

- 24 §9-503 Remedies After an Award.

25 If after an award it is determined that a solicitation

1 or award of a contract is in violation of law, then:

2 (a) if the person awarded the contract has not
3 acted fraudulently or in bad faith:

4 (i) the contract may be ratified and affirmed,
5 provided it is determined that doing so
6 is in the best interests of the State;
7 or

8 (ii) the contract may be terminated and the
9 person awarded the contract shall be
10 compensated for the actual expenses
11 reasonably incurred under the contract,
12 plus a reasonable profit, prior to the
13 termination;

14 (b) if the person awarded the contract has acted
15 fraudulently, in bad faith, or in breach of
16 the ethical standards set forth in Article 12
17 (Ethics in Public Contracting):

18 (i) the contract may be declared null and
19 void; or

20 (ii) the contract may be ratified and affirmed
21 if such action is in the best interests of
22 the State, without prejudice to the State's
23 rights to such damages as may be appropriate.
24
25

1 §9-504 Liability of State Employees.

2 If any governmental body purchases any supplies,
3 services, or construction contrary to the provisions of
4 this Code or its rules, the head of such governmental body
5 and the employee actually making such purchase shall be
6 personally liable for the costs thereof, and if such
7 supplies, services, or construction are so unlawfully
8 purchased and paid for out of State monies, the amount
9 thereof may be recovered in the name of the State in an
10 appropriate action instituted therefore.

11 DEFINITIONAL CROSS-REFERENCES:

12	"Contract"	Section 1-301(4)
	"Contract Modification"	Section 1-301(5)
13	"Contractor"	Section 1-301(6)
	"Director"	Section 1-301(7)
14	"Employee"	Section 1-301(8)
	"Head of a Purchasing Agency"	Section 1-301(10)
15	"May"	Section 1-301(11)
	"Person"	Section 1-301(12)
16	"Purchasing Agency"	Section 1-301(14)
	"Rules"	Section 1-301(16)
17	"Shall"	Section 1-301(18)
18	"Using Agency"	Section 1-301(20)

Article 10

Intergovernmental Relations

Article 10
Proposed Colorado
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ARTICLE 10 -- INTERGOVERNMENTAL RELATIONS

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1 ARTICLE 10 -- INTERGOVERNMENTAL RELATIONS

2 Part A -- Definitions

3 §10-101 Definitions of Terms Used in this Article.

4 (1) Cooperative Purchasing means procurement conducted
5 by, or on behalf of, more than one Public Procurement unit,
6 or by a Public Procurement Unit with an External Procurement
7 Activity.

8 (2) External Procurement Activity means any buying
9 organization not located in this State which, if located in
10 this State, would qualify as a Public Procurement Unit. An
11 agency of the United States is an External Procurement
12 Activity.

13 (3) Local Public Procurement Unit means any county,
14 city, town, and any other subdivision of the State or public
15 agency of any such subdivision, public authority, educational,
16 health, or other institution, and to the extent provided by
17 law, any other entity which expends public funds for the
18 procurement of supplies, services, and construction.

19 (4) Public Procurement Unit means either a Local
20 Public Procurement Unit or a State Public Procurement
21 Unit.

22 (5) State Public Procurement Unit means the Divivson
23 of Purchasing and any other Purchasing Agency of this
24 State.
25

COMMENTARY:

(1) The term "State Public Procurement Unit" in Subsection (5) relates to each entity within State government which carries out procurement functions for the State government. In States such as Colorado, where procurement is partially centralized, the term "State Public Procurement Unit" describes the established primary procurement unit of the State government (Division of Purchasing) and such other units within the State government as are authorized to conduct procurement functions independent of the established primary State Public Procurement Unit (e.g. Group II Agencies).

(2) The term "External Procurement Activity" in Subsection (2) includes, but is not limited to, the Federal Supply Service (General Services Administration) of the United States, the Defense Logistics Agency of the United States, and any Public Procurement Unit in States other than the enacting jurisdiction.

DEFINITIONAL CROSS-REFERENCES:

"Construction"	Section 1-301(3)
"Contract"	Section 1-301(4)
"Contractor"	Section 1-301(6)
"Director"	Section 1-301(7)
"Governmental Body"	Section 1-301(9)
"Invitation for Bids"	Section 3-101(3)
"May"	Section 1-301(11)
"Purchasing Agency"	Section 1-301(15)
"Request for Proposals"	Section 3-101(5)
"Services"	Section 1-301(17)
"Shall"	Section 1-301(18)
"Specification"	Section 4-101(1)
"Supplies"	Section 1-301(19)

Part B -- Cooperative Purchasing

§10-201 Cooperative Purchasing Authorized.

Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or

1 construction with one or more Public Procurement Units or
2 External Procurement Activities in accordance with an
3 agreement entered into between the participants. Such
4 cooperative purchasing may include, but is not limited to,
5 joint or multi-party contracts between Public Procurement
6 Units and open-ended State Public Procurement Unit contracts
7 which are made available to Local Public Procurement Units.

8 §10-202 Sale, Acquisition, or Use of Supplies by a Public
9 Procurement Unit.

10 Any Public Procurement Unit may sell to, acquire from,
11 or use any supplies belonging to another Public Procurement
12 Unit or External Procurement Activity independent of the
13 requirements of Article 3 (Source Selection and Contract
14 Formation) and Article 8 (Supply Management) of this Code.

15 §10-203 Cooperative Use of Supplies or Services.

16 Any Public Procurement Unit may enter into an agreement,
17 independent of the requirements of Article 3 (Source Selection
18 and Contract Formation) and Article 8 (Supply Management)
19 of this Code, with any other Public Procurement Unit or
20 External Procurement Activity for the cooperative use of
21 supplies or services under the terms agreed upon between the
22 parties.

23 §10-204 Joint Use of Facilities.

24 Any Public Procurement Unit may enter into agreements
25 for the common use or lease of warehousing facilities,

1 capital equipment, and other facilities with another Public
2 Procurement Unit or an External Procurement Activity under
3 the terms agreed upon between the parties.

4 §10-205 Supply of Personnel, Information, and Technical
5 Services.

6 (1) Supply of Personnel. Any Public Procurement Unit
7 is authorized, in its discretion, upon written request from
8 another Public Procurement Unit or External Procurement
9 Activity, to provide personnel to the requesting Public
10 Procurement Unit or External Procurement Activity. The
11 Public Procurement Unit or External Procurement Activity
12 making the request shall pay the Public Procurement Unit
13 providing the personnel the direct and indirect cost of
14 furnishing the personnel, in accordance with an agreement
15 between the parties.

16 (2) Supply of Services. The informational, technical,
17 and other services of any Public Procurement Unit may be
18 made available to any other Public Procurement Unit or
19 External Procurement Activity provided that the requirements
20 of the Public Procurement Unit tendering the services shall
21 have precedence over the requesting Public Procurement Unit
22 or External Procurement Activity. The requesting Public
23 Procurement Unit or External Procurement Activity shall pay
24 for the expenses of the services so provided, in accordance
25 with an agreement between the parties.

1 (3) State Information Services. Upon request, the
2 Director, through the Division of Local Government, may make
3 available to Local Public Procurement Units or External Pro-
4 curement Activities the following services, among others:

- 5 (a) standard forms;
- 6 (b) printed manuals;
- 7 (c) product specifications and standards;
- 8 (d) quality assurance testing services and
9 methods;
- 10 (e) qualified products lists;
- 11 (f) source information;
- 12 (g) common use commodities listings;
- 13 (h) supplier prequalification information;
- 14 (i) supplier performance ratings;
- 15 (j) debarred and suspended bidders lists;
- 16 (k) forms for Invitations for Bids, Requests
17 for Proposals, Instructions to Bidders,
18 General Contract Provisions, and other con-
19 tract forms; and
- 20 (l) contracts or published summaries thereof,
21 including price and time of delivery informa-
22 tion.

23 (4) State Technical Services. The State, through the
24 Division of Local Government, may provide the following
25 technical services, among others, to Local Public Procure-

ment Units or External Procurement Activities:

(a) development of products specifications;

(b) development of quality assurance test methods including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(5) Fees. The Director, through the Division of Local Government, may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections (3) and (4) of this Section.

§10-206 Use of Payments Received by a Supplying Public Procurement Unit.

All payments from any Public Procurement Unit or External Procurement Activity received by a Public Procurement Unit supplying personnel or services shall be available as authorized by law or in accordance with fiscal rules.

§10-207 Public Procurement Units in Compliance with Code Requirements.

Where the Public Procurement Unit or External Procurement Activity administering a cooperative purchase complies with the requirements of this Code, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with this Code. Public Procurement

Units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

§10-208 Review of Procurement Requirements.

To the extent possible, the Director may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by State Public Procurement Units. The Director may also collect such information from Local Public Procurement Units. The Director may make available all such information to any Public Procurement Unit upon request.

Part C -- Contract Controversies

§10-301 Contract Controversies.

(1) Public Procurement Unit Subject to Article 9 (Legal and Contractual Remedies). Under a cooperative purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved in accordance with Article 9 (Legal and Contractual Remedies).

(2) Local Public Procurement Unit Not Subject to Article 9 (Legal and Contractual Remedies). Any Local Public Procurement Unit which is not subject to Article 9 (Legal and Contractual Remedies), Part E (Procurement Appeals Board), is authorized to:

- (a) enter into an agreement with the Department of Administration to use the Department to

1 " resolve controversies between the Local Public
2 Procurement Unit and its contractors, whether
3 or not such controversy arose from a coopera-
4 tive purchasing agreement; and

5 (b) enter into an agreement with another Local
6 Public Procurement Unit or External Procure-
7 ment Activity to establish procedures or use
8 such unit's or activity's existing procedures
9 to resolve controversies with contractors,
10 whether or not such controversy arose
11 under a cooperative purchasing agreement.

Article 11

Socioeconomic Procurement Policies;
Federal Assistance or Contract
Procurement Requirements

ARTICLE 11 -- SOCIOECONOMIC PROCUREMENT POLICIES:
FEDERAL ASSISTANCE OR CONTRACT
PROCUREMENT REQUIREMENTS

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1 ARTICLE 11 -- SOCIOECONOMIC PROCUREMENT POLICIES;
2 FEDERAL ASSISTANCE OR CONTRACT
 PROCUREMENT REQUIREMENTS

3 Part A -- Definitions

4 §11-101 Definitions of Terms Used in this Article.

5 (1) Economically Disadvantaged Individuals means
6 those socially disadvantaged individuals whose ability to
7 compete in the free enterprise system has been impaired
8 due to diminished capital and credit opportunities as
9 compared to others in the same business area who are not
10 socially disadvantaged. In determining the degree of
11 diminished credit and capital opportunities, the Executive
12 Director shall consider, among other factors, the assets and
13 worth of such socially disadvantaged individuals.

14 (2) Minority Business Enterprise means any small
15 business concern:

16 (a) which is at least 51 percent owned by one or
17 more socially and economically disadvantaged
18 individuals or, for any publicly owned
19 business, one in which at least 51 percent of
20 the stock is owned by one or more socially
21 and economically disadvantaged individuals;
22 and

23 (b) whose management and daily business opera-
24 tions are controlled by one or more socially
25 and economically disadvantaged individuals.

1 (3) Socially Disadvantaged Individuals means those
2 individuals who have been subjected to racial or ethnic
3 prejudice or cultural bias because of their identity as
4 member of a group without regard to their individual qualities.

5
6 Part B -- Assistance to Minority Business
 Enterprises

7 §11-201 Statement of Policy.

8 It is the declared policy of the this State that
9 the State should aid, counsel, assist, and protect, insofar
10 as possible, the interests of minority business enterprises
11 in order to overcome the effects of past discrimination and
12 to preserve free competitive enterprise. Toward this end,
13 the State shall endeavor to provide that a fair proportion
14 of the State's contracts for supplies, services, and con-
15 struction be placed with minority business enterprises.

16 §11-202 Duties of the Governor.

17 The Governor, through the Colorado Office of Minority
18 Business Enterprise (COMBE) or other appropriate office or
19 agency, shall compile, maintain, and make available to the
20 Executive Director and the State Purchasing Agencies source
21 lists of minority business enterprises, as defined in Section
22 11-101 (Definitions), for the purpose of encouraging procure-
23 ment from such minority business enterprises.

24 §11-203 Duties of the Executive Director.

25 (1) Establishment of Goals. The Executive Director shall

1 annually establish a goal of an overall percentage of the
2 gross dollar amount of contracts for supplies, services, and
3 construction to be awarded to minority business enterprises.

4 (2) Programs for Minority Business Enterprises.

5 The Executive Director may promulgate rules establishing pro-
6 grams, as appropriate, to facilitate the award of State contracts
7 to minority business enterprises. Such programs may include:

- 8 (a) the establishment of a percentage price pre-
9 ference for minority business enterprises to be
10 used in making award under Section 3-202(7)
11 (Competitive Sealed Bidding, Award), provided,
12 however, that notice of such preference shall be
13 set forth in the Invitation for Bids; and
14 (b) the establishment of set-aside programs which
15 allow solicitation of bids or proposals from
16 minority business enterprises only.

17 Part C -- Exemption from Section 3-201

18 §11-301 Exemptions from Section 3-201 (Methods of Source
19 Selection).

20 Notwithstanding the requirements of Section 3-201
21 (Methods of Source Selection), State procurement contracts,
22 where appropriate, shall be awarded as provided in Sections
23 17-24-111 (correctional industries), 24-30-1203 (products
24 and services of the severely handicapped), or 26-8.2-103
25 (products of the rehabilitation center for the

visually impaired), C.R.S. 1973, as amended.

Part D -- Priorities

§11-401 Priorities Among Preferences.

When two or more socioeconomic procurement programs are applicable under the same procurement, businesses benefitting from such programs shall be considered in the following order of precedence:

(a) correctional industries;

(b) industries for the visually impaired;

(c) industries for the severely
handicapped; and

(d) minority business enterprises.

Part E -- Federal Assistance or Contract
Procurement Requirements

§11-501 Compliance with Federal Requirements

When a procurement involves the expenditure of federal assistance or contract funds, the Director or the head of a Purchasing Agency shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Code.

Article 12

Ethics in Public Contracting

ARTICLE 12 -- ETHICS IN PUBLIC CONTRACTING

STATUTORY PROVISIONS

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1 ARTICLE 12 -- ETHICS IN PUBLIC CONTRACTING

2 Part A -- Definitions

3 §12-101 Definitions of Terms Used in this Article.

4 (1) Blind Trust means an independently managed trust in
5 which the employee-beneficiary has no management rights and
6 in which the employee-beneficiary is not given notice of
7 alterations in, or other dispositions of, the property subject
8 to the trust.

9 (2) Confidential Information means any information
10 which is available to an employee only because of the employee's
11 status as an employee of the State of Colorado and is not a mat-
12 ter of public knowledge or available to the public on request.

13 (3) Direct or Indirect Participation means involvement
14 through decision, approval, disapproval, recommendation,
15 preparation of any part of a purchase request, influencing
16 the content of any specification or procurement standard,
17 rendering of advice, investigation, auditing, or in any other
18 advisory capacity.

19 (4) Financial Interest means:

20 (a) ownership of any interest or involvement in
21 any relationship from which, or as a result
22 of which, a person within the past year
23 has received, or is presently or in the fu-
24 ture entitled to receive, more than \$500
25 per year, or its equivalent, except where

1 the ownership interest exceeds 1 percent of the
2 issued and outstanding stock of a publicly
3 owned corporation;

4 (b) ownership of such interest in any property
5 or any business as may be specified by the
6 Executive Director; or

7 (c) holding a position in a business such as
8 an officer, director, trustee, partner,
9 employee, or the like, or holding any position
10 of management.

11 (5) Gratuity means a payment, loan, subscription,
12 advance, deposit of money, services, or anything of more
13 than nominal value, present or promised, unless consideration
14 of substantially equal or greater value is received.

15 (6) Immediate Family means a spouse, children, parents,
16 brothers and sisters, and such other relatives as may be
17 designated by the Executive Director.

18 (7) Official Responsibility means direct administrative
19 or operating authority, whether intermediate or final,
20 either exercisable alone or with others, either personally
21 or through subordinates, to approve, disapprove, or otherwise
22 affect procurement.

23 (8) Purchase Request means that document whereby a
24 Using Agency requests that a contract be entered into for a
25 specified need, and may include, but is not limited to, the

technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

DEFINITIONAL CROSS-REFERENCES:

"Business"	Section 1-301(1)
"Construction"	Section 1-301(3)
"Contract"	Section 1-301(4)
"Contractor"	Section 1-301(6)
"Employee"	Section 1-301(8)
"Governmental Body"	Section 1-301(9)
"Head of a Purchasing Agency"	Section 1-301(10)
"May"	Section 1-301(11)
"Person"	Section 1-301(12)
"Procurement"	Section 1-301(13)
"Rule"	Section 1-301(16)
"Services"	Section 1-301(17)
"Shall"	Section 1-301(18)
"Specification"	Section 4-101(1)
"Supplies"	Section 1-301(19)
"Using Agency"	Section 1-301(20)

Part B -- Standards of Conduct

§12-201 Statement of Policy.

Public employment is a public trust. It is the policy of the State of Colorado to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the State. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to

1 governmental procurement by responsible contractors.

2 Moreover, they should conduct themselves in such a manner as
3 to foster public confidence in the integrity of the State
4 procurement organization.

5 To achieve the purpose of this Article, it is essen-
6 tial that those doing business with the State also observe
7 the ethical standards prescribed herein.

8 §12-202 General Standards of Ethical Conduct.

9 (1) General Ethical Standards for Employees.

10 Any attempt to realize personal gain through public
11 employment by conduct inconsistent with the proper dis-
12 charge of the employee's duties is a breach of a public
13 trust.

14 In order to fulfill this general prescribed standard,
15 employees must also meet the specific standards set forth
16 in: Section 12-204 (Employee Conflict of Interest); Section
17 12-205 (Employee Disclosure Requirements); Section 12-206
18 (Gratuities and Kickbacks); Section 12-207 (Prohibition
19 Against Contingent Fees); Section 12-208 (Restrictions on
20 Employment of Present and Former Employees); and Section
21 12-209 (Use of Confidential Information).

22 (2) General Ethical Standards for Non-Employees.

23 Any effort to influence any public employee to breach the
24 standards of ethical conduct set forth in this Section
25 and Section 12-204 through Section 12-209 of this Article

1 is also a breach of ethical standards."

2 §12-203 Criminal Sanctions.

3 To the extent that violations of the ethical standards
4 of conduct set forth in this Part constitute violations of
5 the Colorado Criminal Code, they shall be punishable as
6 provided therein. Such sanctions shall be in addition to
7 the civil remedies set forth in this Article.

8 §12-204 Employee Conflict of Interest.

9 (1.) Conflict of Interest. It shall be a breach
10 of ethical standards for any employee to participate
11 directly or indirectly in a procurement when the employee
12 knows that:

13 (a) the employee or any member of the employee's
14 immediate family has a financial interest
15 pertaining to the procurement;

16 (b) a business or organization in which the
17 employee, or any member of the employee's
18 immediate family, has a financial interest
19 pertaining to the procurement; or

20 (c) any other person, business, or organiza-
21 tion with whom the employee or any member
22 of the employee's immediate family is nego-
23 tiating or has an arrangement concerning
24 prospective employment is involved in the
25 procurement.

1 (2) Financial Interest in a Blind Trust. Where
2 an employee or any member of the employee's immediate family
3 holds a financial interest in a blind trust, the employee
4 shall not be deemed to have a conflict of interest with
5 regard to matters pertaining to that financial interest,
6 provided that disclosure of the existence of the blind trust
7 has been made to the Attorney General or the governmental
8 body employing the employee.

9 (3) Discovery of Actual or Potential Conflict of
10 Interest, Disqualification, and Waiver. Upon discovery
11 of an actual or potential conflict of interest, an employee
12 shall promptly file a written statement of disqualification
13 with the employing governmental body and shall withdraw
14 from further participation in the transaction involved.

15 §12-205 Employee Disclosure Requirements.

16 (1) Disclosure of Benefit Received from Contract. Any
17 employee who has, or obtains any benefit from, any procure-
18 ment contract with a business in which the employee has a
19 financial interest shall report such benefit to the employ-
20 ing governmental body, provided, however, this Section shall
21 not apply to a contract with a business where the employee's
22 interest in the business has been placed in a disclosed
23 blind trust.

24 (2) Failure to Disclose Benefit Received. Any employee
25 who knows or should have known of such benefit, and fails to

1 report such benefit as required, is in breach of the ethical
2 standards of this Section.

3 §12-206 Gratuities and Kickbacks.

4 (1) Gratuities. It shall be a breach of ethical
5 standards for any person to offer, give, or agree to
6 give any employee or former employee, or for any employee or
7 former employee to solicit, demand, accept, or agree to
8 accept from another person, a gratuity or an offer of
9 employment in connection with any decision, approval,
10 disapproval, recommendation, preparation of any part of a
11 program requirement or a purchase request, influencing the
12 content of any specification or procurement standard, rendering
13 of advice, investigation, auditing, or in any other advisory
14 capacity in any proceeding or application, request for ruling,
15 determination, claim or controversy, or other particular
16 matter, pertaining to any program requirement or a contract
17 or subcontract, or to any solicitation or proposal therefor.

18 (2) Kickbacks. It shall be a breach of ethical
19 standards for any payment, gratuity, or offer of employment
20 to be made by or on behalf of a subcontractor under a con-
21 tract to the prime contractor or higher tier subcontractor
22 or any person associated therewith, as an inducement for the
23 award of a subcontract or order.

24 §12-207 Prohibition Against Contingent Fees.

25 (1) Contingent Fees. It shall be a breach of ethical

standards for a person to be retained, or to retain a person, to solicit or secure a procurement contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This Section shall not prevent an attorney from representing a client in a bid protest nor shall it prevent an attorney or an accountant from entering into contract negotiations with a State agency on behalf of a client.

(2) Representation of Contractor. Every Invitation for Bids, Request for Proposals, and contract shall require every bidder, offeror, or contractor to represent that such person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitutes a breach of ethical standards.

§12-208 Restrictions on Employment of Present and Former Employees.

(1) Contemporaneous Employment Prohibited. Except as may be permitted by rules or rulings of the Executive Director, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

1 (2) Restrictions on Former Employees in Matters
2 Connected with Their Former Duties.

3 (a) Permanent Disqualification of Former Employee
4 Personally Involved in a Particular Matter.

5 It shall be a breach of ethical standards for
6 any former employee knowingly to act as a
7 principal or as an agent for anyone other
8 than the State in connection with any:

9 (i) judicial or other proceeding, applica-
10 tion, request for a ruling, or other
11 determination;

12 (ii) contract;

13 (iii) claim; or

14 (iv) charge or controversy,

15 in which the employee participated personally
16 and substantially through decision, approval,
17 disapproval, recommendation, rendering of
18 advice, investigation, or otherwise while
19 an employee, where the State is a party or
20 has a direct and substantial interest.

21 (b) One Year Representation Restriction Regarding
22 Matters for Which a Former Employee Was

23 Officially Responsible. It shall be a breach
24 of ethical standards for any former employee,
25 within one year after cessation of the former

employee's official responsibility, knowingly to act as a principal or as an agent for anyone other than the State in connection with any:

(i) judicial or other proceeding, application, request for a ruling, or other determination;

(ii) contract;

(iii) claim; or

(iv) charge or controversy,

in matters which were within the former employee's official responsibility, where the State is a party or has a direct or substantial interest.

(3) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the State in connection with any:

(a) judicial or other proceeding, application, request for a ruling, or other determination;

(b) contract;

(c) claim; or

(d) charge or controversy,

1 in which the employee either participates personally and
2 substantially through decision, approval, disapproval,
3 recommendation, the rendering of advice, investigation, or
4 otherwise, or which is the subject of the employee's of-
5 ficial responsibility, where the State is a party or has a
6 direct and substantial interest.

7 §12-209 Use of Confidential Information.

8 It shall be a breach of ethical standards for any
9 employee or former employee knowingly to use confidential
10 information for actual or anticipated personal gain or
11 for the actual or anticipated personal gain of any other
12 person.

13 Part C -- Remedies

14 §12-301 Civil and Administrative Remedies Against
15 Employees Who Breach Ethical Standards.

16 (1) Existing Remedies Not Impaired. Civil and admin-
17 istrative remedies against employees which are in existence
18 on the effective date of this Code shall not be impaired.

19 (2) Right to Recover from Employee Value Received in
20 Breach of Ethical Standards. The value of anything received
21 by an employee in breach of the ethical standards of this
22 Article or rules promulgated hereunder shall be
23 recoverable by the State as provided in Section 12-303
24 (Recovery of Value Transferred or Received in Breach of
25 Ethical Standards).

1 §12-302 Civil and Administrative Remedies Against Non-
2 Employees Who Breach Ethical Standards.

3 (1) Existing Remedies Not Impaired. Civil and ad-
4 ministrative remedies against non-employees which are in
5 existence on the effective date of this Article shall not be
6 impaired.

7 (2) Supplemental Remedies. In addition to existing
8 remedies for breach of ethical standards of this Article or
9 rules promulgated hereunder, the Director or head of a
10 Purchasing Agency may impose any one or more of the fol-
11 lowing:

12 (a) written warnings or reprimands;

13 (b) termination of transactions; and

14 (c) debarment or suspension from being a con-
15 tractor or subcontractor under State con-
16 tracts.

17 (3) Right to Recover from Non-Employee Value Trans-
18 ferred in Breach of Ethical Standards. The value of any-
19 thing transferred in breach of the ethical standards of this
20 Article or rules promulgated hereunder by a non-em-
21 ployee shall be recoverable by the State as provided in
22 Section 12-303 (Recovery of Value Transferred or Received in
23 Breach of Ethical Standards).

24 (4) Right of the State to Debar or Suspend.

25 Debarment or suspension may be imposed by the Director or

1 head of a Purchasing Agency in accordance with the proce-
2 dures set forth in Section 9-102 (Authority to Debar or
3 Suspend) for breach of the ethical standards of this Article.

4 §12-303 Recovery of Value Transferred or Received in
5 Breach of Ethical Standards.

6 (1) General Provisions. The value of anything
7 transferred or received in breach of the ethical standards
8 of this Article or rules promulgated hereunder by an
9 employee or a non-employee may be recovered from both the
10 employee and non-employee.

11 (2) Recovery of Kickbacks by the State. Upon a
12 showing that a subcontractor made a kickback to a prime
13 contractor or a higher tier subcontractor in connection with
14 the award of a subcontract or order thereunder, it shall be
15 conclusively presumed that the amount thereof was included
16 in the price of the subcontract or order and ultimately
17 borne by the State and will be recoverable hereunder from
18 the recipient. In addition, said value may also be re-
19 covered from the subcontractor making such kickbacks.
20 Recovery from one offending party shall not preclude re-
21 covery from other offending parties.

22 §12-304 Appeal of Decisions.

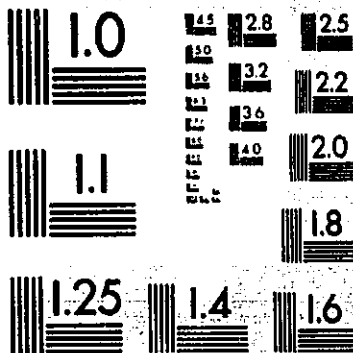
23 (1) General. Except as provided under Subsection (2)
24 of this Section, a decision under Section 12-301 (Civil and
25 Administrative Remedies Against Employees Who Breach Ethical

Standards) or Section 12-302 (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards) shall be reviewable in accordance with the provisions of Title 24, Article 4, C.R.S. 1973, as amended (Administrative Procedure Act).

(2) Debarment or Suspension. A decision of the Director or head of a Purchasing Agency regarding debarment or suspension under Section 12-302(2)(c) (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards, Supplemental Remedies) shall be reviewable as provided in Section 9-303(2) (Time Limitations on Actions, Debarments and Suspensions for Cause).



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