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# Procurement Modernization Act

*Overview*

*Working Together to Serve Colorado*

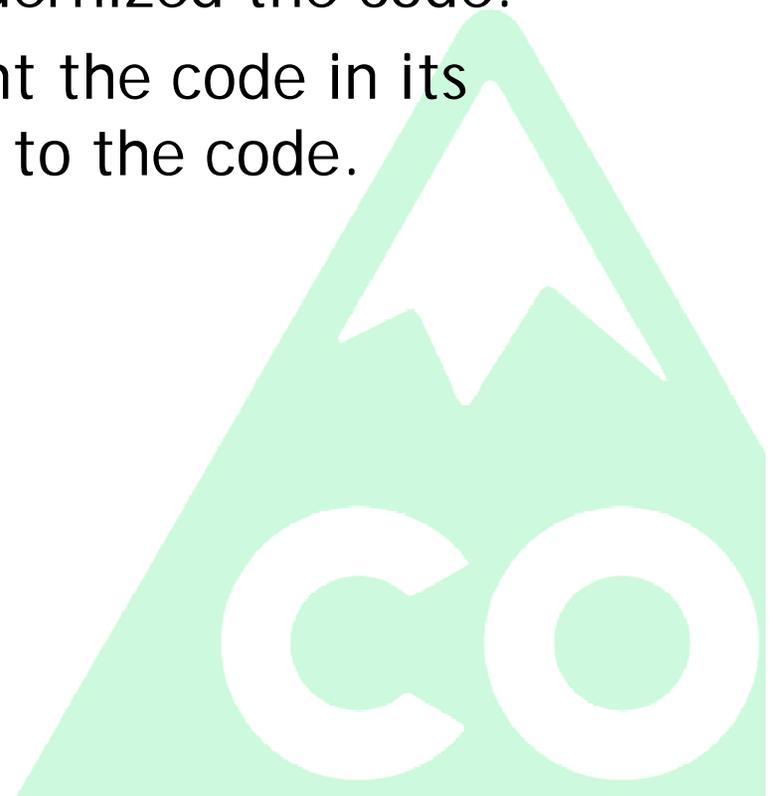




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# Objectives

- This information session will provide a high-level overview of the legislation that modernized the code.
- This information does not represent the code in its entirety but focuses on the changes to the code.

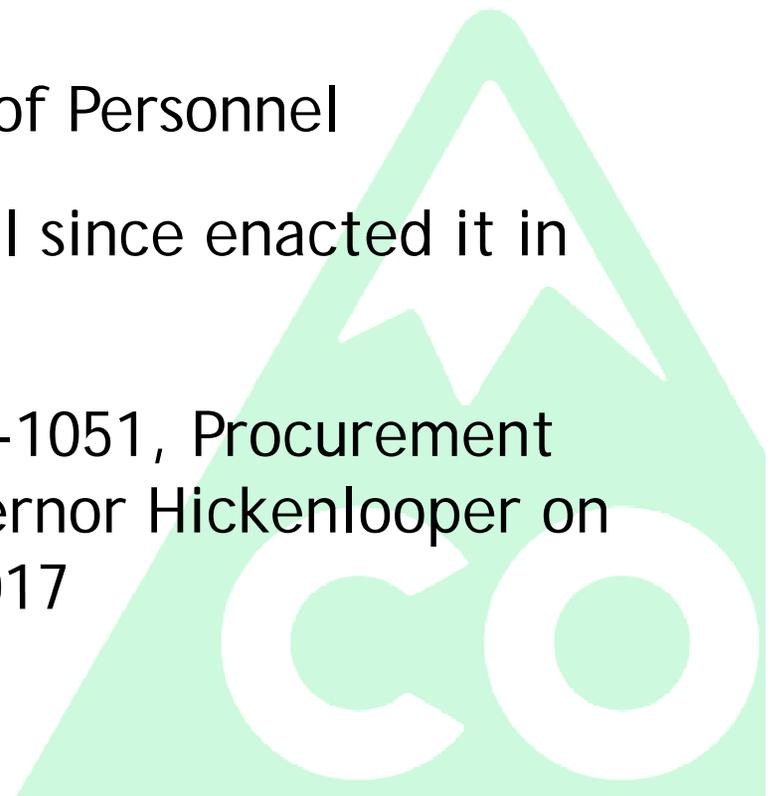




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# Procurement Code Summary

- *Governs* how executive branch agencies buy goods and services
- *Administered* by the Department of Personnel
- *Amended* but not reviewed in total since enacted it in 1982
- *Modernized* through House Bill 17-1051, Procurement Code Modernization, signed by Governor Hickenlooper on April 4, 2017, effective August 9, 2017



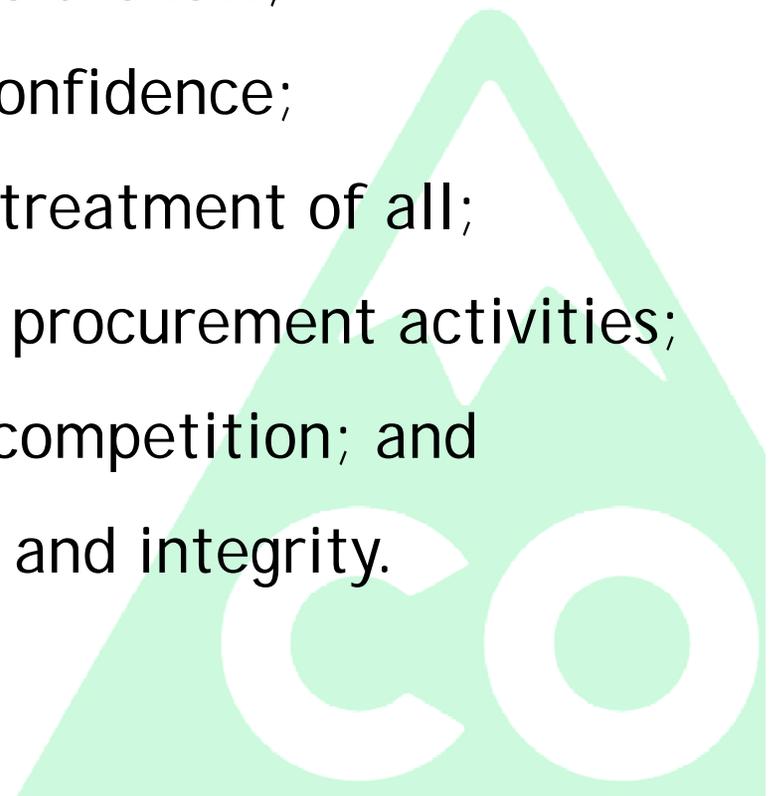


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# Foundational Purposes

## 24-101-102 CRS

- ➔ Simplify, clarify and modernize the law;
- ➔ Provide for increased public confidence;
- ➔ Ensure the fair and equitable treatment of all;
- ➔ Provide increased economy in procurement activities;
- ➔ Foster effective broad-based competition; and
- ➔ Provide safeguards for quality and integrity.





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# Application of the Code

## 24-101-105 CRS

- Applies to all publicly funded contracts by the state
- Does not apply for some purchases such as grants, utilities, conference facilities, annuities, resale contracts
- If procurement official determines reasonable competition exists, a competitive process may be used.

### What does this mean?

- ✓ For a full list of exemptions, see 24-101-105 CRS.
- ✓ If exempt, the agency does not follow the code. No formal sourcing (solicitation or sole source) is required.
- ✓ The competitive process may be outside of the code.



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# Grants

## 24-101-301 CRS

- “Contract” is a state agreement...where the principal purpose...is for the **direct benefit**
- “Grant” means an agreement...grantor transfers anything of value to a grantee **to carry out a public purpose or support...**

### What does this mean?

- ✓ Updates these two definitions to support exemption of grants from the code.



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# Procurement Training

## 24-101-106 CRS

- Provides ability to develop and conduct a procurement education and training program for governmental bodies and vendors

### What does this mean?

- ✓ Procurement is recognized as an important function.
- ✓ Procurement has its own body of knowledge and this allows the state to establish an appropriate educational program.



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# Ethics

## 24-101-107 CRS

- Signifies that the highest standards of ethical behavior are required for all involved in the procurement process

### What does this mean?

- ✓ Ensures public confidence in the state's procurement process.
- ✓ Every person involved must be held to established ethical standards.



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# Definitions

## 24-101-301 CRS

Definitions were added, modified or removed. Examples:

- “Procurement agent” was formerly procurement officer
- “Procurement official” was formerly head of a purchasing agency
- “Award” clarifies it is the selection of a bid or proposal
- “Invitation for bids” was competitive sealed bids

### What does this mean?

- ✓ Updates definitions to current terms being used.
- ✓ See 24-101-301 CRS for all definitions.
- ✓ Consolidates most definitions into one section unless they are only used in a specific section.



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# Confidentiality and CORA

## 24-101-401 CRS

- Incorporates language from 24-103-203(4) CRS and clarifies the process for classifying confidential or proprietary information may be done through rules.

### What does this mean?

- ✓ Maintains requirement to avoid disclosure of proposals or bids during the review process.
- ✓ Maintains that procurement records, including proposals or bids, are open for public inspection after award.



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# Confidentiality and CORA

## 24-103-201.5 CRS

- Clarifies responses to requests for information are confidential until an award of a solicitation has been made or the state decides not to pursue a solicitation.

### What does this mean?

- ✓ Provides consistency for confidentiality of responses to requests for information.
- ✓ If a response has confidential information, that portion may be kept separately in the procurement file.



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# Confidentiality and CORA

What does this mean?

- ✓ For information about what records can be denied for inspection, including trade secrets, see **24-72-204 CRS, Public (Open) Records.**
- ✓ For a definition of “trade secret”, see **7-74-101 CRS, Uniform Trade Secrets Act.** The definition includes proof that the owner has taken measures to prevent the secret from being known.



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# Rulemaking and Organization

24-102-202 CRS

- Clarifies the chief procurement officer has authority.
- Modifies rulemaking from mandatory (shall) to permissive (may).

## What does this mean?

- ✓ The chief procurement officer has authority to delegate and supervise procurement functions of the state.
- ✓ Promulgating rules is now permissive, allowing flexibility for the state.



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# Organization

## 24-102-202.5 CRS

- Removes mandatory registration fee and made fee setting and collection permissive.

### What does this mean?

- ✓ Updates to current practice of no registration fee for suppliers accessing ColoradoVSS, the state's platform for posting solicitations.



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# Organization

## 24-102-302 CRS

- Modifies principal representative to procurement official.

### What does this mean?

✓ The definition of “procurement official” removes the use of “principal representative” and replaces it with an “individual authorized for capital construction and controlled maintenance pursuant to 24-30-1303 (5) CRS”.



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# Market Research

## 24-103-201.5 CRS

- Acknowledges the potential to conduct market research prior to selecting a method of source selection.
- Adds request for information.

### What does this mean?

- ✓ Recognizes the need for market research with procurement.
- ✓ The request for information process was previously in procurement rule.



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# Source Selection

## 24-103-203 CRS

- Removes the determination that a competitive sealed bid is either not practicable or not advantageous to the state to allow use of another sourcing method.

### What does this mean?

- ✓ Clarifies that the procurement official or designee determines proper method of source selection and that no written determination is required.



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# Source Selection

## 24-103-301 CRS

- Indicates that a solicitation can be cancelled at any time before a contract is executed.
- Signifies the decision is not immediately subject to CORA.

### What does this mean?

- ✓ Clarifies when a solicitation may be cancelled.
- ✓ The decision to cancel is not subject to CORA for the lesser of 6 months or until the contract is awarded.



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# Set Asides

## 24-103-803 CRS

- Removes requirement of registration in supplier database.
- Changes status from one year to up to 5 years.

## 24-103-804 CRS

- Refers to list as the Services Set Aside List.

### What does this mean?

- ✓ Allows flexibility and efficiency by removing registration and extending nonprofit agency's self-certified vendor status.
- ✓ Removes detailed processes that may be addressed in rules.



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# Set Asides

## 24-103-805 CRS

- Changes award to “which acceptable response is most advantageous to the state”.
- Changes reporting requirements.
- Requires self-certified vendor to maintain requirements of 24-103-803 CRS for entire term of any contract.

### What does this mean?

- ✓ Clarifies award to be consistent with current practices.
- ✓ Requires reporting from self-certified vendor in lieu of the agency.
- ✓ Removes detailed processes that may be addressed in rules.



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# Preferences

Preferences were scattered in several sections within the code and outside of the code. These were all combined into Part 9 of Article 103.

## What does this mean?

- ✓ Preferences can now be found in 24-103-901 through 24-103-910 CRS.
- ✓ Any other changes to preferences were related to section references and updating terminology.



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# Construction Contracts

24-105-102 CRS

- Performance evaluation reports (REPEALED)

**What does this mean?**

✓ Previously construction contracts \$500,000 or greater required performance evaluation reports. These reports are no longer required.



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# Contracts

## 24-106-103 CRS

- Removed requirements to include reporting number of employment positions to be filled, the term “emergency sole source”, and performance evaluation reports.

### What does this mean?

- ✓ Updates reporting fields to reflect current practices.
- ✓ Removes performance evaluation reports on personal services contracts over \$100,000.



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# Contracts

## 24-106-105 CRS

- The chief procurement officer may approve extension of a contract beyond the term included in the solicitation.
- The term must be for a reasonable time based on what is practicable and necessary given the circumstances.

### What does this mean?

- ✓ Allows for extension of a contract beyond the term in the solicitation, if extenuating circumstances exist and it is in the best interest of the governmental body.



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# Contracts

## 24-106-106 CRS

- Modified amount of time that books and records shall be maintained by the contractor to six years after the date of final payment, *unless a shorter period is otherwise authorized in writing.*

### What does this mean?

- ✓ This change coincides with the federal requirements for books and records to be maintained.



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# Contracts

## 24-106-107 CRS

- Clarifies evaluation is of the vendor's performance.
- Requires contract managers be designated by the state.

### What does this mean?

- ✓ Removes performance evaluation reports; however, performance measures and standards are still required in the contract.
- ✓ Requires designation of a contract manager with subject matter expertise of the contract.



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# Contracts

## 24-106-109 CRS

- Identifies terms and conditions that shall be void ab initio if included in a contract with the state.
- Indicates that contracts with the state (except for another government) shall be governed by Colorado law.

### What does this mean?

- ✓ Clarifies that terms such as indemnification, binding arbitration, and some limitations of liability are impermissible without voiding the entire contract.
- ✓ Updates made to section references and terminology.



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# Remedies

24-109-101.1 through 24-109-505 CRS

- Adds “Aggrieved Party” and “Material Issue”.

24-109-101.5 CRS

- Removes term “de novo”.

**What does this mean?**

- ✓ Clarifies who can submit protests/appeals and limits protests/appeals to issues that prejudice the outcome.
- ✓ Removes “de novo” to ensure issues cannot begin anew at each stage of the remedy process.



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# Remedies

## 24-109-102 CRS

- Changes working days to business days.
- Updates number of days to file and settle a protest
- Clarifies that if a written decision is not provided, the aggrieved party can proceed.

### What does this mean?

- ✓ Previously working, business, and calendar days were being used. Changes to “business days” and creates consistency.
- ✓ Clarifies if no response to a protest, the aggrieved party may continue to appeal as though an adverse decision was rendered.



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# Remedies

## 24-109-103 CRS

- Maintains a stay on a contract resulting from a request for proposals until any related protest has been resolved.

## 24-109-106 CRS

- Timeline of 20 business days for response to contract controversy.

### What does this mean?

- ✓ This language was previously in different sections of the code or in procurement rule. Moves into this section for consistency.



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# Remedies

## 24-109-107 CRS

- Clarifies the Office of Administrative Courts is not excluded from 24-4-105 CRS, State Administrative Procedure Act

## 24-109-108 CRS

- Clarifies computing time, where the first business day is excluded and the last business day is included.

### What does this mean?

- ✓ Updates with computation of time for consistency with submission and response deadlines for remedies.



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# Remedies

## 24-109-201 CRS

- Executive director may refer an appeal to the Office of the Administrative Courts (24-30-1001 CRS)
- Maintains filing an action with the district court by the aggrieved party terminates executive director's authority.

### What does this mean?

- ✓ The Office of Administrative Courts is an option for hearing appeals at the executive director's discretion.
- ✓ Filing with the district court terminates an appeal filed with the executive director.



# Remedies

## 24-109-201 CRS

- A contract for total value of \$1,500,000 dollars or more resulting from a request for proposals is not awarded until any related appeal has been resolved.
- The executive director may override stay if in the best interest of the state.

### What does this mean?

- ✓ Previously a stay on appeals was not allowed so the state could execute a contract after protest resolved.
- ✓ Allows that an override may be applied if determined to be in the best interest of the state.



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# Remedies

## 24-109-202 CRS

- Clarifies appeals are limited to only material issues from the original protest.

## 24-109-203 and 24-109-204 CRS

- Clarifies when appeals and contract controversies shall be filed.

### What does this mean?

- ✓ Reflects the new definition of material issue.
- ✓ Previously the code used working, business, and calendar days. Changes to “business days” and creates consistency.



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# Remedies

## 24-109-205 CRS

- Maintains that an appeal of a decision rendered by the executive director or a procurement official shall be filed with district court.
- Removes that any judicial action shall be de novo.

### What does this mean?

- ✓ Maintains that an aggrieved party may file an appeal with the exclusive jurisdiction for appeals, the district court for the city and county of Denver.
- ✓ Removes “de novo” to ensure issues cannot begin anew at each stage of the remedy process.



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# Remedies

## 24-109-206 CRS

- Clarifies the timeline for when appeals may be submitted.
- Maintains the timeline for appeals related to suspension or debarment.

### What does this mean?

✓ Previously the code used working, business, and calendar days. Changes to “business days” and creates consistency.



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# Remedies

## 24-109-301 CRS

- Adds exception for interest payable on liability incurred by the state under 24-30-202 (24) CRS.
- Clarifies interest on amounts shall accrue from the date the controversy was submitted through final resolution.
- Clarifies interest is calculated at the contract rate or 1 percent per month, whichever is greater, until paid.

### What does this mean?

- ✓ The State Controller statute [24-30-202(24) CRS] addresses interest payable on liabilities.
- ✓ Clarifies when interest would begin and at what rate.



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# Remedies

24-109-401 and 24-109-501 CRS

24-109-502 CRS

- If the procurement official determines the award is in violation of the code, that determination shall not be subject to further administrative or judicial review.

## What does this mean?

- ✓ Modifies remedies for violation of the law and relocates them to 24-109-502 through 24-109-504 CRS.
- ✓ Determinations for protests prior to an award, including those in violation of the code, are final.



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# Remedies

## 24-109-503 CRS

- The procurement official may
  - determine the procurement is in violation of the code
  - determine award is in the best interests of the state
  - submit for ratification

### What does this mean?

✓ Determinations for protests following an award, including those in violation of the code, are made by the procurement official.



# Remedies

## 24-109-503 CRS

- Requests to ratify are submitted to the executive director or chief procurement officer for a decision.
- Sole remedy is costs set forth in 24-109-505 CRS.
- Acceptance of costs by aggrieved party constitutes a waiver of the right to appeal.

### What does this mean?

- ✓ Previously rules allowed agency to ratify; now the executive director or designee must decide to ratify.
- ✓ Clarifies if the aggrieved party accepts costs, they waive right to appeal.



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# Remedies

## 24-109-504 CRS

- Clarifies process for appeals
- Clarifies role of executive director when violation of code is determined by the court

### What does this mean?

- ✓ For appeals following an award, the process is similar to protests, including ratification.
- ✓ Requires the executive director to issue a final determination if the court determines the procurement is in violation of the code.



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# Remedies

## 24-109-505 CRS

- Sole remedy is costs and determination of costs is made by procurement official for protests and executive director for appeals.

### What does this mean?

- ✓ Maintains sole remedy for an aggrieved party is reasonable costs.
- ✓ Clarifies who has authority to make determination about whether costs are reasonable.



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# Cooperative Purchasing

24-110-101 through 24-110-201 CRS

- Requires written approval before agency conducts a cooperative purchasing agreement.
- Requires procurement official to approve purchases from another state agency solicitation.

## What does this mean?

- ✓ Cooperative purchasing can maximize use of resources and leverage economies of scale.
- ✓ Requires written approval to conduct or use a cooperative purchasing agreement.



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# Cooperative Purchasing

24-110-101 through 24-110-201 CRS

- Establishes an order of priority for cooperative purchasing agreements.
- Maintains that local governments may participate in or conduct cooperative purchasing agreements

## What does this mean?

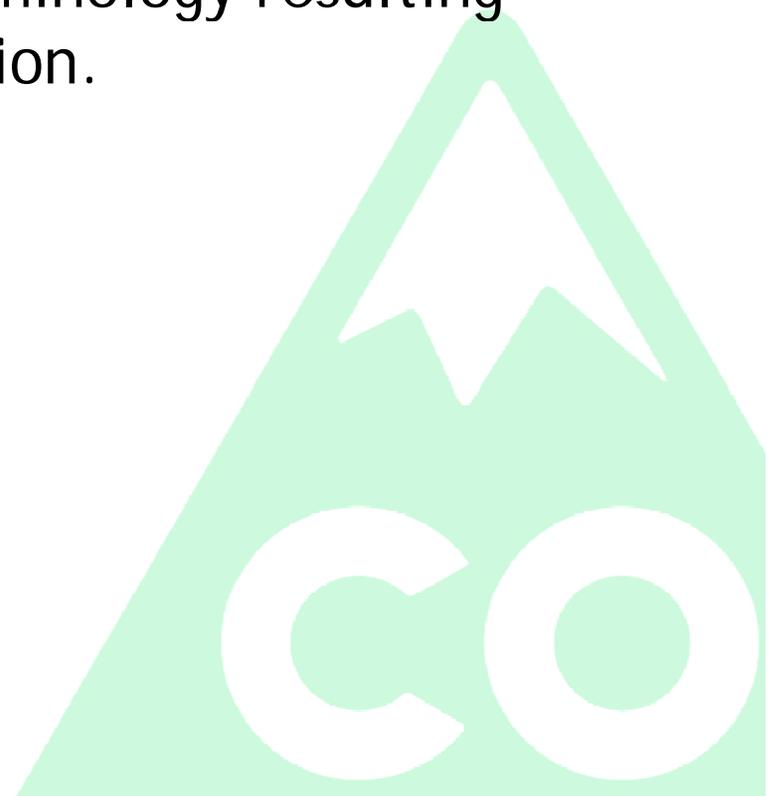
✓ Provides direction on the order of priority: 1) state-issued, 2) agency-issued, and 3) local- or external-issued cooperatives.



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# Additional Changes

Other sections of CRS were modified due to changes to section references and updated terminology resulting from procurement code modernization.





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# Contact

## State Purchasing & Contracts Office

Main phone: 303-866-6100

Email: [SOC\\_Procurement@state.co.us](mailto:SOC_Procurement@state.co.us)

Main website: <https://www.colorado.gov/pacific/osc/spo>

Modernization <https://www.colorado.gov/pacific/osc/PMI>

