



STATE PROCUREMENT AND CONTRACTING

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The purchase of goods and services by public entities in Colorado is generally governed by the state procurement code.¹ This code is designed to ensure the fair treatment of people seeking to do business with the state, to foster broad-based competition through a bidding process, and to save money on purchases made with state funds. This *issue brief* outlines the agencies and types of purchases subject to state procurement rules, explains the vendor selection process, discusses bidding and contracting for construction projects, and describes the types of preference that exist for awarding contracts.

Procurement

Agencies subject to procurement rules.

Under current law, state procurement rules apply to executive branch agencies, except the Colorado Department of Transportation. Higher education institutions may opt out of these rules. The legislative and judicial branches, and political subdivisions of the state, may opt in to the rules. Procurement policy and rule-making for participating state agencies is overseen by the Department of Personnel and Administration (DPA).

Participating higher education institutions.

Only the Colorado Community College System participates in the state procurement system. The University of Colorado System operates its own online bidding system for procurement but uses the state system for construction contracting. The remaining public higher education institutions use the same online procurement system used by many local governments in Colorado.

Purchases subject to procurement rules.

Procurement rules apply in most purchasing situations, with the exception of purchases for road and bridge construction, public printing, goods for public resale, intergovernmental agreements, or in the case of emergencies. The purchase of professional services is also typically exempt from procurement rules. State agencies use three main types of procurement:

- contracts for a specific quantity of goods or services at a specified price;
- price agreements for unknown quantities of goods and services at a specified, per-unit price. DPA negotiates, manages, and maintains price agreements for commonly sourced items such as office supplies and computers. Price agreements can be used by state departments, higher education institutions, local governments, and certified nonprofits; and
- small purchases of one-time or low dollar value items made with a purchase order, procurement card, or commitment voucher.

Vendor selection and competition. A number of formal and informal methods exist for selecting vendors. These methods vary based on the anticipated value or type of procurement. Small purchases and emergency procurements are typically done on an informal basis without public notice or competition. A purchase order or agreement is required for purchases of more than \$5,000. Competitive bidding is required for goods valued at more than \$10,000, or construction and services valued at more than \$25,000, unless the state can document that only one vendor is qualified to be the "sole source." Depending on the dollar amount of the procurement, competition can range

¹Articles 101 to 112 of Title 24, C.R.S.

from seeking documented quotes from staff-selected vendors to issuing a public invitation to bid through the state's electronic bid system, Colorado Vendor Self Service (VSS), www.colorado.gov/vss.

Awarding contracts. Small purchases do not typically include a formal award, but are given to the lowest-priced vendor. Larger procurements are awarded to the bidder that offers the lowest-price bid or, in certain cases, to the bidder that provides the best value.

Bidding and Contracting for Large Construction Projects

The laws governing contracting for construction projects costing more than \$500,000 are separate from the procurement code. There are three types of bids used to solicit services for large construction projects:

- *Competitive sealed bidding, low responsible bidder.* Contracts are awarded to the entity that submitted the lowest bid in compliance with listed requirements and within the plans and specifications for a project;
- *Competitive sealed bidding, best value.* Best value bids allow the department soliciting bids to consider factors other than cost when awarding a bid, such as a vendor's employment practices or reliability. After a contract is awarded, the agency must publicize information used to make the bid selection; and
- *Requests for proposal, integrated project delivery (IPD) or design/build contracting.* The IPD approach allows for a contractual agreement between an agency and a single entity for all of the services required for a public project, such as demolition, design, and construction. An agency may use requests for qualification to pre qualify bidders for the project. The entity selecting this method of bidding must publicly disclose its rationale for selecting this project delivery approach.

The law requires that Colorado residents be used to perform at least 80 percent of the work on a large construction project, unless a bidder can justify that there is insufficient Colorado labor to perform the work.

Preference Programs

Colorado law establishes purchasing preferences in situations where two or more competing bids are tied for low cost, and as a means to consider factors other than cost when awarding contracts for goods and services.

Preference for resident bidders. Colorado has a "low-tie bid" law, meaning that if a resident and non resident vendor offer equal low bids, the award is made to the resident bidder.

Reciprocity laws. Some states, including Colorado, penalize out-of-state vendors if a vendor's home state grants a percent discount to its resident bidders. States with reciprocity laws inflate bids from out-of-state vendors by a percent equal to the discount allowed by the home state.

Preference for specific groups. Several states have procurement preferences for specific groups of people. These preferences are independent of any federal or state assistance programs. Group preferences may include non competitive set-asides, which allow states to prioritize bids from certain groups. Colorado has a set-aside program that prioritizes the purchase of certain products from nonprofit agencies that employ people with severe disabilities. Colorado also has a goal of awarding at least 3 percent of all procurement contracts by dollar value to service-disabled veteran-owned small businesses. In an effort to reach this goal, state agencies may give a 5 percent preference to bids submitted by this group.