

SOURCINGColorado



Fundamentals of Colorado Procurement Reference Guide



- ✓ *Understand the Procurement Code*
- ✓ *Learn Best Practices and Tips*
- ✓ *Improve your Professional Skills*



COLORADO
Division of Finance & Procurement
Department of Personnel
& Administration

PROCUREMENTColorado

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The State Purchasing Office

manages the
purchasing processes of state government
and provides quality procurement through:
Leadership, Information, and Support.

Rules that govern Procurement

Procurements must be done in accordance with:

- a. Budgetary constraints and requirements
- b. Fiscal Rules
- c. Personnel Rules – Personal Services Contract Review
- d. Colorado Procurement Code and Rules

Violation of the Rules may subject the violator/s to **Personal liability**.

- **LIABILITY OF PUBLIC EMPLOYEES 24-109-404, C. R. S.** “If any governmental body purchases any supplies, services, or construction contrary to the provisions of this code, or the rules promulgated pursuant thereto, the head of such governmental body and the public employee, which, for purposes of this section includes elected officials, actually making such purchase shall be personally liable for the costs thereof. If such supplies, services, or construction are unlawfully purchased and paid for with State monies, the amount thereof may be recovered in the name of the State in an appropriate civil action”.
1. The individual and entity making a procurement **ARE RESPONSIBLE** for compliance with all applicable legal standards.
 2. The procurement authority of an entity is determined by the placement in one of 3 categories of purchasing delegation – no delegation, Group I, or Group II.
 3. An individual’s procurement authority and signature authority for commitment documents must be granted by his/her employing entity.
 4. A delegation of authority should be in writing and should be specifically addressed to a named individual/s.

Documentation for various Procurements

[Colorado Fiscal Rules](#) specify how a procurement must be documented.

1. **All procurements exceeding \$5,000 MUST be encumbered and be documented with a “commitment voucher”, as defined in the Fiscal Rules.**
2. **A “commitment voucher” includes a Purchase Order, a contract, a lease, and other alternatives as listed in the Fiscal Rules.**
3. Procurements for goods and services less than \$5,000 may be documented on a contract, Purchase Order (PO), or alternative documentation.
 - A. Alternative documentation includes receipts, invoices, statement, etc.
 - B. If vendor requests State documentation, you must issue a state commitment voucher (PO or contract) and encumber funds.
4. Procurements for Goods in any amount are documented on Purchase Orders.
5. Services (non-construction) up to \$100,000
 - A. May use Purchase Order if it will provide ‘adequate legal protection’ to the State.
 - B. **Must use a state contract** if a Purchase Order will not provide ‘adequate legal protection’ to the State.
 - C. Refer questions to agency contracts manager, risk manager, or assigned attorney general.
6. Services (non-construction) over \$100,000
 - A. **Must use a standard state contract.**
 - B. For certain Price Agreement vendors, a Purchase Order may be used for any dollar amount because the vendor has already agreed to specified supplemental Terms & Conditions in the price agreement.

Reminder: Services Contracts \$100,000 or over must be logged in the Contract Management System (CMS). Agencies may have more contract logging procedures.

Documentation for various Procurements....continued

7. Construction services less than \$100,000
 - A. Less than \$25,000 - may be done on a purchase order IF use of a Purchase Order provides adequate legal protection.
 - B. Between \$25,000 - \$100,000 - may be done on a Purchase Order **IF** use of a Purchase Order provides adequate legal protection *and* if drawings and specifications are reviewed by the Office of the State Architect or authorized delegate.
 - C. If Purchase Order won't provide adequate protection, a state contract must be used.
8. Special documentation requirements for Construction (see also #7)
 - A. Construction services
 - 1) *Licensed professionals* (architect, engineer, land surveyor, landscape architect, industrial hygienist), regardless of dollar amount, must use state contract.
 - 2) *Construction services procurements over \$100,000* must be done on a standard state contract. This includes construction manager/general contractor procurements.
9. Note: A Price Agreement is NOT a commitment document.
 - A. Price Agreement purchases require the use of a commitment document.
 - B. Some Price Agreement vendors have agreed to supplemental terms and conditions that allow agencies to use a Purchase Order transaction above \$100,000 instead of a contract for services.
10. Government contracts
 - A. Other Colorado agency - inter-agency agreement.
 - B. Any other governmental entity – use a standard state contract.
11. Real estate leasing must be done on a standard state lease form. Contact Real Estate services for forms.

Reminder: Services Contracts \$100,000 or over must be logged in the Contract Management System (CMS). Agencies may have more contract logging procedures.

State of Colorado Procurement Code and Procurement Rules

PROCUREMENT CODE

- Statutory - state law adopted by General Assembly
- Sets policy - **what** to do

Procurement Rules

- Implementing rules written by an administrative agency (DPA)
- Set procedure - **how** to do it

The Colorado Procurement Code Purposes and underlying philosophy 24-101-102

- 1. SIMPLIFY, CLARIFY & MODERNIZE COLORADO PROCUREMENT LAW**
– Applies in every expenditure of public funds by Executive branch agencies

- 2. INCREASED PUBLIC CONFIDENCE**
– Consistency in the application of the Procurement Code. Provides remedies for resolution of disputes during contract formation and contract administration

- 3. ENSURE FAIR & EQUITABLE TREATMENT**
– Code requires all parties involved in the procurement process to act in good faith

- 4. INCREASED ECONOMY IN STATE PROCUREMENT ACTIVITIES AND MAXIMIZE THE PURCHASING VALUE OF PUBLIC FUNDS OF THE STATE**
– Rules provide for award to the responsible offeror whose proposal is determined to be most advantageous to the State based on the evaluation factors rules

- 5. FOSTER BROAD-BASED COMPETITION**
– Requirements must be competed for Goods over \$10,000, Services over \$25,000

- 6. SAFEGUARDS FOR MAINTENANCE OF A PROCUREMENT SYSTEM OF QUALITY AND INTEGRITY.**
– Procurement Code provides for remedies, specific criteria for award, and specific process to follow.

Application of the Procurement Code

Applies to:

- **All** governmental bodies of the Executive branch of the state.
- **All** publicly funded contracts.

Exemptions from the Procurement Code 24-101-105

- Revenue producing or no public funds paid (e.g., free samples)
- Legislative and Judicial branches:
Elected officials, i.e., Governor's Office, Treasurer, Secretary of State, Attorney General's Office
- "Professional Services":
Architect, Engineer, Landscape Architect, Land Surveyor, Industrial Hygienists
- Items bought for resale: Bookstore, Museum gift shop
- Contracts between the State and another Colorado agency, political subdivision, another state, and Federal government
- Bridge and highway construction
- Vendor specifically named in a grant award
- Public printing governed by Section 24-70-201 CRS
- Grant distributions (federal pass-throughs only)

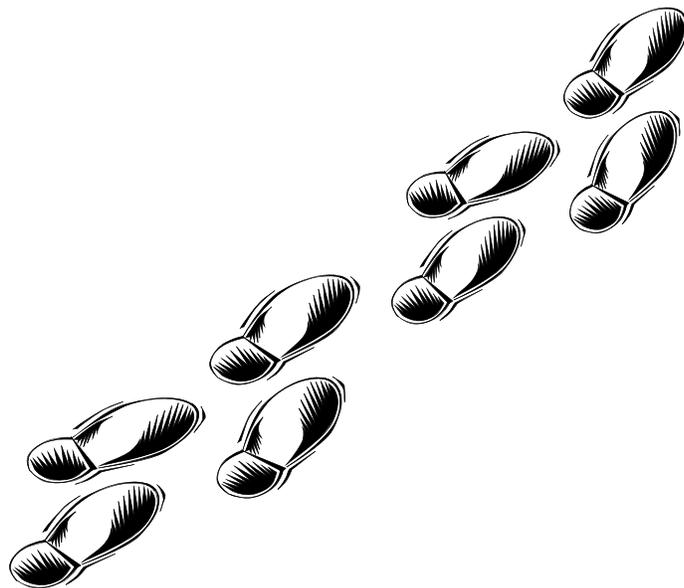
Dollar Limits for Vendor Selection Authority

	GOODS	SERVICES
GROUP II AGENCIES		
Price Agreements	Up to Limit of Agreement, for those items covered by the agreement	Up to Limit of Agreement, for those services covered by the agreement
Discretionary	<\$10,000	<\$25,000
Documented Quote	<\$150,000	<\$150,000
Invitation for Bids Best Value Bids Request for Proposals	>\$150,000*	>\$150,000*
Sole Source	No Dollar Limit	No Dollar Limit
Emergency	To Scope of Emergency	To Scope of Emergency
GROUP I AGENCIES		
Price Agreements	Up to Limit of Agreement, for those items covered by the agreement	Up to Limit of Agreement, for those services covered by the agreement
Discretionary	<\$10,000	<\$25,000
Documented Quote	<\$150,000	<\$150,000
Invitation for Bids	>\$150,000*	>\$150,000*
Best Value Bids	Not Authorized	Not Authorized
Request for Proposals	Not Authorized	Not Authorized
Sole Source	Not Authorized	Not Authorized
Emergency	To Scope of Emergency	To Scope of Emergency
NON-DELEGATED AGENCIES		
Price Agreements	Up to Limit of Agreement, for those items covered by the agreement	Up to Limit of Agreement, for those items covered by the agreement
Discretionary	<\$1,000	<\$1,000
Emergency	To Scope of Emergency	To Scope of Emergency
No Other Purchasing Authorized		
* Procurement Code requires IFB unless it is not practicable, then RFP may be issued.		

Fundamental Steps: The Procurement Process

Best Practice: Work with the customer to help meet requirements

1. Identify needs
2. Receive a purchase requisition from the customer
3. Review procurement process options and decide how to proceed
4. Obtain required prior approvals (agency / central)
5. Choose source selection method
6. Assist the customer to prepare specifications / scope of work
7. Conduct competitive solicitation
8. Select vendor
9. Prepare commitment documentation: Purchase Order or contract
10. Authorize vendor to start work
11. Monitor vendor



Summary of Source Selection Methods with Procurement Code and Rules citations

- | | | |
|----|---|--|
| 1. | Discretionary
(Small Purchases) | 24-103-204 and
R-24-103-204-02 |
| 2. | Price Agreements
(Vendor selection by State Purchasing) | 24-102-202 and
R-24-102-202-01 |
| 3. | Documented Quotes | R-24-103-204-03 |
| 4. | Competitive Sealed Bidding
Invitation for Bid
Telephone Bids
Multi-Step Sealed Bidding
Best Value Bidding | 24-103-202
R-24-103-202a-01
R-24-103-202a-05
R-24-103-202a-12
R-24-103-202.3 |
| 5. | Competitive Sealed Proposals (Request For Proposal) | 24-103-203 |
| 6. | Sole Source | 24-103-205 |
| 7. | Emergency | 24-103-206 |
| 8. | Competitive Negotiation | R-24-103-208-02 |

Fair and Reasonable pricing

Regardless of the source selection method, pricing obtained must be “fair and reasonable”.

How is this determined?

- Adequate competition by competitive solicitation
This can depend on the amount of competition received.
- Established catalog and/or market prices
- Historical prices or rates
- Prices paid by similar public agencies
- Rates established by law or regulation
- Government or educational discount programs

What if lower prices are available elsewhere even though the prices offered have been determined to be fair and reasonable?

Discretionary Vendor Selection

Goods: Up to \$10,000

Services: Up to \$25,000

1. Determine if prior approval for State services is needed (printing services, etc.).
2. Adhere to the dollar limits for the type of goods and/or services being procured.
3. If there is no Price Agreement in effect for this type of item or service, go to the vendor of your choice.
4. Ensure specifications are clear, complete and accurate. Ensure that pricing is "**fair and reasonable**".
5. Take advantage of opportunities to work with Colorado Businesses, MBE/WBE.
6. Properly document your agreement with the vendor. Include all Terms and Conditions in the commitment document.
7. Include **required insurance documentation** (the **Acordtm** form). Use Risk Management resources when needed.
8. Complete documentation **before** vendor is authorized to start performance.
9. Monitor and enforce vendor and agency performance. (Contract Administration)

Procurement Rules Reference
R-24-103-204-02 Competition Not Required.

State Price Agreements

1. Review Price Agreement to make sure the awarded goods and services meet your needs and that the effective dates will cover your requirements.
2. No additional vendor selection is needed.
Additional negotiation may be in your best interest on large dollar purchases.
3. Comply with requirements for prior approvals.
4. Prepare appropriate commitment documentation.
5. Be sure to reference the Price Agreement in your commitment document to invoke the terms.
6. Complete required documentation **before** vendor is authorized to start performance.
7. Monitor and enforce vendor and agency performance. (Contract Administration)
 - Address vendor issues at the agency level.
 - Document issues of non-performance in writing.
 - Contact the State Purchasing Office and share written documentation if no resolution can be reached.

Procurement Rules Reference
R-24-102-202-01 Mandatory and Permissive Price Agreements

Best Practice: Specifications Description and Procurement Code Definition

1. Description of physical/functional characteristics, Statement of Work (SOW)
2. Requirements (Certifications, Licensing): What, Where, When, How many persons
3. Include complete, accurate, clear "plain language" statements.
 - A. What are you procuring (Goods or/and Services)?
 - B. Best Practice: Describe Functional or Performance outcomes, standards, deliverables
 - C. Timeframe (start/end dates), Delivery, Acceptance and Testing standards
 - D. Terms and Conditions

24-104-101 Procurement Code

PART 1 DEFINITIONS

“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.

A specification that states that a vendor must be located within a specified number of miles of where the work is to be performed or goods are to be delivered is **not a defensible condition**.

- Specifications: Description of required physical or functional characteristics.
 - Size, color, components, accessories, repairs
 - Compatibility, Installation, Maintenance, Training
 - Safety standards
 - FOB, Free/Freight On Board
 - Insurance (the **Acordtm** form) – Use Risk Management resources when needed.
 - Warranties: Express or Implied
 - Uniform Commercial Code (UCC)
- TO HELP AVOID CONFLICTS OF INTEREST, SUPPLIERS MUST NOT BE PERMITTED TO PREPARE SPECIFICATIONS.

Best Practices: Resources for Market Research, Specifications, and Scope of Work – Identifying Prospective Bidders

Specifications and Scope of Work Resources

The composition of Documented Quote or Invitation for Bid specifications, and the Request for Proposal scope of work is typically a joint effort between the agency Purchasing staff and the requesting department customer.

- Consider accessing the following sources to help research and gather market information to produce a competitive solicitation.
 - State of Colorado BIDS – Archived solicitations.
 - Other Purchasing Agents at Colorado agencies statewide.
 - Post a Request for Information (RFI) on Colorado BIDS.
- Online search engines www.google.com www.yahoo.com or any that you prefer.
- Professional Procurement Associations
 - NIGP: The Institute for Public Procurement (NIGP) www.nigp.org
 - Rocky Mountain Governmental Purchasing Association (RMGPA) www.rmgpa.org
 - Institute for Supply Management (ISM formerly known as NAPM) www.ism.ws
 - National Association of State Procurement Officials (NASPO) www.naspo.org
 - National Association of Educational Procurement (NAEP) www.naepnet.org
 - Multiple Assembly of Procurement Officials (MAPO) www.coloradomapo.net
 - Colorado Educational Purchasing Council (CEPC) www.coloradocepc.com
- Market-specific Professional Associations and Professional Journals
 - National Contract Management Association www.ncmahq.org/
 - Associations for Social Services, Parks, Homeland security, Correctional services, IT professionals, etc.
- **Basic guidelines for conducting preliminary discussions with vendors.**
 - Always be fair and equitable in your treatment of vendors.
 - Do not divulge information gained from discussions with other vendors.
 - Do not tie the discussions to a particular competitive solicitation.
 - Do not allow the vendor to write a solicitation document for you. The vendor will be prohibited from bidding and equal treatment of vendors is lost.
 - **Do not perform market research with only one vendor.**

Identifying Prospective Bidders:

For the procurement of many goods and services, there is a substantial database of vendors registered with Colorado BIDS who can compete on the solicitation. In other markets, however, competition may be limited.

For procurements in which competition may be limited, the names of prospective bidders can potentially be obtained from either Professional Procurement Associations or market specific Professional Associations. Such information might also be obtained through archived award information on Colorado BIDS.

The Purchasing Agent must ensure, to the greatest extent possible, that adequate competition is gained for competitive solicitations. Adequate competition is defined as receiving two or more responses from vendors who are both responsive and responsible bidders. In almost all circumstances, vendors must be registered on Colorado BIDS at the time submission of their written DQ, IFB or RFP response is due in your office.

Uniform Commercial Code

Article 2-Sales Part 3.

General Obligation and Construction of Contract

§ 2-313. Express Warranties by affirmation, Promise, Description, Sample

- (1) Express warranties by the seller are created as follows:
 - (a) Any **affirmation of fact or promise made** by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
 - (b) Any **description of the goods** which is made part of the **basis of the bargain** creates an express warranty that the goods shall conform to the description.
 - (c) Any **sample or model** which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.
- (2) **It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee”** or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

§ 2-314. Implied Warranty: Merchantability; Usage of Trade.

- (1) Unless excluded or modified (Section 2-316), a warranty that the **goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.** Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
- (2) Goods to be merchantable must be at least such as
 - (a) to pass without objection in the trade under the contract description; and
 - (b) in the case of fungible goods, are of fair average quality within the description; and
 - (c) are fit for the ordinary purposes for which such goods are used; and
 - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
 - (e) are adequately contained, packaged, and labeled as the agreement may require; and
 - (f) conform to the promise or affirmations of fact made on the container or label if any.

§ 2-315. Implied Warranty: Fitness for Particular Purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer relying on the seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the **goods shall be fit for such purpose.**

§ 2-316. Exclusion or Modification of Warranties.

- (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parole or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.
- (2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description of the face hereof."
- (3) Notwithstanding subsection (2)
 - (a) unless the circumstances indicate otherwise, **all implied warranties are excluded by expressions like "as is", "with all faults" or other language** which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
 - (b) when the buyer before entering into the contract has not examined the goods or the sample or model as fully as he desired or has refused to examine the goods **there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed** to him; and
 - (c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.
- (4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections [2-718](#) and [2-719](#)).

Procurement Rules Reference: Documented Quotes

Goods: From \$10,000.00 to \$150,000

Services: From \$25,000 - \$150,000

R-24-103-204-03 Documented Quotes (excerpt)

(a) Commodities costing between \$10,000 and \$150,000, services costing between \$25,000 and \$150,000, and construction projects between \$25,000 and \$150,000 may be purchased using a documented quote process.

(b) For goods and services procurements, neither the solicitation nor the vendor's response constitutes an "offer"; therefore, "responsiveness" at the time of receipt is not an absolute criterion. The purchasing authority may determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely on the price. **"Acceptable," for purposes of this paragraph and paragraphs four and six below, means that the product or service will meet the state's needs and that the price is fair and reasonable.** The purchase order/commitment voucher constitutes an offer. The vendor may accept by performance, unless the purchase order/commitment voucher expressly requires acceptance by written acknowledgement.

(c) For construction projects, the contractor's response constitutes an "offer" and is binding if accepted by the state.

(d) **The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the state, price/cost being the primary consideration.** The basis for the selection must be documented and will be final and conclusive unless determined to be arbitrary, capricious, or contrary to law. **For construction projects, the award must be made to the low acceptable quote.**

(e) Requests for documented quotes must be placed on BIDS in accordance with R24-102-202.5-02 and -04. Solicitations must remain posted for at least three working days unless the director or head of a purchasing agency determines in writing that a lesser time is required in order to meet an immediate state need.

(f) **The purchasing official may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will: make the quote acceptable (including curing a defective bid bond) or make the quote more advantageous to the state.** However, in the negotiation process, the terms of one vendor's quote shall not be revealed to a competing vendor, and quotes may be kept confidential until a commitment voucher is issued.

(g) **Procurement of services greater than \$10,000 must be reviewed by the delegated purchasing official for a determination that prices or rates are fair and reasonable.**

Best Practice: Documented Quotes

Goods: From \$10,000.00 to \$150,000 Services: From \$25,000 - \$150,000

**A CONTRACT is REQUIRED by FISCAL RULES for Services over \$100,000
AND**

***a Personal Services contract review is required
by the Department of Human Resources.***

1. Adhere to the dollar limits for the types of goods and/or services being procured. Be sure there is evidence that funds are available for the procurement.
2. Comply with requirements for prior approval, exemptions, and preferences.
3. Ensure specifications are clear, complete and accurate before solicitation is issued.
4. Include appropriate Terms and Conditions in the solicitation.
5. Publish solicitation on Colorado BIDS - is competition expected to be limited?
6. Allow vendors a reasonable response time (minimum of 3 business days).
7. Decide, in advance, how to handle technical inquiries.
8. DQ is an "informal" vendor selection process (quotes may be received by fax or e-mail.) If you deem that e-mail responses are acceptable, indicate this in your DQ.
9. Procurement officer may negotiate with vendor to clarify its quote:
 - make the quote acceptable (i.e., curing a defective bid bond),
 - make the quote more advantageous to the state,
 - in negotiations, terms of one vendor's quote shall not be shared with the other respondents to the solicitation
 - quotes may be kept confidential until a commitment voucher is issued.
10. Conduct evaluation in accordance with solicitation specifications.
11. Use proper vendor selection standard - the acceptable response that is most advantageous to the state with price/cost the primary consideration. Document the rationale for award.
12. Follow proper protest process, if needed.
 - Protest does **not** (have to) stop the process.
13. Properly document your agreement with the vendor.
 - Verify that the vendor has all required insurance.
14. Complete documentation **before** the vendor is authorized to start performance.
15. Monitor and enforce vendor and agency performance. (Contract Administration)

**Procurement Code Reference: Competitive Sealed Bidding
(Invitation for Bids)**

Goods and Services over \$150,000

24-103-202. COMPETITIVE SEALED BIDDING. (excerpt)

- (1) AN INVITATION FOR BIDS (IFB) SHALL BE ISSUED AND SHALL **INCLUDE A PURCHASE DESCRIPTION AND ALL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE PROCUREMENT.**
- (2) (A) AN INVITATION FOR BIDS FOR A CONTRACT FOR THE PURCHASE OF SUPPLIES SHALL ALSO STATE THE REQUIRED PROCEDURES AND CRITERIA FOR AWARDING THE CONTRACT AS PROVIDED IN SECTION 24-103-202.5 IF LOW TIE BIDS ARE RECEIVED.
- (3) ADEQUATE PUBLIC NOTICE OF THE INVITATION FOR BIDS SHALL BE GIVEN A REASONABLE TIME.
- (4) BIDS SHALL BE **OPENED PUBLICLY IN THE PRESENCE OF ONE OR MORE WITNESSES AT THE TIME AND PLACE DESIGNATED** IN THE INVITATION FOR BIDS. THE AMOUNT OF EACH BID AND SUCH OTHER RELEVANT INFORMATION AS MAY BE SPECIFIED BY RULES, TOGETHER WITH THE NAME OF EACH BIDDER, SHALL BE ENTERED ON A RECORD, AND THE RECORD SHALL BE OPEN TO PUBLIC INSPECTION. AFTER THE TIME OF THE AWARD, ALL BIDS AND BID DOCUMENTS SHALL BE OPEN TO PUBLIC INSPECTION IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 24-72-203 AND 24-72-204.
- (5) BIDS SHALL BE UNCONDITIONALLY ACCEPTED, EXCEPT AS AUTHORIZED BY SUBSECTION (7) OF THIS SECTION. **BIDS SHALL BE EVALUATED BASED ON THE REQUIREMENTS SET FORTH IN THE INVITATION FOR BIDS,** WHICH MAY INCLUDE CRITERIA TO DETERMINE ACCEPTABILITY, SUCH AS INSPECTION, TESTING, QUALITY, WORKMANSHIP, DELIVERY, AND SUITABILITY FOR A PARTICULAR PURPOSE. **THOSE CRITERIA THAT WILL AFFECT THE BID PRICE AND BE CONSIDERED IN THE EVALUATION FOR AWARD SHALL BE OBJECTIVELY MEASURABLE,** SUCH AS DISCOUNTS, TRANSPORTATION COSTS, AND TOTAL OR LIFE-CYCLE COSTS. **NO CRITERIA MAY BE USED IN THE BID EVALUATION THAT ARE NOT SET FORTH IN THE INVITATION FOR BIDS.**
- (6) WITHDRAWAL OF INADVERTENTLY ERRONEOUS BIDS BEFORE THE AWARD MAY BE PERMITTED PURSUANT TO RULES IF THE BIDDER SUBMITS PROOF OF EVIDENTIARY VALUE WHICH CLEARLY AND CONVINCINGLY DEMONSTRATES THAT AN ERROR WAS MADE. EXCEPT AS OTHERWISE PROVIDED BY RULES, ALL DECISIONS TO PERMIT THE WITHDRAWAL OF BIDS BASED ON SUCH MISTAKES SHALL BE SUPPORTED BY A WRITTEN DETERMINATION MADE BY THE EXECUTIVE DIRECTOR OR THE HEAD OF A PURCHASING AGENCY.
- (7) **THE CONTRACT SHALL BE AWARDED WITH REASONABLE PROMPTNESS BY WRITTEN NOTICE TO THE LOW RESPONSIBLE BIDDER WHOSE BID MEETS THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BIDS.**

**Procurement Rules Reference
R-24-103-202a-10 Bid Evaluation and Award.**

All products and services shall be evaluated against the specifications and/or brand names used as a reference and other evaluation criteria in the Invitation for Bid.

For example, the following factors may be considered in evaluating any bid response: delivery date after receipt of order; cash discounts; warranties (type and length); future availability; results of product testing; local service; cost of maintenance agreements; future trade-in value or availability of repurchase agreement; availability of training courses; financial terms if not a cash purchase; space limitations; esthetics; adaptability to environment; cost of operation (if any); safety and health features relating to codes, regulations, or policies.

(a) Product Acceptability. The Invitation for Bids may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. **If bid responses are received that do not contain the required submission data, they may be rejected as nonresponsive.** The Invitation for Bids may also provide for accomplishing any of the following prior to award:

- (i) inspection or testing of a product prior to award for such characteristics as function, quality or workmanship;
- (ii) examination of such elements as appearance, finish, taste, or feel; or
- (iii) other examinations to determine whether it conforms with other specifications.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but **only to determine whether a bidder's offering will meet the State's needs** as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

(b) Determination of Lowest Bidder. Following determination of product acceptability, bids shall be evaluated to **determine which bidder offers the lowest cost to the State in accordance with specifications.** They may be evaluated in accordance with value analysis or life cycle cost formulas. If such formulas are to be used, they shall be objectively measurable and shall be set forth in the Invitation for Bids. Such evaluation factors need not be precise predictors of actual future costs, but to the extent possible they shall:

- (i) be reasonable estimates based upon information the State has available concerning future use; and
- (ii) treat all bids equitably.

(c) Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless such bidder is also the lowest bidder as determined by value analysis or life cycle cost formulas as permitted in this section.

**Best Practice: Competitive Sealed Bidding
(Invitation for Bids)**

Goods and Services over \$150,000

**A CONTRACT is REQUIRED by FISCAL RULES for Services over \$100,000
AND
a *Personal Services contract review is required
by the Department of Human Resources.***

1. Evidence that sufficient funding is available for the procurement.
2. Can the needs be fulfilled by a government entity? Is a State services exemption needed?
3. If procurement involves a multi-year award, a written determination is needed. If using "Best Value Bidding", a written determination is also required.
4. Clear, concise and unrestrictive specifications. Generic? Brand Name or equal? Brand name only?
5. Prospective bidders - limited competition?
6. Bidder's conference? Mandatory or optional?
7. Decide in advance how technical inquiries will be handled.
8. Publish on Colorado BIDS - must allow at least 14 calendar days for bid submission.
9. Amendments to the solicitation - publish on Colorado BIDS.
10. Timeliness of bid submissions.
11. Bid Receipt, Opening and Recording - formal, sealed bid.
12. Mistakes in bid responses.
13. Withdrawal of bid responses (prior to opening or after opening date).
14. Requests for confidential data - written determination.
15. Bid Evaluation and Award.
16. Responsibility determination?
17. Award Notice on BIDS.
18. Bidder protests and appeals.
19. Properly document your agreement with the vendor.
-Verify that the vendor has all required insurance.
20. Monitor and enforce vendor and agency performance. (Contract Administration)

Responsive Bid

Definition:

A bid submitted by any person in response to an Invitation for Bids issued by the State that is in compliance with the solicitation terms and conditions and within the requirements of the plans and specifications described and required therein.

May include delivery requirements, bonds, certifications and licensing requirements, samples of goods.

Responsible Bidder

The State has the right to determine if a vendor has available the appropriate financial, material, equipment, facilities and personnel resources to meet all contractual requirements.

Review experience, resumes, and demonstrated capability.

Use of outside testing labs: CDC, Dept of Public Health and Environment (DOPHE), private labs

Assess Risk.

**Procurement Code Reference: Competitive Sealed Proposals
(Request for Proposals)**

Goods and Services over \$150,000

Request for Proposals (RFP) procedure

24-103-203 (excerpt)

(3) **ADEQUATE PUBLIC NOTICE** OF THE REQUEST FOR PROPOSALS SHALL BE GIVEN IN THE SAME MANNER AS PROVIDED IN SECTION 24-103-202 (3).

(4) PROPOSALS SHALL BE **OPENED SO AS TO AVOID DISCLOSURE OF CONTENTS TO COMPETING OFFERORS** DURING THE PROCESS OF NEGOTIATION. A REGISTER OF PROPOSALS SHALL BE PREPARED IN ACCORDANCE WITH RULES AND SHALL BE OPEN FOR PUBLIC INSPECTION AFTER THE CONTRACT AWARD SUBJECT TO THE PROVISIONS OF SECTIONS 24-72-203 AND 24-72-204.

(5) THE REQUEST FOR PROPOSALS **SHALL STATE EVALUATION FACTORS.**

(6) AS PROVIDED IN THE REQUEST FOR PROPOSALS AND PURSUANT TO RULES, **DISCUSSIONS MAY BE CONDUCTED** WITH RESPONSIBLE OFFERORS WHO SUBMIT PROPOSALS DETERMINED TO BE REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AN AWARD **FOR THE PURPOSE OF CLARIFICATION TO ASSURE FULL UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS.** OFFERORS SHALL BE ACCORDED FAIR AND EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSION AND REVISION OF PROPOSALS, AND **SUCH REVISIONS MAY BE PERMITTED AFTER SUBMISSIONS AND PRIOR TO AWARD FOR THE PURPOSE OF OBTAINING BEST AND FINAL OFFERS.** IN CONDUCTING DISCUSSIONS, THERE SHALL BE NO DISCLOSURE OF ANY INFORMATION DERIVED FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS.

(7) THE AWARD SHALL BE MADE TO THE RESPONSIBLE OFFEROR WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE **THE MOST ADVANTAGEOUS TO THE STATE, TAKING INTO CONSIDERATION THE PRICE AND THE EVALUATION FACTORS** SET FORTH IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA SHALL BE USED IN THE EVALUATION. **THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS MADE. A CONTRACT RESULTING FROM A COMPETITIVE SEALED PROPOSAL IS NOT AWARDED UNTIL ANY PROTEST MADE IN CONNECTION WITH THE PROPOSAL HAS BEEN RESOLVED PURSUANT TO 24-109-102.** NO PROPERTY INTEREST OF ANY NATURE SHALL ACCRUE UNTIL THE CONTRACT IS AWARDED AND SIGNED BY BOTH PARTIES.

(8) THE PROCUREMENT OFFICER SHALL NEGOTIATE, IN THE CASE OF PROCUREMENT OF PROFESSIONAL SERVICES, WITH THE HIGHEST QUALIFIED OFFERORS AND IN THAT NEGOTIATION SHALL TAKE INTO ACCOUNT, IN THE FOLLOWING ORDER OF IMPORTANCE, THE PROFESSIONAL COMPETENCE OF THE OFFERORS, THE TECHNICAL MERITS OF THE OFFERS, AND THE PRICE FOR WHICH THE SERVICES ARE TO BE RENDERED.

R-24-103-203 Competitive Sealed Proposals.

Except as noted, the competitive sealed proposal process shall be the same as the competitive Sealed Bid process.

➤ *Example of a process difference for Competitive Sealed Proposals*

R-24-103-203-02 Written Determinations.

(a) The written determinations required by this section shall be made by the Director or head of a purchasing agency, or a designee of either.

(b) The Director or head of a purchasing agency may make determinations by category of supply, service, or construction item that it is either **not practicable or not advantageous to the State** to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurement of the specified types of supplies, services, or construction may then be made by competitive sealed proposals based upon such determination. The person who made such determination may modify or revoke it at any time, and such determination should be reviewed for current applicability from time to time.

Best Practice: Competitive Sealed Proposals (Request for Proposals)

Goods and Services over \$150,000

**A CONTRACT is REQUIRED by FISCAL RULES for Services over \$100,000
AND
a Personal Services contract review is required
by the Department of Human Resources.**

1. Evidence that the requesting department has funds appropriated for the procurement.
2. Can the need be fulfilled by other governmental entities?
Is a State services exemption needed?
3. A written determination is required.
A written determination is also needed for multi-year contracts.
4. **Should a "Request for Information" process be considered?
Be sure to specify that no award will result.**
5. Publish on Colorado BIDS for at least 30 calendar days.
6. Requests for confidential data - written determination.
7. Responsibility determination?
8. Evaluation, clarifications, BAFO, recommendation for Award(s).
9. Award Notice on Colorado BIDS – Begin contract negotiations, if applicable.
10. Offeror protests and appeals.
11. Properly document your agreement with the vendor.
- Verify that the vendor has all required insurance.
12. Monitor and enforce vendor and agency performance. (Contract Administration)

Tips: the Request for Proposal (RFP)

Document format and RFP process

Background, Overview and Goals

Describe in a few paragraphs the purchase environment and goals.
What are we buying?

Administrative and Legal Requirements

Schedule of Activities – A Chart of Due Dates and Deadlines

- Pre-Proposal conference (mandatory or optional?)
- Written inquiries deadline
- Proposal submission deadline
- Legal requirements: Agreement to State contract terms or Identify exceptions

Scope of Work (SOW) and Program Requirements

- What is the problem we need to have solved?
- What are the responsibilities of the contractor?
- What are the responsibilities of the state?
- Timelines and delivery deadlines
- Do any government regulations or code requirements apply?
- List of outcomes and deliverables
 - ✓ Require a Risk Assessment of the proposed solution
 - ✓ Ask what steps are proposed to help mitigate such risks
- **Be careful with the use of Mandatory Requirements**

Qualifications, experience, background and expertise

- Are certifications or licenses required? How can the offeror prove this?
- Prove relevant experience and cite previous projects most similar to this project within the past 3 – 5 years

Tips: the Request for Proposal (RFP)

Document format and RFP process

Offeror's Response Format for Proposals

Avoid including more SOW and requirements

- Technical Approach
- Qualifications and Experience
- Price Proposal
 - ✓ How many copies of the proposal are needed?
 - ✓ How should proposal responses be organized?
 - ✓ What information must be included and in what order?

Evaluation process

- Evaluation committee - composition of; non-conflict of interest
- Reserve the right to award upon initial review of proposal responses
 - Requests for clarifications?
 - Oral Interviews/Presentations - Equipment or Solution Demonstrations?
 - Best and Final Offer (BAFO)?
- Award recommendation - the proposal deemed to be most advantageous to the State, taking into consideration the evaluation factors and the price.

Evaluation factors

- List criteria in descending order of importance; list specific weights assigned to each criterion in no particular order of importance.
 - ✓ Technical criteria
 - ✓ Qualifications and Experience
 - ✓ Price/cost must always be a factor - What is its relative importance to the technical criteria?
 - ✓ Agreement to State contract terms (Best Practice)

Why use an RFP?

The Request for Proposals process is used to **offer additional value** to the customer when an agency can't clearly identify all program components. We ask the vendor community for its **creative approach to solve problems and provide services**.

The Request for Proposal process provides a certain amount of leeway for professional judgment to be used in determining which proposal is most advantageous to the state (price and other factors considered).

For this reason, an RFP process is beneficial for handling complex procurements where the final determination is more appropriately based on factors other than price.

Still Struggling?

The RFP process can be time consuming and complicated. Without prior experience in handling an RFP, a Purchasing Agent can inadvertently get into a contentious situation with an unsuccessful offeror or end up with a successful contractor who does not truly perform.

Tips to mastering the RFP process:

Find, and use, as many resources as you can to assist you:

- Review other RFPs done by other agencies. Notice the way each project is scoped and how the evaluation process ties in to the requirements.
- Early in the drafting phase, have someone with RFP experience review your document.
- If someone in your particular agency has RFP experience, arrange with your supervisor to "shadow" that person through the process.
- Network with other professionals to become aware of pitfalls and lessons learned. Get familiar with how protest and appeal decisions are made.

**Whenever possible,
attend training sessions specific to the Request for Proposal.**

DIFFERENCES BETWEEN BIDS AND PROPOSALS

Bids (IFB, Sealed Bids)	Proposals (RFP)
<ul style="list-style-type: none"> • All information is disclosed at opening • Used for Goods or Services • Our needs are CLEAR • Specifications are used • No evaluation committee is required • Award based on lowest bidder who is responsive and responsible • No negotiations are allowed • Most Bids result in a Purchase Order 	<ul style="list-style-type: none"> • Only names of offerors are disclosed at the closing • Primarily for Services or complex procurements • Our needs are NOT clear • Statement of Work is used • Best Practice: Use Evaluation Committee • Award is based on criteria other than lowest cost, but cost must be a factor • Negotiation is allowed and encouraged • Most RFPs result in a contract

Best Practices: Solicitation Evaluation Process

DOCUMENTED QUOTE, INVITATION FOR BID, and REQUEST FOR PROPOSAL

1. In all procurement types (DQ, IFB, RFP), the **specifications** are the basis for the evaluation factors.
2. You must use **only** the specifications you included in your solicitation to identify the winning bidder. Specifications cannot be altered or added to after the due date or after the award.

3. **Best practices for evaluating DQs and IFBs.**

Evaluate the low bidder first. Determine if that bidder meets your specifications. If not, move on to the next lowest bidder.

The winning bidder must be **responsive** - meets requirements.

The winning bidder must be **responsible (capable of performing)**.

- Bidder has qualifications of same size/scope as your requirements and provides adequate references.
- Site visits.

4. **Best practices for evaluating RFPs.**

An RFP must state the evaluation criteria to be used in the evaluation process.

Ensure that vendors' responses meet all mandatory requirements in the specifications and evaluation factors.

Determine the quality of the technical approach, qualifications and experience in order to assign ratings.

Evaluate the price and consider its relationship to the technical criteria and components.

Best and Final Offer (BAFO) may be requested to help increase value.

- You may conduct limited negotiations with RFP offerors (no major changes).

5. For all competitive procurements, remember to apply any mandatory (reciprocal) Preferences.

Reciprocal Preference

Reciprocal preferences must be applied during evaluation, if the low bidder is a foreign company (it does not meet the definition of resident bidder in 24-103-101(6) CRS).

General rule on a competitive solicitation: When the low bidder is an out-of-state (also called 'foreign') bidder and that bidder's state law penalizes Colorado bidders, we take their preference/s and apply it against their bidders in our state.

Colorado's reciprocal preference law is mandatory. If the responsive and responsible low bidder is an out-of-state bidder, the Purchasing Agent **MUST** apply the preference law of that state against its bidder in Colorado.

So, if another state penalizes a Colorado vendor 5% when it bids there, we penalize their companies that same 5% when they bid here. To calculate, for evaluation purposes only, the preference-adjusted bid of a low bid out-of-state vendor, we add a percent increase to each out-of-state bidder's bid which is equal to the percent of preference given to local bidders in the bidder's home state.

Access a summary of each state's preference laws at:
http://www.oregon.gov/DAS/EGS/PS/pages/reciprocal_detail.aspx

Procurement Code Reference
24-103-101(6)

Sole Source

1. Two components
 - A. Only one product and/or service can reasonably meet your need
 - AND**
 - B. Only one vendor can provide the needed product and/or service.
2. Written justification is required.
3. **Negotiate cost and scope of work with the sole source vendor.**
4. **Obtain a written quotation from the vendor.**
5. Best Practice: Post a proposed Sole Source procurement on Colorado BIDS to help verify the vendor's sole source status.
6. Ensure specifications are clear, complete and accurate.
7. Include appropriate Terms and Conditions in the agreement.
8. Identify a reasonable limit to the scope of the procurement. The availability of goods and/or services that cannot be procured elsewhere may change as new competitors enter the market.
9. No dollar limit for Sole Source requirements over discretionary limits.
10. Ensure that the Sole Source vendor has all required insurance.
11. Properly document your agreement with the vendor.
12. Complete documentation **before** the vendor is authorized to start performance.
13. Monitor and enforce vendor and agency performance. (Contract Administration)

Procurement Code Reference
24-103-205



State of Colorado – Sole Source Justification

Section 24-103-205, C.R.S., as amended

TYPE or CLEARLY PRINT ALL INFORMATION

(Attach Additional Pages as Needed)

You **MUST** complete this form before beginning any procurement where the basis for vendor selection is:

- ✓ Only one product or service can reasonably meet your need, AND
- ✓ Only one vendor can reasonably provide that product or service.

(You **MUST** meet **BOTH** criteria to have a sole source procurement. Procurement Rule R-24-103-205-01)

Department: _____ Division: _____

Address: _____

Contact Name: _____ RX, PO or Contract #: _____

Phone: _____ FAX: _____

Department Approving Official Name: _____

Department Approving Official Signature: _____

Describe in detail the products and /or services to be procured and how they meet your needs.

Vendor Name: _____ FEIN #: _____

Vendor Address: _____ Phone: _____

Have you procured products and/or services from this vendor in the past 2 years? If Yes explain No Yes

Start Date: _____ End Date: _____

Estimated Total Dollars for this Procurement: \$ _____

Provide estimated cost breakdown of supplies and/or services covered by this procurement:

Supplies \$ _____ Services \$ _____

Attach a detailed explanation of Vendor's Sole Source Status – what is the basis for your identifying this as a sole source?

✓ Do you have an actual or potential conflict of interest in this purchase request? No Yes

✓ If yes, please explain on an attached sheet.

Purchasing Use Only: Comments: *** *Approved for one time purchase as described on this request* ***

✓ How is pricing deemed fair & reasonable per §24-103-403? _____

Approved: _____

State Purchasing Director or Authorized Representative

Date

Use of the Sole Source Form: Summary of Price and Cost Analysis Requirements:

Both sole source and emergency procurements require a written determination by the head of a purchasing agency, or a designee, of the basis for the approval. This form is designed for approval of a “sole source,” not an emergency procurement. Consult with your procurement official regarding requirements for emergency procurements.

This form should be completed and approved before formal negotiations leading to execution of an agreement with a vendor where a competitive process (documented quote, sealed bid, or competitive sealed proposal) is not used because a sole source is justified.

Normally, the actual pricing cannot be evaluated until after execution of the contract or issuance of the purchase order. The price or cost analysis (§24-103-403) should be included with the procurement file before execution of a purchase order or when the contract is routed for approval.

The methods of price cost analysis are explained in Chapter 5 of the *Colorado Contract Procedures and Management Manual*. Normally, price analysis is not done in competitive solicitations where “adequate competition” exists, because the competitive process takes care of the “fairness and reasonableness” of prices. However, in a sole source situation where no price competition exists, some analysis must be done to insure that the requirements of the controller’s statute are met, i.e., that prices or rates are “fair and reasonable.”

Common methods of price/cost analysis include:

a. Comparison of prices and rates to established catalog prices or market prices. In a sole source situation, there commonly are similar prices or rates, e.g., those on price agreements, that can serve as a guide to fairness or prices or rates proposed by a sole source provider. In some cases, e.g., some utilities, prices and rates are set by law or regulation (utility tariff rates).

b. Historical prices or rates for similar items or services procured in the past also serve as a guide to fair and reasonable prices.

c. In either case, even though neither historical or market prices involve the identical service, some analysis can often be done which evaluates the differences in the types of services or goods, and concludes that the nature of the differences warrant the differences in pricing. In other cases, judgments must be made that proprietary aspects of the service or commodity warrant expenditure of the prices or rates in excess of what is customary.

d. In cases where neither historical or catalog prices exist, cost analysis must be used. Vendors can be asked to provide summary level detail of materials and labor costs, as well as markups and other indirect cost rates included in the price. Technical judgments concerning labor hours can be applied to labor hour rates to evaluate the reasonableness of the overall price. Reasonable profit, of course, is another element of price. The Procurement Rules require the submission of cost or pricing data for noncompetitive acquisitions exceeding \$50,000.

Emergency Procurement

1. To be used when there is a threat to public health, safety or welfare.
2. Written justification required.
3. Scope of procurement is limited to scope of emergency.
 - **Negotiate cost and scope of work with vendor. Prioritize scope.**
 - **Obtain written quotation from the vendor.**
4. Ensure specifications are clear, complete and accurate.
5. Include appropriate Terms and Conditions in agreement.
6. **Obtain such competition as is practicable under the circumstances. "Time is of the essence."**
7. No dollar limit applies.
8. Selection of vendor who can best meet your need.
9. Properly document your agreement with the vendor.
 - Verify that the vendor has all required insurance.
10. If possible, complete documentation **before** the vendor is authorized to start performance.
 - Notice to Purchasing Director
 - Notice to State Controller's Office
11. Monitor and enforce vendor performance (Contract Administration).

Best Practice: Develop procedures prior to emergencies.

**Procurement Code Reference
24-103-206**

Request for Information

Not a source selection method.

An RFI is used to obtain preliminary information about a market, type of available service or a product when there is not enough information to write adequate specifications or Statement of Work.

RFI must clearly state that No Award Will Result.

Review the Best Practice: Resources for Market Research (page 15).

Procurement Code Reference
24-103-203-01(e)

Records Retention

1. Procurement files must be retained for a specified number of years after they close or “terminate”.

State Archives Records Management Manual - Schedule 7 Financial Records

A. PROCUREMENT RECORDS

3. Contract and Purchase Order Files

Contract files that document procurements for any amount and type, **including contract, requisition, purchase order**, lease records, tax exemption certificates, correspondence, basis for award, contract administration records of every type including but not limited to payroll files, receipts, inspection reports, audit information, and payments.

Retention: Contracts signed by State Controller retained by the State Controller’s Office for **three years after the contract term ends and then sent to State Archives for an additional three years.**

Contracts signed by delegated state agencies/institutions retained by delegee for **six years after the contract term ends.**

2. Note: ‘procurement’ is legally defined to include all aspects of contract management.

Therefore, a procurement may expire when the following occur. Examples:

- A. The vendor satisfactorily completes a *service*.
- B. The vendor satisfactorily delivers goods that meet specifications and perform as needed. The warranty/ies covering these *goods* subsequently expire, and there are no outstanding complaints with product performance.
- C. A procurement (*goods or services*) is terminated before completion and final settlement is reached with the vendor.
- D. Where there is a continuing relationship with a vendor based on a sole source procurement, the entire file should be retained.

3. What to keep for both winning and non-winning bidders:
 - A. State created – solicitation documents (specifications, modifications, requisitions and related documents), written determination, bid tabulations, user complaints, and related materials such as surveys.
 - B. Vendor created – vendor proposals, bids, price quotes, correspondence, protests, complaints, product literature, etc.
4. **Contracts and Purchase Orders – retain for year of expiration plus six (6) years.** See State Archives Retention Guidelines for Procurement (link below).
5. Be sure to retain records as required by any funding entity (such as the federal government).

[Retention Guidelines specific to Procurement and Contracts](#)

Public (Open) Records Law

1. General Rule – All public records shall be open for inspection by any person at reasonable times, with certain exceptions. Colorado agencies are required to allow examination of public records by anyone who so requests.
2. Exceptions. The following procurement-related public records **shall be closed** to public inspection:
 - A. Trade secrets
 - B. Privileged information
 - C. Confidential commercial and financial data
 - D. Letters of reference

3. General procedure for handling exempt material.

The burden of avoiding disclosure is on the party opposing disclosure.

A vendor should submit specific information that it considers to be **confidential** (usually in support of its bid or proposal) **by clearly marking such material** (page by page, or a section, etc.) and **requesting that such material be closed to public examination.**

The responsible Purchasing Director must review the request and either approve it or deny it.

- If denied, the vendor is given the opportunity to withdraw the information.
- If approved, after evaluation of the bid or proposal is complete, the material should be clearly marked so that it can be removed from the file before any member of the public examines the file.
- It is recommended that **approved confidential material be placed in a clearly marked sealed envelope** and kept with the procurement file. The envelope should be marked with the solicitation number and name. Include a notice that it is confidential information and not for public inspection.

When a vendor submits information that normally would be considered confidential (such as company financial information) but does not request confidentiality, the Purchasing Agent may contact the vendor and verify whether the vendor agrees to have the material open for public inspection. The Purchasing Agent may allow the vendor to submit a request for confidentiality at that time.

4. When a member of the public requests an opportunity to review a file, **the recommended procedure is to remove the exempt material from the file before the file is open for review.**

Reference: C.R.S. 24-72-201

Fundamentals of Colorado Procurement Key Concepts Review at a Glance

<p>Compliance with Rules</p> <ul style="list-style-type: none"> • Personnel Rules • Fiscal Rules • Procurement Code and Rules <p style="text-align: right;">Page 3</p>	<p>Commitment Vouchers</p> <ul style="list-style-type: none"> • Contract and Purchase Order <p style="text-align: right;">Page 4</p>
<p>Dollar Limits for Competition</p> <ul style="list-style-type: none"> • Goods: \$10K • Services: \$25K <p style="text-align: right;">Page 8</p>	<p>Selection Methods</p> <ul style="list-style-type: none"> • Price Agreement or Discretionary, DQ, IFB, RFP, and Sole Source <p style="text-align: right;">Pages 10, 12, 13, 19, 20, 23, 25, 27, 29</p>
<p>Dollar Limit for Personal Services Contract</p> <ul style="list-style-type: none"> • \$100K <p style="text-align: right;">Pages 20, 25, and 29</p>	<p>Time Frames for posting DQ, IFB, and RFP on Colorado Bids</p> <p style="text-align: right;">Pages 20, 25, and 29</p>
<p>Solicitation Dollar Limits:</p> <ul style="list-style-type: none"> • DQ up to \$150K • IFB up to \$150K, Services • IFB in any amount, Goods • RFP \$150K and up <p style="text-align: right;">Page 8</p>	<p>Specifications</p> <ul style="list-style-type: none"> • Description of physical or functional characteristics. • Avoid vendor Conflict of Interest by not permitting suppliers to write specs. <p style="text-align: right;">Pages 14 and 15</p>
<p>Fair and Reasonable Pricing: Adequate Competition, established rates</p> <p style="text-align: right;">Page 11</p>	<p>Responsive Bid – Meets Specifications Responsible Bidder – Ability to perform</p> <p style="text-align: right;">Page 26</p>
<p>Request for Information</p> <ul style="list-style-type: none"> • No Award will Result. <p style="text-align: right;">Page 40</p>	<p>Market Research</p> <ul style="list-style-type: none"> • Use professional resource websites <p style="text-align: right;">Page 15</p>
<p>Emergency Procurement</p> <ul style="list-style-type: none"> • Establish procedures <u>before</u> an emergency occurs. <p style="text-align: right;">Page 39</p>	<p>Open Records and Confidential Information</p> <p style="text-align: right;">Page 42</p>

COLORADO

Department of Personnel & Administration

Division of Finance and Procurement

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