

STATE
OF
COLORADO

PROCUREMENT CODE
and RULES

(unofficial version)

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NOTICE TO USERS

THIS IS NOT AN OFFICIAL DOCUMENT.

The State of Colorado Procurement Code and Procurement Rules have been combined into this single document for ease of use by state employees. While every attempt has been made to ensure accuracy, such accuracy is not guaranteed. Please note that numerous headings have been deleted in this version because, with the addition of the statutory language, such headings were redundant.

Users are encouraged to refer to the official documents (Colorado Revised Statutes and the Colorado Code of Regulations.)

A copy of the official Procurement Rules can be found on the State Purchasing Website at www.gssa.state.co.us.

ARTICLE 101 GENERAL PROVISIONS

PART 1 PURPOSES, CONSTRUCTION AND APPLICATION

24-101-101. SHORT TITLE.
ARTICLES 101 TO 112 OF THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "PROCUREMENT CODE", REFERRED TO IN SAID ARTICLES AS THE "CODE".

24-101-102. PURPOSES - RULES OF CONSTRUCTION

- (1) THIS CODE SHALL BE CONSTRUED AND APPLIED TO PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.
- (2) THE UNDERLYING PURPOSE 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.

R-24-101-102-01 General
These rules implement the provisions of the Colorado Procurement Code (§24-101-101 et seq. CRS) and the Construction Bidding for Public Projects Act (§24-92-101 et seq.).

R-24-101-102-02 Expenditure of Funds.

These rules shall apply to every expenditure of public funds by the executive branch of this state, including federal assistance money, under any contract except supplies, services or construction as defined in Rule R-24-101-105-01.

24-101-103. 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", THE LAW MERCHANT, AND ANY LAW RELATIVE TO CAPACITY TO CONTRACT, AGENCY, FRAUD, MISREPRESENTATION, DURESS, COERCION, MISTAKE, OR BANKRUPTCY SHALL SUPPLEMENT THE PROVISIONS OF THIS CODE.

24-101-104. REQUIREMENT OF GOOD FAITH.

THIS CODE REQUIRES ALL PARTIES INVOLVED IN THE NEGOTIATION, PERFORMANCE, OR ADMINISTRATION OF STATE CONTRACTS TO ACT IN GOOD FAITH.

24-101-105. APPLICATION OF THIS CODE.

(1) THIS CODE SHALL APPLY TO ALL PUBLICLY FUNDED CONTRACTS ENTERED INTO BY ALL GOVERNMENTAL BODIES OF THE EXECUTIVE BRANCH OF THIS STATE; EXCEPT THAT THIS CODE SHALL NOT APPLY TO THE PROCUREMENT OF BRIDGE AND HIGHWAY CONSTRUCTION NOR TO CONTRACTS FOR UNSOLICITED OR COMPARABLE PROPOSALS FOR PUBLIC-PRIVATE INITIATIVES UNDER SECTION 43-1-1203,C.R.S. THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, BY FORMAL ACTION OF THE BOARD, AND THE COLORADO COMMISSION ON HIGHER EDUCATION, BY FORMAL ACTION OF THE COMMISSION, MAY ELECT TO BE EXEMPT FROM THE PROVISIONS OF THIS CODE AND MAY ENTER INTO CONTRACTS INDEPENDENT OF THE TERMS SPECIFIED IN THIS CODE. EXCEPT AS PROVIDED IN SECTION 24-111-103, IT SHALL ALSO APPLY TO CONTRACTS FUNDED IN WHOLE OR IN PART WITH FEDERAL ASSISTANCE MONEYS. HOWEVER, THIS CODE SHALL NOT APPLY TO THE AWARDED OF GRANTS OR TO THE AWARDED OF CONTRACTS BETWEEN THE STATE AND ITS POLITICAL

SUBDIVISIONS OR OTHER GOVERNMENTS, EXCEPT AS PROVIDED IN ARTICLE 110 OF THIS TITLE. IT SHALL APPLY TO THE TRANSFER OR DISPOSAL OF STATE SUPPLIES. EXCEPT FOR THE PROVISIONS OF ARTICLE 109 OF THIS TITLE, THIS CODE SHALL NOT APPLY TO THE PROCUREMENT OF PUBLIC PRINTING, AS DEFINED IN SECTION 24-70-201. THIS CODE SHALL NOT APPLY TO THE PROCUREMENT OF PROFESSIONAL SERVICES, AS DEFINED IN SECTION 24-30-1402. THIS CODE SHALL NOT APPLY TO THE COLORADO STATE FAIR AUTHORITY CREATED PURSUANT TO SECTION 35-65-401(1), C.R.S. THIS CODE SHALL NOT APPLY TO THE STATE BOARD OF LAND COMMISSIONERS IN CONNECTION WITH CONTRACT EXPENDITURES FROM THE STATE BOARD OF LAND COMMISSIONERS INVESTMENT AND DEVELOPMENT FUND CREATED IN SECTION 36-1-153(1), C.R.S. UPON THE REQUEST OF A GOVERNMENTAL BODY PURCHASING ITEMS FOR RESALE TO THE PUBLIC, THE HEAD OF A PURCHASING AGENCY MAY, BY WRITTEN DETERMINATION, PROVIDE THAT THIS CODE SHALL NOT APPLY TO ITEMS ACQUIRED FOR SUCH RESALE. NOTHING IN THIS CODE OR IN RULES PROMULGATED UNDER THIS CODE SHALL PREVENT ANY GOVERNMENTAL BODY OR POLITICAL SUBDIVISION FROM COMPLYING WITH THE TERMS AND CONDITIONS OF ANY GRANT, GIFT, BEQUEST, OR COOPERATIVE AGREEMENT.

- (2) ALL POLITICAL SUBDIVISIONS AND LOCAL PUBLIC AGENCIES OF THIS STATE ARE AUTHORIZED TO ADOPT ALL OR ANY PART OF THIS CODE AND ITS ACCOMPANYING RULES.
- (3) THE PROVISIONS OF SECTION 8-18-101 AND 8-18-103, C.R.S., WHICH REQUIRE A PREFERENCE FOR RESIDENT BIDDERS AND RESIDENT AGRICULTURAL PRODUCTS UNDER CERTAIN CIRCUMSTANCES, APPLY TO THE AWARD OF CONTRACTS UNDER THIS CODE.
- (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES MAY PROCURE THE NECESSARY SERVICES AND SUPPORT REQUIRED TO DEVELOP, IMPLEMENT, AND OPERATE STATE AND FEDERAL CHILD SUPPORT ENFORCEMENT WELFARE REFORM MANDATES WHICH SHALL NOT BE SUBJECT TO THIS CODE. THIS PROCUREMENT SHALL BE LIMITED TO FUNDS SPECIFICALLY APPROPRIATED FOR CHILD

SUPPORT ENFORCEMENT IN FISCAL YEAR 1997-98
SUBJECT TO AVAILABLE APPROPRIATIONS FOR
INFORMATION TECHNOLOGY HARDWARE,
SOFTWARE, AND RELATED SERVICES.

R-24-101-105-01

Applicability

The Colorado Procurement Code and these rules do not apply to the following procurements:

- (a) No state funds are expended or the contract is revenue-producing. Agencies shall maximize the return to the State when revenue-producing contracts are involved. Competitive bidding is encouraged to ensure fair and open competition.
- (b) The procurement is made by the legislative or judicial branch of state government.
- (c) The procurement is for highway and/or bridge construction.
- (d) The contract is between state agencies, between the State and a political sub-division, another state, or the federal government, or any combination as described in R-24-110-101 through R-24-110-301.
- (e) The procurement is for public printing which meets the requirements of Article 109, CRS, as amended.
- (f) The procurement is for services provided by architects, engineers, landscape architects, industrial hygienists and land surveyors (Ref. 24-30-1401 through 24-30-1407).
- (g) After approval of a written determination, a supplier's item is to be procured for resale; or
- (h) Where the procurement of services from a specific vendor(s) is necessary to comply with the specific terms and conditions of a grant award.
- (i) The awarding of grants, as the term is defined in §24-101-301(10.5)(A),(B) CRS.

PART 2 DETERMINATIONS

24-101-201. DETERMINATIONS
WRITTEN DETERMINATIONS REQUIRED BY THIS CODE SHALL
BE RETAINED IN THE APPROPRIATE OFFICIAL CONTRACT

FILE OF THE DEPARTMENT OF PERSONNEL OR THE
PURCHASING AGENCY ADMINISTERING THE PROCUREMENT.

- R-24-101-201-01 Preparation and Execution
Where the Colorado Procurement Code or these rules require a written determination, the person required to prepare the determination may delegate its preparation.
- R-24-101-201-02 Content
Each written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made.
- R-24-101-201-03 Supporting Information
The person responsible for the execution of a written determination may require other state personnel, including technical personnel and appropriate personnel in the using agency, to furnish, in an accurate and adequate fashion, any information pertinent to the determination.
- R-24-101-201-04 Retention
Each written determination shall be filed in the solicitation or contract file to which it applies, and shall be retained as part of such file for so long as the file is required to be maintained, as provided in Section 24-80-101 through 24-80-112.

PART 3 DEFINITIONS

- 24-101-301. DEFINITIONS.
THE TERMS DEFINED IN THIS SECTION SHALL HAVE THE FOLLOWING MEANINGS WHENEVER THEY APPEAR IN THIS CODE, UNLESS THE CONTEXT IN WHICH THEY ARE USED CLEARLY REQUIRES A DIFFERENT MEANING OR A DIFFERENT DEFINITION IS PRESCRIBED FOR A PARTICULAR ARTICLE OR PORTION THEREOF.
- (1) "AWARD" MEANS THE ACCEPTANCE OF A BID OR PROPOSAL AND MAY INCLUDE THE PRESENTATION OF A PROPOSED WRITTEN AGREEMENT FOR PERFORMANCE OF THE CONTRACT.
- (1.5) "BUSINESS" MEANS ANY CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, INDIVIDUAL,

- SOLE PROPRIETORSHIP, JOINT-STOCK COMPANY, JOINT VENTURE, OR OTHER PRIVATE LEGAL ENTITY.
- (2) "CHANGE ORDER" MEANS A WRITTEN ORDER, SIGNED BY A PROCUREMENT OFFICER, DIRECTING THE CONTRACTOR TO MAKE CHANGES WHICH THE CHANGES CLAUSE OF THE CONTRACT AUTHORIZES THE PROCUREMENT OFFICER TO ORDER WITHOUT THE CONSENT OF THE CONTRACTOR.
 - (3) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING, OR DEMOLISHING ANY PUBLIC STRUCTURE OR BUILDING OR ANY OTHER PUBLIC IMPROVEMENTS OF ANY KIND TO ANY PUBLIC REAL PROPERTY. FOR THE PURPOSES OF THIS CODE, "CONSTRUCTION" INCLUDES CAPITAL CONSTRUCTION AND CONTROLLED MAINTENANCE, AS DEFINED IN SECTION 24-30-1301.
 - (4) "CONTRACT" MEANS ANY TYPE OF STATE AGREEMENT, REGARDLESS OF WHAT IT MAY BE CALLED, FOR THE PROCUREMENT OR DISPOSAL OF SUPPLIES, SERVICES, OR CONSTRUCTION.
 - (5) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION OF SPECIFICATIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE, QUANTITY, OR OTHER PROVISION OF A CONTRACT ACCOMPLISHED BY MUTUAL ACTION OF THE PARTIES TO THE CONTRACT.
 - (6) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT WITH A GOVERNMENTAL BODY.
 - (7) REPEALED.
 - (8) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL.
 - (9) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.
 - (10) "GOVERNMENTAL BODY" MEANS ANY DEPARTMENT, COMMISSION, COUNCIL, BOARD, BUREAU, COMMITTEE, INSTITUTION OF HIGHER EDUCATION, AGENCY, GOVERNMENT CORPORATION, OR OTHER ESTABLISHMENT OR OFFICIAL, OTHER THAN AN ELECTED OFFICIAL, OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT IN THIS STATE; EXCEPT THAT THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, BY FORMAL ACTION OF THE BOARD, AND THE COLORADO COMMISSION ON HIGHER EDUCATION, BY FORMAL ACTION OF THE COMMISSION, MAY ELECT

TO BE EXCLUDED FROM THE MEANING OF
"GOVERNMENTAL BODY."

(10.5) (A) "GRANT" MEANS THE FURNISHING OF ASSISTANCE, INCLUDING FINANCIAL OR OTHER MEANS OF ASSISTANCE, BY THE PURCHASING AGENCY TO ANY PERSON TO SUPPORT A PROGRAM AUTHORIZED BY LAW.

(B) THE TERM "GRANT" DOES NOT INCLUDE:

- (I) A LOAN;
- (II) AN AWARD REQUIRED BY THE TERMS OF A GRANT TO BE AWARDED IN ACCORDANCE WITH THE PURCHASING AGENCY'S PROCUREMENT STATUTES AND REGULATIONS; OR
- (III) AN AWARD WHOSE PRIMARY PURPOSE IS TO PROCURE AN END PRODUCT TO SATISFY A REQUIREMENT OF THE PURCHASING AGENCY, EITHER IN THE FORM OF SUPPLIES, SERVICES, OR CONSTRUCTION.

(11) "HEAD OF A PURCHASING AGENCY" MEANS THE DIRECTOR OF A PURCHASING AGENCY CREATED PURSUANT TO SECTION 24-102-204 OR 24-102-302 (2) AND THE PRINCIPAL REPRESENTATIVE AUTHORIZED TO ENTER INTO CONTRACTS FOR CAPITAL CONSTRUCTION OR CONTROLLED MAINTENANCE PURSUANT TO PART 13 OF ARTICLE 30 OF THIS TITLE.

(12) "INVITATION FOR BIDS" MEANS ALL DOCUMENTS, WHETHER ATTACHED OR INCORPORATED BY REFERENCE, UTILIZED FOR SOLICITING BIDS.

(13) "PERSON" MEANS ANY BUSINESS, INDIVIDUAL, UNION, COMMITTEE, CLUB, OTHER ORGANIZATION, OR GROUP OF INDIVIDUALS.

(14) "PROCUREMENT" MEANS BUYING, PURCHASING, RENTING, LEASING, OR OTHERWISE ACQUIRING ANY SUPPLIES, SERVICES, OR CONSTRUCTION. "PROCUREMENT" INCLUDES ALL FUNCTIONS THAT PERTAIN TO THE OBTAINING OF ANY SUPPLY, SERVICE, OR CONSTRUCTION, INCLUDING DESCRIPTION OF REQUIREMENTS, SELECTION AND SOLICITATION OF SOURCES, PREPARATION AND AWARD OF CONTRACT, AND ALL PHASES OF CONTRACT ADMINISTRATION.

- (15) "PROCUREMENT OFFICER" MEANS ANY PERSON DULY AUTHORIZED TO ENTER INTO AND ADMINISTER CONTRACTS AND MAKE WRITTEN DETERMINATIONS WITH RESPECT THERETO. "PROCUREMENT OFFICER" INCLUDES AN AUTHORIZED REPRESENTATIVE ACTING WITHIN THE LIMITS OF HIS AUTHORITY.
- (16) "PUBLIC EMPLOYEE" MEANS AN INDIVIDUAL DRAWING A SALARY FROM A GOVERNMENTAL BODY OR A NONCOMPENSATED INDIVIDUAL PERFORMING PERSONAL SERVICES FOR A GOVERNMENTAL BODY.
- (17) "PURCHASING AGENCY" MEANS ANY GOVERNMENTAL BODY OTHER THAN THE DEPARTMENT OF PERSONNEL WHICH IS AUTHORIZED TO ENTER INTO CONTRACTS BY SECTION 24-102-302 (1) BY WAY OF DELEGATION FROM THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 24-102-302 (2) OR BY THE WAY OF DELEGATION FROM THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 24-102-204.
- (18) "REQUEST FOR PROPOSALS" MEANS ALL DOCUMENTS, WHETHER ATTACHED OR INCORPORATED BY REFERENCE, UTILIZED FOR SOLICITING PROPOSALS.
- (19) "RULES" MEANS STATE PROCUREMENT RULES AND HAS THE SAME MEANING AS PROVIDED IN SECTION 24-4-102(15).
- (20) "SERVICES" MEANS THE FURNISHING OF LABOR, TIME, OR EFFORT BY A CONTRACTOR NOT INVOLVING THE DELIVERY OF A SPECIFIC END PRODUCT OTHER THAN REPORTS WHICH ARE MERELY INCIDENTAL TO THE REQUIRED PERFORMANCE. THE TERM DOES NOT INCLUDE PROFESSIONAL SERVICES AS DEFINED IN SECTION 24-30-1402.
- (21) (DELETED BY AMENDMENT, L.96, P.1533, §98, EFFECTIVE JUNE 1, 1996.)
- (22) "SUPPLIES" MEANS ALL PROPERTY, INCLUDING BUT NOT LIMITED TO EQUIPMENT, MATERIALS, AND INSURANCE. THE TERM DOES NOT INCLUDE LAND, THE PURCHASE OF AN INTEREST IN LAND, WATER OR MINERAL RIGHTS, WORKERS' COMPENSATION INSURANCE, BENEFIT INSURANCE FOR STATE EMPLOYEES, OR PROPERTY FURNISHED IN CONNECTION WITH PUBLIC PRINTING, AS DEFINED IN SECTION 24-70-201.
- (23) "USING AGENCY" MEANS ANY GOVERNMENTAL BODY OF THE STATE WHICH UTILIZES ANY SUPPLIES,

SERVICES, OR CONSTRUCTION PROCURED UNDER THIS CODE.

R-24-101-301 Terms Defined in Colorado Procurement Code

- (a) As used throughout these rules, words and terms defined in the Colorado Procurement Code shall have the same meaning as in the Code.
- (b) "Commodity" as used in these Rules shall have the same meaning as "product".
- (c) "Product" means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the State, either in and of itself, or in conjunction with services. As used in these Rules, "Product," "Supplies," and "Commodity" shall have essentially the same meaning.

PART 4 PROCUREMENT RECORDS AND INFORMATION

24-101-401. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
EXCEPT AS PROVIDED IN SECTION 24-103-202 (4), PROCUREMENT INFORMATION SHALL BE A PUBLIC RECORD AND SHALL BE AVAILABLE TO THE PUBLIC, AS PROVIDED IN SECTIONS 24-72-203 AND 24-72-204.

24-101-402. RETENTION OF PROCUREMENT RECORDS.
ALL PROCUREMENT RECORDS SHALL BE RETAINED AND DISPOSED OF IN ACCORDANCE WITH RECORDS RETENTION GUIDELINES AND SCHEDULES, AS PROVIDED IN SECTION 24-80-103.

ARTICLE 102 PROCUREMENT ORGANIZATION

PART 1 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL

24-102-101. AUTHORITY AND DUTIES OF THE EXECUTIVE DIRECTOR.
SUBJECT TO THE PROVISIONS OF PART 4 OF THIS ARTICLE, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL HAS 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, EXCEPT FOR EXCESS OR SURPLUS EQUIPMENT AND SUPPLIES AS PROVIDED IN SECTION 17-24-106.6, CRS, AND EXCEPT AS PROVIDED IN PART 17 OF ARTICLE 30 AND PART 4 OF ARTICLE 82 OF THIS TITLE. THE EXECUTIVE DIRECTOR SHALL CONSIDER AND DECIDE MATTERS OF POLICY WITHIN THE PROVISIONS OF THIS CODE.

PART 2 DIVISION OF PURCHASING

24-102-201. PURCHASING

- (1) (DELETED BY AMENDMENT, L.96, P.1510, §32, EFFECTIVE JUNE 1, 1996.)
- (2) THE POWERS, DUTIES AND FUNCTIONS CONCERNING PURCHASING SHALL BE ADMINISTERED AS IF TRANSFERRED TO THE DEPARTMENT OF PERSONNEL BY A TYPE 2 TRANSFER, AS SUCH TRANSFER IS DEFINED BY THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF THIS TITLE.

R-24-102-201 State Purchasing Director
The State Purchasing Director referred to in these rules shall be appointed by the Executive Director of the Department of Personnel and shall have these powers and duties through delegation from the Executive Director. Any powers and duties not so delegated remain with the Executive Director.

24-102-202. AUTHORITY OF THE EXECUTIVE DIRECTOR

- (1) CONSISTENT WITH THE PROVISIONS OF THIS CODE, THE EXECUTIVE DIRECTOR MAY ADOPT

OPERATIONAL PROCEDURES GOVERNING THE
INTERNAL FUNCTIONS OF THE DEPARTMENT.

(2) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN
THIS CODE, THE EXECUTIVE DIRECTOR SHALL,
PURSUANT TO RULES:

- (A) PROCURE OR SUPERVISE THE PROCUREMENT
OF ALL SUPPLIES AND SERVICES NEEDED BY
THE STATE;
- (B) REPEALED, L.86, P. 757, SS13, EFFECTIVE JULY 1,
1987.
- (C) ESTABLISH AND MAINTAIN PROGRAMS FOR
THE INSPECTION, TESTING, AND ACCEPTANCE
OF SUPPLIES AND SERVICES; AND
- (D) EXAMINE EACH REQUISITION SUBMITTED BY A
USING AGENCY AND APPROVE, DISAPPROVE,
OR REVISE IT AS TO QUANTITY OR QUALITY.
- (E) DEVELOP AND MAINTAIN PROGRAMS AND
PROCEDURES TO DELEGATE PURCHASING
AUTHORITY IN ORDER TO CONSERVE
RESOURCES FOR MANAGEMENT OF THE
STATEWIDE PURCHASING SYSTEM;
- (F) DEVELOP PROGRAMS TO EVALUATE AND
REDUCE THE ADMINISTRATIVE COSTS OF THE
STATEWIDE PROCUREMENT FUNCTION.

R-24-102-202-01

Mandatory and Permissive Price Agreements

- (a) The State Purchasing Director may issue
mandatory or permissive price agreements for
supplies or services for use by all state agencies
and institutions.
- (b) Mandatory price agreements shall be used by all
agencies and institutions if and when the
supplies or services are needed. Any agency or
institution desiring to purchase supplies or
services of a similar nature other than those on a
mandatory price agreement must request and
receive written authorization to do so by the
Division of Purchasing.
- (c) Permissive price agreements may be used by all
agencies and institutions if and when the
supplies or services are needed. If supplies or
services contained on permissive price
agreements are not used by agencies or
institutions, the needs must be submitted for
competition as provided by these rules.

24-102-202.5. SUPPLIER DATABASE - CASH FUND

- (1) THE EXECUTIVE DIRECTOR SHALL DEVELOP A CENTRALIZED DATABASE THAT INCLUDES A LISTING OF ALL BUSINESSES WHICH ARE INTERESTED IN PROVIDING GOODS AND SERVICES TO THE STATE. THE BUSINESSES IN THE DATABASE SHALL BE IDENTIFIED BY A REGISTRATION NUMBER, AND THE EXECUTIVE DIRECTOR SHALL DEVELOP A PROCEDURE FOR NOTIFYING THE APPROPRIATE BUSINESSES WHENEVER THE STATE ISSUES REQUESTS FOR PROPOSALS OR INVITATIONS FOR BIDS FOR GOODS OR SERVICES WHICH A PARTICULAR BUSINESS PROVIDES. THE DATABASE SHALL BE ACCESSIBLE THROUGH THE DEPARTMENT OF PERSONNEL TO ALL PURCHASING AGENCIES DESIGNATED PURSUANT TO SECTION 24-102-302 (2). SUCH PURCHASING AGENCIES SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL EXPENSES INCURRED IN THE USE AND MAINTENANCE OF THE DATABASE FROM MONEYS IN THE SUPPLIER DATABASE CASH FUND CREATED IN SUBSECTION (2) OF THIS SECTION.
- (2) (A) EACH BUSINESS THAT WISHES TO BE INCLUDED IN THE DATABASE CREATED PURSUANT TO SUB-SECTION (1) OF THIS SECTION SHALL PAY A REGISTRATION FEE AS DETERMINED BY THE EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL SET AND COLLECT SUCH FEES AS ARE NECESSARY TO COVER THE DIRECT AND INDIRECT COSTS WHICH ARE INCURRED IN IMPLEMENTING THE PROVISIONS OF THIS SECTION. THE REVENUE FROM SUCH FEES SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE SUPPLIER DATABASE CASH FUND, WHICH FUND IS HEREBY CREATED. THE GENERAL ASSEMBLY SHALL MAKE APPROPRIATIONS FROM SUCH FUND AS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION. IN ACCORDANCE WITH SECTION 24-36-114, ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF THIS FUND SHALL BE CREDITED TO THE GENERAL FUND.
(B) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, ON MARCH 5, 2003, THE STATE TREASURER SHALL DEDUCT THREE HUNDRED THOUSAND DOLLARS FROM THE SUPPLIER DATABASE

CASH FUND AND TRANSFER SUCH SUM TO THE GENERAL FUND.

- (3) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONTRACTORS REQUIRED TO BE APPROVED PURSUANT TO THE PROVISIONS OF SECTION 24-30-1303 (1) (Q).

R-24-102-202.5-01 Bid Information and Distribution System (BIDS).

Definitions

- (a) "Bid Information and Distribution System (BIDS) means the central database and notification system created pursuant to §24-102-202.5 CRS.
- (b) "Construction Project," for purposes of Rule R-24-102-202.5-04, means any procurement that meets the definition of a "public project," as defined in §24-92-102(8) CRS, or any procurement that meets the definition of "construction" as defined in §24-101-301 CRS.

R-24-102-202.5-02 Use of BIDS - Goods and Services

- (a) BIDS shall be the only notification method required for competitive solicitations for goods and services made through Invitations for Bids (IFB), Requests for Proposals (RFP), and Documented Quotes (DQ).
- (b) Except as provided in paragraph (c) below, bids, proposals, and quotes shall not be deemed responsive unless the responding vendor is registered for BIDS.
- (c) When the director or head of a purchasing agency or delegate believes that BIDS is not likely to yield adequate competition, the following procedure can be used if the following paragraph appears in the solicitation document: "Because of the limited competition expected from registered BIDS vendors on this solicitation, the procuring agency intends to use both BIDS and additional methods of vendor notification and may make the specifications available to non-registered vendors through additional means. However, quotes, bids or offers submitted by non-registered vendors will not be opened or considered (except as necessary to determine BIDS registration status) unless, after examination of quotes/bids/offers submitted by BIDS registered vendors, it is determined that there is not adequate competition among BIDS

registered vendors. If adequate competition exists among registered vendors, quotes, bids, or proposals from non-registered vendors will not be considered. A vendor is considered registered if its registration and payment is received in the State Purchasing Office prior to the bid opening time or the due date for receipt of quotes.”

- R-24-102-202.5-03 BIDS Fees
- (a) The BIDS fee structure shall be set by the State Purchasing Director.
 - (b) Every vendor wishing to be listed on the BIDS vendor database shall pay an annual registration fee. Where a corporation has subsidiaries, each subsidiary requesting a listing in BIDS shall be deemed to be a separate entity and shall pay a separate fee.
 - (c) Additional fees may be set by the State Purchasing Director.

- R-24-102-202.5-04 Use of BIDS - Notice of Construction Projects and Professional Services
- For all construction projects and for all professional service procurements (as defined in §24-30-1402(6) CRS) for which competitive notification or solicitation procedures are required, a notification must be placed on BIDS, and the award must be posted on BIDS.
- (a) Detailed specifications shall not be included in the notice, and all information must be open to public view, without password protection.
 - (b) Contractors/bidders need not be registered for BIDS in order to be deemed responsive.
 - (c) This requirement is in addition to, and does not supersede, any advertisement, notification, or solicitation procedures required by statute or rule.

24-102-203. SPECIAL DUTIES REGARDING STATE-OWNED MOTOR VEHICLES. (REPEALED).

24-102-204. DELEGATION OF PURCHASING AUTHORITY BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL. SUBJECT TO RULES, THE EXECUTIVE DIRECTOR MAY DELEGATE PURCHASING AUTHORITY TO DESIGNEES OR TO ANY DEPARTMENT, AGENCY, OR OFFICIAL.

- R-24-102-204-01 Purchasing Delegation Limits.
Purchasing delegations will have limits as described in Rule R-24-103-204 and all associated subparagraphs. An agency that receives limited purchasing authority shall be referred to as a "Group I Agency", and an agency that receives an unrestricted purchasing delegation shall be referred to as a "Group II Agency".
- R-24-102-204-02 Delegation Criteria.
Recognizing the importance of local control to meet local needs, delegation of purchasing authority is encouraged where efficient.
- (a) Minimum criteria to receive a Group I purchasing delegation shall include:
 - (i) a signed Delegation Agreement between the Department of Personnel and the delegated agency or the governing board of a college or university, and
 - (ii) successful completion by staff of training by the Division of Purchasing, and
 - (iii) use of the Bid Information and Distribution System (BIDS), if and when made available by the Division of Purchasing.
 - (b) Minimum criteria to receive a Group II purchasing delegation shall include:
 - (i) a signed Delegation Agreement between the Department of Personnel and the delegated agency or the governing board of a college or university, and
 - (ii) demonstrated need, and
 - (iii) demonstrated existing staff competency in state purchasing, and
 - (iv) an automated purchasing system, and
 - (v) use of the Bid Information and Distribution System (BIDS).

24-102-205. CENTRALIZED CONTRACT MANAGEMENT SYSTEM – PERSONAL SERVICES CONTRACTS - LEGISLATIVE DECLARATION - DEFINITIONS.

- (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT BY ENACTING THIS SECTION THE GENERAL ASSEMBLY INTENDS TO:
 - (I) ESTABLISH A POLICY OF OPEN COMPETITION FOR PERSONAL SERVICES CONTRACTS UNLESS THE COMPETITION IS SPECIFICALLY EXEMPTED UNDER THIS SECTION;
 - (II) PROVIDE FOR LEGISLATIVE AND EXECUTIVE REVIEW OF ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY GOVERNMENTAL BODY;
 - (III) CENTRALIZE THE LOCATION OF INFORMATION ABOUT PERSONAL SERVICES CONTRACTS FOR THE PURPOSE OF FACILITATING PUBLIC REVIEW OF SUCH CONTRACTS; AND
 - (IV) ENSURE THE PROPER ACCOUNTING OF EXPENDITURES FOR PERSONAL SERVICES.
 - (b) FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.
 - (c) INsofar AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.
- (2) THIS SECTION SHALL APPLY TO ANY PERSONAL SERVICES CONTRACT TO WHICH THE STATE IS A PARTY THE VALUE OF WHICH EXCEEDS ONE HUNDRED THOUSAND DOLLARS WITH THE EXCEPTION OF ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S., OR TO ANY GRANT, AWARD, OR CONTRACT FUNDED BY

ANY FEDERAL OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR CONTRACT. FOR PURPOSES OF THIS SECTION, "SPONSORED PROJECT" MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS.

- (3) (a) ON OR BEFORE JUNE 30, 2009, THE DEPARTMENT SHALL IMPLEMENT AND MAINTAIN A CENTRALIZED CONTRACT MANAGEMENT SYSTEM FOR THE PURPOSE OF MONITORING ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY A GOVERNMENTAL BODY THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS SECTION. WITH RESPECT TO EACH CONTRACT ENTERED INTO BY A GOVERNMENTAL BODY, INFORMATION CONTAINED IN THE SYSTEM SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:
- (I) THE GOVERNMENTAL BODY THAT ENTERED INTO THE PERSONAL SERVICES CONTRACT;
 - (II) THE PERSONS OR ENTITIES WITH WHICH THE GOVERNMENTAL BODY IS CONTRACTING;
 - (III) THE DURATION AND NUMBER OF POSITIONS ON THE STATE PAYROLL CREATED DIRECTLY OR INDIRECTLY AS A RESULT OF ANY PERSONAL SERVICES CONTRACT;
 - (IV) THE PURPOSE OF THE PERSONAL SERVICES CONTRACT;
 - (V) THE EFFECTIVE DATES, PERIODS OF PERFORMANCE, AND ANY RENEWAL TERMS OF THE PERSONAL SERVICES CONTRACT;
 - (VI) THE VENDOR SELECTION METHOD UPON WHICH THE PERSONAL SERVICES CONTRACT WAS AWARDED, WHETHER COMPETITIVELY PROCURED, AWARDED ON A SOLE-SOURCE BASIS, OR OTHERWISE. WHERE THE CONTRACT HAS BEEN AWARDED ON A SOLE-SOURCE

BASIS, THE GOVERNMENTAL BODY SHALL CERTIFY THAT THE GOVERNMENTAL BODY HAS FOLLOWED THE REQUIREMENTS OF SUBSECTION (5) OF THIS SECTION.

- (VII) THE TOTAL VALUE OF THE PERSONAL SERVICES CONTRACT AND ANY AMENDMENTS TO THE CONTRACT;
 - (VIII) IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION (6) OF THIS SECTION, AN EVALUATION FOLLOWING COMPLETION OF THE PERSONAL SERVICES CONTRACT THAT MEASURES THE VENDOR'S PERFORMANCE IN MEETING CONTRACTUAL REQUIREMENTS RELATING TO QUALITY, COST, AND DEADLINES;
 - (IX) WHETHER ANY SERVICES UNDER THE PERSONAL SERVICES CONTRACT, OR ANY SUBCONTRACTS TO THE CONTRACT THAT DIRECTLY RELATE TO THE SERVICES PROVIDED UNDER THE CONTRACT, ARE ANTICIPATED TO BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE AS DISCLOSED IN THE STATEMENT OF WORK PURSUANT TO SECTION 24-102-206 AND THE VENDOR'S JUSTIFICATION FOR OBTAINING SERVICES OUTSIDE THE UNITED STATES OR THE STATE IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 24-102-206; AND
 - (X) UPON COMPLETION OF THE PERSONAL SERVICES CONTRACT, THE EXTENT AS DISCLOSED BY THE VENDOR TO WHICH ANY SERVICES UNDER THE CONTRACT, OR ANY SUBCONTRACTS TO THE CONTRACT THAT DIRECTLY RELATE TO THE SERVICES PROVIDED UNDER THE CONTRACT, WERE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE.
- (b) EACH GOVERNMENTAL BODY SHALL BE RESPONSIBLE FOR GATHERING RELEVANT INFORMATION TO BE SUBMITTED TO THE DEPARTMENT FOR INCLUSION IN THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (3).

- (c) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL BE A PUBLICLY AVAILABLE DATABASE OF ALL PERSONAL SERVICES CONTRACTS ENTERED INTO BY ANY GOVERNMENTAL BODY, ACCESSIBLE FROM THE WEBSITE MAINTAINED BY THE STATE. INFORMATION CONCERNING CONTRACTS CONTAINED IN THE DATABASE AND ACCESSIBLE ON THE WEBSITE SHALL BE SEARCHABLE BY CRITERIA ENUMERATED IN SUBPARAGRAPHS (I) TO (X) OF PARAGRAPH (a) OF THIS SUBSECTION (3). INFORMATION IN THE DATABASE SHALL BE EITHER PRESENTED IN PLAIN AND NONTECHNICAL LANGUAGE OR BY MEANS OF KEY TERMS THAT ARE CLEARLY AND EASILY DEFINED.
- (d) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL IDENTIFY THE NUMBER OF EMPLOYMENT POSITIONS TO BE FILLED UNDER ANY PERSONAL SERVICES CONTRACT THAT WAS PREVIOUSLY PERFORMED BY CLASSIFIED CIVIL SERVICE EMPLOYEES, IN ADDITION TO THE TOTAL NUMBER OF POSITIONS, IF ANY, ELIMINATED BY THE CONTRACT. IN THE CASE OF ANY CONTRACT THAT IS MORE THAN ONE YEAR IN DURATION, THE SYSTEM SHALL IDENTIFY THE COST SAVINGS, IF ANY, AND QUALITY IMPROVEMENTS, IF ANY, REALIZED BY THE STATE AS A RESULT OF THE CONTRACT.
- (e) ANY NEW PERSONAL SERVICES CONTRACTS SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL BE ADDED TO THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) NOT MORE THAN THIRTY DAYS AFTER THE EXECUTION OF THE CONTRACT.
- (4) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION SHALL INCLUDE INFORMATION CONCERNING PERSONAL SERVICES

EXPENDITURES BY THE GOVERNMENTAL BODY AND TYPES OF SERVICES. THE TYPES OF SERVICES THAT MAY BE DESIGNATED SHALL INCLUDE, WITHOUT LIMITATION, PROFESSIONAL TECHNICAL, NONPROFESSIONAL SUPPORT, PURCHASED SERVICES, ARCHITECTURAL, ENGINEERING AND CONSTRUCTION TRADES, AND PROFESSIONAL EQUIPMENT REPAIR.

- (5) (a) SUBJECT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (5), PRIOR TO ENTERING INTO A SOLE-SOURCE PERSONAL SERVICES CONTRACT, THE GOVERNMENTAL BODY SHALL ATTEMPT TO IDENTIFY COMPETING VENDORS BY PLACING A NOTICE ON THE STATE'S BID NOTIFICATION WEBSITE FOR NOT LESS THAN THREE BUSINESS DAYS. IF THE GOVERNMENTAL BODY RECEIVES NOT LESS THAN TWO RESPONSES TO THE NOTICE FROM QUALIFIED AND RESPONSIBLE VENDORS THAT ARE ABLE TO MEET THE SPECIFICATIONS IDENTIFIED IN THE NOTICE AND THAT ARE NOT OTHERWISE PROHIBITED FROM BIDDING ON THE CONTRACT, THE SOLE-SOURCE SELECTION METHOD SHALL NOT BE USED.
- (b) NOTWITHSTANDING THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (5), THE DIRECTOR OF A GOVERNMENTAL BODY OR HIS OR HER DESIGNEE MAY ENTER INTO OR AUTHORIZE OTHERS TO ENTER INTO AN EMERGENCY SOLE-SOURCE PERSONAL SERVICE CONTRACT ON BEHALF OF THE GOVERNMENTAL BODY WHERE AN EMERGENCY CONDITION IS PRESENT AND A SOLE-SOURCE PERSONAL SERVICE CONTRACT IS NECESSARY TO ENSURE THAT THE REQUIRED SERVICES ARE OBTAINED IN SUFFICIENT TIME TO ADDRESS THE EMERGENCY. WHERE THE GOVERNMENTAL BODY ENTERS INTO AN EMERGENCY SOLE-SOURCE PERSONAL SERVICE CONTRACT PURSUANT TO THIS PARAGRAPH (b), THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, AND ANY CONTRACT FILE MAINTAINED THEREUNDER, SHALL INCLUDE A WRITTEN DETERMINATION THAT SPECIFIES THE BASIS FOR THE DETERMINATION THAT AN EMERGENCY CONDITION IS PRESENT AND THE

BASIS FOR THE SELECTION OF THE VENDOR RETAINED TO PERFORM THE SOLE-SOURCE CONTRACT. A SOLE-SOURCE PERSONAL SERVICES CONTRACT AUTHORIZED PURSUANT TO THIS PARAGRAPH (b) SHALL BE LIMITED TO THE QUANTITY OF PERSONAL SERVICES AND DURATION NECESSARY TO ADDRESS THE EMERGENCY.

- (c) FOR PURPOSES OF PARAGRAPH (b) OF THIS SUBSECTION (5), "EMERGENCY CONDITION" MEANS A SITUATION THAT CREATES AN IMMINENT THREAT TO THE PUBLIC HEALTH, WELFARE, OR SAFETY AS MAY ARISE BY REASON OF, WITHOUT LIMITATION, A FLOOD, EPIDEMIC, RIOT, CATASTROPHIC EQUIPMENT FAILURE OR SIMILAR THREAT TO THE PUBLIC HEALTH, WELFARE, OR SAFETY AS DETERMINED BY THE DIRECTOR OF THE GOVERNMENTAL BODY OR HIS OR HER DESIGNEE.
- (6) UPON THE COMPLETION OF EACH PERSONAL SERVICES CONTRACT, THE GOVERNMENTAL BODY THAT WAS A PARTY TO THE CONTRACT SHALL EVALUATE THE VENDOR THAT PERFORMED THE CONTRACT. THE EVALUATION PERFORMED BY THE GOVERNMENTAL BODY SHALL BE SUBMITTED TO THE VENDOR TO ALLOW THE VENDOR TO REVIEW THE EVALUATION AND TO SUBMIT ANY COMMENTS IN RESPONSE TO THE EVALUATION, AFTER WHICH POINT THE EVALUATION, INCLUDING ANY RESPONSE SUBMITTED BY THE VENDOR, SHALL BE ADDED TO THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION. THE EVALUATION SHALL BECOME PUBLICLY AVAILABLE THIRTY DAYS AFTER COMPLETION OF THE CONTRACT. THE EVALUATION SHALL MEASURE, WITHOUT LIMITATION, THE PERFORMANCE OF THE VENDOR IN MEETING CONTRACTUAL REQUIREMENTS RELATING TO QUALITY, COST, AND DEADLINES. IF THE VENDOR DISPUTES ANY INFORMATION CONTAINED IN THE EVALUATION, THE VENDOR MAY EXERCISE THE CONTRACT DISPUTE RIGHTS SPECIFIED IN SECTION 24-109-106, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE

APPEAL, THE VENDOR MAY FILE A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING ANY EVALUATION SHALL BE REMOVAL OF THE EVALUATION, CORRECTION OF THE EVALUATION, OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

- (7) (a) COMMENCING ON SEPTEMBER 30, 2007, UNTIL SUCH TIME AS THE DEVELOPMENT OF THE SYSTEM CREATED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION IS COMPLETE, THE DEPARTMENT SHALL PROVIDE REPORTS ON A QUARTERLY BASIS TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY CONCERNING THE STATUS OF THE DEVELOPMENT OF THE SYSTEM.
- (b) THE DEPARTMENT SHALL ANNUALLY REPORT INFORMATION ON PERSONAL SERVICES CONTRACTS CONTAINED IN THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM CREATED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION TO THE STANDING LEGISLATIVE COMMITTEES OF REFERENCE IN EACH HOUSE OF THE GENERAL ASSEMBLY WITH OVERSIGHT RESPONSIBILITIES OVER THE DEPARTMENT'S AFFAIRS.
- (c) WITH RESPECT TO ANY SOLE-SOURCE PERSONAL SERVICES CONTRACT IDENTIFIED IN THE SYSTEM REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY CREATED IN SECTION 2-3-301 (1), C.R.S., CONCERNING ANY NEW CONTRACT ENTERED INTO BY THE STATE DURING THE PRIOR CALENDAR YEAR. EACH REPORT SHALL DESCRIBE, WITHOUT LIMITATION, THE FOLLOWING:
- (1) THE NUMBER AND AGGREGATE VALUE OF THE SOLE-SOURCE PERSONAL SERVICES CONTRACTS FOR EACH CATEGORY OF SERVICES SPECIFIED IN SUBSECTION (4) OF THIS SECTION; AND

- (II) THE JUSTIFICATION PROVIDED BY THE GOVERNMENTAL BODY FOR THE USE OF THE SOLE-SOURCE CONTRACTING PROVISIONS IN SECTION 24-103-205 AND THE STEPS TAKEN TO DETERMINE IF A VENDOR IS THE ONLY AVAILABLE SOURCE FOR THE REQUIRED SUPPLY, SERVICE, OR CONSTRUCTION ITEM.
- (8) THE IMPLEMENTATION OF THE DATABASE REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION SHALL BE FUNDED IN TWO PHASES, WITH A PORTION OF THE FUNDING PROVIDED IN THE 2007-08 STATE FISCAL YEAR, AND A PORTION OF THE FUNDING PROVIDED IN THE 2008-09 STATE FISCAL YEAR.
- (9) TO ACCOMPLISH THE LEGISLATIVE INTENT UNDERLYING SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE OFFICE OF CONTRACT ADMINISTRATION IS HEREBY CREATED IN THE DEPARTMENT, WHICH OFFICE SHALL BE FUNDED WITHIN EXISTING APPROPRIATIONS.

24-102-206. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO.

- (1) PRIOR TO CONTRACTING OR AS A REQUIREMENT FOR THE SOLICITATION OF ANY CONTRACT FROM THE STATE FOR SERVICES, AS APPROPRIATE, ANY PROSPECTIVE VENDOR SHALL DISCLOSE IN A STATEMENT OF WORK WHERE SERVICES WILL BE PERFORMED UNDER THE CONTRACT, INCLUDING ANY SUBCONTRACTS, AND WHETHER ANY SERVICES UNDER THE CONTRACT OR ANY SUBCONTRACTS ARE ANTICIPATED TO BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE. IF THE PROSPECTIVE VENDOR ANTICIPATES SERVICES UNDER THE CONTRACT OR ANY SUBCONTRACTS WILL BE PERFORMED OUTSIDE THE UNITED STATES OR THE STATE, THE VENDOR SHALL PROVIDE IN ITS STATEMENT OF WORK A PROVISION SETTING FORTH WHY IT IS NECESSARY OR ADVANTAGEOUS TO GO OUTSIDE THE UNITED STATES OR THE STATE TO PERFORM THE CONTRACT OR ANY SUBCONTRACTS.

- (2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED TO APPLY TO ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., OR THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S.

PART 3 ORGANIZATION OF PUBLIC PROCUREMENT

24-102-301. CENTRALIZATION OF PROCUREMENT AUTHORITY.
EXCEPT AS OTHERWISE PROVIDED IN THIS PART 3, ALL RIGHTS, POWERS, DUTIES, AND AUTHORITY RELATING TO THE PROCUREMENT OF SUPPLIES, SERVICES, AND CONSTRUCTION AND THE SALE AND DISPOSAL OF SUPPLIES, SERVICES, AND CONSTRUCTION ARE VESTED IN THE DEPARTMENT OF PERSONNEL EXCEPT FOR THE DISPOSAL OF SURPLUS STATE PROPERTY AS PROVIDED IN SECTION 17-24-106.6 CRS, AND EXCEPT AS PROVIDED IN PART 4 OF ARTICLE 82 OF THIS TITLE.

24-102-302. PURCHASING AGENCIES - ESTABLISHMENT - AUTHORITY

- (1) CAPITAL CONSTRUCTION AND CONTROLLED MAINTENANCE, AS DEFINED AND DELEGATED TO PRINCIPAL REPRESENTATIVES BY PART 13 OF ARTICLE 30 OF THIS TITLE, SHALL BE PROCURED BY SUCH PRINCIPAL REPRESENTATIVES AS THE APPROPRIATE PURCHASING AGENCY.
- (2) IF THE EXECUTIVE DIRECTOR IS OF THE OPINION AND SO CERTIFIES IN WRITING THAT THE NEEDS OF ANY GOVERNMENTAL BODY ARE OF SUCH SPECIALIZED NATURE AND SUFFICIENT VOLUME TO WARRANT A PURCHASING AGENCY FOR SUCH GOVERNMENTAL BODY, HE SHALL AUTHORIZE THE CREATION OF THE SAME. ALL SUCH PURCHASING AGENCIES SHALL OPERATE UNDER THE PROVISIONS OF THIS CODE AND THE RULES PROMULGATED PURSUANT THERETO AND SHALL BE SUBJECT TO THE SUPERVISION AND CONTROL OF THE EXECUTIVE DIRECTOR. ALL SUCH PURCHASING AGENCIES SHALL OPERATE UNDER THE PROVISIONS OF SECTION 17-24-111, CRS, REQUIRING THE PURCHASE OF GOODS AND SERVICES FROM THE DIVISION OF CORRECTIONAL INDUSTRIES, AND

FAILURE OF ANY SUCH PURCHASING AGENCY TO COMPLY WITH SUCH REQUIREMENT SHALL BE CAUSE FOR THE EXECUTIVE DIRECTOR TO SUSPEND FOR A PERIOD OF UP TO ONE YEAR AT THE DISCRETION OF THE EXECUTIVE DIRECTOR THE AUTHORITY OF A PURCHASING AGENCY CREATED PURSUANT TO THIS SUBSECTION (2) TO PURCHASE GOODS AND SERVICES. THE AUTHORITY OF A PURCHASING AGENCY TO PURCHASE GOODS AND SERVICES MAY ALSO BE SUSPENDED AT THE DISCRETION OF THE EXECUTIVE DIRECTOR. THE FINANCIAL AND STAFF RESOURCES DEDICATED TO THE PURCHASING FUNCTION IN THE AFFECTED AGENCY SHALL BE UNDER THE AUTHORITY OF THE DEPARTMENT OF PERSONNEL DURING THE PERIOD OF SUSPENSION, AND PURCHASES MADE FOR THE AFFECTED AGENCY SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 17-24-111 (1), CRS

- (3) THE HEADS OF PURCHASING AGENCIES RESPONSIBLE FOR PROCURING THE SUPPLIES, SERVICES, OR CONSTRUCTION DELEGATED TO THEM BY SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL CONDUCT PROCUREMENTS IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE AND ITS IMPLEMENTING RULES. THE EXECUTIVE DIRECTOR SHALL ESTABLISH A STANDARD SUPPLIER'S FORM AND A STANDARD SET OF PROCEDURES THAT EACH PURCHASING AGENCY SHALL USE IN ACCEPTING THE FORM AND EVALUATING THE SUPPLIER. EACH PURCHASING AGENCY CREATED PURSUANT TO THIS SECTION SHALL SUBMIT A QUARTERLY REPORT TO THE EXECUTIVE DIRECTOR REGARDING THE QUANTITY AND TYPE OF GOODS AND SERVICES PROCURED DURING THE PRIOR QUARTER. SUCH REPORT SHALL INCLUDE A DESCRIPTION OF ANY INSTANCE WHERE A CONTRACTOR FAILED TO DELIVER A GOOD OR SERVICE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT. THE REPORTING REQUIREMENTS ESTABLISHED IN THIS SUBSECTION (3) SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER REPORTING REQUIREMENTS ESTABLISHED IN THIS CODE.

PART 4 STATE PROCUREMENT RULES

- 24-102-401. STATE PROCUREMENT RULES.
- (1) RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF SECTION 24-4-103.
 - (2) THE EXECUTIVE DIRECTOR MAY DELEGATE HIS POWER TO PROMULGATE RULES.
 - (3) NO RULE 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 5 COORDINATION

- 24-102-501. COLLECTION OF DATA CONCERNING PUBLIC PROCUREMENT. ALL USING AGENCIES SHALL FURNISH SUCH REPORTS AS THE EXECUTIVE DIRECTOR MAY REQUIRE CONCERNING USAGE, NEEDS, AND STOCKS ON HAND, AND THE EXECUTIVE DIRECTOR SHALL HAVE AUTHORITY TO PRESCRIBE FORMS TO BE USED BY THE USING AGENCIES IN THE REQUISITIONING, ORDERING, AND REPORTING OF SUPPLIES, SERVICES, AND CONSTRUCTION.
- 24-102-502. PROCUREMENT ADVISORY COUNCIL - SUNSET REVIEW (REPEALED)

ARTICLE 103 SOURCE SELECTION AND CONTRACT FORMATION

PART 1 DEFINITIONS

24-103-101. DEFINITIONS.

AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "COST-REIMBURSEMENT CONTRACT" MEANS A CONTRACT UNDER WHICH A CONTRACTOR IS REIMBURSED FOR COSTS WHICH ARE ALLOWABLE AND ALLOCABLE IN ACCORDANCE WITH THE CONTRACT TERMS AND THE PROVISIONS OF THIS CODE AND A FEE, IF ANY.
- (2) "ESTABLISHED CATALOGUE PRICE" MEANS THE PRICE INCLUDED IN A CATALOGUE, PRICE LIST, SCHEDULE, OR OTHER FORM THAT:
 - (A) IS REGULARLY MAINTAINED BY A MANUFACTURER OR CONTRACTOR; AND
 - (B) IS EITHER PUBLISHED OR OTHERWISE AVAILABLE FOR INSPECTION BY CUSTOMERS; AND
 - (C) STATES PRICES AT WHICH SALES ARE CURRENTLY OR WERE LAST MADE TO A SIGNIFICANT NUMBER OF ANY CATEGORY OF BUYERS OR BUYERS CONSTITUTING THE GENERAL BUYING PUBLIC FOR THE SUPPLIES OR SERVICES INVOLVED.
- (3) "LOW RESPONSIBLE BIDDER" MEANS ANY PERSON WHO HAS BID IN COMPLIANCE WITH THE INVITATION TO BID AND WITHIN THE REQUIREMENTS OF THE PLANS AND SPECIFICATIONS FOR A PUBLIC CONTRACT WHO IS THE LOW BIDDER AND WHO HAS FURNISHED BONDS OR THEIR EQUIVALENT IF REQUIRED BY LAW.
- (3.5) "LOW TIE BIDS" MEANS LOW RESPONSIBLE BIDS FROM BIDDERS THAT ARE IDENTICAL IN AMOUNT AND THAT MEET ALL THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BIDS PURSUANT TO THIS CODE.

- (4) "PROFESSIONAL SERVICES" MEANS SERVICES OF ACCOUNTANTS, CLERGY, PHYSICIANS, LAWYERS, AND DENTISTS AND SUCH OTHER SERVICES AS MAY BE PROCURED THROUGH AGENTS OF THOSE SERVICES, EXCLUDING THOSE PROFESSIONAL SERVICES AS DEFINED IN SECTION 24-30-1402, AS THE EXECUTIVE DIRECTOR MAY BY RULE DESIGNATE AS PROFESSIONAL SERVICES.
- (5) "PURCHASE DESCRIPTION" MEANS THE WORDS USED IN A SOLICITATION TO DESCRIBE THE SUPPLIES, SERVICES, OR CONSTRUCTION TO BE PURCHASED, AND INCLUDES SPECIFICATIONS ATTACHED TO, OR MADE A PART OF, THE SOLICITATION.
- (6) "RESIDENT BIDDER" MEANS:
 - (A) A PERSON OR BUSINESS THAT IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO AND THAT MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN COLORADO; OR
 - (B) A PERSON OR BUSINESS THAT IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO, THAT MAINTAINS A PLACE OF BUSINESS IN COLORADO, AND THAT HAS FILED COLORADO UNEMPLOYMENT COMPENSATION REPORTS IN AT LEAST SEVENTY-FIVE PERCENT OF THE EIGHT QUARTERS IMMEDIATELY BEFORE BIDDING ON A CONTRACT.

R-24-103-101-01

Terms Defined in This Chapter.

As used in this chapter, unless the context otherwise requires:

- (a) "Acceptable Bid" means an offer submitted by any person in response to an Invitation for Bid 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.
- (b) "Adequate Competition" exists if a competitive sealed bid or competitive sealed proposal has been conducted and at least two responsible and

responsive offerors have independently competed to provide the State's needed product or services. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines, in writing that such competition is not adequate.

- (c) "Alternate Bid" means an offer submitted by any person in response to an Invitation for Bid issued by the State that is in essential compliance with the solicitation terms and conditions but which may offer an alternate that does not significantly deviate from the required specifications contained in the solicitation. The soliciting agency would be responsible for determining whether an alternate bid is acceptable.
- (d) "Competitive Negotiation" means the process of discussion and issue resolution between a procurement official and a prospective vendor in order to arrange for the providing of a product or service needed by the State. If more than one vendor is available for such negotiation, the needs of the State must be clearly defined in advance of any negotiations, via a specification that details fully the State's intended procurement.
- (e) "Cost of Ownership Life Cycle Analysis" means an accounting of the estimated total cost of ownership, including but not limited to: initial costs, operational costs, longevity, stranded utility costs, and service and disposal costs, along with an assessment of life-cycle environmental, health and energy impacts resulting from new material extraction, transportation, manufacturing, use, and disposal.
- (f) "Documented Quotation" or "Request for Quotation (RFQ)" is a process of soliciting informally for fulfilling the State's need for a specific product(s) or service(s) and receiving and evaluating vendor responses. The dollar limits for use of documented quotations shall be as stated in the Section on Small Purchases and

shall be conducted only by a procurement officer or designee.

- (g) “Environmentally Preferable Products” - means products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider such factors as the availability of any raw materials used in the product or service being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product or service being purchased.
- (h) “Nationally Recognized Third-party Certification Entity” means a voluntary, multiple criteria-based program that awards a certification after independently reviewing the product or service on its cost of ownership and life cycle and meets criteria for overall environmental preferability and product function characteristics. The Governor’s Energy Office or any successor office maintains a listing of eligible entities.
- (i) "Request for Proposals (RFP)" is the commonly used name for competitive sealed proposals. Formal RFPs shall be used in all cases where the total expected cost of the procurement is in excess of the small purchase threshold and the provisions of §24-101-203 apply. Procurements for which the resulting contract is expected to be for more than one fiscal period must take into account the costs for the full life of any resulting contract to determine total expected cost.
- (j) “Responsible Vendor” 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.

- (k) "Sealed" means that the Bid, Proposal, or Best Value Bid must be submitted in a manner that:
 - (i) Ensures that the contents of the bid, proposal, or best value bid cannot be opened or viewed before the formal bid opening without leaving evidence that the document has been opened or viewed; and
 - (ii) Ensures that the document cannot be changed, once received by the State, without leaving evidence that the document has been changed; and
 - (iii) Bears a physical or electronic signature evincing an intent by the bidder or offeror to be bound. An electronic signature must comply with the definitions and requirements set forth in the Government Electronic Transactions Act, §24-71.1-101 et seq. CRS and its implementing rules; and
 - (iv) Records, manually or electronically, the date and time the bid, proposal, or best value bid is received by the state and that cannot be altered without leaving evidence of the alteration.

- (l) "Substitute Bid" means an offer submitted by any person in response to an Invitation for Bid that is not in substantive compliance with the terms and conditions and specifications of the solicitation as issued. A substitute bid, by this definition, would generally be considered non-responsive to the requirements of the solicitation and would serve the sole purpose of advising the soliciting agency that a different specification could be used to provide the desired or similar product or service. The soliciting agency would be responsible for determining whether the substitute language would be justification for canceling the bid and re-soliciting.

PART 2 METHODS OF SOURCE SELECTION

24-103-201. METHODS OF SOURCE SELECTION.

- (1) UNLESS OTHERWISE AUTHORIZED BY LAW, ALL STATE CONTRACTS SHALL BE AWARDED BY COMPETITIVE SEALED BIDDING PURSUANT TO SECTION 24-103-202, EXCEPT AS PROVIDED IN:
 - (A) SECTION 24-103-203, CONCERNING AWARDS BY COMPETITIVE SEALED PROPOSALS;
 - (A.5) SECTION 24-103-202.3, CONCERNING COMPETITIVE SEALED BEST VALUE BIDDING;
 - (B) SECTION 24-103-204, CONCERNING SMALL PURCHASES;
 - (C) SECTION 24-103-205, CONCERNING SOLE SOURCE PROCUREMENTS;
 - (D) SECTION 24-103-206, CONCERNING EMERGENCY PROCUREMENTS;
 - (E) PART 14 OF ARTICLE 30 OF THIS TITLE, CONCERNING ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, AND LAND SURVEYING SERVICES.
 - (F) SECTION 24-103-208, CONCERNING OTHER PROCUREMENT METHODS.

24-103-202. COMPETITIVE SEALED BIDDING.

- (1) CONTRACTS SHALL BE AWARDED BY COMPETITIVE SEALED BIDDING EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-103-201.
- (2) (A) AN INVITATION FOR BIDS SHALL BE ISSUED AND SHALL INCLUDE A PURCHASE DESCRIPTION AND ALL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE PROCUREMENT.
 - (B) AN INVITATION FOR BIDS FOR A CONTRACT FOR THE PURCHASE OF SUPPLIES SHALL ALSO STATE THE REQUIRED PROCEDURES AND CRITERIA FOR AWARDED 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, BUT IN THE CASE OF CONSTRUCTION AT LEAST FOURTEEN DAYS, PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF BIDS, PURSUANT TO RULES. SUCH NOTICE MAY INCLUDE PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.
- (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, EXCEPT AS OTHERWISE PROVIDED FOR CERTAIN LOW TIE BIDS UNDER SECTION 24-103-202.5. IN THE EVENT THAT ALL BIDS FOR A CONSTRUCTION PROJECT EXCEED AVAILABLE FUNDS, AS CERTIFIED BY THE APPROPRIATE FISCAL OFFICER, THE HEAD OF A PURCHASING AGENCY IS AUTHORIZED, IN SITUATIONS WHERE TIME OR ECONOMIC CONSIDERATIONS PRECLUDE RESOLICITATION OF WORK OF A REDUCED SCOPE, TO NEGOTIATE AN ADJUSTMENT OF THE BID PRICE WITH THE LOW RESPONSIBLE BIDDER IN ORDER TO BRING THE BID WITHIN THE AMOUNT OF AVAILABLE FUNDS; EXCEPT THAT THE FUNCTIONAL SPECIFICATIONS INTEGRAL TO COMPLETION OF THE PROJECT MAY NOT BE REDUCED IN SCOPE, TAKING INTO ACCOUNT THE PROJECT PLAN, DESIGN, AND SPECIFICATIONS AND QUALITY OF MATERIALS.
- (8) WHEN IT IS CONSIDERED IMPRACTICAL TO INITIALLY PREPARE A PURCHASE DESCRIPTION TO SUPPORT AN AWARD BASED ON PRICE, AN INVITATION FOR BIDS MAY BE ISSUED REQUESTING THE SUBMISSION OF UNPRICED OFFERS TO BE FOLLOWED BY AN INVITATION FOR BIDS LIMITED TO THOSE BIDDERS WHOSE OFFERS HAVE BEEN QUALIFIED UNDER THE CRITERIA SET FORTH IN THE FIRST SOLICITATION.

- (9) THE PROVISIONS OF SUBSECTIONS (4), (5), AND (6) OF THIS SECTION SHALL ALSO APPLY TO CONSTRUCTION AND SHALL BE IN ADDITION TO ANY OTHER REQUIREMENTS FOR COMPETITIVE SEALED BIDDING FOR CONSTRUCTION AS PROVIDED FOR IN THIS TITLE.

R-24-103-202a
R-24-103-202a-01

Competitive Sealed Bidding (other than construction)
Invitation for Bids

- (a) Bidding Policy. It shall be the policy of the State of Colorado to purchase products, commodities, services, and construction in a manner that affords businesses a fair and equal opportunity to compete.
- (b) Specifications. Purchasing agencies shall issue product, supply, service, or construction specifications which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists shall only be used in accordance with the provisions of Rules R-24-104-202, -01, -02.

Purchasing agencies may utilize life cycle costing and/or value analysis in determining the lowest responsible bidder. In bids where life cycle costing or value analysis is to be used, the specifications shall indicate the procedure and valuative factors to be considered.

When appropriate, specifications issued and/or used by the federal government, other public procurement units or professional organizations may be referenced by the State of Colorado. Bidders may be required to certify that these standardized specifications have been met.

- (c) Solicitation Time. Except as provided under emergency procedures, the minimum time for the bid opening date shall be not less than 14 calendar days after posting solicitations on BIDS. When special requirements or conditions exist, the head of a purchasing agency may lengthen or shorten the bid time, but in no case shall the time cycle be shortened to reduce

competition. Solicitation periods of less than 14 calendar days shall be documented by the head of the purchasing agency as to why a reduced bid period was required.

R-24-103-202a-02

Pre-bid Conferences.

Pre-Bid Conferences. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced on BIDS. The conference should be held long enough after the Invitation for Bid has been issued, to allow bidders to become familiar with it, but with adequate time before bid opening to allow bidders consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment, posted on BIDS.

R-24-103-202a-03

Amendments to Invitations for Bids

Amendments to Invitations for Bids shall be identified as such and may require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends. Amendments shall be posted on BIDS with sufficient time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation prior to bid opening, such time shall be increased in the amendment.

R-24-103-202a-04

Withdrawal of Bids

- (a) Withdrawal of Bids Prior to Bid Opening. Any bid may be withdrawn from the appropriate purchasing agency prior to the specified bid opening date and time.
- (b) Withdrawal of Bids after Bid Opening but Prior to Award. The Director or head of a purchasing agency may allow a bid to be withdrawn after bid opening but prior to award provided:
 - (i) the bidder provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or
 - (ii) the mistake is clearly evident on the face of the bid; and

- (iii) it is found to be (by the Director or head of the purchasing agency) unconscionable not to allow the bid to be withdrawn.
- (c) Procedure. Bids may be withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. A telegraphic withdrawal received by telephone from the telegraph company, prior to bid opening, will be effective if the telegraph company confirms the message by sending a copy of the telegram showing that the message was received at such office prior to bid opening.

R-24-103-202a-05

Telephone Bids.

Telephone bids from vendors will not be accepted, except as allowed in Rule R-24-103-204-03 and unless the Director or head of a purchasing agency makes a written determination that market conditions are of such nature that it is in the best interest of the State to solicit telephone bids.

Comment: An example of when the Director or head of a purchasing agency may approve telephone bids is in the procurement of petroleum fuels where the market price may change on a daily basis.

R-24-103-202a-06

Electronic Bids.

Bids may be submitted electronically when: The terms of the solicitation expressly permit electronic submission and the requirements of one of the following statutes or rules are met: R 24-103-101-01(h), §24-103-204 CRS, or §24-103-206 CRS.

R-24-103-202a-07

Timeliness of Bids.

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

- (a) If prior to a specified opening time and date, the mail, either directly by the post office or by

internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All Invitations for Bids utilizing this exception must so state in the terms and conditions of the Invitation for Bids.

- (b) In the event of a labor unrest (strike, work slow down, etc.) which may affect mail delivery, the Director is authorized to develop and issue emergency procedures.
- (c) In any other situation that is beyond the control of the state or the vendor, the director or the head of a purchasing agency shall rule on the acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) Are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202a-08

Bid Receipt, Opening, and Recording

- (a) Receipt. Upon receipt, each bid and modification shall be time-stamped by machine or by hand and shall be stored in a secure place until bid opening time. Bids and modifications shall not be opened upon receipt, except that unidentified bids and modifications may be opened for identification purposes. The purchasing employee will immediately reseal the bid or modification and attest in writing that

the employee has not revealed the contents of the envelope.

- (b) Opening and Recording. All bid openings shall be open to the public and/or interested parties. Bids and modifications shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the Invitation for Bids. The name of each bidder, the bid price(s) (unless otherwise provided in the Invitation for Bids), and other information deemed appropriate by the Procurement Officer shall be read aloud at the time of bid opening.

Reading of all bid item prices may not be reasonable or desired (e.g., in the case of lengthy or complex bids). The decision not to read all bid prices shall be made by the Procurement Officer and shall be stated in the Invitation for Bids.

The name of each bidder, amount of bid, delivery, names(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection. Prior to award, copies of pricing information not read aloud at the bid opening shall be made reasonably available for inspection, if requested. Other information related to a bid, or a bidder's responsiveness, may be withheld from inspection until such determinations have been made. After award, all bid documents, and a complete bid analysis, shall be open to public inspection except to the extent the State has approved a bidder's request that trade secrets or other proprietary data be held confidential as set forth below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.

- (c) Confidential Data. The Procurement Officer shall determine the validity of any written requests for nondisclosure of trade secrets and

other proprietary data. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder(s) in writing what portions of the bids will be disclosed, and that unless the bidder protests under Article 109, Part 1, of the Colorado Procurement Code, the bids will be so disclosed.

After award, the bids shall be open to public inspection subject to any continued prohibition on the disclosure of confidential data.

R-24-103-202a-09

Mistakes in Bids

- (a) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be withdrawn if the conditions set forth in this section are met, provided that no correction or withdrawal of bids shall be allowed after award.
- (b) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include the failure of a bidder to:
 - (i) return the number of signed bids required by the Invitation for Bids;
 - (ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;
 - (iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

- (A) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - (B) the amendment involved had a negligible affect on price, quantity, quality, or delivery.
- (c) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices and transposition errors.
- (d) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- (e) Determinations Required. Any decision to permit or deny correction or withdrawal of a bid under this section shall be supported by a written determination prepared by the director or head of a purchasing agency or their designee.

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.

- (d) Environmentally Preferable Products. The provisions of 24-103-207.5 CRS, which require a preference for environmentally preferable products apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of 24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency's existing budget.

R-24-103-202a-11

Disposition of Bid Surety.

If a bid is withdrawn in accordance with this section, any bid surety shall be returned to the bidder in a timely manner.

R-24-103-202a-12

Multi-Step Sealed Bidding.

- (a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the State. The second phase will consider only those bidders whose technical

offers were determined to be acceptable during the first phase and, therefore, their price bids will be opened and considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

- (b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare, initially, a definitive purchase description which would be suitable to permit an award based on price.

R-24-103-202a-13

Records.

All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b

Competitive Sealed Bidding - Construction

R-24-103-202b-01

General Provisions.

- (a) Extension of Time for Bid or Proposal Acceptance. After opening bids, the Procurement Officer may request low bidders to extend the time during which the State may accept their bids, provided that no other change is permitted. The reasons for requesting such extension shall be documented.
- (b) One Bid Received. If only one responsive bid is received in response to an Invitation for Bid (including multi-step bidding), an award may be made to the single bidder if the Procurement Officer finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Rule R-24-103-301, (Cancellation of Solicitations; Rejection of Bids or Proposals) and

- (i) new bids may be solicited;
 - (ii) the proposed procurement may be cancelled; or
 - (iii) if the Director or head of a purchasing agency determines in writing that the need for the construction continues but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Rule R-24-103-205 (Sole Source Procurement) or Rule R-24-103-206 (Emergency Procurements), as appropriate.
- (c) Multiple or Alternate Bids. The solicitation shall prohibit multiple or alternate bids unless such bids are specifically provided. When prohibited the multiple or alternate bids shall be rejected although a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.
- (d) Combining Bids or Offers Not Acceptable. Any bid or offer which is conditioned upon receiving award of both the particular contract being solicited and another State contract shall be deemed nonresponsive and not acceptable.
- (e) Affiliates are prohibited from submitting bids for the same contract. Affiliates are defined as any individuals, partnerships, corporations, joint ventures, companies, firms, contractors or other legal entities, if directly or indirectly, either (i) one controls or can control the other, or (ii) a third controls or can control both.
- (f) Purchase of Items Separately from Construction Contract. The Director or head of a purchasing agency is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.
- (g) Standard Forms. All construction bidding and contracting procedures shall utilize standard

State of Colorado forms which are listed below or their revisions and are available from Central Stores, Division of Central Services, Department of Personnel:

- (i) State Form SC-6.11; Advertisement for Bids
- (ii) State Form SC-6.12; Information for Bidders
- (iii) State Form SC-6.13; Proposal
- (iv) State Form SC-6.14; Bid Bond
- (v) State Form SC-6.15; Notice of Award
- (vi) State Form SC-6.21; Agreement
- (vii) State Form SC-6.22; Performance Bond
- (viii) State Form SC-6-221; Labor and Material Payment Bond
- (ix) State Form SC-6.23; The General Conditions of the Contract
- (x) State Form SC-6.26; Notice to Proceed
- (xi) State Form SC-6.27; Notice of Acceptance
- (xii) State Form SC-7.3; Notice of Contractor's Settlement

Any changes or modifications of the printed state forms, including General Conditions of the Contract, shall not be deemed valid unless issued in the form of Supplementary General Conditions and approved by the Principal Representative and the State Buildings Section.

R-24-103-202b-02.

Invitation for Bids.

- (a) Content. The Invitation for Bids shall include the following:
 - (i) instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information.
 - (ii) the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance

- requirements not included in the purchase description; and
- (iii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
- (b) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
- (c) Acknowledgment of Addenda. The Invitation for Bids shall require the acknowledgment of the receipt of all addenda issued.
- (d) Bidding Time. Bidding time is the period of time between the date of the Advertisement for Bids and the date set for opening of bids. In each case bidding time will be set up to provide bidders a reasonable time to prepare their bids, but in no event shall this time be less than fourteen days as provided in Section 24-103-202 (3).

R-24-103-202b-03

Bidder Submissions.

- (a) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.
Bidders must execute and submit bids on the form as prescribed by the Department of Personnel, State Buildings Section, and as specified by the Invitation for Bids. A bid received on any other form will be cause for that bid being deemed unresponsive.
- (b) Telegraphic Bids. Telegraphic Bids and mailgrams will not be accepted or considered, but will be rejected.

R-24-103-202b-04

Public Notice.

- (a) Distribution. Notice of the Invitation for Bids will be advertised according to the provisions of Section 24-70-101 through 107 and these Rules.

The Notice will be advertised in The Daily Journal, Denver, Colorado, and in a newspaper

of general circulation which is printed and published in the municipality nearest the location of the construction site as described in the Invitation for Bids. Publication of the advertisement shall occur twice, one week apart. Additionally, a copy of the Advertisement for Bids shall be sent to the Colorado Minority Business Development Agency, with a set of Bid Documents attached thereto. Nothing in these rules shall prevent the Procurement Officer from advertising or otherwise giving public notice in additional media and locations; and/or more than twice as described above.

The Notice of the Invitation for Bids shall include the following information and statements:

- (i) date, time and location of the bid opening
 - (ii) project number, name and location
 - (iii) project time of completion
 - (iv) location where Bidding Documents may; be obtained
 - (v) deposit required, if any, for a complete set of Contract Documents
 - (vi) "Preference shall be given to Colorado resident bidders and for Colorado labor as provided by law."
 - (vii) "The rate of wages to be paid for all laborers and mechanics shall be in accordance with the applicable Davis-Bacon rates of wages for the project. Such rates will be specified in the General Documents."
 - (viii) any other appropriate information. A copy of the Invitation for Bid shall be made available for public inspection at the office of the State Buildings Section.
- (b) Pre-Bid Conferences. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be

held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written addendum as provided in Rule R-24-103-202b-05 (Addenda to Invitations for Bids) and the Invitation for Bids and the notice of the pre-bid conference shall so provide.

R-24-103-202b-05

Addenda to Invitation for Bids.

- (a) Form. Addenda to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The addenda shall reference the portions of the Invitation for Bids it amends.
- (b) Distribution. Addenda shall be sent to all prospective bidders known to have received an Invitation for Bids.
- (c) Timeliness. Addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.

R-24-103-202b-06

Pre-Opening Modification or Withdrawal of Bids.

- (a) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.
- (b) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.
- (c) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

R-24-103-202b-07

Timeliness of Bids

Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The following exceptions are permitted by the director or head of a purchasing agency:

- (a) If prior to a specified opening time and date, the mail, either directly by the post office or by

internal distribution system, has not been delivered, any bid received by the next same-day delivery may be accepted if it is reasonable to believe the bid response was in the delivery process which was not completed prior to the opening time and date. All invitations for bids utilizing this exception must so state in the terms and conditions of the invitation for bids.

- (b) In the event of a labor unrest (strike, work slow down, etc.) which may affect mail delivery, the director is authorized to develop and issue emergency procedures.
- (c) In any other situation that is beyond the control of the state or the vendor, the director or the head of a purchasing agency shall rule on the acceptability of the bid. However, under no circumstances shall a late bid be accepted if the bid was still within the control of the vendor at the time the bid opening actually occurred.

In those situations where the late bid was not in the control of the vendor at the time of the bid opening, the director or head of a purchasing agency shall not accept the late bid unless he/she further finds that extraordinary circumstances exist. The responsibility for ensuring that the bid is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids.

R-24-103-202b-08

Receipt, Opening, and Recording of Bids.

- (a) Receipt. Upon receipt, all bids and modifications will be date and time-stamped but not opened.
- (b) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, attendees received, alternatives, bid security, time of completion, and such other information

as is deemed appropriate by the Procurement Officer, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and addresses of required witnesses shall also be recorded at the opening. The opened bids shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection R-24-103-202b-08(c) of this Section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non confidential portion of the bid.

- (c) Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Such requests shall be submitted by the bidder prior to the bid opening under separate cover. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bids will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the State Procurement Code, the bids will be so disclosed. The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

R-24-103-202b-09 Mistakes in Bids.

- (a) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent it is

not contrary to the interest of the State or the fair treatment of other bidders.

- (b) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Rule R-24-103-202b-06 (Pre-Opening Modification or Withdrawal of Bids).
- (c) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid reasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Sub-section R-24-103-202b-09 (d) (i) through R-24-103-202b-09 (d) (iii) of this Section are met.
- (d) Mistakes Discovered After Opening But Before Award. This Sub-section sets forth procedures to be applied in three situations described in Sub-section R-24-103-202b-09(d)(i) through R-24-103-202b-09(d)(iii) below in which mistakes in bids are discovered after opening but before award.
 - (i) minor informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice or other bidders. The Procurement officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State.
 - (ii) mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending

- unit prices, transposition errors, and arithmetical errors.
 - (iii) mistakes where intended correct bid is not evident. A bidder may be permitted to withdraw a low bid if:
 - (A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, or
 - (B) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
 - (e) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Director or the head of a purchasing agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected or the bid withdrawn.
 - (f) Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied under Sub-sections R-24-103-202b-09(d) or R-24-103-202b-09(e) of this Section, the Director or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations, except that the Procurement Officer shall prepare the determination required under Sub-section R-24-103-202b-09(i) of this Section.

R-24-103-202b-10

Bid Evaluation and Award

- (a) General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." See Sections 24-103-202 (5) and (7) of the State Procurement Code. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest requirements or criteria that are not disclosed in the Invitation for Bid.
- (b) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used

in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

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

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

- (c) Determination of Lowest Bidder. Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future cost, but to the extent possible such evaluation factors shall:
 - (i) be reasonable estimates based upon information the State has available concerning future use; and
 - (ii) treat all bids equitably.
- (d) 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.

- (e) Low Tie Bids. Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. In the discretion of the Director or the head of a purchasing agency, award shall be made in any permissible manner that will discourage tie bids. The office of the Attorney General shall be notified of any tie bids in an amount greater than \$1,000.

R-24-103-202b-11

Multi-Step Sealed Bidding.

- (a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
- (b) Conditions for Use. The multi-step sealed bidding method will be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price.
- (c) Procedure for Phase One of Multi-Step Sealed Bidding.
 - (i) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Rule R-24-103-202b-02 (Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in Section R-24-103-202b-02, the multi-step Invitation for Bids shall state:

- (A) that un-priced technical offers are requested;
 - (B) whether price bids are to be submitted at the same time as un-priced technical offers; if they are, such price bids shall be submitted in a separate sealed envelope;
 - (C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical offers are found acceptable in the first phase;
 - (D) the criteria to be used in the evaluation of un-priced technical offers;
 - (E) that the State, to the extent the Procurement Officer finds necessary, may conduct oral or written discussions of the un-priced technical offers;
 - (F) that bidders may designate those portions of the un-priced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and
 - (G) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
- (ii) Addenda to the Invitation for Bids. After receipt of un-priced technical offers, addenda to the Invitation for Bids shall be distributed only to bidders who submitted un-priced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated addendum will

significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Rule R-24-103-301 (Cancellation of Solicitations; Rejections of Bids or Proposals) of this Chapter and a new Invitation for Bids issued.

- (iii) Receipt of Handling of Un-priced Technical Offers. Un-priced technical offers shall not be opened publicly but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request non-disclosure of trade secrets and other proprietary data identified in writing.
- (iv) Evaluation of Un-Priced Technical Offers. The un-priced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The un-priced technical offers shall be categorized as:
 - (A) acceptable;
 - (B) potentially acceptable; that is, reasonably susceptible of being made acceptable; or
 - (C) unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable un-priced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Sub-

section R-24-103-202b-11 (c) (v) of this Section.

(v) Discussion of Un-priced Technical Offers.

Discussion of its technical offer may be conducted by the Procurement Officer with any bidder who submits an acceptable, or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one un-priced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable, may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

(vi) Notice of Unacceptable Un-priced Technical Offer. When the Procurement Officer determines a bidder's un-priced technical offer to be unacceptable, such bidder shall not be afforded an additional opportunity to supplement technical offers.

(vii) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during Phase One:

(A) before un-priced technical offers are considered;

(B) after any discussions have commenced under Section R-24-103-202b-11(c)(v)

(Procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Un-priced Technical Offers); or

- (C) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Rule R-24-103-202b-09 (Mistakes in Bids).
- (d) Procedure for Phase Two.
 - (i) Initiation. Upon the completion of Phase One, the Procurement Officer shall either:
 - (A) open price bids submitted in Phase One (if price bids were required to be submitted) from bidders whose un-priced technical offers were found to be acceptable; or
 - (B) if price bids have not been submitted, technical discussions have been held, or amendments to the Invitation for Bids have been issued, invite each acceptable bidder to submit a price bid.
 - (ii) Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:
 - (A) as specifically set forth in Rule R-24-103-202b-11 (Multi-Step Sealed Bidding) through this Section;
 - (B) no public notice need be given of this invitation to submit price bids because such notice was previously given;
 - (C) after award the un-priced technical offer of the successful bidder shall be disclosed as follows:

The Procurement Officer shall examine written requests of confidentially for trade secrets and proprietary data in the technical offer of said bidder to

determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder in writing what portion of the un-priced technical offer will be disclosed and that, unless the bidder protests under Article 109 (Remedies) of the State Procurement Code, the offer will be so disclosed. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

- (D) un-priced technical offers of bidder who are not awarded the contract shall not be open to public inspection unless the Director or head of a purchasing agency determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process; provided, however, that the provisions of paragraph (C) above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

24-103-202.3 COMPETITIVE SEALED BEST VALUE BIDDING.

- (1) WHEN, PURSUANT TO RULES, THE STATE PURCHASING DIRECTOR, THE HEAD OF A PURCHASING AGENCY, OR A DESIGNEE OF EITHER OFFICER WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER DETERMINES IN WRITING THAT THE USE OF COMPETITIVE SEALED BEST VALUE BIDDING IS ADVANTAGEOUS TO THE STATE, A CONTRACT

MAY BE ENTERED INTO BY COMPETITIVE SEALED BEST VALUE BIDDING.

- (2) AN INVITATION FOR BIDS UNDER COMPETITIVE SEALED BEST VALUE BIDDING SHALL BE MADE IN THE SAME MANNER AS PROVIDED IN SECTION 24-103-202 (2), (3), AND (4).
- (3) (A) THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY MAY ALLOW A BIDDER TO SUBMIT PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO THE BASE BID FOR A COMMODITY OR SERVICE THAT WILL RESULT IN A PRODUCT OR SERVICE TO THE STATE HAVING THE BEST VALUE AT THE LOWEST COST. THE INVITATION FOR BIDS FOR COMPETITIVE SEALED BEST VALUE BIDDING MUST CLEARLY STATE THE PURCHASE DESCRIPTION OF THE COMMODITY OR SERVICE BEING SOLICITED AND THE TYPES OF ENHANCEMENTS, OPTIONS, OR ALTERNATIVES THAT MAY BE BID; EXCEPT THAT THE FUNCTIONAL SPECIFICATIONS INTEGRAL TO THE COMMODITY OR SERVICE MAY NOT BE REDUCED.
(B) PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO THE BID MAY BE EVALUATED BY THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY TO DETERMINE WHETHER THE TOTAL OF THE BID PRICE AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES PROVIDE A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST TO THE STATE. THIS EVALUATION SHALL BE MADE UTILIZING THE RULES OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL PROMULGATED PURSUANT TO PARAGRAPH (D) OF THIS SUBSECTION (3).
(C) A CONTRACT MAY BE AWARDED TO A BIDDER WHERE THE TOTAL AMOUNT OF A BID PRICE AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES OF THE BIDDER EXCEED THE TOTAL AMOUNT OF THE BID PRICE

AND THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES OF ANOTHER BIDDER IF IT IS DETERMINED PURSUANT TO PARAGRAPH (B) OF THIS SUBSECTION (3) THAT THE HIGHER TOTAL AMOUNT PROVIDES A CONTRACT WITH THE BEST VALUE AT THE LOWEST COST TO THE STATE.

(D) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL PROMULGATE RULES TO BE UTILIZED BY THE STATE PURCHASING DIRECTOR OR THE HEAD OF A PURCHASING AGENCY IN MAKING THE EVALUATION PURSUANT TO PARAGRAPH (B) OF THIS SUBSECTION (3). THE RULES SHALL PROVIDE:

- (I) CRITERIA FOR OBJECTIVELY MEASURING PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES TO A BID, INCLUDING RELEVANT FORMULAS OR GUIDELINES;
 - (II) CRITERIA FOR OBJECTIVELY DETERMINING WHETHER THE PRICES FOR ENHANCEMENTS, OPTIONS, OR ALTERNATIVES PROVIDE THE BEST VALUE AT THE LOWEST COST TO THE STATE.
- (4) 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 EXCEPT AS OTHERWISE PROVIDED FOR CERTAIN LOW TIE BIDS UNDER SECTION 24-103-202.5.

R-24-103-202.3-01

Definitions.

- (a) Base bid means the minimum functional requirements set forth in the bid, as issued by the state.
- (b) Enhancements means components, services, or products that exceed the minimum functional requirements and would improve the quality of

the goods or services being procured by the state.

- (c) Options means choices of additional components, services, or products that would serve to provide increased value to the state beyond the base bid.
- (d) Alternatives means a choice of a different commodity or service that meets or exceeds the functional requirements of the base bid.
- (e) Best value means the lowest overall cost to the state after taking into consideration costs, benefits, and savings.

R-24-103-202.3-02

Written Determination.

When best value bidding selection process is to be used, the State Purchasing Director or head of a purchasing agency shall make a written determination that the use of best value bidding is appropriate for the commodity or service being solicited.

R-24-103-202.3-03

Award

When the best value bidding process is used, award shall be made to the responsible offeror whose bid results in the best value to the state. The bid, as awarded, must meet the minimum functional requirements in the base bid.

R-24-103-202.3-04

Evaluation.

Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these specifications shall be determined to be responsive. When a written determination has been made that best value bidding is appropriate for the commodity or service being solicited, the invitation for bids shall expressly allow for enhancements, options, and/or alternatives and shall set forth the objective criteria or formula to be used for evaluation, and the invitation for bid shall require that prices be stated for all options, enhancements, and/or alternatives. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives. Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which

enhancements, options, or alternatives best meet the needs of the state, an award shall be made to the bidder providing the best value to the state.

24-103-202.5 LOW TIE BIDS - AWARD PROCEDURE AND DETERMINATION - BID PREFERENCE.

- (1) IF LOW TIE BIDS ARE RECEIVED IN RESPONSE TO AN INVITATION FOR BIDS FOR A SUPPLY CONTRACT, THE FOLLOWING PROCEDURES ARE REQUIRED:
 - (A) IF THE LOW TIE BIDS ARE FROM A RESIDENT BIDDER AND A NONRESIDENT BIDDER, THE RESIDENT BIDDER SHALL BE GIVEN A PREFERENCE OVER THE NONRESIDENT BIDDER;
 - (B) IF THE LOW TIE BIDS ARE FROM RESIDENT BIDDERS, THE PROCUREMENT OFFICER SHALL:
 - (I) USE A FAIR AND REASONABLE PROCEDURE FOR DETERMINING WHICH BIDDER RECEIVES THE CONTRACT AWARD THAT AT A MINIMUM PROVIDES FOR THE PRESENCE, AT THE TIME AND PLACE THE DETERMINATION IS MADE, OF THE BIDDERS OR THE BIDDERS' REPRESENTATIVES AND AN IMPARTIAL WITNESS DESIGNATED BY THE PROCUREMENT OFFICER WHO IS NOT AN EMPLOYEE OF THAT PROCUREMENT OFFICER'S AGENCY; AND
 - (II) GIVE THE BIDDERS AT LEAST FIVE BUSINESS DAYS' WRITTEN NOTICE BY CERTIFIED MAIL OF THE DATE THE DETERMINATION WILL BE MADE, OF THE PROCEDURE FOR MAKING THE DETERMINATION, AND THAT THE BIDDERS OR THE BIDDERS' REPRESENTATIVES MAY BE PRESENT WHEN THE DETERMINATION IS MADE;
 - (C) IF THE LOW TIES BIDS ARE ONLY FROM NONRESIDENT BIDDERS, THE PROCUREMENT OFFICER SHALL FOLLOW THE PROCEDURES IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (B) OF THIS SUBSECTION (1);
 - (D) ALL OTHER APPLICABLE PROVISIONS OF THE CODE THAT ARE NOT INCONSISTENT WITH THIS SECTION SHALL BE FOLLOWED.
- (2) IF THE PROCUREMENT OFFICER DETERMINES THAT COMPLIANCE WITH THIS SECTION WILL CAUSE DENIAL OF FEDERAL MONEYS THAT WOULD OTHERWISE BE AVAILABLE OR WOULD OTHERWISE BE INCONSISTENT WITH FEDERAL LAW, THIS SECTION

SHALL BE SUSPENDED, BUT ONLY TO THE EXTENT NECESSARY TO PREVENT DENIAL OF THE MONEYS OR TO ELIMINATE THE INCONSISTENCY WITH FEDERAL LAW.

R 24-103-202.5-01

- (a) The requirements of §24-103-202.5 CRS regarding low tie bids shall be stated in all Invitations for Bids for commodities.
 - (i) The IFB shall state that any bidder who wishes to be considered a "resident bidder" for purposes of the preference provided in §24-103-202.5 CRS shall include with his/her bid, proof that he/she meets the definition of resident bidder as set forth in either §24-103-101(6)(a) CRS or §24-103-101(6)(b) CRS.
 - (b) When low tie bids are received in response to an Invitation for Bids for commodities and tie bidders are either both/all resident bidders or both/all non-resident bidders, the State Purchasing Director or the head of a purchasing agency shall follow the procedures set forth in §24-103-202.5 and shall flip a coin or draw straws to determine which bidder receives the award, except when a valid environmentally preferable product preference exists pursuant to 24-103-207.5 CRS. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of 24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the

lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency's existing budget.

- (c) Any tie bid for personal services procured through a competitive sealed bid shall be broken by awarding the contract to the bidder utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.

24-103-203. **COMPETITIVE SEALED PROPOSALS.**

- (1) WHEN, PURSUANT TO RULES, THE EXECUTIVE DIRECTOR , THE HEAD OF A PURCHASING AGENCY, OR A DESIGNEE OF EITHER OFFICER WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER DETERMINES IN WRITING THAT THE USE OF COMPETITIVE SEALED BIDDING IS EITHER NOT PRACTICABLE OR NOT ADVANTAGEOUS TO THE STATE, A CONTRACT MAY BE ENTERED INTO BY COMPETITIVE SEALED PROPOSALS. COMPETITIVE SEALED PROPOSALS MAY BE USED FOR THE PROCUREMENT OF PROFESSIONAL SERVICES WHETHER OR NOT THE DETERMINATION DESCRIBED BY THIS SUBSECTION (1) HAS BEEN MADE. THE EXECUTIVE DIRECTOR MAY PROVIDE BY RULE THAT IT IS NEITHER PRACTICABLE NOR ADVANTAGEOUS TO THE STATE TO PROCURE SPECIFIED TYPES OF SUPPLIES, SERVICES, OR CONSTRUCTION BY COMPETITIVE SEALED BIDDING.
- (2) PROPOSALS SHALL BE SOLICITED THROUGH A REQUEST FOR PROPOSALS.

- (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 below, the competitive sealed proposal process shall be the same as the competitive Sealed Bid process.

- R-24-103-203-01 Definitions.
- (a) "Acceptable Proposal" means an offer submitted by any person in response to a Request for Proposals, 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.
 - (b) "Advantageous" means a judgmental assessment of what is in the State's best interests.
 - (c) "Practicable" means what may be accomplished or put into practical application; reasonably possible.
 - (d) "Proposal" means a response, from a vendor, to a Request for Proposals (RFP), also called a "response" or "offer".

- (e) "Request for Information (RFI)" is similar to an RFP, but is 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 readily available to write an adequate specification or work statement. An RFI may ask for vendor input to assist the State in preparing a specification or work statement for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily. The RFI must clearly state that no award will result.

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. Procurements 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.

R-24-103-203-03

When Competitive Sealed Bidding Is "Not Practicable".
Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by his or her bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include, but are not limited to:

- (a) whether the contract needs to be other than a fixed-price type;
- (b) whether it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;
- (c) whether it may be necessary to afford offerors the opportunity to revise their proposals;
- (d) whether it may be necessary to base an award on a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and
- (e) whether the primary considerations in determining award may be factors other than price alone.

R-24-103-203-04

When Competitive Sealed Bidding Is "Not Advantageous".

A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Competitive sealed bidding may be practicable, that is reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- (a) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and
- (b) whether the elements listed in the specifications are desirable rather than necessary in conducting a procurement.

R-24-103-203-05

Dollar Thresholds for, and Content of, Requests for Proposals (RFP's).

- (a) Requests for Proposals shall be issued (promulgated) by the Division of Purchasing, or agencies with delegated purchasing authority, for requirements that are estimated to exceed

small purchase thresholds, utilizing guidelines established by the Division of Purchasing

- (b) Form of Proposal. The manner and format in which proposals are to be submitted, including any forms for that purpose, shall be as set forth in the Request for Proposals.

R-24-103-203-06

Vendor Inquiries

In cases where an RFP raises questions or concerns from vendors, or may require interpretation, all known participating vendors must be given an opportunity to ask questions and to receive answers or clarifications. This may be accomplished by use of a pre-proposal conference, via a formal inquiry period, or a combination of options. If any of these options is anticipated, the RFP shall so state and shall list appropriate dates, times and locations.

Pre-proposal conferences may be mandatory or optional. However, if such meetings result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

Similarly, if responses to inquiries result in any material changes to the scope of work or otherwise affect the manner or form of response, all known potential offerors must be notified in writing of any such change.

When such written notice is given, offerors must be afforded a reasonable amount of time to review these materials, to contemplate any consequences and to consider the content for inclusion in their offers.

R-24-103-203-07

Proposal Preparation Time.

Proposal preparation time for formal RFPs shall be set to provide offerors a minimum of 30 calendar days to prepare and submit their proposals. However, when special requirements or conditions exist, the State Purchasing Director or head of a purchasing agency may shorten this time, but in no case shall the time be shortened in order to reduce competition. The State Purchasing Director or head of a purchasing agency

shall document why the reduced time period was necessary.

R-24-103-203-08

Opening and Recording of Proposals.

Proposals shall be opened publicly and a register of proposals shall be prepared which shall include the name of each offeror.

R-24-103-203-09

Evaluation of Proposals.

Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used. Factors not specified in the Request for Proposals shall not be considered.

(a) Veterans' Preference. The relative weight assigned to a criterion, as to the extent and quality of any preference for veterans of military service given by offeror in the hiring of offeror's employees, shall not exceed 5%.

(b) Minority Business Enterprises.

(i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against minority businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of MBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing past discrimination in the geographical area of the study for the goods or services involved.

(ii) The goal established in each procurement for MBE participation, against which the extent of participation shall be measured, and the weight assigned to the criterion which considers the extent of offeror's MBE participation, shall be determined on a case-by-case basis, but in no event shall

the weight assigned to such criterion exceed the lesser of a goal established as a result of the disparity study relied upon as evidence of past discrimination, or the 17% goal established by the Governor's Executive Order D005587.

- (iii) In establishing the goal, and the weight of the criterion which considers such goal, consideration shall be given to:
 - A. the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and
 - B. the extent to which Minority Business enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and
 - C. the extent to which the procuring agency is exceeding, on an annual aggregate basis, the goals of the Executive Order at the time the RFP is prepared.
- (c) Women's Business Enterprises.
 - (i) When a competitive sealed proposal process is conducted for commodities or services, and past discrimination against women's businesses can be shown, the RFP shall contain an evaluation criterion, in addition to price and other appropriate criteria, evaluating the extent of WBE participation offered in the proposal. Disparity or predicate studies accepted by other public entities may be used as evidence establishing past discrimination in the geographical area of the study for the goods or services involved.
 - (ii) The goal for WBE participation established in each procurement against which the extent of participation shall be measured, and the weight assigned to

the criterion that considers the extent of offeror's WBE participation, shall be determined on a case by case basis, but in no event shall such criterion exceed the goal established as a result of the disparity findings relied upon as directed by the Governor's Executive Order D0005-94.

- (iii) In establishing the goal, and the weight of the criterion that considers such goal, consideration shall be given to:
 - A. the extent to which subcontracting, or the use of suppliers, is permitted by the RFP or is possible in the response to the RFP; and
 - B. the extent to which Women's Business Enterprises exist in the particular marketplace and industry to provide the specific goods or services sought by the State in the RFP; and
 - C. the extent to which actual WBE participation in the agency's contracts, resulting from RFPs, issued during the current year have exceeded the goals set in those same RFP's, on an aggregate basis.
- (d) Tie bids. In all solicitations for personal services, by competitive sealed proposal, any tie between offerors shall be broken by awarding the contract to the offeror utilizing the greatest quantitative (numerical) preference for veterans in hiring offeror's employees.
- (e) Classifying Proposals. For the purpose of conducting discussion with offerors, proposals shall be initially classified as:
 - (i) acceptable;
 - (ii) potentially acceptable, that is, reasonable susceptible of being made acceptable; or
 - (iii) unacceptable.

R-24-103-203-10 Proposal Discussion with Individual Offerors after Opening.
Purpose of Discussion. Discussions may be held to:

- (a) promote understanding of the State's requirements and the offeror's proposals; and
- (b) facilitate arriving at a contract that will be most advantageous to the State taking into consideration price and the other evaluation factors set forth in the Request for Proposals.
- (c) Conduct and Purpose of Discussion. Offerors shall be accorded fair and equal treatment in discussion and revision of their proposals. After RFP's have been opened, discussions may be held with those offerors determined to be most responsive. Discussions may be held to clarify requirements and to make adjustments in services to be performed and in costs and/or prices. Auction techniques and/or disclosure of any information derived from competing proposals are prohibited. Any changes to the proposal, technical or costs, shall be submitted/confirmed in writing by the contractor(s).

R-24-103-203-11 Award.
Awards shall be made to the responsible offeror whose proposal is determined to be most advantageous to the State based on the evaluation factors set forth in the Request for Proposals. The evaluation committee established to evaluate offers shall make such determination subject to final approval by the Director or head of a purchasing agency.

24-103-204. SMALL PURCHASES.
ANY PROCUREMENT NOT EXCEEDING THE AMOUNT ESTABLISHED BY RULE MAY BE MADE IN ACCORDANCE WITH SMALL PURCHASE PROCEDURES ESTABLISHED BY RULES, BUT PROCUREMENT REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED SO AS TO CONSTITUTE A SMALL PURCHASE UNDER THIS SECTION.

R-24-103-204 Small Purchases.
Small purchases are goods and services purchases costing less than \$150,000 and construction projects

costing less than \$150,000. Small purchases may be procured in accordance with the dollar limits and procedures established by this rule. Procurements shall not be artificially divided so as to constitute small purchases under this section. Small purchases are subject to the requirement that prices paid be fair and reasonable. (§24-30-202(2) CRS)

- (a) Effective upon the state purchasing director's order, small purchases over \$1000 must be reported to the division of purchasing according to a schedule and by one or more mechanisms acceptable to the state purchasing director. Reports must include the following information:
 - (i) dollar amount
 - (ii) category of commodity or service, in accordance with categories defined in the bids system
 - (iii) name and FEIN of the vendor from whom the purchase was made
 - (iv) gender and ethnicity of the vendor from whom the purchase was made
- (b) Procurements advertised and posted on bids need not be reported separately, if the full award information is properly reported on bids.

R-24-103-204-01

Purchase Orders.

The use of Purchase Orders is governed by the Fiscal Rules.

R-24-103-204-02

Competition Not Required.

- (a) Non-delegated Agencies. Agencies which have not been delegated purchasing authority may purchase supplies or services up to a limit of \$1,000 without benefit of competition. Items on a mandatory price agreement issued by the Division of Purchasing must be secured from the appropriate vendor.
- (b) Group I and Group II Agencies. Group I and Group II agencies may secure supplies up to a limit of \$10,000 and services up to \$25,000 without benefit of competition. Items on a mandatory price agreement issued by the

Division of Purchasing must be secured from the appropriate vendor.

- (c) All agencies shall maximize the opportunity for minority-owned and women-owned business enterprises to receive orders that are issued when bids are not required.
- (d) The person doing the acquisition shall use professional judgment to ensure that the State is receiving maximum value. This rule does not preclude the option to place the solicitation on BIDS.
- (e) All agencies may procure construction up to \$25,000 without benefit of competition.

If abuses to this rule are discovered, the Director or head of a purchasing agency may revoke the purchasing authority.

R 24-103-204-03 Documented Quotes

- (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 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 acknowledgment.
- (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, except when the award is for products only that are for inclusion in construction projects and the products are specifically identified and a valid environmentally preferable product preference exists pursuant to 24-103-207.5 CRS. The provisions of 24-103-207.5 CRS which require a preference for environmentally preferable products, apply to the award of contracts under this section. The purchasing preference applies to products and services that have a lesser or reduced adverse effect on human health and the environment than comparable competing products. When the conditions of 24-103-207.5 CRS subsections (3)(a) through (f) have been met, agencies shall award bids for environmentally preferable products or services that cost no more than five percent more than the lowest bid. However, agencies may award the contract to a bidder who offers environmentally preferable products and services which exceed the lowest bid by more than five percent if a cost of ownership life-cycle analysis establishes that long term savings to the state will result. In addition, each purchasing agency must ensure that the purchase can be accommodated within an agency's existing budget..

- (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.
- (h) Agencies may, with the approval of the State Buildings Program, utilize a Standing Order Process for projects less than \$150,000. An approved process must include open public solicitation (including advertising on BIDS) for eligible contractors at least once per year, a process for obtaining at least three quotes before awarding a contract to an eligible contractor, and an equitable process for determining which contractors will be given an opportunity to provide quotes.

- (i) Bonding and retainage requirements set forth in §38-26-106, §24-105-201 et seq. and §24-91-103(1) and rules promulgated thereunder are not affected by this rule. Failure to provide a bid bond if required but not cured makes the quote unacceptable. Agencies should seek legal advice when bid bonds have been required and the terms of the quote are modified after receipt.

24-103-205. SOLE SOURCE PROCUREMENT.

A CONTRACT MAY BE AWARDED FOR A SUPPLY, SERVICE, OR CONSTRUCTION ITEM WITHOUT COMPETITION WHEN, UNDER RULES, THE EXECUTIVE DIRECTOR, THE HEAD OF A PURCHASING AGENCY, OR A DESIGNEE OF EITHER OFFICER WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER DETERMINES IN WRITING THAT THERE IS ONLY ONE SOURCE FOR THE REQUIRED SUPPLY, SERVICE, OR CONSTRUCTION ITEM. SOLE SOURCE PROCUREMENT PROVISIONS SHALL NOT BE USED WHEN THE GOODS OR SERVICES NEEDED ARE AVAILABLE THROUGH THE DIVISION OF CORRECTIONAL INDUSTRIES UNLESS THE PURCHASING AGENCY SPECIFIES THE DIVISION OF CORRECTIONAL INDUSTRIES AS THE SOLE SOURCE PROVIDER.

R-24-103-205-01 Sole Source Procurements.

- (a) Conditions for Use. A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could justify a sole source procurement:
 - (i) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
 - (ii) where a sole supplier's item is needed for trial use or testing;
 - (iii) where public utility services are to be procured.

The Director, the head of a purchasing agency, or the designee of such person, shall make a written determination that a procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

- (b) Exemptions. Sole source determinations are not required under circumstances outlined in 24-101-105, CRS, as amended, and related rules.

R-24-103-205-02 Negotiation.

When a sole source procurement is authorized, the Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

24-103-206. EMERGENCY PROCUREMENTS.
NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, THE EXECUTIVE 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, BUT 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.

R-24-103-206-01 Definition of Emergency Conditions.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the using agency and approved by the director, head of a purchasing agency, or designee. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (a) the functioning of state government, or its programs;
- (b) the preservation or protection of property; or
- (c) the health or safety of any person or persons.

R-24-103-206-02 Scope of Emergency Procurements.
Emergency procurements shall be limited only to a quantity of those supplies, services, or construction items necessary to meet the emergency.

R-24-103-206-03 Authority to Make Emergency Procurements.
Any state agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Director, or head of a purchasing agency, shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the state agency shall notify the Director, or head of a purchasing agency, on the next working day.

R-24-103-206-04 Source Selection Methods.

- (a) General. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- (b) Determination Required. The Procurement Officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the director.

24-103-207. STATE PURCHASES OF RECYCLED PAPER AND RECYCLED PRODUCTS.

- (1) WHEN PURCHASING PAPER AND PAPER PRODUCTS, THE EXECUTIVE DIRECTOR OR ANY PURCHASING AGENT SHALL, WHENEVER THE PRICE IS COMPETITIVE AND THE QUALITY ADEQUATE FOR THE PURPOSE INTENDED, PURCHASE RECYCLED PAPER AS DEFINED IN SECTION 13-1-133(4)(d), C.R.S.

- (2) FOR THE FISCAL YEAR 1990-91, THE EXECUTIVE DIRECTOR SHALL ESTABLISH AS A GOAL THAT AT LEAST TEN PERCENT OF THE TOTAL VOLUME OF PAPER AND PAPER PRODUCTS PURCHASED BY THE STATE SHALL CONTAIN RECYCLED PAPER. THE GOAL SHALL INCREASE TO TWENTY PERCENT FOR THE FISCAL YEAR 1991-92, TO THIRTY PERCENT FOR THE FISCAL YEAR 1992-93, TO FORTY PERCENT FOR THE FISCAL YEAR 1993-94, AND TO FIFTY PERCENT FOR THE FISCAL YEAR 1994-95, AND FOR EACH FISCAL YEAR THEREAFTER.
- (3) EACH AGENCY USING RECYCLED PAPER MAY PRINT THE NOTATION "PRINTED ON RECYCLED STOCK" ON ANY PAPER OR PAPER PRODUCT WHICH HAS BEEN CERTIFIED BY THE DIVISION AS RECYCLED PAPER.
- (4) FOR PURPOSES OF THIS SECTION, "PAPER AND PAPER PRODUCTS" MEANS PAPER ITEMS, INCLUDING BUT NOT LIMITED TO PAPER NAPKINS, TOWELS, CORRUGATED AND OTHER CARDBOARD, TOILET TISSUE, HIGH-GRADE OFFICE PAPER, NEWSPRINT, OFFSET PAPER, BOND PAPER, XEROGRAPHIC BOND PAPER, MIMEO PAPER, AND DUPLICATOR PAPER.
- (5) WHEN PURCHASING ANY PRODUCT WITH PUBLIC FUNDS, THE EXECUTIVE DIRECTOR OR ANY PURCHASING AGENT SHALL BE AUTHORIZED TO PURCHASE PRODUCTS OR MATERIALS WITH RECYCLED CONTENT, THAT HAVE BEEN SOURCE-REDUCED, THAT ARE REUSABLE, OR THAT HAVE BEEN COMPOSTED, UNLESS ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:
 - (A) THE PRODUCT IS NOT AVAILABLE WITHIN A REASONABLE PERIOD OF TIME;
 - (B) THE PRODUCT FAILS TO MEET EXISTING PURCHASING RULES, INCLUDING SPECIFICATIONS; OR
 - (C) THE PRODUCT FAILS TO MEET FEDERAL OR STATE HEALTH OR SAFETY STANDARDS, AS SET FORTH IN THE CODE OF FEDERAL REGULATIONS OR THE COLORADO CODE OF REGULATIONS.
- (6) IN ADDITION TO THE REQUIREMENTS SET FORTH IN SUBSECTIONS (1), (2), AND (5) OF THIS SECTION, THE PURCHASING AGENT SHALL BE AUTHORIZED TO PURCHASE, WHEN COST-EFFICIENT AND

ECONOMICALLY FEASIBLE, EQUIPMENT THAT RESULTS IN THE REDUCTION OF PAPER USAGE.

24-103-207.5 PURCHASING PREFERENCE FOR ENVIRONMENTALLY PREFERABLE PRODUCTS - DEFINITIONS.

- (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ENVIRONMENTALLY PREFERABLE PRODUCTS" MEANS PRODUCTS THAT HAVE A LESSER OR REDUCED ADVERSE EFFECT ON HUMAN HEALTH AND THE ENVIRONMENT WHEN COMPARED WITH COMPETING PRODUCTS THAT SERVE THE SAME PURPOSE. THE PRODUCT COMPARISON MAY CONSIDER SUCH FACTORS AS THE AVAILABILITY OF ANY RAW MATERIALS USED IN THE PRODUCT BEING PURCHASED AND THE AVAILABILITY, USE, PRODUCTION, SAFE OPERATION, MAINTENANCE, PACKAGING, DISTRIBUTION, DISPOSAL, OR RECYCLABILITY OF THE PRODUCT BEING PURCHASED.
- (2) ALL INVITATIONS FOR BIDS FOR PRODUCTS SHALL INCLUDE LANGUAGE THAT DESCRIBES THE AVAILABILITY OF THE PURCHASING PREFERENCE FOR ENVIRONMENTAL PRODUCTS. IN CONNECTION WITH THE PURCHASE OF PRODUCTS, A GOVERNMENTAL BODY SHALL AWARD THE CONTRACT TO A BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS SUBJECT TO THE CONDITIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, UNLESS THE SPECIFICATIONS USED IN THE SOLICITATION CONTAIN ENVIRONMENTALLY PREFERABLE PRODUCT CRITERIA. THIS PREFERENCE DOES NOT APPLY TO THE PURCHASE OF SERVICES, INCLUDING CONSTRUCTION SERVICES.
- (3) THE PREFERENCE SPECIFIED IN SUBSECTION (2) OF THIS SECTION SHALL APPLY ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE MET AND SELECTING AN ENVIRONMENTALLY PREFERABLE PRODUCT WOULD NOT OTHERWISE BE

DISADVANTAGEOUS TO THE STATE UPON CONSIDERATION OF THESE CONDITIONS, SINGLY OR IN COMBINATION:

- (A) THE QUALITY OF THE ENVIRONMENTALLY PREFERABLE PRODUCTS MEETS THE SPECIFICATION OF THE BID.
 - (B) THE ENVIRONMENTALLY PREFERABLE PRODUCTS ARE SUITABLE FOR THE USE REQUIRED BY THE PURCHASING ENTITY.
 - (C) ANY BIDDER ABLE TO OFFER ENVIRONMENTALLY PREFERABLE PRODUCTS IS ABLE TO SUPPLY SUCH PRODUCTS IN SUFFICIENT QUANTITY, AS INDICATED IN THE INVITATION FOR BIDS.
 - (D) THE BID PRICE FOR ENVIRONMENTALLY PREFERABLE PRODUCTS DOES NOT EXCEED THE LOWEST BID PRICE FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY MORE THAN FIVE PERCENT.
 - (E) THE HEAD OF THE GOVERNMENTAL BODY OR OTHER OFFICIAL CHARGED BY LAW WITH THE DUTY TO PURCHASE PRODUCTS HAS MADE A DETERMINATION THAT THE GOVERNMENTAL BODY IS ABLE TO PURCHASE THE ENVIRONMENTALLY PREFERABLE PRODUCTS OUT OF THE GOVERNMENTAL BODY'S EXISTING BUDGET WITHOUT ANY FURTHER SUPPLEMENTAL OR ADDITIONAL APPROPRIATION.
- (4) IF THE BID PRICE FOR ENVIRONMENTALLY PREFERABLE PRODUCTS EXCEEDS THE BID FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY MORE THAN FIVE PERCENT, A GOVERNMENTAL BODY MAY AWARD THE CONTRACT TO A BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS WHERE THE GOVERNMENTAL BODY DEMONSTRATES, ON THE BASIS OF ASSESSMENTS

SUCH AS THE COSTS OF OWNERSHIP AND A LIFE-CYCLE ANALYSIS, THAT LONG-TERM SAVINGS TO THE STATE WILL RESULT FROM ENVIRONMENTALLY PREFERABLE PURCHASING IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. NOTHING IN THIS SECTION SHALL REQUIRE THAT A GOVERNMENTAL BODY PERFORM AN ANALYSIS OF THE COSTS OF OWNERSHIP OR A LIFE-CYCLE ANALYSIS IN CONNECTION WITH THE PURCHASE OF ANY PRODUCTS.

- (5) (A) ANY BIDDER THAT SEEKS TO QUALIFY FOR THE PREFERENCE CREATED BY SUBSECTION (2) OF THIS SECTION SHALL PROVIDE DOCUMENTATION TO THE GOVERNMENTAL BODY INVITING THE BID THAT THE PRODUCTS OFFERED BY THE BIDDER ARE ENVIRONMENTALLY PREFERABLE. THIS REQUIREMENT MAY BE SATISFIED BY SUBMISSION OF ANY OF THE FOLLOWING:
- (I) A LIFE-CYCLE ANALYSIS CONDUCTED ON THE APPLICABLE PRODUCT THAT HAS BEEN CONDUCTED IN ACCORDANCE WITH APPLICABLE STANDARDS AS DETERMINED BY THE PURCHASING GOVERNMENTAL BODY OR BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION OR ANY SUCCESSOR ORGANIZATION;
 - (II) A REFERENCE TO AN EXISTING ENVIRONMENTALLY PREFERABLE PRODUCT LIST MAINTAINED BY A STATE OR THE FEDERAL GOVERNMENT THAT CONTAINS THE PRODUCT; OR
 - (III) A REFERENCE TO A NATIONALLY RECOGNIZED THIRD-PARTY CERTIFICATION ENTITY THAT HAS CERTIFIED THE PRODUCT AS ENVIRONMENTALLY PREFERABLE ON THE BASIS OF A VALID LIFE-CYCLE ANALYSIS. THE GOVERNOR'S ENERGY OFFICE OR SUCCESSOR OFFICE

SHALL MAINTAIN A LIST OF CERTIFICATION ENTITIES.

- (B) THE GOVERNMENTAL BODY MAY RELY IN GOOD FAITH ON ANY FORM OF DOCUMENTATION THAT SATISFIES THE REQUIREMENT OF PARAGRAPH (a) OF THIS SUBSECTION (5).
 - (C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IF NONE OF THE FORMS OF DOCUMENTATION SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (5) APPLY TO THE PRODUCT BEING PURCHASED, THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO THE PURCHASE OF THE PRODUCT.
- (6) A GOVERNMENTAL BODY SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THE RESULTS OF ANY ANALYSIS OF THE COSTS OF OWNERSHIP AND LIFE-CYCLE ANALYSIS USED TO JUSTIFY THE PURCHASE OF ANY ENVIRONMENTALLY PREFERABLE PRODUCTS IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION DURING THE PREVIOUS FISCAL YEAR.
- (7) IN CONNECTION WITH ANY COST OF OWNERSHIP ANALYSIS OR LIFE-CYCLE ANALYSIS UNDERTAKEN IN CONNECTION WITH ANY PURCHASE UNDER THIS SECTION OF A PRODUCT THAT INVOLVES THE REPLACEMENT OF EXISTING ELECTRICAL, NATURAL GAS, OR STEAM SERVICE, THE COST ANALYSIS SHALL CONSIDER ANY STRANDED UTILITY COSTS.

24-103-208. OTHER PROCUREMENT METHODS. THE EXECUTIVE DIRECTOR MAY ESTABLISH, BY RULE, OTHER COMPETITIVE PROCUREMENT METHODS THAT ARE DEEMED TO BE IN THE BEST INTEREST OF THE STATE AND THAT ARE CONSISTENT

WITH THE PROVISIONS OF SECTION 24-101-102, INCLUDING, BUT NOT LIMITED TO, REVERSE AUCTIONS. FOR THE 2004-05 FISCAL YEAR AND EVERY OTHER FISCAL YEAR THEREAFTER, THE STATE AUDITOR SHALL REVIEW THE COMPETITIVE PROCUREMENT METHODS ESTABLISHED PURSUANT TO THIS SECTION.

R-24-103-208-01 Competitive Reverse Auctions

Contracts for goods and services may be awarded by competitive reverse auctions if the director or head of a purchasing agency determines that adequate competition can be achieved and that the process is likely to result in better pricing.

Competitive reverse auction means a computer aided bidding process through which a pre-established group of vendors may post bids for a defined period of time and may change their bids as desired during the bidding period.

- (a) The intent to conduct a competitive reverse auction shall be published on the BIDS system for a period of not less than 14 days. The BIDS notice shall include all terms, conditions, and specifications and shall tell interested vendors how to participate in the process. If the director or head of a purchasing agency believes that BIDS is not likely to yield adequate competition, the agency may notify potential vendors through additional methods; however, vendors must register for BIDS prior to the auction process to be eligible to participate.
- (b) All responsible vendors willing to accept the terms and conditions of the procurement and to meet the specifications of the bid shall be eligible to participate. The purchasing agency may conduct a preliminary process to determine vendor responsibility and to ensure the vendor's responsiveness to terms and specifications.
- (c) During the bidding process, the participating vendors shall be identified only by a letter, number, or other symbol to protect their identities; each bid price and the letter, number, or symbol designation of the vendor shall be posted for all bidding vendors immediately upon receipt.
- (d) The contract shall be awarded to the low responsible bidder whose bid meets the requirements and specifications.

R-24-103-208-02 Competitive Negotiation

Contracts may be awarded by competitive negotiation.

- (a) If the director or head of a purchasing agency determines that time does not permit resolicitation, a contract may be awarded by competitive negotiation after an unsuccessful competitive sealed bid or competitive sealed proposal process.
- (b) A competitive sealed bid or competitive sealed proposal process is unsuccessful if (1) all offers received are unreasonable or uncompetitive, (2) the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer, (3) the solicitation has been properly cancelled in accordance with the provisions of §24-103-301 or §24-109-401 and -402 CRS, or (4) the number of responsive offers is not adequate to ensure adequate price competition.
- (c) The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the state's needs.
- (d) The purchasing agency may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.
- (e) Each vendor with whom the purchasing agency negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors.
- (f) A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.
- (g) The award shall be made to the vendor whose offer is most advantageous to the state. The director or head of a purchasing agency shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the state.

PART 3 CANCELLATION OF SOLICITATIONS: REJECTION OF BIDS OR PROPOSALS

24-103-301. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS.

AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS, OR ANY OTHER SOLICITATION MAY BE CANCELLED OR ANY OR ALL BIDS OR PROPOSALS MAY BE REJECTED IN WHOLE OR IN PART AS MAY BE SPECIFIED IN THE SOLICITATION WHEN IT IS IN THE BEST INTERESTS OF THE STATE PURSUANT TO RULES. THE REASONS THEREFOR SHALL BE MADE PART OF THE CONTRACT FILE.

R-24-103-301-01 Scope of This Rule

The provisions of this rule shall govern the cancellation of any solicitations whether issued by the state under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

R-24-103-301-02 Policy

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water." A solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the state's best interest.

R-24-103-301-03 Cancellation of Solicitation; Notice

Each solicitation issued by the State shall contain language stating that the solicitations may be cancelled as provided in this rule.

R-24-103-301-04 Cancellation of Solicitation: Rejection of all Bids or Proposals

(a) Prior to Opening. Prior to opening of bids, a solicitation may be cancelled in whole or in part when the Director, or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:

- (i) the state no longer requires the supplies, services, or construction.
 - (ii) the state no longer can reasonably expect to fund the procurement; or
 - (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (b) Notice. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:
 - (i) identify the solicitation;
 - (ii) explain the reason for cancellation; and
 - (iii) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies, services, or construction.
- (c) After Opening. After opening but prior to award, any or all bids or proposals may be rejected in whole or in part when the Director or the head of a purchasing agency, determines in writing that such action is in the state's best interest for reasons including but not limited to:
 - (i) the supplies, services, or construction being procured are no longer required;
 - (ii) ambiguous or otherwise inadequate specifications were part of the solicitation;
 - (iii) the solicitation did not provide for consideration of all factors of significance to the state;
 - (iv) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;
 - (v) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - (vi) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive,

or may have been submitted in bad faith.

A notice of rejection should be sent to all businesses that submitted bids or proposals.

- (d) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- (e) Disposition of Bids or Proposals. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

PART 4 QUALIFICATIONS AND DUTIES

24-103-401. RESPONSIBILITY OF BIDDERS AND OFFERORS(1)A WRITTEN DETERMINATION OF NONRESPONSIBILITY OF A BIDDER OR OFFEROR SHALL BE MADE PURSUANT TO RULES. THE UNREASONABLE FAILURE OF A BIDDER OR OFFEROR TO PROMPTLY SUPPLY INFORMATION IN CONNECTION WITH AN INQUIRY WITH RESPECT TO RESPONSIBILITY MAY BE GROUNDS FOR A DETERMINATION OF NONRESPONSIBILITY WITH RESPECT TO SUCH BIDDER OR OFFEROR.

(2) INFORMATION FURNISHED BY A BIDDER OR OFFEROR PURSUANT TO THIS SECTION SHALL NOT BE DISCLOSED OUTSIDE OF THE DEPARTMENT OF PERSONNEL OR THE PURCHASING AGENCY WITHOUT PRIOR WRITTEN CONSENT BY THE BIDDER OR OFFEROR.

R-24-103-401-01 Application
A determination of responsibility or non-responsibility shall be governed by this Rule.

R-24-103-401-02 Standards of Responsibility

- (a) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has:

- (i) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them necessary to indicate the capability to meet all contractual requirements;
 - (ii) a satisfactory record of performance;
 - (iii) a satisfactory record of integrity;
 - (iv) qualified legally to contract with the State; and
 - (v) supplied all necessary information in connection with the inquiry concerning responsibility.
- (b) Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

R-24-103-401-03

Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) evidence that such contractor possesses such necessary items;
- (b) acceptable plans to subcontract for such necessary items; or
- (c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

R-24-103-401-04

Written Determination of Non-responsibility Required

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Director or head of a purchasing agency. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

24-103-402. PREQUALIFICATION OF SUPPLIERS.
PROSPECTIVE SUPPLIERS MAY BE PREQUALIFIED FOR PARTICULAR TYPES OF SUPPLIES, SERVICES, AND CONSTRUCTION, AND THE METHOD OF COMPILING AND SOLICITING FROM SUCH MAILING LISTS OF POTENTIAL CONTRACTORS SHALL BE PURSUANT TO RULES.

R-24-103-402-01 Requirements.

State construction projects of \$150,000 or more, and under the supervision of the State Buildings Section, Department of Personnel, require the Contractor to be qualified with that Section. Projects under \$150,000 do not normally require pre-qualification. A contractor, to be qualified with the Colorado State Buildings Section, must annually file State Form SC-9.1, "Contractor's Statement of Experience," and be qualified at least two (2) calendar days prior to the date fixed for publicly opening sealed bids. This form can be obtained by writing the Director, State Buildings Section. Filing instructions are detailed in the form under instructions. The state buildings section will pre-qualify only one entity owned by or controlled by a corporation, an individual, a joint venture or partnership. Under no circumstances will two or more entities owned or controlled by a single corporation, individual, partnership or joint venture submit bids for the same contract. The fact that a prospective contractor has been pre-qualified does not necessarily represent a finding of responsibility.

The Director, or head of a purchasing agency, may develop additional pre-qualification procedures for specific solicitations.

24-103-403. COST OR PRICING DATA.
(1) A CONTRACTOR SHALL, EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, SUBMIT COST OR PRICING DATA AND SHALL CERTIFY THAT, TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE COST OR PRICING DATA SUBMITTED WAS ACCURATE, COMPLETE, AND CURRENT AS OF A MUTUALLY DETERMINED SPECIFIED DATE PRIOR TO THE DATE OF:
(A) THE PRICING OF ANY CONTRACT AWARDED BY COMPETITIVE SEALED PROPOSALS, SECTION 24-

- 103-203, OR PURSUANT TO THE SOLE SOURCE PROCUREMENT AUTHORITY, SECTION 24-103-205, WHERE THE TOTAL CONTRACT PRICE IS EXPECTED TO EXCEED AN AMOUNT ESTABLISHED BY RULE; OR
- (B) THE PRICING OF ANY CHANGE ORDER OR CONTRACT MODIFICATION WHICH IS EXPECTED TO EXCEED AN AMOUNT ESTABLISHED BY RULE.
- (2) 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) THE REQUIREMENTS OF THIS SECTION NEED NOT BE APPLIED TO ANY CONTRACT IN WHICH:
- (A) THE CONTRACT PRICE IS BASED ON ADEQUATE PRICE COMPETITION; OR
- (B) THE CONTRACT PRICE IS BASED ON ESTABLISHED CATALOGUE PRICES OR MARKET PRICES;
- (C) THE CONTRACT PRICE IS SET BY LAW OR RULE; OR
- (D) IT IS DETERMINED IN WRITING, PURSUANT TO RULES, THAT THE REQUIREMENTS OF THIS SECTION MAY BE WAIVED AND THE REASONS FOR SUCH WAIVER ARE STATED IN WRITING.

R-24-103-403-01

Definitions.

- (a) Cost Data is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (b) Price Data is factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. The

definition refers to data relevant to both prime and subcontract prices.

R-24-103-403-02

Requirement for Cost or Pricing Data.

Cost or pricing data is required to be submitted in support of a proposal when:

- (a) adjusting the price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$500. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required if considered separately are consolidated for administrative convenience;
- (b) an emergency procurement is made in excess of \$25,000, but such data may be submitted after contract award; or
- (c) the procurement officer makes a written determination that the circumstances warrant requiring submission of cost or pricing data provided, however, cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding.

R-24-103-403-03

Submission of Cost or Pricing Data and Certification.

- (a) Time and Manner. When cost or pricing data are required, they shall be submitted to the procurement officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall be either actually submitted or specifically identified in writing.
- (b) Obligation to Keep Data Current. The offeror or contractor is required to keep such submission current until the negotiations are concluded.

- (c) Time for Certification. The offeror or contractor shall certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching agreement.
- (d) Refusal to Submit Data. A refusal by the offeror to supply the required data shall be referred to the Director or the head of a purchasing agency, whose duty shall be to determine, in writing, whether to disqualify the non-complying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the Director or the head of a purchasing agency who shall determine, in writing, whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the adjustment, subject to the contractor's rights under Article 109 (Remedies) of the Colorado Procurement Code.
- (e) Exceptions. Cost and pricing data need not be submitted and certified:
 - (i) where the contract price is based on:
 - (A) adequate price competition;
 - (B) established catalogue prices or market prices;
 - (ii) when the Director or the head of a purchasing agency determines in writing to waive the applicable requirement for submission of cost or pricing data under the Sub-section R-24-103-403-02(a) or (b) of this Section in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.

If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

R-24-103-403-04

Meaning of Terms "Adequate Price Competition," "Established Catalogue Prices or Market Prices," and "Prices Set by Law or Regulation".

- (a) Application. As used in the exceptions set forth in Rule R-24-103-403-03(e) (Cost or Price Data, Exceptions) the terms "adequate price competition," "established catalogue prices or market prices," and "prices set by law or regulations" shall be construed in accordance with the following definitions.
- (b) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.
- (c) Established Catalogue Prices or Market Prices.
 - (i) See Article 103, Part 1 (Definitions, Established Catalogue Price) of the Colorado Procurement Code for the definition of established catalogue price.
 - (ii) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.
 - (iii) If, despite the existence of an established catalogue price or market price, and after consultation with the prospective contractors, the procurement officer considers that such price is not reasonable, cost or pricing data may be requested. Where the reasonableness of the price can be

assured by a request for cost or pricing data limited to data pertaining to the differences in the item or services being procured and those in the catalogue or market, requests should be so limited.

- (d) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

R-24-103-403-05

Defective Cost or Pricing Data.

- (a) Overstated Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, the State is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.
- (b) Offsetting Understated Cost or Pricing Data. In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the State's claim for overstated

cost or pricing data arising out of the same pricing action.

- (c) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with Sub-sections (a) and (b) of this Section and the contractor may appeal this decision under Article 109 (Remedies) of the State of Colorado Procurement Code.

PART 5 TYPES OF CONTRACTS

24-103-501. 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; EXCEPT 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 OF CONTRACT OR THAT IT IS IMPRACTICABLE TO OBTAIN THE SUPPLIES, SERVICES, OR CONSTRUCTION REQUIRED UNLESS THE COST-REIMBURSEMENT CONTRACT IS USED.

R-24-103-501. Types of Contracts.
The minimum requirements for contract formation and content are contained in Chapter 3 of the Colorado Fiscal Rules.

24-103-502. 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 EXECUTIVE DIRECTOR, THE HEAD OF A PURCHASING AGENCY, OR A DESIGNEE OF EITHER OFFICER WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER THAT 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 THE PROPOSED CONTRACTOR'S ACCOUNTING SYSTEM IS ADEQUATE TO ALLOCATE COSTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

24-103-503. MULTI YEAR CONTRACTS.

- (1) 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 IF THE TERM OF THE CONTRACT AND CONDITIONS OF RENEWAL OR EXTENSION, IF ANY, ARE INCLUDED IN THE SOLICITATION AND IF FUNDS ARE AVAILABLE FOR THE FIRST YEAR AT THE TIME OF CONTRACTING. THE STATE SHALL INITIATE THE RENEWAL OR EXTENSION OF A CONTRACT FOR SUPPLIES OR SERVICES. PAYMENT AND PERFORMANCE OBLIGATIONS FOR SUCCEEDING FISCAL YEARS SHALL BE SUBJECT TO THE AVAILABILITY AND APPROPRIATION OF FUNDS THEREFOR.
- (2) PRIOR TO THE UTILIZATION OF A MULTI YEAR 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.
- (3) WHEN FUNDS ARE NOT APPROPRIATED OR OTHERWISE MADE AVAILABLE TO SUPPORT CONTINUATION OF PERFORMANCE IN A SUBSEQUENT FISCAL YEAR, THE CONTRACT SHALL BE CANCELLED, AND THE CONTRACTOR MAY BE REIMBURSED FOR THE REASONABLE VALUE OF ANY NONRECURRING COSTS INCURRED BUT NOT AMORTIZED IN THE PRICE OF THE SUPPLIES OR SERVICES DELIVERED UNDER THE CONTRACT.

R-24-103-503 Multi-Year Contracts

The Division of Purchasing or agencies with delegated purchasing authority may enter into multi-year contracts for supplies or services subject to funding availability. Contracts for periods in excess of five years shall not be executed without written permission of the State Purchasing Director.

Specifications for multi-year contracts shall contain conditions of renewal or extension, if any. Methods used to determine any price escalation/de-escalation shall be part of the original specifications and made a part of the contract. Contracts shall only be renewed or extended if funds are available for the new contract period.

PART 6 AUDIT OF RECORDS

24-103-601. RIGHT TO AUDIT RECORDS.

- (1) (DELETED BY AMENDMENT, L.2007, p.1237, § 2, EFFECTIVE August 3, 2007.)
- (2) THE STATE SHALL BE ENTITLED TO AUDIT THE BOOKS AND RECORDS OF ANY CONTRACTOR OR SUBCONTRACTOR UNDER ANY NEGOTIATED CONTRACT OR SUBCONTRACT TO THE EXTENT THAT THE BOOKS AND RECORDS RELATE TO THE PERFORMANCE OF A STATE CONTRACT OR SUBCONTRACT, IF THE STATE IS ABLE, IN CONDUCTING ANY SUCH AUDIT, TO MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION CONTAINED IN THE BOOKS AND RECORDS THAT IS DEEMED PROPRIETARY AS DETERMINED BY THE STATE. SUCH BOOKS AND RECORDS SHALL BE MAINTAINED BY THE CONTRACTOR FOR A PERIOD OF THREE YEARS AFTER THE DATE OF FINAL PAYMENT UNDER THE PRIME CONTRACT AND BY THE SUBCONTRACTOR FOR A PERIOD OF THREE YEARS AFTER THE DATE OF FINAL PAYMENT UNDER THE SUBCONTRACT, UNLESS A SHORTER PERIOD IS OTHERWISE AUTHORIZED IN WRITING.

PART 7 DETERMINATIONS AND REPORTS

24-103-701. FINALITY OF DETERMINATIONS.

THE DETERMINATIONS REQUIRED BY SECTIONS 24-103-202 (6), 24-103-203 (1) AND (7), 24-103-205, 24-103-206, 24-103-401 (1), 24-103-403 (3), 24-103-501, 24-103-502, AND 24-103-503 (2) ARE FINAL AND CONCLUSIVE UNLESS THEY ARE CLEARLY ERRONEOUS, ARBITRARY, CAPRICIOUS, OR CONTRARY TO LAW.

24-103-702. REPORTING OF ANTICOMPETITIVE PRACTICES.

WHEN FOR ANY REASON COLLUSION OR OTHER ANTICOMPETITIVE PRACTICES ARE SUSPECTED AMONG ANY BIDDERS OR OFFERORS, A NOTICE OF THE RELEVANT FACTS SHALL BE TRANSMITTED TO THE ATTORNEY GENERAL.

PART 8 SET ASIDES IN STATE PROCUREMENT FOR ALL PERSONS WITH SEVERE DISABILITIES

24-103-801. LEGISLATIVE DECLARATION.

(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IT IS IN THE BEST INTEREST OF THE STATE TO ENHANCE THE DIGNITY AND CAPACITY FOR SELF-SUPPORT OF ALL PERSONS WITH SEVERE DISABILITIES AND TO MINIMIZE THEIR DEPENDENCE ON GOVERNMENT PROGRAMS FOR THEIR BASIC NEEDS; AND

(b) IT BENEFITS THE STATE AS WELL AS ALL PERSONS WITH SEVERE DISABILITIES TO ENCOURAGE AND ASSIST ALL PERSONS WITH SEVERE DISABILITIES TO ACHIEVE MAXIMUM PERSONAL INDEPENDENCE THROUGH USEFUL AND PRODUCTIVE GAINFUL EMPLOYMENT BY IDENTIFYING A MARKET FOR THE SERVICES THAT THEY CAN OFFER.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE PURPOSE OF THIS ACT IS TO CREATE A SET ASIDE PROGRAM FOR NONPROFIT AGENCIES THAT EMPLOY ANY PERSONS WITH SEVERE DISABILITIES AND TO ALLOW NONPROFIT AGENCIES TO BID ON CERTAIN TYPES OF SERVICES SOLICITATIONS. IN FURTHERANCE OF THIS PURPOSE, THE GENERAL ASSEMBLY RECOGNIZES THAT IT IS IN THE BEST INTERESTS OF ALL PERSONS WITH SEVERE DISABILITIES THAT THE EMPLOYMENT OPTIONS CREATED PURSUANT TO THIS ACT EXPAND THE OPPORTUNITIES FOR ALL PERSONS WITH SEVERE DISABILITIES TO WORK IN INTEGRATED EMPLOYMENT SETTINGS.

24-103-802. DEFINITIONS.

AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "BUNDLING" MEANS A STATE AGENCY CONSOLIDATING TWO OR MORE SOLICITATIONS FOR SERVICES PREVIOUSLY PROVIDED OR PERFORMED UNDER SEPARATE SMALLER CONTRACTS INTO A SINGLE SOLICITATION THAT IS LIKELY TO BE UNSUITABLE FOR AWARD TO A NONPROFIT AGENCY DUE TO ANY OF THE FOLLOWING:
 - (a) THE DIVERSITY, SIZE, OR SPECIALIZED NATURE OF THE ELEMENTS OF THE REQUIRED SERVICES;
 - (b) THE AGGREGATE DOLLAR VALUE OF THE ANTICIPATED AWARD; OR
 - (b) THE GEOGRAPHICAL DISPERSION OF THE CONTRACT PERFORMANCE SITES.
- (2) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.
- (3) "NONPROFIT AGENCY" MEANS A PRIVATE NONPROFIT ORGANIZATION ESTABLISHED UNDER THE LAWS OF THE UNITED STATES OR THIS STATE THAT IS OPERATED IN THE INTEREST OF PERSONS WITH SEVERE DISABILITIES OR THAT SPECIALIZES IN SERVICES FOR PERSONS WITH SEVERE DISABILITIES, THE NET INCOME OF WHICH DOES NOT BENEFIT IN WHOLE OR IN PART ANY SHAREHOLDER OR OFFICER.
- (4) "SELF-CERTIFIED VENDOR" MEANS A NONPROFIT AGENCY THAT HAS APPLIED AND BEEN APPROVED BY THE DEPARTMENT TO BID ON CERTAIN SERVICES SOLICITATIONS PURSUANT TO THIS PART 8.
- (5) "SERVICES SOLICITATION" MEANS A SOLICITATION BY A STATE AGENCY FOR THE FURNISHING OF LABOR, TIME, OR EFFORT BY A CONTRACTOR NOT INVOLVING THE DELIVERY OF A SPECIFIC END PRODUCT OTHER THAN PRODUCTS THAT ARE MERELY INCIDENTAL TO THE REQUIRED PERFORMANCE.
- (6) "SEVERE DISABILITY" MEANS ONE OR MORE PHYSICAL OR MENTAL DISABILITIES THAT CONSTITUTE A SUBSTANTIAL IMPAIRMENT TO EMPLOYMENT AND THAT ARE OF SUCH A NATURE AS TO REQUIRE MULTIPLE VOCATIONAL REHABILITATION SERVICES OVER AN EXTENDED PERIOD.
- (7) "STATE AGENCY" MEANS ANY STATE OFFICE, DEPARTMENT, COMMISSION, INSTITUTION, OR BUREAU, OR ANY AGENCY, DIVISION, OR UNIT

WITHIN A DEPARTMENT OR OFFICE. NOTWITHSTANDING THE PROVISIONS OF SECTION 24-101-105, "STATE AGENCY" SHALL INCLUDE EACH INSTITUTION OF HIGHER EDUCATION AND THE COLORADO COMMISSION ON HIGHER EDUCATION. "STATE AGENCY" SHALL NOT INCLUDE ANY MUNICIPALITY, COUNTY, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER LOCAL GOVERNMENT IN THE STATE.

24-103-803. NONPROFIT AGENCIES - SELF-CERTIFIED VENDOR LIST - CREATION.

- (1) ANY NONPROFIT AGENCY THAT IS INTERESTED IN PERFORMING STATE SERVICES AND THAT WOULD LIKE TO BID ON SOLICITATIONS FOR SUCH SERVICES THROUGH THE SET ASIDE PROGRAM CREATED IN THIS PART 8 SHALL FIRST APPLY TO THE DEPARTMENT, IN A MANNER TO BE DETERMINED BY THE PAGE 4-HOUSE BILL 08-1047 DEPARTMENT, TO BECOME A SELF-CERTIFIED VENDOR PURSUANT TO THIS SECTION.
- (2) THE DEPARTMENT SHALL ACCEPT APPLICATIONS FROM ANY NONPROFIT AGENCY THAT SEEKS TO BECOME A SELF-CERTIFIED VENDOR TO BID ON CERTAIN SERVICES SOLICITATIONS. IN ORDER FOR A NONPROFIT AGENCY TO BECOME A SELF-CERTIFIED VENDOR, THE NONPROFIT AGENCY SHALL CERTIFY THAT:
 - (a) THE NONPROFIT AGENCY IS AN INDEPENDENT TAX-EXEMPT CHARITABLE OR SOCIAL WELFARE ORGANIZATION OPERATING UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;
 - (b) THE NONPROFIT AGENCY IS REGISTERED ON THE CENTRALIZED SUPPLIER DATABASE OF ALL BUSINESSES THAT ARE INTERESTED IN PROVIDING GOODS AND SERVICES TO THE STATE, WHICH DATABASE IS CREATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL PURSUANT TO SECTION 24-102-202.5;
 - (c) THE NONPROFIT AGENCY SATISFIES THE STATUTORY REQUIREMENTS TO BE ELIGIBLE TO BID ON A STATE SERVICES SOLICITATION PURSUANT TO SECTION 24-103-401 AND ANY RULES PROMULGATED BY THE DEPARTMENT OF

PERSONNEL IN FURTHERANCE OF SAID SECTION;

- (d) THE NONPROFIT AGENCY WOULD BE CAPABLE OF HIRING AND WOULD EMPLOY PEOPLE TO PERFORM ANY SERVICE FOR WHICH THE NONPROFIT AGENCY BIDS, AND THAT OF THOSE PEOPLE EMPLOYED A TOTAL OF SEVENTY-FIVE PERCENT WOULD BE PERSONS WITH SEVERE DISABILITIES AND A MINIMUM OF TWENTY PERCENT WOULD BE PERSONS WITH SEVERE DISABILITIES WHO HAVE DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 27-10.5-102, C.R.S.; AND
 - (e) ANY OTHER CRITERIA CONSISTENT WITH THE PURPOSES OF THIS PART 8 THAT ARE DEEMED NECESSARY BY THE DEPARTMENT.
- (3) THE DEPARTMENT SHALL CREATE AND MAINTAIN A LIST OF ALL NONPROFIT AGENCIES THAT HAVE ATTAINED SELF-CERTIFIED VENDOR STATUS AND SHALL MAKE THE LIST AVAILABLE TO THE DEPARTMENT OF PERSONNEL. THE DEPARTMENT OF PERSONNEL SHALL DISTRIBUTE THE LIST PAGE 5-HOUSE BILL 08-1047 TO EACH STATE AGENCY.
 - (4) A NONPROFIT AGENCY'S SELF-CERTIFIED VENDOR STATUS IS VALID FOR ONE YEAR AFTER THE DATE THAT THE NONPROFIT AGENCY'S SELF-CERTIFICATION APPLICATION WAS APPROVED. AFTER ONE YEAR, A NONPROFIT AGENCY IS REQUIRED TO REAPPLY TO THE DEPARTMENT FOR SELF-CERTIFIED VENDOR STATUS TO BE ELIGIBLE TO RESPOND TO A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8.
- (5) (a) NOTHING IN THIS PART 8 SHALL BE CONSTRUED TO REQUIRE A NONPROFIT AGENCY THAT SEEKS TO RESPOND TO SERVICES SOLICITATIONS TO BECOME A SELF-CERTIFIED VENDOR; EXCEPT THAT A NONPROFIT AGENCY SHALL NOT BE ELIGIBLE TO BID FOR A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8 UNLESS THE NONPROFIT AGENCY IS SELF-CERTIFIED PURSUANT TO THIS SECTION.
(b) NOTHING IN THIS PART 8 SHALL BE CONSTRUED TO PREVENT A NONPROFIT AGENCY FROM BIDDING ON ANY STATE AGENCY SOLICITATION THAT IS NOT A SET ASIDE SOLICITATION PURSUANT TO THIS PART 8.

- 24-103-804. SERVICES SOLICITATIONS - CATEGORICAL IDENTIFICATION.
- (1) (a) THE DEPARTMENT OF PERSONNEL SHALL PUBLISH A LIST OF THE SERVICES THAT STATE AGENCIES SEEK THROUGH SERVICES SOLICITATIONS AND SHALL MAKE THE LIST AVAILABLE TO NONPROFIT AGENCIES ON AN ANNUAL BASIS. AS PART OF A NONPROFIT AGENCY'S APPLICATION TO BECOME A SELF-CERTIFIED VENDOR PURSUANT TO SECTION 24-103-803, THE NONPROFIT AGENCY SHALL SPECIFY THE TASKS AND ACTIVITIES THAT IT IS ABLE TO PERFORM FOR STATE AGENCIES BASED ON THE LIST CREATED BY THE DEPARTMENT OF PERSONNEL.
 - (b) THE DEPARTMENT SHALL REVIEW EACH APPLICATION SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) AND CREATE A LIST OF THE TYPES OF TASKS AND ACTIVITIES THAT IT DEEMS APPROPRIATE FOR A SELF-CERTIFIED VENDOR TO PERFORM. THE DEPARTMENT SHALL CREATE AN INITIAL TASKS AND ACTIVITIES LIST WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1) AND SHALL REVIEW AND UPDATE THE LIST AT LEAST ANNUALLY.
- (2) AFTER CREATING THE TASKS AND ACTIVITIES LIST PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL MEET WITH THE STATE PURCHASING DIRECTOR OR THE DIRECTOR'S DESIGNEE TO DETERMINE THE TYPES OF SERVICES SOLICITATIONS THAT WOULD INVOLVE SOME OR ALL OF THE TASKS OR ACTIVITIES SPECIFIED ON THE LIST AND THAT COULD BE SUCCESSFULLY PERFORMED BY SELF-CERTIFIED VENDORS. THE DEPARTMENT AND THE STATE PURCHASING DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL SOLICIT INPUT FROM THE PURCHASING DIRECTOR OF EACH STATE AGENCY REGARDING THE NATURE OF SERVICES FOR WHICH THE STATE AGENCY PERIODICALLY ISSUES SOLICITATIONS FOR BIDS AND THE TYPE OF SERVICES THAT THE STATE AGENCY BELIEVES COULD BE SUCCESSFULLY PERFORMED BY A SELF-CERTIFIED VENDOR. WITHIN NINETY DAYS AFTER THE ESTABLISHMENT OF THE LIST OF TASKS AND ACTIVITIES CREATED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL CREATE A LIST OF THE TYPES OF SERVICES SOLICITATIONS THAT IT DEEMS APPROPRIATE FOR A SELF-CERTIFIED VENDOR TO PERFORM. THE LIST SHALL BE REFERRED TO AS THE

"SERVICES SET ASIDE LIST". THE DEPARTMENT SHALL REVIEW AND UPDATE THE LIST AT LEAST ANNUALLY.

- (3) THE DEPARTMENT SHALL PROVIDE THE SERVICES SET ASIDE LIST TO THE STATE PURCHASING DIRECTOR. THE STATE PURCHASING DIRECTOR SHALL PROVIDE THE SERVICES SET ASIDE LIST TO THE PURCHASING DIRECTOR OF EACH STATE AGENCY AND SHALL MAKE THE LIST AVAILABLE TO ANY NONPROFIT AGENCY THAT IS SELF-CERTIFIED TO BID ON SERVICES SOLICITATIONS PURSUANT TO THIS PART 8.

ARTICLE 103.5 CONTRACT PERFORMANCE

24-103.5-101. MONITORING OF VENDOR PERFORMANCE - DEFINITIONS.

- (1) (a) FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.
 - (b) INsofar AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.
- (2) EACH PERSONAL SERVICES CONTRACT ENTERED INTO PURSUANT TO THIS CODE WITH A VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE SHALL CONTAIN:
 - (a) PERFORMANCE MEASURES AND STANDARDS DEVELOPED SPECIFICALLY FOR THE CONTRACT BY THE GOVERNMENTAL BODY ADMINISTERING THE CONTRACT. THE PERFORMANCE MEASURES AND

STANDARDS SHALL BE NEGOTIATED BY THE GOVERNMENTAL BODY AND THE VENDOR PRIOR TO EXECUTION OF THE CONTRACT AND SHALL BE INCORPORATED INTO THE CONTRACT. THE MEASURES AND STANDARDS SHALL BE USED BY THE GOVERNMENTAL BODY TO EVALUATE THE PERFORMANCE OF THE GOVERNMENTAL BODY AND THE VENDOR UNDER THE CONTRACT.

- (b) AN ACCOUNTABILITY SECTION THAT REQUIRES THE VENDOR TO REPORT REGULARLY ON ACHIEVEMENT OF THE PERFORMANCE MEASURES AND STANDARDS SPECIFIED IN THE CONTRACT AND THAT ALLOWS THE GOVERNMENTAL BODY TO WITHHOLD PAYMENT UNTIL SUCCESSFUL COMPLETION OF ALL OR PART OF THE CONTRACT AND THE ACHIEVEMENT OF ESTABLISHED PERFORMANCE STANDARDS. THE ACCOUNTABILITY SECTION SHALL INCLUDE A REQUIREMENT THAT PAYMENT BY THE GOVERNMENTAL BODY TO THE VENDOR SHALL BE MADE WITHOUT DELAY UPON SUCCESSFUL COMPLETION OF ALL OR ANY PART OF THE CONTRACT IN ACCORDANCE WITH THE PAYMENT SCHEDULE SPECIFIED IN THE CONTRACT OR AS OTHERWISE AGREED UPON BY THE PARTIES.
 - (c) MONITORING REQUIREMENTS THAT SPECIFY HOW THE GOVERNMENTAL BODY AND THE VENDOR WILL EVALUATE EACH OTHERS' PERFORMANCE, INCLUDING PROGRESS REPORTS, SITE VISITS, INSPECTIONS, AND REVIEWS OF PERFORMANCE DATA. THE GOVERNMENTAL BODY SHALL USE ONE OR MORE MONITORING PROCESSES TO ENSURE THAT THE RESULTS, OBJECTIVES, AND OBLIGATIONS OF THE CONTRACT ARE MET.
 - (d) METHODS AND MECHANISMS TO RESOLVE ANY SITUATION IN WHICH THE GOVERNMENTAL BODY'S MONITORING ASSESSMENT DETERMINES NON-COMPLIANCE, INCLUDING TERMINATION OF THE CONTRACT.
- (3) EACH GOVERNMENTAL BODY ADMINISTERING THE PERSONAL SERVICES CONTRACT SHALL, WITHIN

EXISTING RESOURCES OF THE GOVERNMENTAL BODY, DESIGNATE AT LEAST ONE PERSON WITHIN THE GOVERNMENTAL BODY RESPONSIBLE FOR MONITORING WHETHER THE CRITERIA DESCRIBED IN SUBSECTION (2) OF THIS SECTION ARE MET, WHETHER AND TO WHAT EXTENT THE CONTRACT WAS COMPLETED ACCORDING TO THE PERFORMANCE SCHEDULE SPECIFIED IN THE CONTRACT, SATISFACTION OF THE SCOPE OF THE VENDOR'S WORK AS SPECIFIED IN THE CONTRACT, AND WHETHER AND TO WHAT EXTENT THE VENDOR MET OR EXCEEDED BUDGETARY REQUIREMENTS UNDER THE CONTRACT.

- (4) BEFORE THE GOVERNMENTAL BODY MAY ENTER INTO A PERSONAL SERVICES CONTRACT, THE PERSON SELECTED IN SUBSECTION (3) OF THIS SECTION SHALL CERTIFY THAT THE PROPOSED PERFORMANCE MEASURES AND STANDARDS, DATA SOURCES, AND DATA COLLECTION METHODS PROVIDE A VALID BASIS FOR ASSESSING THE VENDOR'S PERFORMANCE.

- (5) IN THE CASE OF A CONTRACT THAT HAS BEEN RENEWED IN A SUBSEQUENT FISCAL YEAR, THE GOVERNMENTAL BODY SHALL CERTIFY ANNUALLY WHETHER THE VENDOR ON ANY CONTRACT IS COMPLYING WITH THE TERMS OF THE CONTRACT. IF THE GOVERNMENTAL BODY DETERMINES THAT THE VENDOR HAS NOT COMPLIED WITH THE CONTRACT TERMS, INCLUDING BUT NOT LIMITED TO PERFORMANCE STANDARDS AND MEASURABLE OUTCOMES, THE STATE SHALL BE ENTITLED TO ANY REMEDY AVAILABLE UNDER LAW IN THE CASE OF CONTRACT NONPERFORMANCE, INCLUDING BUT NOT LIMITED TO TERMINATION OF THE CONTRACT AND THE RETURN OF ANY AND ALL PAYMENTS MADE TO THE VENDOR BY THE STATE UNDER THE CONTRACT; EXCEPT THAT THE RECOVERY OF ANY MONEYS BY THE STATE SHALL BE REDUCED BY THE VALUE OF ANY CONTRACTUAL BENEFITS REALIZED BY THE STATE FROM PARTIAL PERFORMANCE BY THE VENDOR UNDER THE CONTRACT. IF A VENDOR IS DEEMED TO BE IN DEFAULT UNDER ANY ONE PARTICULAR CONTRACT WITH THE STATE, THE STATE MAY, UPON A SHOWING OF GOOD CAUSE, DECLARE ANY OR ALL OTHER CONTRACTS IT

HAS ENTERED INTO WITH THE VENDOR TO BE IN DEFAULT.

- (6) THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) SHALL INCLUDE SUCH INFORMATION AS WILL ALLOW THE EXECUTIVE DIRECTOR AND THE GOVERNMENTAL BODY TO EVALUATE THE PRIOR RECORD OF A PARTICULAR VENDOR IN MEETING PERFORMANCE MEASURES AND STANDARDS UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IN CONNECTION WITH A PERSONAL SERVICES CONTRACT TO WHICH IT HAS BEEN A PARTY. IF A PARTICULAR VENDOR DEMONSTRATES A GROSS FAILURE TO MEET SUCH PERFORMANCE MEASURES AND STANDARDS IN CONNECTION WITH ONE OR MORE CONTRACTS TO WHICH IT HAS BEEN A PARTY, THE EXECUTIVE DIRECTOR, UPON THE REQUEST OF AND WITH A SHOWING OF GOOD CAUSE BY A GOVERNMENTAL BODY, MAY REMOVE THE NAME OF THE VENDOR FROM THE DATABASE AND PROHIBIT THE VENDOR FROM BIDDING ON FUTURE CONTRACTS. UPON A SHOWING OF GOOD CAUSE BY A VENDOR OR GOVERNMENTAL BODY, THE EXECUTIVE DIRECTOR MAY REINSTATE THE NAME OF THE VENDOR TO THE DATABASE. IF A VENDOR DISPUTES THE REMOVAL OF ITS NAME FROM THE DATABASE OR THE PROHIBITION OF THE VENDOR FROM BIDDING ON FUTURE CONTRACTS, THE VENDOR MAY EXERCISE THE DEBARMENT PROTEST AND APPEAL RIGHTS SPECIFIED IN SECTION 24-109-105, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE APPEAL, THE VENDOR MAY FILE A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING SUCH REMOVAL OR PROHIBITION SHALL BE REVERSAL OF THE DEBARMENT OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).
- (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION:

- (a) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO APPLY TO ANY CONTRACT TO WHICH THE STATE IS A PARTY UNDER MEDICARE, THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 8 OF TITLE 25.5, C.R.S., THE "COLORADO INDIGENT CARE PROGRAM", PART 1 OF ARTICLE 3 OF TITLE 25.5, C.R.S., OR TO ANY GRANT, AWARD, OR CONTRACT FUNDED BY ANY FEDERAL OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR CONTRACT. FOR PURPOSES OF THIS ARTICLE, "SPONSORED PROJECT" MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS.
- (b) THE PROVISIONS OF THIS SECTION SHALL NOT TAKE EFFECT UNTIL THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) HAS BEEN IMPLEMENTED.

ARTICLE 104 SPECIFICATIONS

PART 1 DEFINITIONS

24-104-101. DEFINITIONS.
AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (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.

R-24-104-101-01 Terms Defined in this Chapter.

- (a) Brand Name Specification: Means a specification limited to one or more items by manufacturer's names or catalogue numbers.
- (b) Brand Name or Equal Specification: Means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.
- (c) Qualified Products List: Means an approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the state has determined will meet the applicable specification requirements.
- (d) Specifications: See Statute; includes performance characteristics.

PART 2 SPECIFICATIONS

24-104-201. 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.

R-24-104-201-01

General Purpose and Policies

- (a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs, i.e., value analysis. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the State's requirements.
- (b) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.
- (c) Preference for Commercially Available Products. It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

24-104-202. DUTIES OF THE EXECUTIVE DIRECTOR.
THE EXECUTIVE DIRECTOR SHALL PREPARE, ISSUE, REVISE, MAINTAIN, AND MONITOR THE USE OF SPECIFICATIONS FOR SUPPLIES, SERVICES, AND CONSTRUCTION REQUIRED BY THE STATE.

R-24-104-202

Brand Name or Equal Specification: Conditions for Use

Brand name or equal specifications may be used when it is in the best interest of the State and when the item to be procured is best described by use of such a specification. Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not to limit or restrict competition.

R-24-104-202-01

Brand Name Specifications: Conditions for Use

Since use of a brand name specification is restrictive, it may be used when only the brand name or items will satisfy the State's needs. The procurement officer shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Rule R-24-103-205 (Sole Source Procurement).

R-24-104-202-02

Qualified Products List: Conditions for Use

A qualified products list may be developed with the approval of the Director or the head of a purchasing agency when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the State's requirements. When developing a qualified products list, a representative group of potential suppliers may be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration on subsequent solicitations.

24-104-203. **EXEMPTED ITEMS SPECIFICATIONS FOR SUPPLIES, SERVICES, OR CONSTRUCTION ITEMS TO BE PROCURED BY PURCHASING AGENCIES EXEMPTED FROM CENTRALIZED PROCUREMENT PURSUANT TO SECTION 24-102-302 MAY BE PREPARED BY**

THOSE PURCHASING AGENCIES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND RULES PROMULGATED PURSUANT TO THIS ARTICLE.

- 24-104-204. RELATIONSHIP WITH USING AGENCIES.
THE EXECUTIVE DIRECTOR MAY OBTAIN EXPERT ADVICE AND ASSISTANCE FROM PERSONNEL OF USING AGENCIES IN THE DEVELOPMENT OF SPECIFICATIONS AND MAY DELEGATE, IN WRITING, TO A USING AGENCY THE AUTHORITY TO PREPARE AND UTILIZE ITS OWN SPECIFICATIONS.
- 24-104-205. MAXIMUM PRACTICABLE COMPETITION.
ALL SPECIFICATIONS SHALL SEEK TO PROMOTE OVERALL ECONOMY FOR THE PURPOSES INTENDED AND ENCOURAGE COMPETITION IN SATISFYING THE STATE'S NEEDS AND SHALL NOT BE UNDULY RESTRICTIVE.
- 24-104-206. OWNERSHIP CONSIDERATIONS.
WHEN FEASIBLE, SPECIFICATIONS SHALL INCORPORATE THE CONCEPTS OF ENERGY EFFICIENCY, VALUE ANALYSIS, AND LIFE-CYCLE COST.
- 24-104-207. SPECIFICATIONS PREPARED BY ARCHITECTS AND ENGINEERS. THE REQUIREMENTS OF THIS ARTICLE REGARDING THE PURPOSES AND NONRESTRICTIVENESS OF SPECIFICATIONS SHALL APPLY TO ALL SPECIFICATIONS UNLESS OTHERWISE PROVIDED BY LAW.

ARTICLE 105 CONSTRUCTION CONTRACTS

PART 1 MANAGEMENT OF CONSTRUCTION CONTRACTING

24-105-101. RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT.
THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES PROVIDING FOR AS MANY ALTERNATIVE METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT AS HE MAY DETERMINE TO BE FEASIBLE. THESE RULES SHALL SET FORTH CRITERIA TO BE USED IN DETERMINING WHICH METHOD OF CONSTRUCTION CONTRACTING MANAGEMENT IS TO BE USED FOR A PARTICULAR PROJECT, GRANT TO THE HEAD OF A DIVISION WITHIN THE DEPARTMENT OR THE HEAD OF A PURCHASING AGENCY WHICH IS RESPONSIBLE FOR CARRYING OUT THE CONSTRUCTION PROJECT THE DISCRETION TO SELECT THE APPROPRIATE METHOD OF CONSTRUCTION CONTRACTING MANAGEMENT FOR A PARTICULAR PROJECT, AND 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 FOR EACH PROJECT.

R-24-105-101-01 Definitions

- (a) Prime Contractor, as used in this article means a person who has a contract with the state to build, alter, repair, improve, or demolish any public structure or building, or other public improvements of any kind to any public real property.

R-24-105-101-02 General Definitions

- (a) Use of Definitions. The following definitions are to provide a common vocabulary for use in the context of this Rule and for general discussion concerning the construction contracting activities of the state. The methods described are not all mutually exclusive and often may be combined on one project. These definitions are not intended to be fixed in

respect to all construction projects of the state. In each project these definitions may be adapted to fit the circumstances of that project. However, the procurement officer should endeavor to ensure that these terms are defined adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the definitions provided in this Rule should be explicitly noted.

- (b) Single Prime Contractor. The single prime contractor method of contracting is typified by one business (general contractor) contracting with the state to timely complete an entire construction project in accordance with plans and specifications provided by the state. Often these plans and specifications are prepared by a private architectural firm under contract to the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
- (c) Multiple Prime Contractors. Under the multiple prime contractor method, the state or the state's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with state plans and specifications. The state or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.
- (d) Design-Build or Turnkey. In design-build or turnkey project, a business contracts directly with the state to meet the state's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

- (e) **Construction Manager.** Construction management is a team approach to construction. A construction manager is a firm or individual experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the design (consisting of architect/engineers and other consultants as may be required as team members) and construction of the project, including the administration of change orders. The state contracts with a qualified construction manager to act for the state in the construction project as specified in the construction management contract.
- (f) **Sequential Design and Construction.** Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.
- (g) **Phased Design and Construction.** Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as fast-track construction.

The above defined methods of construction contracting are not to be construed as an exclusive list. In selecting the appropriate construction contracting method, consideration will be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.

24-105-102. PERFORMANCE EVALUATION REPORTS - DEFINITIONS.

- (1) (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:
 - (I) "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-101-301 (10); EXCEPT THAT, FOR PURPOSES OF THIS SECTION,

"GOVERNMENTAL BODY" SHALL ALSO INCLUDE ELECTED OFFICIALS, THE GOVERNING BOARD OF EACH INSTITUTION OF HIGHER EDUCATION, AND THE COLORADO COMMISSION ON HIGHER EDUCATION.

(II) "REPORT" MEANS A CONTRACTOR PERFORMANCE EVALUATION REPORT REQUIRED BY THIS SECTION.

(b) IN SO FAR AS A CONFLICT EXISTS BETWEEN THE DEFINITION GIVEN A PARTICULAR TERM AFFECTING A PERSONAL SERVICES CONTRACT BY THE DEPARTMENT ACTING PURSUANT TO THIS CODE OR ANY RULES PROMULGATED THEREUNDER AND THE DEFINITION GIVEN A TERM BY AN INSTITUTION OF HIGHER EDUCATION, THE MEANING GIVEN THE TERM BY THE DEPARTMENT SHALL CONTROL.

(2) IN THE CASE OF EACH CONSTRUCTION CONTRACT WITH A VALUE OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, THE GOVERNMENTAL BODY SHALL PREPARE, PRIOR TO COMPLETION OF THE CONTRACT, A CONTRACTOR PERFORMANCE EVALUATION REPORT, WHICH SHALL BE COMPLETED ON A FORM PROVIDED BY THE DEPARTMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL NOT TAKE EFFECT UNTIL THE CENTRALIZED CONTRACT MANAGEMENT SYSTEM REQUIRED BY SECTION 24-102-205 (3) (a) HAS BEEN IMPLEMENTED.

(3) EACH REPORT SHALL EVALUATE THE CONTRACTOR'S PERFORMANCE ON A PARTICULAR PROJECT AND SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

(a) THE NAME OF THE GOVERNMENTAL BODY, THE NAME OF THE PARTICULAR PROJECT AND ANY APPLICABLE CONTRACT NUMBER, THE TYPE OF PROCUREMENT METHOD USED FOR AWARDING THE CONTRACT, AND THE NAME OF THE EMPLOYEE WITHIN THE GOVERNMENTAL BODY RESPONSIBLE FOR COMPLETING THE REPORT;

(b) THE INITIAL AMOUNT BUDGETED FOR COMPLETION OF THE CONTRACT AND THE FINAL AMOUNT PAID BY THE GOVERNMENTAL BODY UPON COMPLETION OF THE CONTRACT;

- (c) THE INITIAL COMPLETION DATE AS SPECIFIED IN THE CONTRACT AND THE DATE ON WHICH THE CONTRACT WAS ACTUALLY COMPLETED;
- (d) A NUMERICAL RATING THAT ASSESSES THE CONTRACTOR'S OVERALL QUALITATIVE PERFORMANCE IN CONNECTION WITH THE CONTRACT; AND
- (e) A NUMERICAL RATING THAT ASSESSES THE CONTRACTOR'S OVERALL SAFETY PERFORMANCE IN CONNECTION WITH THE CONTRACT.
- (4) EACH REPORT SHALL BE KEPT ON FILE BY THE GOVERNMENTAL BODY AND SHALL BE FORWARDED, WITHIN THIRTY DAYS OF THE DATE ON WHICH THE REPORT IS COMPLETED, TO A CENTRAL DATABASE MANAGED BY THE DEPARTMENT. EACH REPORT SHALL BE MAINTAINED IN THE DATABASE FOR AT LEAST FIVE YEARS AFTER BEING FORWARDED TO THE DATABASE.
- (5) EACH GOVERNMENTAL BODY SHALL ESTABLISH APPROPRIATE PROCEDURES TO ENSURE THAT EACH REPORT RELATING TO A PROSPECTIVE CONTRACTOR IS REVIEWED BY THE GOVERNMENTAL BODY PRIOR TO THE GOVERNMENTAL BODY MAKING ANY FUTURE CONTRACT AWARDS, REGARDLESS OF THE PROCUREMENT METHOD USED. THE REVIEW REQUIRED BY THIS SUBSECTION (5) SHALL BE UNDERTAKEN TO ENSURE THAT PROSPECTIVE CONTRACTORS MEET APPLICABLE CONTRACTOR RESPONSIBILITY STANDARDS AND TO ENABLE THE GOVERNMENTAL BODY TO ASSESS CONTRACTOR QUALIFICATIONS AND CAPABILITIES FOR PURPOSES OF COMPETITIVE BID EVALUATIONS.
- (6) IF A VENDOR DISPUTES ANY INFORMATION CONTAINED IN A REPORT, THE VENDOR MAY EXERCISE THE CONTRACT RIGHTS SPECIFIED IN SECTION 24-109-106, 24-109-107, 24-109-201, OR 24-109-202. IF, UPON COMPLETION OF AN APPEAL FILED WITH THE EXECUTIVE DIRECTOR OR THE DENVER DISTRICT COURT, AS APPLICABLE, THE VENDOR IS NOT SATISFIED WITH THE RESOLUTION OF THE APPEAL, THE VENDOR MAY FILE, ON A FORM PREPARED BY THE DEPARTMENT, A REBUTTAL STATEMENT THAT SHALL BE MAINTAINED AS PART OF THE VENDOR EVALUATION

RECORD. THE VENDOR'S SOLE REMEDY IN CONTESTING INFORMATION CONTAINED IN THE REPORT SHALL BE REMOVAL OF THE EVALUATION, CORRECTION OF THE EVALUATION, OR SUBMISSION OF THE REBUTTAL STATEMENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

- (7) THE REQUIREMENTS OF THIS SECTION SHALL BE IN ADDITION TO ANY REQUIREMENTS RELATING TO THE EVALUATION OF CONTRACT PERFORMANCE SPECIFIED IN SECTION 24-102-205 OR ARTICLE 103.5 OF THIS TITLE, OR OTHERWISE.

PART 2 BONDS

24-105-201. BID SECURITY.

- (1) BID SECURITY SHALL BE REQUIRED FOR ALL COMPETITIVE SEALED BIDDING FOR CONSTRUCTION CONTRACTS WHEN THE PRICE IS ESTIMATED BY THE PROCUREMENT OFFICER TO EXCEED FIFTY THOUSAND DOLLARS. 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 IN THIS SUBSECTION (1) PREVENTS THE REQUIREMENT OF SUCH BONDS ON CONSTRUCTION CONTRACTS UNDER FIFTY THOUSAND DOLLARS.
- (2) BID SECURITY SHALL BE IN AN AMOUNT EQUAL TO AT LEAST FIVE PERCENT OF THE AMOUNT OF THE BID.
- (3) WHEN THE INVITATION FOR BIDS REQUIRES SECURITY, NONCOMPLIANCE REQUIRES THAT THE BID BE REJECTED AS NONRESPONSIVE.
- (4) AFTER THE BIDS ARE OPENED, THEY SHALL BE IRREVOCABLE FOR THE PERIOD SPECIFIED IN THE INVITATION FOR BIDS, EXCEPT AS PROVIDED IN SECTION 24-103-202 (6). IF A BIDDER IS PERMITTED TO WITHDRAW HIS BID BEFORE AWARD, NO ACTION SHALL BE HAD AGAINST THE BIDDER OR THE BID SECURITY.

R-24-105-201-02 Acceptable Bid Security.
Acceptable bid security shall be limited to:

- (a) a one-time bid bond underwritten by a company licensed to issue bid bonds in the State of Colorado, and in the form prescribed in Section 24-105-203 of the Colorado Procurement Code and Rule R-24-105-203; or
- (b) a bank cashier's check made payable to the Treasurer of the State of Colorado; or
- (c) a bank certified check made payable to the Treasurer of the State of Colorado.

The bid security is submitted as a guarantee that the bid will be maintained in full force and effect for a period of thirty (30) days after the opening of the bids or as specified in the Invitation for Bids.

24-105-202. **CONTRACT PERFORMANCE AND PAYMENT BONDS.**

- (1) **WHEN A CONSTRUCTION CONTRACT IS AWARDED IN EXCESS OF FIFTY THOUSAND DOLLARS, THE FOLLOWING BONDS OR SECURITY SHALL BE DELIVERED TO THE STATE AND SHALL BECOME BINDING ON THE PARTIES UPON THE EXECUTION OF THE CONTRACT:**
 - (A) **A PERFORMANCE BOND SATISFACTORY TO THE STATE, EXECUTED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE OR OTHERWISE SECURED IN A MANNER SATISFACTORY TO THE STATE, IN AN AMOUNT EQUAL TO FIFTY PERCENT OF THE PRICE SPECIFIED IN THE CONTRACT; AND**
 - (B) **A PAYMENT BOND SATISFACTORY TO THE STATE, EXECUTED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE OR OTHERWISE SECURED IN A MANNER SATISFACTORY TO THE STATE, FOR THE PROTECTION OF ALL PERSONS SUPPLYING LABOR AND MATERIAL TO THE CONTRACTOR OR ITS SUBCONTRACTORS FOR THE PERFORMANCE OF THE WORK PROVIDED FOR IN THE CONTRACT. THE BOND SHALL BE IN AN AMOUNT EQUAL TO FIFTY PERCENT OF THE PRICE SPECIFIED IN THE CONTRACT.**
- (2) **NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE STATE TO REQUIRE A PERFORMANCE BOND OR OTHER SECURITY IN ADDITION TO THOSE BONDS OR IN CIRCUMSTANCES**

OTHER THAN THOSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

- (3) SUITS ON PAYMENT BONDS AND LABOR AND PAYMENT BONDS SHALL BE BROUGHT IN ACCORDANCE WITH SECTIONS 38-26-105 TO 38-26-107, CRS

R-24-105-202-01 Performance Bonds

R-24-105-202-02 Payment Bonds

R-24-105-202-03 Exceptions

If it is deemed to be in the State's best interest, the procurement officer may require, as provided in 24-105-202(2), CRS, a performance bond or other security in addition to those bonds or in circumstances other than those specified in Section 24-105-202(a), (b), CRS, as amended.

24-105-203. BOND FORMS AND COPIES.

- (1) THE FORM OF BONDS REQUIRED BY THIS PART 2 SHALL BE AS PROVIDED IN SECTIONS 38-26-105 TO 38-26-107, CRS
- (2) ANY PERSON MAY REQUEST AND OBTAIN FROM THE STATE A CERTIFIED COPY OF A BOND UPON PAYMENT OF THE COST OF REPRODUCTION OF THE BOND AND POSTAGE, IF ANY. A CERTIFIED COPY OF A BOND SHALL BE PRIMA FACIE EVIDENCE OF THE CONTENTS, EXECUTION, AND DELIVERY OF THE ORIGINAL.

R-24-105-203-01 Forms

Performance bonds, labor and material payment bonds, and bid bonds shall be executed on forms as prescribed by the Department of Personnel, State Buildings Section.

PART 3 CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

24-105-301. CONTRACT CLAUSES AND THEIR ADMINISTRATION.

- (1) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES REQUIRING THE INCLUSION IN STATE CONSTRUCTION CONTRACTS OF CLAUSES PROVIDING FOR ADJUSTMENTS IN PRICES, TIME OF

PERFORMANCE, AND OTHER APPROPRIATE CONTRACT PROVISIONS AFFECTED BY AND COVERING THE FOLLOWING SUBJECTS:

- (A) THE UNILATERAL RIGHT OF THE STATE TO ORDER IN WRITING CHANGES IN THE WORK WITHIN THE SCOPE OF THE CONTRACT AND CHANGES IN THE TIME OF PERFORMANCE OF THE CONTRACT THAT DO NOT ALTER THE SCOPE OF THE CONTRACT WORK;
 - (B) VARIATIONS OCCURRING BETWEEN ESTIMATED QUANTITIES OF WORK ON A CONTRACT AND ACTUAL QUANTITIES;
 - (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 CONDITION CLAUSES REQUIRED BY THE RULES NEED NOT BE INCLUDED IN A CONTRACT WHEN THE CONTRACT IS NEGOTIATED OR WHEN THE CONTRACTOR PROVIDES THE SITE OR DESIGN.
- (2) (A) ADJUSTMENTS IN PRICE 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 PRACTICABLE;
 - (II) BY UNIT PRICES SPECIFIED IN THE CONTRACT OR SUBSEQUENTLY AGREED UPON;
 - (III) BY THE COSTS ATTRIBUTABLE TO THE EVENTS OR SITUATIONS UNDER SUCH CLAUSES WITH ADJUSTMENT OF PROFIT OR FEE, ALL AS SPECIFIED IN THE CONTRACT OR SUBSEQUENTLY AGREED UPON;
 - (IV) IN SUCH OTHER MANNER AS THE CONTRACTING PARTIES MAY MUTUALLY AGREE; OR
 - (V) IN THE ABSENCE OF AGREEMENT BY THE PARTIES, BY A UNILATERAL DETERMINATION BY THE STATE OF THE COSTS ATTRIBUTABLE TO THE EVENTS OR SITUATIONS UNDER SUCH CLAUSES WITH

ADJUSTMENT OF PROFIT OR FEE, ALL AS COMPUTED BY THE STATE PURSUANT TO THE APPLICABLE SECTIONS OF ANY RULES ISSUED UNDER ARTICLE 107 OF THIS TITLE AND SUBJECT TO THE PROVISIONS OF ARTICLE 109 OF THIS TITLE.

A CONTRACTOR SHALL BE REQUIRED TO SUBMIT COST OR PRICING DATA IF ANY ADJUSTMENT IN CONTRACT PRICE IS SUBJECT TO THE PROVISIONS OF SECTION 24-103-403.

- (3) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES REQUIRING THE INCLUSION IN STATE CONSTRUCTION CONTRACTS OF CLAUSES PROVIDING FOR APPROPRIATE REMEDIES AND COVERING THE FOLLOWING SUBJECTS:
 - (A) LIQUIDATED DAMAGES AS APPROPRIATE;
 - (B) SPECIFIED EXCUSES FOR DELAY OR NONPERFORMANCE;
 - (C) TERMINATION OF THE CONTRACT FOR DEFAULT; AND
 - (D) TERMINATION OF THE CONTRACT IN WHOLE OR IN PART FOR THE CONVENIENCE OF THE STATE.
- (4) THE CONTRACT CLAUSES PROMULGATED UNDER THIS SECTION SHALL BE SET FORTH IN RULES; EXCEPT THAT SUCH RULES SHALL BE CONSISTENT WITH SECTION 24-91-103.5 (1) AND (2). HOWEVER, THE HEAD OF A DIVISION WITHIN THE DEPARTMENT DESIGNATED BY THE EXECUTIVE DIRECTOR OR THE HEAD OF A PURCHASING AGENCY MAY VARY THE CLAUSES FOR INCLUSION IN ANY PARTICULAR STATE CONSTRUCTION CONTRACT SO LONG AS ANY VARIATIONS ARE SUPPORTED BY A WRITTEN DETERMINATION THAT DESCRIBES THE CIRCUMSTANCES JUSTIFYING SUCH VARIATIONS AND NOTICE OF ANY MATERIAL VARIATION IS STATED IN THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS. NO VARIATION THAT IS INCONSISTENT WITH SECTION 24-91-103.5 (1) AND (2) SHALL BE MADE PURSUANT TO THIS SUBSECTION (4).

R-24-105-301

Contract Clauses and Their Administration.

The clauses required by §24-105-301 CRS are hereby promulgated and set forth in the General Conditions of the Contract as Articles 35 General, 35A, 35B, 37, 38, 46, 48B, 49, and 50, as shown in Appendix A of these Procurement Rules. The entire text of the General Conditions of the Contract is included in Appendix A for the reader's convenience; however, only these articles are regulatory. All other provisions of the General Conditions of the Contract are subject to revision without rulemaking.

R-24-105-301-01 General Conditions of the Contract.
All construction contracts shall have incorporated as a part of the contract documents, "The General Conditions of the Contract," State Form SC-6.23.

24-105-302. FISCAL RESPONSIBILITY.
EVERY CONTRACT MODIFICATION, CHANGE ORDER, OR CONTRACT PRICE ADJUSTMENT UNDER A CONSTRUCTION CONTRACT WITH THE STATE IN EXCESS OF AN AMOUNT SPECIFIED IN THE CONTRACT SHALL BE SUBJECT TO PRIOR WRITTEN CERTIFICATION BY THE CONTROLLER OR OTHER OFFICIAL RESPONSIBLE FOR MONITORING AND REPORTING UPON THE STATUS OF THE COSTS OF THE TOTAL PROJECT OR CONTRACT BUDGET AS TO THE EFFECT OF THE CONTRACT MODIFICATION, CHANGE ORDER, OR ADJUSTMENT IN CONTRACT PRICE ON THE TOTAL PROJECT OR CONTRACT BUDGET. IN THE EVENT THAT THE CERTIFICATION OF THE CONTROLLER OR OTHER RESPONSIBLE OFFICIAL DISCLOSES A RESULTING INCREASE IN THE TOTAL PROJECT OR CONTRACT BUDGET, THE PROCUREMENT OFFICER SHALL NOT EXECUTE OR MAKE SUCH CONTRACT MODIFICATION, CHANGE ORDER, OR ADJUSTMENT IN CONTRACT PRICE UNLESS SUFFICIENT FUNDS ARE AVAILABLE THEREFOR OR THE SCOPE OF THE PROJECT OR CONTRACT IS ADJUSTED SO AS TO PERMIT THE DEGREE OF COMPLETION THAT IS FEASIBLE WITHIN THE TOTAL PROJECT OR CONTRACT BUDGET AS IT EXISTED PRIOR TO THE CONTRACT MODIFICATION, CHANGE ORDER, OR ADJUSTMENT IN CONTRACT PRICE UNDER CONSIDERATION; EXCEPT THAT, WITH RESPECT TO THE VALIDITY OF ANY EXECUTED CONTRACT MODIFICATION, CHANGE ORDER, OR ADJUSTMENT IN CONTRACT PRICE WHICH THE CONTRACTOR HAS REASONABLY RELIED UPON,

IT SHALL BE PRESUMED THAT THERE HAS BEEN
COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

R24-105-302 Fiscal Responsibility. (See Statute)

ARTICLE 106 MODIFICATION AND TERMINATION OF CONTRACTS (FOR OTHER THAN CONSTRUCTION)

24-106-101. CONTRACT CLAUSES - PRICE ADJUSTMENTS - ADDITIONAL CLAUSES - MODIFICATION.

(1) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES PERMITTING OR REQUIRING THE INCLUSION OF CLAUSES PROVIDING FOR ADJUSTMENTS IN PRICES, TIME OF PERFORMANCE, OR OTHER APPROPRIATE CLAUSES COVERING THE FOLLOWING:

(A) THE UNILATERAL RIGHT OF THE STATE TO ORDER, IN WRITING, CHANGES IN THE WORK WITHIN THE SCOPE OF THE CONTRACT AND TEMPORARY STOPPING OF WORK OR DELAYING OF PERFORMANCE; AND

(B) VARIATIONS OCCURRING BETWEEN ESTIMATED QUANTITIES OF WORK IN A CONTRACT AND ACTUAL QUANTITIES.

(2) (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 PRACTICABLE;

(II) BY UNIT PRICES SPECIFIED IN THE CONTRACT OR SUBSEQUENTLY AGREED UPON;

(III) BY THE COSTS ATTRIBUTABLE TO THE EVENTS OR SITUATIONS UNDER SUCH CLAUSES WITH ADJUSTMENT OF PROFIT OR FEE, ALL AS SPECIFIED IN THE CONTRACT OR SUBSEQUENTLY AGREED UPON;

(IV) IN SUCH OTHER MANNER AS THE CONTRACTING PARTIES MAY MUTUALLY AGREE; OR

(V) IN THE ABSENCE OF AGREEMENT BY THE PARTIES, BY A UNILATERAL DETERMINATION BY THE STATE OF THE COSTS ATTRIBUTABLE TO THE EVENTS OR SITUATIONS UNDER SUCH CLAUSES WITH

ADJUSTMENT OF PROFIT OR FEE, ALL AS COMPUTED BY THE STATE IN ACCORDANCE WITH APPLICABLE SECTIONS OF THE RULES PROMULGATED UNDER ARTICLE 107 OF THIS TITLE AND SUBJECT TO THE PROVISIONS OF ARTICLE 109 OF THIS TITLE.

- (B) A CONTRACTOR SHALL BE REQUIRED TO SUBMIT COST OR PRICING DATA IF ANY ADJUSTMENT IN CONTRACT PRICE IS SUBJECT TO THE PROVISIONS OF SECTION 24-103-403.
- (3) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES INCLUDING, BUT NOT LIMITED TO, RULES PERMITTING OR REQUIRING THE INCLUSION IN STATE CONTRACTS OF CLAUSES PROVIDING FOR APPROPRIATE REMEDIES AND COVERING THE FOLLOWING SUBJECTS:
 - (A) LIQUIDATED DAMAGES AS APPROPRIATE.
 - (B) SPECIFIED EXCUSES FOR DELAY OR NONPERFORMANCE.
 - (C) TERMINATION OF THE CONTRACT FOR DEFAULT; AND
 - (D) TERMINATION OF THE CONTRACT IN WHOLE OR IN PART FOR THE CONVENIENCE OF THE STATE.
- (4) ANY CONTRACT CLAUSES PROMULGATED UNDER THIS SECTION SHALL BE SET FORTH IN RULES; EXCEPT THAT SUCH RULES SHALL BE CONSISTENT WITH SECTION 24-91-103.5 (1) AND (2). HOWEVER, THE EXECUTIVE DIRECTOR OR THE HEAD OF A PURCHASING AGENCY MAY VARY THE CLAUSES FOR INCLUSION IN ANY PARTICULAR STATE CONTRACT SO LONG AS ANY VARIATIONS ARE SUPPORTED BY A WRITTEN DETERMINATION THAT DESCRIBES THE CIRCUMSTANCES JUSTIFYING SUCH VARIATIONS AND NOTICE OF ANY MATERIAL VARIATION IS STATED IN THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS. NO VARIATION THAT IS INCONSISTENT WITH SECTION 24-91-103.5 (1) AND (2) SHALL BE MADE PURSUANT TO THIS SUBSECTION (4).

R-24-106-101-01

Revisions to Contract Clauses

These clauses may be varied for use in a particular contract at the discretion of the procurement officer.

R-24-106-102-02

Changes Clause

(a) Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

(i) Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (A) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith;
- (B) method of shipment or packing;

or

(C) place of delivery.

(ii) Adjustments of Price or Time or Performance. If any such change order increases or decreases, the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

- (iii) Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.
- (iv) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

R-24-106-101-03

Stop Work Order Clause

- (a) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modification, engineering changes or realignment of programs.
- (b) Use of Orders
 - (i) Because stop work orders may result in increased costs by reason of standby costs, such orders will be issued only with prior approval of the procurement officer.
 - (ii) Stop work orders shall include, as appropriate:
 - (A) a clear description of work to be suspended;
 - (B) instructions as to the issuance of further orders by the contractor for material or services.
 - (iii) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.
- (c) Clause

- (i) Order to Stop Work. The procurement officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocatable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:
 - (A) cancel the stop work order; or
 - (B) terminate the work covered by such order; or
 - (C) terminate the contract.
- (ii) Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly cancelled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:
 - (A) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocatable to, the performance of any part of this contract; and
 - (B) the contractor asserts claim for such an adjustment within 30 days after the end of the period of work stoppage.

- (iii) Termination of Stopped Work. If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

R-24-106-101-04

Variations in Estimated Quantities Clause

- (a) Define Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

"Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

 - (i) the unit prices for the increased quantity increment will remain the same; and
 - (ii) such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."
- (b) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:
 - (i) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;
 - (ii) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;
 - (iii) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and
 - (iv) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids may be solicited.

R-24-106-101-05

Price Adjustment Clause

The following clause may be used when price adjustments are anticipated:

- “(a) Price Adjustment Method. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:
- (i) by agreement on a fixed-price adjustment;
 - (ii) by unit prices specified in the contract;
 - (iii) in such other manner as the parties may mutually agree; or
 - (iv) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.
- (b) Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Colorado State Procurement Rules.

R-24-106-101-06

Termination for Default Clause

- (a) Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.
- (b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely reasonable, and

necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

(c) Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

(d) Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the state and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

(e) Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been

issued pursuant to the termination for convenience clause.

R-24-106-101-07

Liquidated Damages Clause

The State may insert the following clause in construction contracts:

"When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for a \$_____ (amount to be filled in for each contract) per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency."

R-24-106-101-08

Termination for Convenience Clause

- (a) Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.
- (b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of

subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) Compensation.

(i) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) (iii) in this paragraph.

(ii) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(A) contract prices for supplies or services accepted under the contract;

- (B) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (C) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c)(ii) of this paragraph;
- (D) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection terminated portion of

this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

- (iv) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado State Procurement Code.

R-24-106-101-09

Novation, Assignment or Change of Name

- (a) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer, provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.
- (b) Recognition of a Successor in Interest Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferrer and the transferee shall agree that:
 - (i) the transferee assumes all of the transferrer's obligations;
 - (ii) the transferrer waives all rights under the contract as against the agency; and
 - (iii) unless the transferrer guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.
- (c) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into

an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are thereby changed.

ARTICLE 107 COST PRINCIPLES

24-107-101. ADMINISTRATIVE RULES - COST REIMBURSEMENT.
THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES SETTING FORTH COST PRINCIPLES WHICH MAY BE USED TO DETERMINE THE ALLOWABILITY OF INCURRED COSTS FOR THE PURPOSE OF REIMBURSING COSTS UNDER CONTRACT PROVISIONS WHICH PROVIDE FOR THE REIMBURSEMENT OF COSTS; EXCEPT THAT, IF A WRITTEN DETERMINATION IS APPROVED BY A PERSON WHO IS IN A HIGHER RANKING EMPLOYMENT POSITION THAN A PROCUREMENT OFFICER, SUCH COST PRINCIPLES MAY BE MODIFIED BY CONTRACT.

- R-24-107-101-01 Applicability of Cost Principles
- (a) Application. This subpart contains cost principles and procedures to be used as guidance in:
 - (i) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services;
 - (ii) establishment of price adjustments for contract changes;
 - (iii) pricing of termination for convenience settlements; and
 - (iv) any other situation in which cost analysis is required.
 - (b) Limitation. Cost principles in this subpart are not applicable to:
 - (i) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to such contracts;
 - (ii) prices which are fixed by law or regulation;

- (iii) prices which are based on established catalogue prices as defined in Section 24-103-101 (2) of the Colorado Procurement Code, or established market price; and
- (iv) stipulated unit prices.

R-24-107-101-02

Allowable Costs

- (a) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).
- (b) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.
- (c) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:
 - (i) reasonable, as defined in Section R-24-107-101-03 (Reasonable Costs);
 - (ii) allocable, as defined in Section R-24-107-101-04 (Allocable Costs);
 - (iii) not made unlawful under any applicable law;
 - (iv) not allowable under Section R-24-107-101-05 (Treatment of Specific Costs) or Section R-24-107-101-06 (Costs Requiring Prior Approval to be Allowable); and
 - (v) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R-24-107-101-03

Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

- (a) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
- (b) the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;
- (c) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;
- (d) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and
- (e) any other relevant circumstances.

R-24-107-101-04

Allocable Costs

- (a) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:
 - (i) is incurred specifically for the contract;
 - (ii) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
 - (iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.
- (b) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as

provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives.

Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(c) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(d) Indirect Costs

(i) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct cost have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

(ii) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

- (iii) The contractor's method of distribution may require examination when:
 - (A) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;
 - (B) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or
 - (C) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.
- (iv) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

R-24-107-101-05

Treatment of Specific Costs

- (a) Advertising. The only allowable advertising costs are those for:
 - (i) the recruitment of personnel;
 - (ii) the procurement of scarce items;

- (iii) the disposal of scrap or surplus materials;
 - (iv) the listing of a business' name and location in a classified directory; and
 - (v) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.
- (b) **Bad Debts.** Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.
- (c) **Contingencies**
 - (i) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in subsection (c)(ii) of this section.
 - (ii) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.
- (d) **Depreciation and Use Allowances**
 - (i) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's

operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

- (ii) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.
 - (iii) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.
 - (iv) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.
- (e) Entertainment
- (i) Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as

meals, beverages, lodging, transportation and gratuities. Entertainment costs are unallowable.

- (ii) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section R-24-107-101-07 (Applicable Credits). This section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.
- (f) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workmen's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.
- (g) Gifts, Contributions and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions and donations are unallowable.
- (h) Interest Costs

- (i) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (h)(ii) of this section.
 - (ii) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 24-209-301 of the Colorado Procurement Code.
- (i) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.
- (j) Material Costs
 - (i) Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to subsection (j)(ii) and subsection (j)(iii) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.
 - (ii) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.
 - (iii) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall

be made on the basis of costs incurred by the transferrer (determined in accordance with these costs principles regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferrer's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

- (A) the price is established either by the established catalogue price, as defined in Section 24-103-101(2) of the Colorado Procurement Code; or
- (B) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(k) Taxes

- (i) Except as limited in subsection (k)(ii) of this section all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.
- (ii) The following costs are unallowable:
 - (A) federal income taxes and federal excess profit taxes;
 - (B) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

- (C) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and
 - (D) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of account and financial statements.
- (iii) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.
 - (iv) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R-24-107-101-06

Cost Requiring Prior Approval to be Allowable

- (a) General. The costs described in subsections (b), (c), (d), and (e) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards set out herein.
- (b) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost

which will be covered as allowable pre-contract costs.

- (c) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.
- (d) Insurance
 - (i) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.
 - (ii) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.
 - (iii) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.
- (e) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these regulations, except that costs incurred in litigation against the purchasing agency are unallowable.

- R-24-107-101-07
- (a) **Applicable Credits**
Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.
- (b) **Reducing Costs.** Credits shall be applied to reduce related direct or indirect costs.
- (c) **Refund.** The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.
- R-24-107-101-08
- Advance Agreements**
- (a) **Purpose.** Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.
- (b) **Procedure Required.** Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties and incorporated in the contract.
- (c) **Limitation on Costs Covered.** An advance agreement shall not provide for any treatment of costs inconsistent with these regulations unless a determination has been made pursuant to Section R-24-107-101-10 (Authority to Deviate from Cost Principles).
- R-24-107-101-09
- Use of Federal Cost Principles.**
- (a) **Cost Negotiations.** In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Procurement Regulations, Part 1-15, the procurement officer, after notifying the contractor, may use the federal cost principles as

guidance in contract negotiations, subject to subsection (b) of this section.

(b) Incorporation of Federal Cost Principles: Conflicts Between Federal Principles and This Part

(i) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the regulations issued pursuant to Section 25-107-101 of the Colorado Procurement Code, the state rules shall control.

(ii) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 24-107-101 of the Colorado Procurement Code, the cost principles specified in the grant shall control.

R-24-107-101-10

Authority to Deviate from Cost Principles

If a procurement officer desires to deviate from the cost principles set forth in these regulations, a written determination shall be made by such officer specifying the reasons for the deviation.

ARTICLE 108 SUPPLY MANAGEMENT

24-108-101 TO 24-108-401. REPEALED, L.86, P.757, §13, EFFECTIVE JULY 1, 1987.

ARTICLE 109 REMEDIES

PART 1 PRELITIGATION RESOLUTION OF CONTROVERSIES

24-109-101. RESOLUTION OF CONTROVERSIES.

- (1) THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE IS AUTHORIZED TO SETTLE AND RESOLVE ANY QUESTIONS REGARDING:
 - (A) ANY PROTEST CONCERNING THE SOLICITATION OR AWARD OF A CONTRACT;
 - (B) DEBARMENT OR SUSPENSION FROM CONSIDERATION FOR AWARD OF CONTRACTS; AND
 - (C) ANY CONTROVERSY ARISING BETWEEN THE STATE AND A CONTRACTOR BY VIRTUE OF A CONTRACT BETWEEN THEM, INCLUDING, WITHOUT LIMITATION, CONTROVERSIES BASED UPON BREACH OF CONTRACT, MISTAKE, MISREPRESENTATION, OR ANY OTHER CAUSE FOR CONTRACT MODIFICATION OR RESCISSION.
- (2) ANY DECISION OF THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE IS SUBJECT TO APPEAL DE NOVO TO THE EXECUTIVE DIRECTOR OR TO THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER PURSUANT TO THE PROVISIONS OF THIS ARTICLE.
- (3) THE PROVISIONS OF SECTION 24-4-105 SHALL NOT APPLY TO THE ADMINISTRATIVE PROCEDURES ESTABLISHED PURSUANT TO THIS ARTICLE.

24-109-102. PROTESTED SOLICITATIONS AND AWARDS.

- (1) ANY ACTUAL OR PROSPECTIVE BIDDER, OFFEROR, OR CONTRACTOR WHO IS AGGRIEVED IN CONNECTION WITH THE SOLICITATION OR AWARD OF A CONTRACT MAY PROTEST TO THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE. THE PROTEST SHALL BE SUBMITTED IN WRITING WITHIN SEVEN WORKING DAYS AFTER SUCH AGGRIEVED PERSON KNOWS OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE THERETO.

- (2) THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE SHALL HAVE THE AUTHORITY TO SETTLE AND RESOLVE A PROTEST OF AN AGGRIEVED BIDDER, OFFEROR, OR CONTRACTOR, ACTUAL OR PROSPECTIVE, CONCERNING THE SOLICITATION OR AWARD OF A CONTRACT. A WRITTEN DECISION REGARDING THE PROTEST SHALL BE RENDERED WITHIN SEVEN WORKING DAYS AFTER THE PROTEST IS FILED. THE DECISION SHALL BE BASED ON AND LIMITED TO A REVIEW OF THE ISSUES RAISED BY THE AGGRIEVED BIDDER, OFFEROR, OR CONTRACTOR AND SHALL SET FORTH EACH FACTOR TAKEN INTO ACCOUNT IN REACHING THE DECISION. THIS AUTHORITY SHALL BE EXERCISED PURSUANT TO RULES PROMULGATED TO PROVIDE FOR THE EXPEDITIOUS RESOLUTION OF THE PROTEST.

R-24-109-102-01

Filing of Protest

- (a) Subject of Protest. Protestors may file a protest on any phase of solicitation or award, including but not limited to specifications, award, or disclosure of information marked confidential in the bid offer.
- (b) Form. The written protest shall include, as a minimum, the following:
- (i) the name and address of the protestor;
 - (ii) appropriate identification of the procurement by bid or award number;
 - (iii) a statement of the reasons for the protest; and
 - (iv) any available exhibits, evidence, or documents substantiating the protest.

R-24-109-102-02

Requested Information.

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the Director or head of a purchasing agency, the protest may be resolved without such information.

R-24-109-102-03

Decision

If an action concerning the protest has been commenced in court, the Director or head of a purchasing agency

shall not act on the protest but shall refer it to the Attorney General. The decision shall inform the protester of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

24-109-103 STAY OF PROCUREMENTS DURING PROTESTS
REPEALED, L.85, P.875, §12, EFFECTIVE JUNE 6, 1985.

R-24-109-103 Stay of Procurement During Protest
CRS 24-109-103 was repealed by the General Assembly effective June 6, 1985. This only affects Competitive Sealed Bids or awards of any type other than Competitive Sealed Proposals. A stay of a contract for Competitive Sealed Proposals is in effect until any protest is resolved pursuant to CRS 24-109-102. (See CRS 24-103-203(7) effective April 8,1996).

24-109-104. ENTITLEMENT TO COSTS.
WHEN A PROTEST IS SUSTAINED ADMINISTRATIVELY OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW AND THE PROTESTING BIDDER OR OFFEROR SHOULD HAVE BEEN AWARDED THE CONTRACT UNDER THE SOLICITATION BUT, DUE TO A DEFECT IN THE SOLICITATION, WAS NOT, THE PROTESTOR SHALL BE ENTITLED TO THE REASONABLE COSTS INCURRED IN CONNECTION WITH THE SOLICITATION, INCLUDING BID PREPARATION COSTS. NO OTHER COSTS SHALL BE PERMITTED, AND REASONABLE COSTS SHALL NOT INCLUDE ATTORNEY FEES. THESE COSTS SHALL BE PAID FROM FUNDS APPROPRIATED OR OTHERWISE MADE AVAILABLE TO THE AGENCY WHICH IS DETERMINED TO BE RESPONSIBLE FOR THE DEFECT IN THE SOLICITATION. SUCH DETERMINATION SHALL BE MADE BY THE EXECUTIVE DIRECTOR.

24-109-105. DEBARMENT AND SUSPENSION.
(1) (A) AFTER REASONABLE NOTICE TO THE PERSON INVOLVED AND REASONABLE OPPORTUNITY FOR THAT PERSON TO BE HEARD, THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE, AFTER CONSULTATION WITH THE USING AGENCY AND THE ATTORNEY GENERAL, SHALL HAVE AUTHORITY TO DEBAR A PERSON FOR ANY OF THE REASONS SET FORTH IN SUBSECTION (2) OF THIS SECTION FROM

CONSIDERATION FOR AWARD OF CONTRACTS. THE DEBARMENT SHALL NOT BE FOR A PERIOD OF MORE THAN THREE YEARS.

(B) THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE, AFTER CONSULTATION WITH THE USING AGENCY AND THE ATTORNEY GENERAL, SHALL HAVE AUTHORITY TO SUSPEND A PERSON FROM CONSIDERATION FOR AWARD OF CONTRACTS IF THERE IS PROBABLE CAUSE TO BELIEVE THAT SUCH PERSON HAS ENGAGED IN ACTIVITIES THAT MAY LEAD TO DEBARMENT. THE SUSPENSION SHALL NOT BE FOR A PERIOD EXCEEDING THREE MONTHS. HOWEVER, IF A CRIMINAL INDICTMENT HAS BEEN ISSUED FOR AN OFFENSE WHICH WOULD BE A CAUSE FOR DEBARMENT UNDER SUBSECTION (2) OF THIS SECTION, THE SUSPENSION SHALL, AT THE REQUEST OF THE ATTORNEY GENERAL, REMAIN IN EFFECT UNTIL AFTER THE TRIAL OF THE SUSPENDED PERSON.

(C) THE AUTHORITY TO DEBAR OR SUSPEND SHALL BE EXERCISED PURSUANT TO RULES WHICH SHALL PROVIDE FOR AN EXPEDITIOUS RESOLUTION OF THE ISSUE OF DEBARMENT OR SUSPENSION.

(2) A PERSON MAY BE DEBARRED FOR ANY OF THE FOLLOWING REASONS:

(A) CONVICTION OF A CRIMINAL OFFENSE AS AN INCIDENT TO OBTAINING OR ATTEMPTING TO OBTAIN A PUBLIC OR PRIVATE CONTRACT OR SUBCONTRACT OR IN THE PERFORMANCE OF SUCH CONTRACT OR SUBCONTRACT;

(B) CONVICTION UNDER STATE OR FEDERAL STATUTES OF EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS, OR RECEIVING STOLEN PROPERTY;

(C) CONVICTION UNDER STATE OR FEDERAL ANTITRUST STATUTES ARISING OUT OF THE SUBMISSION OF BIDS OR PROPOSALS;

(D) WILLFUL MATERIAL FAILURE TO PERFORM IN ACCORDANCE WITH THE TERMS OF ONE OR MORE CONTRACTS, FOLLOWING NOTICE OF SUCH FAILURE, OR A HISTORY OF MATERIAL FAILURE TO PERFORM, OR OF MATERIALLY UNSATISFACTORY PERFORMANCE OF, ONE OR MORE CONTRACTS; OR

(E) THE PERSON IS CURRENTLY UNDER DEBARMENT BY ANY OTHER GOVERNMENTAL

- ENTITY WHICH IS BASED UPON A SETTLEMENT AGREEMENT OR A FINAL ADMINISTRATIVE OR JUDICIAL DETERMINATION ISSUED BY A FEDERAL, STATE, OR LOCAL GOVERNMENTAL ENTITY; OR
- (F) VIOLATION OF THE PROVISIONS OF SECTION 7-108-401, C.R.S.

R-24-109-105-01

Suspension.

- (a) Initiation. After consultation with the affected using agency, the Attorney General, and where practicable, the contractor or potential contractor who is to be suspended, the director may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for debarment. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:
- (i) state that the suspension will be for the period necessary to complete an investigation into possible debarment, as limited in CRS-24-109-105 of the Colorado Procurement Code;
 - (ii) inform the suspended person that bids or proposals will not be solicited from him or her and, if received, will not be considered during the period of suspension; and
 - (iii) inform the contractor or prospective contractor of his or her right to appeal administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.
- (b) Effect of Decision. A contractor or prospective contractor is suspended upon issuance of the notice of suspension; the suspension shall remain in effect during any appeals.

R-24-109-105-02

Debarment

- (a) Initiation. Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in

activities which are a cause for debarment, and after consultation with the affected using agencies and Attorney General, the Director may debar a contractor or prospective contractor. A written notice of debarment shall be sent by certified mail, return receipt requested. The notice shall inform the debarred person of his or her right to appeal the decision administratively or judicially in accordance with Article 109 (Remedies) of the Colorado Procurement Code.

- (b) Effect of Debarment Decision. A debarment decision will take effect 30 days after the contractor or prospective contractor receives notice of the decision unless an appeal is filed during that time. After the debarment decision takes effect, the person shall remain debarred unless a court, the Executive Director, or the person who issued the debarment decision orders otherwise or until the debarment period specified in the decision expires. A debarment may be for a specific purchasing agency or may apply to all agencies.
- (c) Lists of Debarred and Suspended Persons. The Director shall maintain a current list of all debarred and suspended persons and shall send such lists and updates of it to heads of all purchasing agencies.

24-109-106. RESOLUTION OF CONTRACT AND BREACH OF CONTRACT CONTROVERSIES - APPLICABILITY -AUTHORITY.

- (1) THIS SECTION APPLIES TO CONTROVERSIES BETWEEN THE STATE AND A CONTRACTOR WHICH ARISE UNDER, OR BY VIRTUE OF, A CONTRACT BETWEEN THEM, INCLUDING, WITHOUT LIMITATION, CONTROVERSIES WHICH ARE BASED UPON BREACH OF CONTRACT, MISTAKE, MISREPRESENTATION, OR ANY OTHER CAUSE FOR CONTRACT MODIFICATION OR RESCISSION.
- (2) THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE IS AUTHORIZED TO SETTLE AND RESOLVE ANY CONTROVERSY DESCRIBED IN SUBSECTION (1) OF THIS SECTION. THIS AUTHORITY SHALL BE EXERCISED PURSUANT TO RULES WHICH SHALL

PROVIDE FOR AN EXPEDITIOUS RESOLUTION OF THE
CONTROVERSY.

R-24-109-106-01

Statement of Policy

The Colorado Procurement Code establishes procedures and remedies to resolve contract and breach of contract controversies between the state and a contractor. It is the state's policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these rules, the word "controversy" is meant to be broad and all-encompassing, including the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

R-24-109-106-02

Decision.

- (a) Procurement Prior to Issuing Decisions. When a controversy cannot be resolved by mutual agreement, the Director or head of a purchasing agency shall, within 20 working days after receiving a written request by the contractor for a final decision, issue a written decision. Before issuing a final decision, the Director or head of a purchasing agency shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.
- (b) Final Decision. The Director or head of a purchasing agency shall immediately furnish a copy of the decision to the contractor by certified mail, return receipt requested. The decision shall include:
 - (i) a description of the controversy;
 - (ii) a reference to the pertinent contract provision;
 - (iii) a statement of the factual areas of agreement and disagreement;
 - (iv) the supporting rationale for the decision; and
 - (v) notice of the contractor's right to appeal the decision administratively or judicially in accordance with the provisions of Article 109 (Remedies) of the Colorado Procurement Code.

- (c) Payments of Amounts Found Due. The amount and interest on the amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. If, on appeal, such payments are required to be returned, interest shall be paid from the date of payment.

24-109-107. ISSUANCE AND APPEAL OF DECISION.

- (1) THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE 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 GIVE NOTICE TO THE PROTESTOR, PROSPECTIVE CONTRACTOR, OR CONTRACTOR OF HIS OR HER RIGHT TO ADMINISTRATIVE AND JUDICIAL REVIEWS AS PROVIDED FOR IN THIS ARTICLE.
- (2) A DECISION SHALL BE EFFECTIVE UNLESS STAYED OR UNTIL REVERSED ON APPEAL. A COPY OF THE DECISION RENDERED UNDER SUBSECTION (1) OF THIS SECTION SHALL BE MAILED OR OTHERWISE FURNISHED IMMEDIATELY TO THE PROTESTOR, PROSPECTIVE CONTRACTOR, OR CONTRACTOR. THE DECISION SHALL BE FINAL AND CONCLUSIVE UNLESS THE PROTESTOR, PROSPECTIVE CONTRACTOR, OR CONTRACTOR APPEALS THE DECISION TO THE EXECUTIVE DIRECTOR OR COMMENCES AN ACTION IN COURT PURSUANT TO THIS ARTICLE. ANY APPEAL FROM A DECISION UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION 24-4-105.
- (3) IF THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE DOES NOT ISSUE A WRITTEN DECISION REGARDING A CONTRACT CONTROVERSY WITHIN TWENTY WORKING DAYS AFTER WRITTEN REQUEST FOR A FINAL DECISION, OR WITHIN SUCH LONGER PERIOD AS MAY BE AGREED UPON BY THE PARTIES, THEN THE CONTRACTOR MAY PROCEED AS IF A DECISION AGAINST HIM OR HER HAD BEEN RENDERED.

PART 2

APPEALS

24-109-201. APPEAL TO THE EXECUTIVE DIRECTOR.
UNLESS AN ACTION HAS BEEN INITIATED PREVIOUSLY IN THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER PURSUANT TO THIS ARTICLE, THE EXECUTIVE DIRECTOR SHALL HAVE THE AUTHORITY TO REVIEW AND DETERMINE DE NOVO ANY APPEAL BY AN AGGRIEVED PERSON FROM A DECISION OF THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE RENDERED PURSUANT TO SECTION 24-109-107. THE EXECUTIVE DIRECTOR IS AUTHORIZED TO DESIGNATE ANOTHER PERSON TO EXERCISE HIS OR HER POWERS PURSUANT TO THIS PART 2.

24-109-202. RULES OF PROCEDURE.
THE EXECUTIVE DIRECTOR SHALL ADOPT RULES OF PROCEDURE WHICH, TO THE FULLEST EXTENT POSSIBLE, PROVIDE FOR THE EXPEDITIOUS RESOLUTION OF APPEALS OF CONTROVERSIES. THE ONLY PARTIES TO THE APPEALS SHALL BE THE PERSONS AGGRIEVED BY DECISIONS OF THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE AND THE APPROPRIATE STATE AGENCY. SECTION 24-4-105 SHALL NOT APPLY TO REVIEWS AND DETERMINATIONS MADE BY THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE PURSUANT TO THIS ARTICLE.

- R-24-109-202-01 Filing of Appeals.
- (a) When to file. Appeals of decisions of the Director or head of a purchasing agency shall be submitted in writing to the Executive Director within ten (10) working days of the date a decision is mailed or within twenty (20) working days of a decision regarding a suspension, debarment, or contract controversy. Appeals received after the prescribed time periods shall not be considered. (See CRS 24-109-203.)
 - (b) Form. The written appeal shall include copies of all documents and evidence previously submitted to the Director or head of a purchasing agency, any additional relevant information, and the decision rendered by the Director or head of a purchasing agency.
 - (c) Content. The appeal shall be limited to the issues raised in the original protest. However,

the appeal may include new evidence or additional information related to those issues or issues related to the conduct of the protest process.

R-24-109-202-02

Additional Information

The Executive Director may request that the parties submit any additional information necessary to make a decision on the appeal. If any party fails to submit requested information within the time period set by the Executive Director, the appeal may be considered without such information.

R-24-109-202-03

Hearing by the Executive Director

- (a) Request for Hearing. A contractor or prospective contractor bringing an appeal may request in writing that the Executive Director conduct a hearing on the appeal.
- (b) Notice of Hearing. If a hearing is requested, the Executive Director, or his designee, shall send a written notice of the time and place of the hearing to all parties and the Attorney General. Such notice shall be sent by certified mail, return receipt requested.
- (c) Hearing Procedures. Hearings shall be as informal as possible under the circumstances. The weight to be attached to any evidence presented shall be within the discretion of the Executive Director or his designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The Executive Director, or his designee, may request evidence in addition to that presented by the parties. A hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The Executive Director or his designee may:
 - (i) hold informal conferences to settle, simplify, or fix the issue or to consider

- other matters that may aid in an expeditious disposition of the appeal;
- (ii) require parties to state their position with respect to the various issues;
- (iii) require parties to produce for examination those relevant witnesses and documents under their control;
- (iv) regulate the course of the hearing and conduct of participants;
- (v) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (vi) request and set time limitation for submission of briefs; and
- (vii) administer oaths or formulations.

24-109-203. TIME LIMITATION FOR APPEALS.

- (1) IN THE CASE OF AN APPEAL TO THE EXECUTIVE DIRECTOR FROM A DECISION REGARDING A PROTESTED SOLICITATION OR AWARD, THE AGGRIEVED PERSON SHALL FILE AN APPEAL WITHIN TEN WORKING DAYS OF THE DATE THAT A DECISION IS MAILED PURSUANT TO SECTION 24-109-107 (2).
- (2) IN THE CASE OF AN APPEAL TO THE EXECUTIVE DIRECTOR FROM A DECISION REGARDING A DEBARMENT, SUSPENSION, OR CONTRACT CONTROVERSY, THE AGGRIEVED PERSON SHALL FILE AN APPEAL WITHIN TWENTY WORKING DAYS OF RECEIPT OF A DECISION RENDERED OR DEEMED TO BE RENDERED PURSUANT TO SECTION 24-109-107.

24-109-204. DECISIONS OF THE EXECUTIVE DIRECTOR.

- (1) ON EACH APPEAL SUBMITTED, THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PROMPTLY DECIDE THE CONTRACT CONTROVERSY, DEBARMENT, OR SUSPENSION OR WHETHER THE SOLICITATION OR AWARD WAS IN ACCORDANCE WITH THE PROCEDURES PROVIDED IN THIS CODE, REGULATIONS ENACTED PURSUANT TO THIS CODE, AND THE TERMS AND CONDITIONS OF THE SOLICITATION. THE DECISION SHALL BE IN WRITING. A COPY OF ANY DECISION SHALL BE PROVIDED TO ALL PARTIES.

- (2) A WRITTEN DECISION PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ISSUED WITHIN THE FOLLOWING TIME PERIODS:
- (A) IN THE CASE OF ANY PROTEST CONCERNING THE SOLICITATION OR AWARD OF A CONTRACT OR OF DEBARMENT OR SUSPENSION FROM CONSIDERATION FOR AWARD OF CONTRACT, WITHIN THIRTY WORKING DAYS AFTER RECEIPT OF THE APPEAL; AND
- (B) IN THE CASE OF ANY CONTROVERSY ARISING BETWEEN THE STATE AND A CONTRACTOR BY VIRTUE OF A CONTRACT BETWEEN THEM, WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE APPEAL.

R-24-109-204

Decision by the Executive Director.

The Executive Director, or his designee, shall issue a final decision on the issue. Copies of the decision shall inform the contractor or prospective contractor of his or her rights to judicial appeals under Article 109 (Remedies) of the Colorado Procurement Code. However, if an action concerning the protest, suspension, debarment, or contract controversy has been commenced in court, the Executive Director shall not act on the matter, but shall refer it to the Attorney General.

24-109-205. APPEALS TO DISTRICT COURT.

AN APPEAL OF A DECISION BY THE EXECUTIVE DIRECTOR OR A DESIGNEE RENDERED PURSUANT TO SECTION 24-109-201 OR BY THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE RENDERED PURSUANT TO SECTION 24-109-107 SHALL BE FILED WITH THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, WHICH SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR SUCH APPEALS. ANY JUDICIAL ACTION UNDER THIS PART 2 SHALL BE DE NOVO, AND THE PROVISIONS OF SECTION 24-4-106 SHALL NOT APPLY.

24-109-206. TIME LIMITATIONS ON APPEALS TO THE DISTRICT COURT.

- (1) A JUDICIAL REVIEW OF A DECISION OF THE EXECUTIVE DIRECTOR OR A DESIGNEE OR OF THE HEAD OF A PURCHASING AGENCY OR A DESIGNEE SHALL BE INITIATED WITHIN THE FOLLOWING TIME PERIODS:
 - (A) IN THE CASE OF AN ACTION BETWEEN THE STATE AND A BIDDER, OFFEROR, OR CONTRACTOR, PROSPECTIVE OR ACTUAL, WHO IS AGGRIEVED IN CONNECTION WITH THE SOLICITATION OR AWARD OF A CONTRACT, WITHIN TEN WORKING DAYS AFTER RECEIPT OF THE DECISION;
 - (B) IN THE CASE OF A SUSPENSION OR DEBARMENT, WITHIN SIX MONTHS AFTER RECEIPT OF THE DECISION; OR
 - (C) IN THE CASE OF AN ACTION ON A CONTRACT OR FOR BREACH OF A CONTRACT, WITHIN TWENTY WORKING DAYS AFTER THE DATE OF THE DECISION.

PART 3 INTEREST

24-109-301. INTEREST.
INTEREST ON AMOUNTS DETERMINED TO BE DUE TO A CONTRACTOR OR TO THE STATE SHALL BE PAYABLE FROM THE DATE THE PAYMENT WAS DUE IN ACCORDANCE WITH THE TERMS OF THE CONTRACT OR THE CLAIM WAS FILED, WHICHEVER IS EARLIER, THROUGH THE DATE OF DECISION OR JUDGMENT, WHICHEVER IS LATER. INTEREST SHALL BE CALCULATED AT ELEVEN PERCENT PER ANNUM.

PART 4 SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

24-109-401. APPLICABILITY.
THIS PART 4 SHALL APPLY IN SITUATIONS IN WHICH IT IS DETERMINED JUDICIALLY OR ADMINISTRATIVELY, OR UPON ADMINISTRATIVE OR JUDICIAL REVIEW, THAT A SOLICITATION OR AWARD OF A CONTRACT IS IN VIOLATION OF THE LAW.

R-24-109-401 Applicability

This Rule addresses only requirements of procurement law. Any other violations of law or rule are not considered in this review process.

R-24-109-401-01

Definitions.

- (a) An "unauthorized purchase" is any situation where a purchase has occurred or a purchase commitment has been made to a vendor to obtain goods or services, and:
 - (i) the requesting agency has not followed established applicable purchasing statutes and rules, or
 - (ii) a purchase or commitment to purchase is made by a person(s) who is not so authorized.
- (b) "Ratification" is the act of the using agency's purchasing director, after review of all facts involved in an unauthorized purchase, sanctioning the unauthorized purchase.
- (c) "Responsible individual(s)" is the person(s) who has made an unauthorized purchase.

24-109-402.

REMEDIES PRIOR TO AN AWARD.

IF, PRIOR TO THE AWARDED OF A CONTRACT, IT IS DETERMINED THAT A SOLICITATION OR THE PROPOSED AWARD IS IN VIOLATION OF THE LAW, THEN THE SOLICITATION OR PROPOSED AWARD SHALL BE CANCELLED OR SHALL BE REVISED IN ORDER TO COMPLY WITH THE LAW.

24-109-403.

REMEDIES AFTER AN AWARD.

- (1) IF, AFTER THE AWARDED OF A CONTRACT, IT IS DETERMINED THAT THE SOLICITATION OR THE AWARD OF THE CONTRACT IS IN VIOLATION OF THE LAW AND IF THE PERSON AWARDED THE CONTRACT HAS NOT ACTED FRAUDULENTLY OR IN BAD FAITH, THE CONTRACT MAY BE RATIFIED AND AFFIRMED, IF IT IS DETERMINED THAT DOING SO IS IN THE BEST INTERESTS OF THE STATE, OR THE CONTRACT MAY BE TERMINATED, AND THE PERSON AWARDED THE CONTRACT SHALL BE COMPENSATED FOR THE ACTUAL EXPENSES REASONABLY INCURRED UNDER THE CONTRACT PRIOR TO ITS TERMINATION, PLUS A REASONABLE PROFIT.

- (2) IF, AFTER THE AWARDING OF A CONTRACT, IT IS DETERMINED THAT THE SOLICITATION OR THE AWARD OF THE CONTRACT IS IN VIOLATION OF THE LAW AND IF THE PERSON AWARDED THE CONTRACT HAS ACTED FRAUDULENTLY OR IN BAD FAITH, THE CONTRACT MAY BE DECLARED NULL AND VOID, OR THE CONTRACT MAY BE RATIFIED AND AFFIRMED IF SUCH ACTION IS IN THE BEST INTERESTS OF THE STATE, BUT SUCH RATIFICATION AND AFFIRMATION SHALL BE WITHOUT PREJUDICE TO THE STATE'S RIGHT TO SUCH DAMAGES AS MAY BE APPROPRIATE.

24-109-404. LIABILITY OF PUBLIC EMPLOYEES.
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 THE 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 MONEYS, THE AMOUNT THEREOF MAY BE RECOVERED IN THE NAME OF THE STATE IN AN APPROPRIATE CIVIL ACTION.

R-24-109-404-01 Authority of the Director or Head of a Purchasing Agency.

The director or head of a purchasing agency is authorized, after review and consideration of all facts involved in an unauthorized purchase, to decide whether to ratify an unauthorized purchase.

R-24-109-404-02 Factors to be Considered in Ratification of an Unauthorized Purchase.

(a) The director or head of a purchasing agency, or their designee, shall consider all factors related to the procurement including, but not limited to, the following in making a decision whether or not to ratify an unauthorized purchase:

(i) the facts and circumstances giving rise to the need for the good or service, including the responsible individual's explanation as to why established

- procedures were not followed, and any lack of information or training on the part of the responsible individual;
- (ii) indications of intent to deliberately evade established purchasing procedures;
 - (iii) whether the purchase, if it had been made according to established procedures, would have been reasonable (prudent) and appropriate;
 - (iv) the extent to which any competition was obtained;
 - (v) whether this is the first occurrence, or a repeat instance, by the responsible individual;
 - (vi) whether appropriate written assurances and safeguards have been established to preclude a subsequent unauthorized procurement; and
 - (vii) indications as to whether either the agency or vendor has acted fraudulently or in bad faith.
- (b) A decision to ratify an unauthorized purchase shall weigh the above noted factors as they apply to the express goals of State Procurement Code, CRS 24-101-102, and in particular fairness to any vendor who has acted fairly and in good faith.

R-24-109-404-03

Purchasing Agency Actions - Authorized Ratification.

- (a) After consideration of the above factors, the state purchasing director or head of a purchasing agency may take one of the following actions:
- (i) ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order if the procurement meets the substantive requirements of law and is only a procedural violation; or
 - (ii) refuse to ratify the responsible individual's action, but ratify the commitment and authorize issuance of a payment voucher, voucher request or purchase order if the procurement fails

- to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad faith, and ratification of the commitment is in the best interests of the State; or
- (iii) refuse to ratify the responsible individual's action and authorize issuance of a payment voucher, voucher request or purchase order for only the amount of actual expenses and reasonable profit, if the procurement fails to meet the substantive requirements of law, the vendor has not acted fraudulently or in bad faith, and ratification of the commitment is not in the best interests of the state.
- (b) When ratification is denied pursuant to (a)(ii) or (a)(iii) of this subsection 04 above, a purchase order shall not be issued except in cases where it is necessary to effect payment and the purchase order shall so indicate.
 - (c) If during the review process, it is determined that:
 - (i) the vendor has acted fraudulently or in bad faith, the ratification shall be denied and there shall be no authorization of a payment voucher, voucher request or purchase order; or
 - (ii) the responsible person has acted fraudulently or in bad faith, there shall be no ratification, but authorization to issue a payment voucher, voucher request or purchase order may be given.

R-24-109-404-04

Purchasing Agency Actions - In the Event of Denial.

- (a) In the event the director or head of a purchasing agency refuses to ratify the unauthorized procurement, the following actions shall occur:
 - (i) notification shall be sent to the responsible individual, the state controller, their agency controller and their agency head, that ratification is denied, and that the responsible

- individual(s) can be held personally liable for payment;
- (ii) notification shall be sent to the affected vendor(s) that the State has denied responsibility for the purchase in whole or in part as determined in the ratification review process; and
- (iii) notification shall be sent to the director.
- (b) In the event a court action is started involving a procurement that is undergoing a ratification review, the ratification process shall cease and be referred to the Attorney General.

R-24-109-404-05

Written Determination.

A written determination setting forth the basis for the decision shall be made and included in the procurement record.

ARTICLE 110 INTERGOVERNMENTAL RELATIONS

PART 1 DEFINITIONS

- 24-110-101. **DEFINITIONS.**
AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
- (1) "COOPERATIVE PURCHASING" MEANS PROCUREMENT CONDUCTED BY, OR ON BEHALF OF, MORE THAN ONE PUBLIC PROCUREMENT UNIT OR BY A PUBLIC PROCUREMENT UNIT WITH AN EXTERNAL PROCUREMENT ACTIVITY.
 - (2) "EXTERNAL PROCUREMENT ACTIVITY" MEANS ANY BUYING ORGANIZATION NOT LOCATED IN THIS STATE WHICH, IF LOCATED IN THIS STATE, WOULD QUALIFY AS A PUBLIC PROCUREMENT UNIT. AN AGENCY OF THE UNITED STATES IS AN EXTERNAL PROCUREMENT ACTIVITY.
 - (3) "LOCAL PUBLIC PROCUREMENT UNIT" MEANS ANY COUNTY, CITY, COUNTY AND CITY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE, ANY PUBLIC AGENCY OF ANY SUCH POLITICAL SUBDIVISION, ANY PUBLIC AUTHORITY, ANY EDUCATIONAL, HEALTH, OR OTHER INSTITUTION, AND, TO THE EXTENT PROVIDED BY LAW, ANY OTHER ENTITY WHICH EXPENDS PUBLIC FUNDS FOR THE PROCUREMENT OF SUPPLIES, SERVICES, AND CONSTRUCTION.
 - (4) "PUBLIC PROCUREMENT UNIT" MEANS EITHER A LOCAL PUBLIC PROCUREMENT UNIT OR A STATE PUBLIC PROCUREMENT UNIT.
 - (5) "STATE PUBLIC PROCUREMENT UNIT" MEANS THE DEPARTMENT OF PERSONNEL, OR ANY OTHER PURCHASING AGENCY OF THIS STATE.

PART 2 COOPERATIVE PURCHASING

- 24-110-201. **COOPERATIVE PURCHASING AUTHORIZED.**
(1) ANY PUBLIC PROCUREMENT UNIT MAY EITHER PARTICIPATE IN, SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES, SERVICES, OR CONSTRUCTION WITH ONE OR MORE PUBLIC PROCUREMENT UNITS, EXTERNAL PROCUREMENT ACTIVITIES, OR PROCUREMENT CONSORTIUMS THAT INCLUDE AS MEMBERS

TAX-EXEMPT ORGANIZATIONS AS DEFINED BY SECTION 501 (C) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN ACCORDANCE WITH AN AGREEMENT ENTERED INTO BETWEEN THE PARTICIPANTS. SUCH COOPERATIVE PURCHASING MAY INCLUDE, BUT IS NOT LIMITED TO, JOINT OR MULTIPARTY CONTRACTS BETWEEN PUBLIC PROCUREMENT UNITS AND OPEN-ENDED STATE PUBLIC PROCUREMENT UNIT CONTRACTS THAT ARE MADE AVAILABLE TO LOCAL PUBLIC PROCUREMENT UNITS.

(2) WITH PRIOR WRITTEN APPROVAL OF THE EXECUTIVE DIRECTOR AND UNDER PROCEDURES ESTABLISHED BY RULE, A STATE PUBLIC PROCUREMENT UNIT MAY PURCHASE GOODS OR SERVICES UNDER THE TERMS OF A CONTRACT BETWEEN A VENDOR AND AN EXTERNAL PROCUREMENT ACTIVITY OR A LOCAL PUBLIC PROCUREMENT UNIT WITHOUT COMPLYING WITH THE REQUIREMENTS OF SECTION 24-102-202.5 AND ARTICLE 103 OF THIS TITLE.

R-24-110-201-01 Cooperative Purchasing

The Executive Director or his designee may approve the purchase of goods or services in accordance with §24-110-201(2) CRS if he finds that such purchase is in the best interests of the state, after considering: (1) The interests of Colorado vendors and vendors registered with the BIDS system; (2) the competitiveness of pricing under the contract; (3) the efficiencies and cost savings of using the contract, beyond the savings and administrative convenience achieved from not having to comply with Article 103 of the Procurement Code; and (4) the purposes of the Procurement Code, as set forth in §24-101-102 CRS.

- (a) The head of a purchasing agency shall make the request through the State Purchasing Director, addressing the considerations set forth above.
- (b) The Executive Director or his designee may approve a single purchase, make a conditional approval, or approve participation in an on-going program with the external procurement activity or the local public procurement unit. Participation in an on-going program must be for a specific period of time, not to exceed two years.

- 24-110-202. SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT.
ANY PUBLIC PROCUREMENT UNIT MAY SELL TO, ACQUIRE FROM, OR USE ANY SUPPLIES BELONGING TO ANOTHER PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY INDEPENDENT OF THE REQUIREMENTS OF ARTICLE 103 OF THIS TITLE.
- 24-110-203. COOPERATIVE USE OF SUPPLIES OR SERVICES.
ANY PUBLIC PROCUREMENT UNIT MAY ENTER INTO AN AGREEMENT, INDEPENDENT OF THE REQUIREMENTS OF ARTICLE 103 OF THIS TITLE, WITH ANY OTHER PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY FOR THE COOPERATIVE USE OF SUPPLIES OR SERVICES UNDER THE TERMS AGREED UPON BETWEEN THE PARTIES.
- 24-110-204. JOINT USE OF FACILITIES.
ANY PUBLIC PROCUREMENT UNIT MAY ENTER INTO AGREEMENTS FOR THE COMMON USE OR LEASE OF WAREHOUSING FACILITIES, CAPITAL EQUIPMENT, AND OTHER FACILITIES WITH ANOTHER PUBLIC PROCUREMENT UNIT OR AN EXTERNAL PROCUREMENT ACTIVITY UNDER THE TERMS AGREED UPON BETWEEN THE PARTIES.
- 24-110-205. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES.
- (1) ANY PUBLIC PROCUREMENT UNIT IS AUTHORIZED, IN ITS DISCRETION, UPON WRITTEN REQUEST FROM ANOTHER PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY, TO PROVIDE PERSONNEL TO THE REQUESTING PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY.
 - (2) INFORMATIONAL, TECHNICAL, AND OTHER SERVICES OF ANY PUBLIC PROCUREMENT UNIT MAY BE MADE AVAILABLE TO ANY OTHER PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY IF THE REQUIREMENTS OF THE PUBLIC PROCUREMENT UNIT TENDERING THE SERVICES SHALL HAVE PRECEDENCE OVER THE REQUESTING PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY. THE REQUESTING PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY SHALL PAY ANY EXPENSES INCURRED IN PROVIDING SUCH SERVICES, IN

ACCORDANCE WITH THE AGREEMENT BETWEEN THE PARTIES.

(3) UPON REQUEST, THE EXECUTIVE DIRECTOR, THROUGH THE DIVISION OF LOCAL GOVERNMENT, WITHIN THE DEPARTMENT OF LOCAL AFFAIRS, MAY MAKE AVAILABLE TO LOCAL PUBLIC PROCUREMENT UNITS AND EXTERNAL PROCUREMENT ACTIVITIES THE FOLLOWING ITEMS, INCLUDING, BUT NOT LIMITED TO:

- (A) STANDARD FORMS;
- (B) PRINTED MANUALS;
- (C) PRODUCT SPECIFICATIONS AND STANDARDS;
- (D) QUALITY ASSURANCE TESTING SERVICES AND METHODS;
- (E) LISTS OF QUALIFIED PRODUCTS;
- (F) SOURCE INFORMATION;
- (G) LISTS OF COMMON USE COMMODITIES;
- (H) SUPPLIER PREQUALIFICATION INFORMATION;
- (I) SUPPLIER PERFORMANCE RATING;
- (J) LISTS OF DEBARRED AND SUSPENDED BIDDERS;
- (K) FORMS FOR INVITATIONS FOR BIDS, REQUESTS FOR PROPOSALS, INSTRUCTIONS TO BIDDERS, GENERAL CONTRACT PROVISIONS, AND OTHER CONTRACT FORMS; AND
- (L) CONTRACTS OR PUBLISHED SUMMARIES OF CONTRACTS, INCLUDING PRICE AND TIME OF DELIVERY INFORMATION.

(4) THE STATE, THROUGH THE DIVISION OF LOCAL GOVERNMENT WITHIN THE DEPARTMENT OF LOCAL AFFAIRS, MAY PROVIDE TO LOCAL PUBLIC PROCUREMENT UNITS AND EXTERNAL PROCUREMENT ACTIVITIES TECHNICAL SERVICES, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

- (A) THE DEVELOPMENT OF PRODUCTS SPECIFICATIONS;
- (B) THE DEVELOPMENT OF QUALITY ASSURANCE TEST METHODS INCLUDING RECEIVING, INSPECTION, AND ACCEPTANCE PROCEDURES;
- (C) THE USE OF PRODUCT TESTING AND INSPECTION FACILITIES; AND
- (D) THE USE OF PERSONNEL TRAINING PROGRAMS.

- 24-110-206. USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT.
ALL PAYMENTS FROM ANY PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY WHICH ARE RECEIVED BY A PUBLIC PROCUREMENT UNIT FOR SUPPLYING PERSONNEL OR SERVICES SHALL BE AVAILABLE FOR USE AS AUTHORIZED BY LAW OR PURSUANT TO FISCAL RULES.
- 24-110-207. PUBLIC PROCUREMENT UNITS - COMPLIANCE WITH CODE.
WHENEVER THE PUBLIC PROCUREMENT UNIT OR EXTERNAL PROCUREMENT ACTIVITY WHICH IS ADMINISTERING A COOPERATIVE PURCHASE AGREEMENT COMPLIES WITH THE REQUIREMENTS OF THIS CODE, THE PUBLIC PROCUREMENT UNIT WHICH IS PARTICIPATING IN SUCH AGREEMENT SHALL ALSO BE DEEMED TO HAVE COMPLIED WITH THIS CODE. NO PUBLIC PROCUREMENT UNIT MAY ENTER INTO A COOPERATIVE PURCHASING AGREEMENT FOR THE PURPOSE OF CIRCUMVENTING THIS CODE.
- 24-110-207.5. CERTIFICATION OF CERTAIN ENTITIES AS LOCAL PUBLIC PROCUREMENT UNITS - RULES. (1) THE EXECUTIVE DIRECTOR MAY CERTIFY ANY OF THE FOLLOWING ENTITIES AS A LOCAL PUBLIC PROCUREMENT UNIT: (A) ANY NONPROFIT COMMUNITY MENTAL HEALTH CENTER, AS DEFINED IN SECTION 27-1-201 (1), CRS, ANY NONPROFIT COMMUNITY MENTAL HEALTH CLINIC, AS DEFINED IN SECTION 27-1-201 (2), CRS, ANY NONPROFIT COMMUNITY CENTERED BOARD, AS DEFINED IN SECTION 27-10.5-102 (3), CRS, OR ANY NONPROFIT SERVICE AGENCY, AS DEFINED IN SECTION 27-10.5-102 (28), CRS, AS A LOCAL PUBLIC PROCUREMENT UNIT SO LONG AS THE ENTITY USES THE SUPPLIES, SERVICES, OR CONSTRUCTION PROCURED FOR THE PUBLIC MENTAL HEALTH SYSTEM OR THE PUBLIC DEVELOPMENTALLY DISABLED SYSTEM; OR (B) ANY NONPROFIT ENTITY ELIGIBLE TO RECEIVE FUNDS PURSUANT TO SECTION 24-32-705 OR 24-32-717, SO LONG AS THE ENTITY USES THE SUPPLIES, SERVICES, OR CONSTRUCTION PROCURED FOR THE REHABILITATION, CONSTRUCTION, ACQUISITION, OR PROVISION OF LOW-OR MODERATE-INCOME HOUSING.
- (2) THE EXECUTIVE DIRECTOR SHALL ADOPT SUCH REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE CERTIFICATION PROCESS REQUIRED BY THIS SECTION.
- 24-110-208. REVIEW OF PROCUREMENT REQUIREMENTS.

TO THE EXTENT POSSIBLE, THE EXECUTIVE 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 EXECUTIVE DIRECTOR, THROUGH THE DIVISION OF LOCAL GOVERNMENT WITHIN THE DEPARTMENT OF LOCAL AFFAIRS, MAY ALSO COLLECT SUCH INFORMATION FROM LOCAL PUBLIC PROCUREMENT UNITS. THE EXECUTIVE DIRECTOR MAY MAKE AVAILABLE ALL SUCH INFORMATION TO ANY PUBLIC PROCUREMENT UNIT UPON REQUEST.

PART 3 CONTRACT CONTROVERSIES

24-110-301. CONTRACT CONTROVERSIES.
IN THE CASE OF A COOPERATIVE PURCHASING AGREEMENT, CONTROVERSIES WHICH ARISE BETWEEN AN ADMINISTERING PUBLIC PROCUREMENT UNIT AND ITS BIDDERS, OFFERORS, OR CONTRACTORS MAY BE RESOLVED IN ACCORDANCE WITH ARTICLE 109 OF THIS TITLE.

ARTICLE 111 PREFERENCES IN AWARDING CONTRACTS - FEDERAL ASSISTANCE REQUIREMENTS

24-111-101. EXEMPTIONS FROM PRESCRIBED METHODS OF SOURCE SELECTION.

NOTWITHSTANDING THE REQUIREMENTS OF SECTION 24-101-201, STATE PROCUREMENT CONTRACTS, WHERE APPROPRIATE, SHALL BE AWARDED AS PROVIDED IN SECTIONS 17-24-111, 24-30-1203, AND 26-8.2-103, CRS

24-111-102. PRIORITIES AMONG PREFERENCES.

(1) WHEN TWO OR MORE SOCIOECONOMIC PROCUREMENT PROGRAMS ARE APPLICABLE TO THE SAME PROCUREMENT, BUSINESSES BENEFITING FROM SUCH PROGRAMS SHALL BE CONSIDERED IN THE FOLLOWING ORDER OF PRECEDENCE:

- (A) CORRECTIONAL INDUSTRIES;
- (B) INDUSTRIES FOR THE VISUALLY IMPAIRED;
- (C) INDUSTRIES FOR PERSONS WITH SEVERE DISABILITIES.

R-24-111-102-01 Minority-owned and Women-owned Business Enterprises

It is the policy of this State that all procurement offices shall make a special effort to solicit and encourage minority-owned and women-owned business participation for state contracts and awards. All state procurement offices are mandated to implement the spirit and direction offered by present or future executive orders relating to this subject. Agencies and institutions are encouraged, to the greatest extent possible without sacrificing adequate competition, to ensure active participation by minority-owned and women-owned business enterprises.

R-24-111-102-02 Preferences

- (a) No provision is made in this Code for preferences or set asides for minority-owned or women-owned businesses.
- (b) In the event tie low bids are received in response to solicitations for bids for commodities, pursuant to §24-103-202 CRS, preference is

given to the resident bidder, pursuant to §§24-103-202.5 and 8-18-101 CRS.

- 24-111-103. COMPLIANCE WITH FEDERAL REQUIREMENTS.
WHEN A PROCUREMENT INVOLVES THE EXPENDITURE OF FEDERAL ASSISTANCE OR CONTRACT FUNDS, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL OR THE HEAD OF A PURCHASING AGENCY SHALL COMPLY WITH THE APPROPRIATE FEDERAL LAW AND THE RULES AND REGULATIONS PROMULGATED PURSUANT TO SUCH LAW WHICH ARE MANDATORILY APPLICABLE.

ARTICLE 112 EFFECTIVE DATE - APPLICABILITY

24-112-101. EFFECTIVE DATE - APPLICABILITY.

- (1) THIS CODE SHALL TAKE EFFECT ON JANUARY 1, 1982. THE PROVISIONS OF THIS CODE APPLY TO CONTRACTS SOLICITED OR ENTERED INTO ON OR AFTER SAID DATE, ALTHOUGH THE PARTIES TO A CONTRACT MAY AGREE TO THE APPLICATION OF THIS CODE TO A CONTRACT SOLICITED OR ENTERED INTO PRIOR TO JANUARY 1, 1982.
- (2) CONTRACTS VALIDLY ENTERED INTO PRIOR TO JANUARY 1,, 1982, AND THE RIGHTS, DUTIES, AND INTERESTS FLOWING FROM THEM REMAIN VALID ON OR AFTER SAID DATE AND MAY BE TERMINATED, PERFORMED, OR ENFORCED AS REQUIRED OR PERMITTED BY ANY STATUTE OR OTHER LAW AMENDED OR REPEALED BY THE ENACTMENT OF THIS CODE AS THOUGH SUCH REPEAL OR AMENDMENT HAD NOT OCCURRED UNLESS THE PARTIES AGREED AT THE TIME OF FORMATION OF SUCH CONTRACT THAT THE PROVISIONS OF THIS CODE WOULD APPLY.

R-24-112-101-01 Effective Date
Rules implementing the Colorado Procurement Law, SB-130, Title 24, shall become effective January 1, 1982. All contracts solicited or entered into after January 1, 1982, shall be in accordance to Title 24, and enacted rules implementing that Title.

End

COLORADO PROCUREMENT RULES

Appendix A

General Conditions of the Contract

The construction contract clauses required by §24-105-301 CRS are set forth in the General Conditions of the Contract as Articles 35 General, 35A, 35B, 37, 38, 46, 48B, 49, and 50. The entire text of the General Conditions of the Contract is included in this Appendix A for the reader's convenience; however, only these articles are regulatory. All other provisions of the General Conditions of the Contract are subject to revision without rulemaking.

THE GENERAL CONDITIONS OF THE CONTRACT

State Form SC-6.23



TABLE OF CONTENTS

THE CONTRACT

ARTICLE 1. DEFINITIONS	1
A. CONTRACT DOCUMENTS	1
B. PROCEDURAL DOCUMENTS.....	1
C. DEFINITIONS OF WORDS AND TERMS USED.....	2
ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION.....	6
A. EXECUTION.....	6
B. CORRELATION.....	7
C. INTENT OF DOCUMENTS	7
D. PARTNERING, COMMUNICATIONS AND COOPERATION	8
ARTICLE 3. COPIES FURNISHED	9
ARTICLE 4. OWNERSHIP OF DRAWINGS.....	9

THE ARCHITECT

ARTICLE 5. ARCHITECT/ENGINEER'S STATUS.....	9
ARTICLE 6. ARCHITECT/ENGINEER DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION	10
A. DECISIONS.....	10
B. JUDGMENTS	10
C. ACCESS TO WORK.....	11
D. INSPECTION.....	11

THE CONTRACTOR

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION.....	12
ARTICLE 8. MATERIALS AND EMPLOYEES.....	13
ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS	14
A. SURVEYS.....	14
B. PERMITS AND LICENSES	14
C. TAXES.....	14
D. LAWS AND REGULATIONS.....	15
ARTICLE 10. PROTECTION OF WORK AND PROPERTY	15
A. GENERAL PROVISIONS	15
B. SAFETY PRECAUTIONS.....	16
C. EMERGENCIES	17
ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK	17
ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES	17
A. REQUESTS FOR INFORMATION	17
B. SCHEDULES.....	18
ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES	21
A. SUBMITTAL PROCESS	21
B. FABRICATION AND ORDERING	22
C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS.....	23
D. CONTRACTOR REPRESENTATIONS.....	23
ARTICLE 14. SAMPLES AND TESTING.....	23
A. SAMPLES.....	23
B. TESTING - GENERAL.....	24

C.	TESTING - CONCRETE AND SOILS	24
D.	TESTING - OTHER	25
ARTICLE 15.	SUBCONTRACTS.....	25
ARTICLE 16.	RELATIONS OF CONTRACTOR AND SUBCONTRACTOR	26
ARTICLE 17.	MUTUAL RESPONSIBILITY OF CONTRACTORS	26
ARTICLE 18.	SEPARATE CONTRACTS.....	27
ARTICLE 19.	USE OF PREMISES.....	27
ARTICLE 20.	CUTTING, FITTING OR PATCHING	27
ARTICLE 21.	UTILITIES.....	28
A.	TEMPORARY UTILITIES.....	28
B.	PROTECTION OF EXISTING UTILITIES.....	28
C.	CROSSING OF UTILITIES	29
ARTICLE 22.	UNSUITABLE CONDITIONS.....	29
ARTICLE 23.	TEMPORARY FACILITIES	29
A.	OFFICE FACILITIES.....	29
B.	TEMPORARY HEAT	29
C.	WEATHER PROTECTION	30
D.	DUST PARTITIONS.....	30
E.	BENCH MARKS.....	30
F.	SIGN.....	30
G.	SANITARY PROVISION	31
ARTICLE 24.	CLEANING UP	31
ARTICLE 25.	INSURANCE.....	31
A.	GENERAL LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE	31
B.	WORKERS' COMPENSATION INSURANCE	32
C.	BUILDER'S RISK INSURANCE	33
D.	ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS	34
ARTICLE 26.	CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS	35
ARTICLE 27.	LABOR AND WAGES.....	35
ARTICLE 28.	ROYALTIES AND PATENTS.....	36
ARTICLE 29.	ASSIGNMENT	36
ARTICLE 30.	CORRECTION OF WORK BEFORE ACCEPTANCE	37
<u>PAYMENT AND COMPENSATION</u>		
ARTICLE 31.	APPLICATIONS FOR PAYMENTS.....	38
A.	CONTRACTOR'S SUBMITTALS.....	38
B.	ARCHITECT/ENGINEER CERTIFICATION	39
C.	RETAINAGE WITHHELD	40
D.	RELEASE OF RETAINAGE	40
ARTICLE 32.	CERTIFICATES FOR PAYMENTS	41
ARTICLE 33.	PAYMENTS WITHHELD.....	41
ARTICLE 34.	DEDUCTIONS FOR UNCORRECTED WORK.....	42
ARTICLE 35.	CHANGES IN THE WORK.....	43
A.	THE VALUE OF CHANGED WORK.....	44
B.	DETAILED BREAKDOWN.....	44
C.	EMERGENCY FIELD CHANGE ORDERED WORK	47
ARTICLE 36.	CLAIMS	49
ARTICLE 37.	DIFFERING SITE CONDITIONS.....	52
A.	NOTICE IN WRITING	52

B. LIMITATIONS	53
ARTICLE 38. DELAYS AND EXTENSIONS OF TIME	53
ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS	55
 <u>COMPLETION</u>	
ARTICLE 40. RIGHT OF OCCUPANCY	57
ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT	58
A. NOTICE OF COMPLETION	58
B. FINAL INSPECTION.....	58
C. NOTICE OF SUBSTANTIAL COMPLETION.....	59
D. NOTICE OF ACCEPTANCE	61
E. SETTLEMENT	62
ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE	64
ARTICLE 43. LIENS.....	64
ARTICLE 44. ONE-YEAR GUARANTEE AND SPECIAL GUARANTEES AND WARRANTIES	64
A. ONE-YEAR GUARANTEE OF THE WORK.....	64
B. SPECIAL GUARANTEES AND WARRANTIES.....	65
ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION	66
ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES	67
ARTICLE 47. DAMAGES	69
ARTICLE 48. STATE’S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY DAMAGES.....	70
A. STATE’S RIGHT TO DO THE WORK	70
B. TEMPORARY SUSPENSION OF WORK.....	71
C. DELAY DAMAGES	71
ARTICLE 49. STATE’S RIGHTS TO TERMINATE CONTRACT	72
A. GENERAL.....	72
B. CONDITIONS AND PROCEDURES	73
C. ADDITIONAL CONDITIONS	74
ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE	74
A. NOTICE OF TERMINATION	74
B. PROCEDURES	74
ARTICLE 51. CONTRACTOR’S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT	77
ARTICLE 52. SPECIAL PROVISIONS	77
A. CONTROLLER’S APPROVAL CRS 24-30-202(1)	77
B. FUND AVAILABILITY CRS 24-30-202(5.5).....	78
C. INDEMNIFICATION.....	78
E. NON-DISCRIMINATION.....	79
F. CHOICE OF LAW; NO ARBITRATION	79
G. VENDOR OFFSET SYSTEM CRS 24-30-202(1) & CRS 24-30-202.4	80
H. EMPLOYEE FINANCIAL INTEREST CRS 24-18-201 & CRS 24-50-507	80
ARTICLE 53. MISCELLANEOUS PROVISIONS.....	80
A. CONSTRUCTION OF LANGUAGE.....	80
B. SEVERABILITY	80

C.	SECTION HEADINGS	81
D.	AUTHORITY	81
E.	INTEGRATION OF UNDERSTANDING	81
F.	VENUE	81
G.	NO THIRD PARTY BENEFICIARIES	81
H.	WAIVER	82
ARTICLE 54.	OPTIONAL PROVISIONS AND ELECTIONS	82
A.	MODIFICATION OF ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION	82
B.	MODIFICATION OF ARTICLE 27. LABOR AND WAGES	82
C.	MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS	82
D.	MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES	83
E.	NOTICE IDENTIFICATION	84
INDEX	85

Note: The sections of the General Conditions indicated in *italics* (Articles 35 General and 35A, 35B, 37, 38, 46, 48B, 49 and 50) are regulatory and cannot be modified except through appropriate rule making procedures through the Division of Finance and Procurement, Department of Personnel & Administration.



General Conditions of Contract

ARTICLE 1. DEFINITIONS

A. CONTRACT DOCUMENTS

The Contract Documents consist of:

1. Agreement; (SC-6.21);
2. Performance Bond (SC-6.22) and Labor and Material Payment Bond (SC-6.221);
3. General and Supplementary General Conditions of the Contract (SC-6.23);
4. Detailed Specification Requirements, including all addenda issued prior to the opening of the bids; and,
5. Drawings, including all addenda issued prior to the opening of the bids.
6. Change Orders (SC-6.31) and Amendments (SBP-02), if any, when properly executed.

B. PROCEDURAL DOCUMENTS

The Procedural Documents used in the administration and performance of the Agreement consist of:

1. Advertisement for Bids;
2. Information for Bidders (SC-6.12);
3. Bid (SC-6.13);
4. Bid Bond (SC-6.14);
5. Notice of Award (SC-6.15);
6. Builder's risk insurance certificates of insurance (ACORD 25-S);

7. Liability and workers' compensation certificates of insurance;
8. Notice to Proceed (SC-6.23);
9. Notice of Approval of Beneficial Occupancy (SBP-01);
10. Notice of Partial Substantial Completion (SBP-07.1);
11. Notice of Substantial Completion (SBP-07);
12. Notice of Partial Final Acceptance (SC-6.28);
13. Notice of Acceptance (SC-6.27);
14. Notice of Partial Contractor's Settlement (SC-7.31);
15. Notice of Contractor's Settlement (SC-7.3);
16. Certificates for Contractor's Payment (SC-7.2 and SC-7.2A);
17. Other procedural and reporting documents or forms referred to in the General Conditions, the Supplementary General Conditions, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to closing out check list (SBP-05) and punch list forms (SBP-06), and the Building Inspection Report (SBP-BIR). A list of the current standard State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

C. DEFINITIONS OF WORDS AND TERMS USED

1. AGREEMENT. The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on State Form SC-6.21. The term Agreement when used without reference to State Form SC-6.21 may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. ARCHITECT/ENGINEER. The term "Architect/Engineer" shall mean either the architect of record or the engineer of record under contract to the State of Colorado for the Project identified in the Contract Documents.
3. BENEFICIAL OCCUPANCY. The term "Beneficial Occupancy" means occupancy taken by the State as Owner prior to the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Beneficial Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Beneficial Occupancy. Prior to the date of execution of a Notice of Approval of Beneficial

Occupancy the State shall have no right to occupy and the project may not be considered safe for occupancy for the intended use.

4. CHANGE ORDER. The term "Change Order" means a written order, signed by a Procurement Officer, directing the Contractor to make changes in the Work, in accordance with Article 35A, The Value Of Changed Work.
5. COLORADO LABOR. The term "Colorado labor" shall be defined, as provided in § 8-17-101, C.R.S., as any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification, or shall have such other meaning as the term may otherwise be given in § 8-17-101, C.R.S., as amended.
6. CONTRACTOR. The word "Contractor" shall mean the person, company, firm, corporation or other legal entity entering into a contract with the State of Colorado acting by and through the Principal Representative
7. DAYS. The term "days" whether singular or plural shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used it shall mean business days of the State of Colorado.
8. DRAWINGS. The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Architect/Engineer showing the work to be done, except that where a list of drawings is specifically enumerated in the Supplementary General Conditions or division 1 of the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.
9. EMERGENCY FIELD CHANGE ORDER. The term "Emergency Field Change Order" shall mean a written change order for extra work or a change in the work necessitated by an emergency as defined in Article 35C executed on State form SC 6.31 and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.
10. FINAL ACCEPTANCE. The terms "final acceptance" or "finally complete" mean the stage in the progress of the work, after substantial completion, when all remaining items of work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a partial Notice of Acceptance can be issued.
11. NOTICE. The term "Notice " shall mean any communication in writing from either contracting party to the other by such means of delivery that

receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 54E, Notice Identification, or to such other person as either party identifies in writing to receive Notice. Notice by facsimile transmission where proper transmission is evidence shall be adequate where facsimile numbers are included in Article 54E. Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.

12. OWNER. The term "Owner " shall mean the Principal Representative.
13. PRINCIPAL REPRESENTATIVE. The term "Principal Representative " shall be defined, as provided in § 24-30-1301(11), C.R.S., as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the general assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in § 24-30-1301(11), C.R.S., as amended. The Principal Representative may delegate authority. The Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.
14. PROCUREMENT OFFICER. The term "Procurement Officer " means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. "Procurement Officer" includes an authorized representative of the Principal Representative acting within the limits of his or her authority.
15. PRODUCT DATA. The term "Product Data " shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
16. REASONABLY INFERABLE: The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which the Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications. The phrase shall not, however, be construed to make the

Contractor, rather than the Architect/Engineer, responsible for producing the Drawings and Specifications

17. SAMPLES. The term "Samples" shall mean examples of materials or work provided to establish the standard by which the Work will be judged.
18. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g. "SC 6.23" is the State form number for these General Conditions of the Contract).
19. SBP. The term "SBP" means "State Buildings", which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Beneficial Occupancy).
20. SHOP DRAWINGS. The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
21. SPECIFICATIONS. The term "Specifications" shall mean the requirements of divisions 1 through 17 of the project manual prepared by the Architect/Engineer describing the work to be accomplished.
22. STATE BUILDINGS PROGRAMS. The term "State Buildings Programs" is the shortened name of the division of State Buildings and Real Estate Programs. It shall refer to the division of the executive department of State government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, *et seq*, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.
23. SUBCONTRACTOR. The term "Subcontractor" shall mean a person, company, firm, corporation or other legal entity supplying labor and materials on site, or only labor, for Project work under separate contract or agreement with the Contractor. The term "Subcontractor at any tier" shall mean all Subcontractors, and shall include subcontractors to Subcontractors, as well as subcontractors to such subcontractors, supplying labor and materials on site, or only labor, for Project work for, and under separate contract or agreement with, a Subcontractor or other subcontractor.

24. **SUBMITTALS.** The term “submittals” means drawings, lists, tables, documents and samples prepared by the Contractor to facilitate the progress of the work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
25. **SUBSTANTIAL COMPLETION.** The terms “substantial completion ” or “substantially complete ” mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Order s, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Principal Representative, be designated as substantially complete.
26. **SURETY.** The term “Surety ” shall mean the company providing the labor and material payment and performance bonds for the Contractor as obligor.
27. **WORK.** The term “Work ” shall mean all or part of the labor, materials, equipment, and other services required by the Contract Documents or otherwise required to be provided by the Contractor to meet the Contractor’s obligations under the Contract.

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. EXECUTION

The Contractor, within ten (10) days from the date of Notice of Award, will be required to:

1. Execute the Agreement, State Form SC-6.21;
2. Furnish fully executed Performance and Labor and Material Payment Bonds on State Form s SC-6.22 and SC-6.221; and
3. Furnish certificates of insurance evidencing all required insurance on standard Acord forms designed for such purpose.

4. Furnish certified copies of any insurance policies requested by the Principal Representative.

B. CORRELATION

By execution of the Agreement the Contractor represents that the Contractor has visited the site, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

C. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

In any event, if any error exists, or appears to exist, in the requirements of the Drawings or Specifications, or if any disagreement exists as to such requirements, the Contractor shall have the same explained or adjusted by the Architect/Engineer before proceeding with the work in question. In the event of the Contractor's failure to give prior written Notice of any such errors or disagreements of which the Contractor or the Subcontractors at any tier are aware, the Contractor shall, at no additional cost to the Principal Representative, make good any damage to, or defect in, work which is caused by such omission.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply so long as such more stringent or higher quality requirements are reasonably inferable. The Architect/Engineer shall decide which requirements will provide the best installation.

With the exception noted in the following paragraph, the precedence of the Contract Documents is in the following sequence:

1. The Agreement (SC-6.21);

2. The Supplementary General Conditions, if any;
3. The General Conditions (SC-6.23); and
4. Drawings and Specifications, all as modified by any addenda.

Change Order s and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Notwithstanding the foregoing order of precedence, the Special Provisions of Article 52 of the General Conditions, Special Provisions, shall take precedence, rule and control over all other provisions of the Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the form required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain State forms from the Principal Representative upon request.

D. PARTNERING, COMMUNICATIONS AND COOPERATION

In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of construction contracts, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.

The Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the Notice to Proceed, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the contract amount, and no costs associated with such plan or its development shall be recoverable under any contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written

Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low contract values may not justify the expense or special efforts required. In the case of small projects with an initial Contract value under \$500,000, the requirements of the preceding paragraph shall not apply.

ARTICLE 3. COPIES FURNISHED

The Contractor will be furnished, free of charge, the number of copies of Drawings and Specifications as specified in the Contract Documents, or if no number is specified, all copies reasonably necessary for the execution of the work.

ARTICLE 4. OWNERSHIP OF DRAWINGS

Drawings or Specifications, or copies of either, furnished by the Architect/Engineer, are not to be used on any other work. At the completion of the Work, at the written request of the Architect/Engineer, the Contractor shall endeavor to return all Drawings and Specifications.

The Contractor may retain the Contractor's Contract Document set, copies of Drawings and Specifications used to contract with others for any portion of the Work and a marked up set of as-built drawings.

ARTICLE 5. ARCHITECT/ENGINEER'S STATUS

The Architect/Engineer is the representative of the Principal Representative for purposes of administration of the Contract, as provided in the Contract Documents and the Agreement. In case of termination of employment or the death of the Architect/Engineer, the Principal Representative will appoint a capable Architect/Engineer against whom the Contractor makes no reasonable objection, whose status under the Contract shall be the same as that of the former Architect/Engineer.

ARTICLE 6. ARCHITECT/ENGINEER DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Architect/Engineer shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work or the interpretation of the Contract Documents, and in the exercise of due diligence shall be reasonably available to the Contractor to timely interpret and make decisions with respect to questions relating to the design or concerning the Contract Documents.

B. JUDGMENTS

The Architect/Engineer is, in the first instance, the judge of the performance required by the Contract Documents as it relates to compliance with the Drawings and Specifications and quality of workmanship and materials.

The Architect/Engineer shall make judgments regarding whether directed work is extra or outside the scope of Work required by the Contract Documents at the time such direction is first given. If, in the Contractor's judgment, any performance directed by the Architect/Engineer is not required by the Contract Documents or if the Architect/Engineer does not make the judgment required, it shall be a condition precedent to the filing of any claim for additional cost related to such directed work that the Contractor, before performing such work, shall first obtain in writing, the Architect/Engineer's written decision that such directed work is included in the performance required by the Contract Documents. If the Architect/Engineer's direction to perform the work does not state that the work is within the performance required by the Contract Documents, the Contractor shall, in writing, request the Architect/Engineer to advise in writing whether the directed work will be considered extra work or work included in the performance required by the Contract Documents.

The Architect/Engineer shall respond to any such written request for such a decision within three (3) business days and if no response is provided, or if the Architect/Engineer's written decision is to the effect that the work is included in the performance required by the Contract Documents, the Contractor may file with the Principal Representative and the Architect/Engineer a Notice of claim in accordance with Article 36, Claims. Whether or not a Notice of claim is filed, the Contractor shall proceed with the

ordered work. Disagreement with the decision of the Architect/Engineer shall not be grounds for the Contractor to refuse to perform the work directed or to suspend or terminate performance.

C. ACCESS TO WORK

The Architect/Engineer, the Principal Representative and representatives of State Buildings Programs shall at all times have access to the work. The Contractor shall provide proper facilities for such access and for their observations or inspection of the work.

D. INSPECTION

The Architect/Engineer has agreed to make, or that structural, mechanical, electrical engineers or other consultants will make, periodic visits to the site to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

Without in any way meaning to be exclusive or to limit the responsibilities of the Architect/Engineer or the Contractor, the Architect/Engineer has agreed to observe, among other aspects of the Work, the following for compliance with the Contract Documents:

1. Bearing surfaces of excavations before concrete is placed based upon the findings and recommendations of the Principal Representative 's soils engineering consultant;
2. Reinforcing steel after installation and before concrete is poured;
3. Structural concrete;
4. Laboratory reports on all concrete testing based upon the findings and recommendations of the Principal Representative 's testing consultant;
5. Structural steel during and after erection and prior to its being covered or enclosed;
6. Steel welding; Principal Representative will furnish steel welding inspection consultant/agency if required or necessary for the project;
7. Mechanical and plumbing work following its installation and prior to its being covered or enclosed;
8. Electrical work following its installation and prior to its being covered or enclosed;

9. Compaction testing reports based upon the findings and recommendations of the Principal Representative 's testing consultant; and
10. Any special or quality control testing required in the Contract Documents provided by the Principal Representative 's testing consultant.

If the Specifications, the Architect/Engineer 's instructions, laws, ordinances of any public authority require any work to be specifically tested or approved, the Contractor shall give the Architect/Engineer timely notice of its readiness for observation by the Architect/Engineer or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by the Contractor. The Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of the Contractor to determine the Notice required by the State pursuant to Building Inspection Record for the Project, according to State form SBP-B.I.R., or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such work is covered up without approval or consent of the Architect/Engineer or prior to any building code inspection, it must, if required by the Architect/Engineer, the Principal Representative or the State Buildings Programs, be uncovered for examination, at the Contractor 's expense. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such costs, unless he or she shall show that the defect in the work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned work may be ordered, and if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Contractor shall be reimbursed the cost of examination and replacement.

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Architect/Engineer and the Principal Representative. The superintendent shall not be changed except with the consent of the Architect/Engineer and the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the

superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Architect/Engineer. The Contractor shall not be liable to the Principal Representative for damage to the extent it results from errors or deficiencies in the Contract Documents or other instructions by the Architect/Engineer, unless the Contractor knew or had reason to know, that damage would result by proceeding and the Contractor fails to so advise the Architect/Engineer.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Contractor's Work. The Contractor shall lay out all work in a manner satisfactory to the Architect/Engineer, making permanent records of all lines and levels required for excavation, grading, foundations, and for all other parts of the Work.

ARTICLE 8. MATERIALS AND EMPLOYEES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be first class and of uniform quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor is fully responsible for all acts and omissions of the Contractor's employees and shall at all times enforce strict discipline and good order among employees on the site. The Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the work assigned to him.

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

A. SURVEYS

The Principal Representative shall furnish all surveys, property lines and bench marks deemed necessary by the Architect/Engineer, unless otherwise specified.

B. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Unless otherwise specified in the Specifications, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the State. The Contractors' employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. The Contractor shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

C. TAXES

1. REFUND OF SALES AND USE TAXES

The Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed or directed in the Supplementary General Conditions or the Specifications, the Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by the Contractor, and the Contractor shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, the Contractor

shall require Subcontractors at all tiers to pay all local sales and use taxes required to be paid and to maintain records and furnish the Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per § 39-26-114(1)(d), C.R.S., and § 39-26-203, C.R.S.

2. FEDERAL TAXES

The Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish the Contractor, on request exemption certificates.

D. LAWS AND REGULATIONS

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified. If the Contractor observes that the Drawings or Specifications require work which is at variance therewith, the Contractor shall without delay notify the Architect/Engineer in writing and any necessary changes shall be adjusted as provided in Article 35, Changes In The Work.

The Contractor shall bear all costs arising from the performance of work required by the Drawings or Specifications that the Contractor knows to be contrary to such laws, ordinances, rules or regulations, if such work is performed without giving Notice to the Architect/Engineer.

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

A. GENERAL PROVISIONS

The Contractor shall continuously maintain adequate protection of all work and materials, protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. The Contractor shall make good any damage, injury or loss, except to the extent:

1. Directly due to errors in the Contract Documents;

2. Caused by agents or employees of the Principal Representative; and,
3. Due to causes beyond the Contractor 's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by the Contractor;

B. SAFETY PRECAUTIONS

The Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. He or she shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Architect/Engineer by the Contractor.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within the building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

The Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

C. EMERGENCIES

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor without special instruction or authorization from the Architect/Engineer or Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided the Contractor has no responsibilities for the emergency, if the Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency work, the Contract sum shall be equitably adjusted in accordance with Article 35, Changes In The Work.

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

The Contractor shall keep on the job site one copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. As-built drawings shall be updated weekly by the Contractor and Subcontractors to reflect actual constructed conditions including dimensioned locations of underground work and the Contractor's failure to maintain such updates may be grounds to withhold portions of payments otherwise due in accordance with Article 33, Payments Withheld. All such documents shall be available to the Architect/Engineer and representatives of the State. In addition, the Contractor shall keep on the job site one copy of all approved addenda, Change Order s and requests for information issued for the Work.

The Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Shop Drawing and Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

A. REQUESTS FOR INFORMATION

The Architect/Engineer shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from. The

Architect/Engineer shall determine what additional instructions or drawings are necessary for the proper execution of the Work.

The Work shall be executed in conformity with such instructions and the Contractor shall do no work without proper drawings, specifications or instructions. If the Contractor believes additional instructions, specifications or drawings are needed for the performance of any portion of the Work, the Contractor shall give Notice of such need in writing through a request for information furnished to the Architect/Engineer sufficiently in advance of the need for such additional instructions, specifications or drawings to avoid delay and to allow the Architect/Engineer a reasonable time to respond. The Contractor shall maintain a log of the requests for information and the responses provided.

B. SCHEDULES

1. SUBMITTAL SCHEDULES

Prior to filing the Contractor's first application for payment, a schedule shall be prepared which may be preliminary to the extent required, fixing the dates for the submission and initial review of required Shop Drawings, Product Data and Samples for the beginning of manufacture and installation of materials, and for the completion of the various parts of the Work. It shall be prepared so as to cause no delay in the Work or in the work of any other contractor. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Architect/Engineer. It shall fix the dates at which the various Shop Drawings Product Data and Samples will be required from the Architect/Engineer. The Architect/Engineer, after review and agreement as to the time provided for initial review, shall review and comment on the Shop Drawings, Product Data and Samples in accordance with that schedule. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture or installation.

At the time the schedule is prepared, the Contractor, the Architect/Engineer and Principal Representative shall jointly identify the Shop Drawing, Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Architect/Engineer for the purposes of owner coordination with existing facility standards and systems. The Contractor shall furnish a copy for the Principal

Representative when so requested. Transmittal of Shop Drawings and Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

The Contractor may also, or at the direction of the Principal Representative at any time shall, prepare and maintain a schedule, which may also be preliminary and subject to change to the extent required, fixing the dates for the initial responses to requests for information or for detail drawings which will be required from the Architect/Engineer to allow the beginning of manufacture, installation of materials and for the completion of the various parts of the Work. The schedule shall be subject to review and approval by the Architect/Engineer. The Architect/Engineer shall, after review and agreement, furnish responses and detail drawings in accordance with that schedule. Any such schedule shall be prepared and approved in time to avoid delay, considering reasonable periods for review, manufacture or installation, but so long as the request for information schedule is being maintained, it shall not be deemed to transfer responsibility to the Contractor for errors or omissions in the Contract Documents where circumstances make timely review and performance impossible.

The Architect/Engineer shall not unreasonably withhold approval of the Contractor's schedules and shall inform the Contractor and the Principal Representative of the basis of any refusal to agree to the Contractor's schedules. The Principal Representative shall attempt to resolve any disagreements.

2. SCHEDULE OF VALUES

Within twenty-one (21) calendar days after the date of the Notice to Proceed, the Contractor shall submit to the Architect/Engineer and Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized schedule of the values of the various parts of the Work, as estimated by the Contractor, aggregating the total price. The schedule of values shall be in such detail as the Architect/Engineer or the Principal Representative shall require, prepared on forms acceptable to the Principal Representative. It shall, at a minimum, identify on a separate line each division of the Specifications including the general conditions costs to be charged to the Project. The Contractor shall revise and resubmit the

schedule of values for approval when, in the opinion of the Architect/Engineer or the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents or the Contract sum.

The total cost of each line item so separately identified shall, when requested by the Architect/Engineer or the Principal Representative, be broken down into reasonable estimates of the value of:

- a. Material, which shall include the cost of material actually built into the Project plus any local sales or use tax paid thereon; and,
- b. Labor and other costs.

The cost of subcontracts shall be incorporated in the Contractor 's schedule of values, and when requested by the Architect/Engineer or the Principal Representative, shall be separately shown as line items.

The Architect/Engineer shall review the proposed schedules and approve it after consultation with the Principal Representative, or advise the Contractor of any required revisions within ten (10) days of its receipt. In the event no action is taken on the submittal within ten days, the Contractor may utilize the schedule of values as its submittal for payment until it is approved or until revisions are requested.

When the Architect/Engineer deems it appropriate to facilitate certification of the amounts due to the Contractor, further breakdown of subcontracts, including breakdown by labor and materials, may be directed.

This schedule of values, when approved, will be used in preparing Contractor 's applications for payment on State Form SC-7.2, Application for Payment.

3.CONSTRUCTION SCHEDULES

Within twenty-one (21) calendar days after the date of the Notice to Proceed, the Contractor shall submit to the Architect/Engineer and the Principal Representative, and to the State Buildings Programs when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The CPM

schedule shall start with the date of the Notice to Proceed and include submittals activities, the various construction activities, change order work (when applicable), close-out, testing, demonstration of equipment operation when called for in the Specifications, and acceptance. The CPM shall at a minimum correlate to the schedule of values line items and shall be cost loaded if requested by the Architect/Engineer or Principal Representative. The completion time shall be the time specified in the Agreement and all Project scheduling shall allocate float utilizing the full period available for construction as specified in the Agreement on State Form SC 6.13, without indication of early completion, unless such earlier completion is approved in writing by the Principal Representative and State Building Programs.

The time shown between the starting and completion dates of the various elements within the construction schedule shall represent one hundred per cent (100%) completion of each element.

All other elements of the CPM schedule shall be as required by the Specifications. In addition, the Contractor shall submit monthly updates of the construction schedule. These updates shall reflect the Contractor's "work in place" progress.

When requested by the Architect/Engineer, the Principal Representative or the State Buildings Programs, the Contractor shall revise the construction schedule to reflect changes in the schedule of values.

When the testing of materials is required by the Specifications, the Contractor shall also prepare and submit to the Architect/Engineer and the Principal Representative a schedule for testing in accordance with Article 14, Samples and Testing.

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. SUBMITTAL PROCESS

The Contractor shall check and field verify all dimensions. The Contractor shall check, approve and submit to the Architect/Engineer in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the specifications or required by the Contractor for the work of the various trades. All Drawings

and Product Data shall contain identifying nomenclature and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures. The number of copies of Shop Drawings and Product Data to be submitted shall be as specified in the Specifications and if no number is specified then three copies shall be submitted.

The Architect/Engineer shall review and comment on the Shop Drawings and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Shop Drawings and Product Data, if any, shall be clearly noted, and the submittals shall be returned to the Contractor for such corrections. If a change in the scope of the Work is intended by revisions requested to any Shop Drawings and Product Data, the Contractor shall be requested to prepare a change proposal in accordance with Article 35, Changes In The Work. On resubmitted Shop Drawings, Product Data or Samples, the Contractor shall direct specific attention in writing on the transmittal cover to revisions other than those corrections requested by the Architect/Engineer on any previously checked submittal. The Architect/Engineer shall promptly review and comment on, and return, the resubmitted items.

The Contractor shall thereafter furnish such other copies in the form approved by the Architect/Engineer as may be needed for the prosecution of the work.

B. FABRICATION AND ORDERING

Fabrication shall be started by the Contractor only after receiving approved Shop Drawings from the Architect/Engineer. Materials shall be ordered in accordance with approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS

The review and comments of the Architect/Engineer of Shop Drawings, Product Data or Samples shall not relieve the Contractor from responsibility for deviations from the Drawings or Specifications, unless he or she has in writing called the attention of the Architect/Engineer to such deviations at the time of submission, nor shall it relieve the Contractor from responsibility for errors of any sort in Shop Drawings or Product Data. Review and comments on Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Architect/Engineer and Principal Representative of all additional costs, time and other impacts of the identified deviation by bring it to their attention in writing at the time the submittals are made, and any subsequent change in the Contract sum or the Contract time shall be limited to cost, time and impacts so identified.

D. CONTRACTOR REPRESENTATIONS

By preparing, approving, and/or submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and co-ordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

ARTICLE 14. SAMPLES AND TESTING

A. SAMPLES

The Contractor shall furnish for approval, with such promptness as to cause no delay in his or her work or in that of any other Contractor, all Samples as directed by the Architect/Engineer. The Architect/Engineer shall check and approve such Samples, with reasonable promptness, but only for conformance with the design intent of the Contract Documents and the Project, and for compliance with any submission requirements given in the Contract Documents.

B. TESTING - GENERAL

The Contractor shall provide such equipment and facilities as the Architect/Engineer may require for conducting field tests and for collecting and forwarding samples to be tested. Samples themselves shall not be incorporated into the Work after approval without the permission of the Architect/Engineer.

All materials or equipment proposed to be used may be tested at any time during their preparation or use. The Contractor shall furnish the required samples without charge and shall give sufficient Notice of the placing of orders to permit the testing thereof. Products may be sampled either prior to shipment or after being received at the site of the Work.

Tests shall be made by an accredited testing laboratory. Except as otherwise provided in the Specifications, sampling and testing of all materials, and the laboratory methods and testing equipment, shall be in accordance with the latest standards and tentative methods of the American Society of Testing Materials (ASTM). The cost of testing which is in addition to the requirements of the Specifications shall be paid by the Contractor if so directed by the Architect/Engineer, and the Contract sum shall be adjusted accordingly by Change Order ; provided however, that whenever testing shows portions of the Work to be deficient, all costs of testing including that required to verify the adequacy of repair or replacement work shall be the responsibility of the Contractor.

C. TESTING - CONCRETE AND SOILS

Unless otherwise specified or provided elsewhere in the Contract Documents, the Principal Representative will contract for and pay for the testing of concrete and for soils compaction testing through an independent laboratory or laboratories selected and approved by the Principal Representative. The Contractor shall assume the responsibility of arranging, scheduling and coordinating the concrete sample collection efforts and soils compaction efforts. Testing shall be performed in accordance with the requirements of the Specifications, and if no requirements are specified, the Contractor shall request instructions and testing shall be as directed by the

Architect/Engineer or the soils engineer, as applicable, and in accordance with standard industry practices.

The Principal Representative and the Architect/Engineer shall be given reasonable advance notice of each concrete pour and reserve the right to either increase or decrease the number of cylinders or the frequency of tests.

Soil compaction testing shall be at random locations selected by the soils engineer. In general, soils compaction testing shall be as directed by the soils engineer and shall include all substrate prior to backfill or construction.

D. TESTING - OTHER

Additional testing required by the Specifications will be accomplished and paid for by the Principal Representative in a manner similar to that for concrete and soils unless noted otherwise in the Specifications. In any case, the Contractor will be responsible for arranging, scheduling and coordinating additional tests. Where the additional testing will be contracted and paid for by the Principal Representative the Contractor shall give the Principal Representative not less than one month advance written Notice of the date the first such test will be required.

ARTICLE 15. SUBCONTRACTS

The Contractor shall, within twenty one (21) days after the date of the Notice of Award, submit to the Architect/Engineer, the Principal Representative and State Buildings Programs a preliminary list of Subcontractors. It shall be as complete as possible at the time, showing all known Subcontractors planned for the work. The list shall be supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Architect/Engineer, the Principal Representative and State Buildings Programs not less than ten (10) days before the Subcontractor commences work.

The Contractor 's list shall include those Subcontractors, if any, which the Contractor indicated in its bid would be employed for specific portions of the Work if such indication was requested in the bid documents issued by the State. The substitution of any Subcontractor listed in the Contractor's bid shall be justified in writing not less than ten (10) days after the date of the Notice of Award, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered bid errors, or other similar reasons, but not including the availability of

a lower Subcontract price, such substitution may be approved. The Contractor shall bear any additional cost incurred by such substitutions.

The Contractor shall not employ any Subcontractor that the Architect/Engineer, within seven (7) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Architect/Engineer, the Principal Representative or State Buildings Programs. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

The Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents, so far as applicable to the work of such Subcontractor. The Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the Contractor cause damage to any separate contractor on the work, the Contractor agrees, upon due Notice, to settle with such contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the

Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 52C, Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

ARTICLE 18. SEPARATE CONTRACTS

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his or her work with theirs. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect/Engineer any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of work, except as to defects which may develop in the other Contractor's work after the execution of the Contractor's work.

To insure the proper execution of subsequent work, the Contractor shall measure work already in place and shall at once report to the Architect/Engineer any discrepancy between the executed work and the Drawings.

ARTICLE 19. USE OF PREMISES

The Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings. The Contractor shall not unreasonably encumber the premises with materials.

The Contractor shall enforce all of the Architect/Engineer's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

ARTICLE 20. CUTTING, FITTING OR PATCHING

The Contractor shall do all cutting, fitting or patching of work that may be required to make its several parts come together properly and fit it to receive or be received

by work of other Contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted work as the Architect/Engineer may direct. The Contractor shall not endanger any work by cutting, excavating or otherwise altering the work and shall not cut or alter the work of any other Contractor save with the consent of the Architect/Engineer.

ARTICLE 21. UTILITIES

A. TEMPORARY UTILITIES

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the locations of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to the Contractor's compliance with all statutory or regulatory requirements to call for utility locates. When actual conditions deviate from those shown the Contractor shall comply with the requirements of Article 37, Differing Site Conditions. The Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him and other Contractors for their Work and shall install and maintain all such utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site. The Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Approval of Beneficial Occupancy or the date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.

B. PROTECTION OF EXISTING UTILITIES

Where existing utilities, such as water mains, sanitary sewers, storm sewers and electrical conduits, are shown on the Drawings, the Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

C. CROSSING OF UTILITIES

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, the Contractor shall secure proper written permission before executing such new construction. The Contractor will be required to furnish a proper release before final acceptance of the Work.

ARTICLE 22. UNSUITABLE CONDITIONS

The Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any cost caused by ill-timed work shall be borne by the Contractor unless the timing of such work shall have been directed by the Architect/Engineer or the Principal Representative, after the award of the Contract, and the Contractor provided Notice of any additional cost.

ARTICLE 23. TEMPORARY FACILITIES

A. OFFICE FACILITIES

The Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the Architect/Engineer, representatives of the Principal Representative and State Buildings Programs.

B. TEMPORARY HEAT

The Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If the Contractor desires to put the permanent system into use, in whole or in part, the Contractor shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve the Contractor of his or her one-year guarantee of the

system from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, the Contractor shall provide manufacturers' extended warranties from the date of the Contractor's use prior to the date of the Notice of Substantial Completion. In the event a manufacturer's standard warranty runs from the date of first use and such first use occurs prior to the date of the Notice of Approval of Beneficial Occupancy and/or prior to the date of the Notice of Substantial Completion, and such occupancy date was not contemplated in the Contract Documents, the Contractor shall provide an extended manufacturer's warranty and any extended warranty cost shall be reimbursed to the Contractor; provided, however, that reimbursement shall only be due if the Contractor shall have given advance Notice of such additional cost and shall have given the Principal Representative a reasonable opportunity to decline such extended warranty coverage.

C. WEATHER PROTECTION

The Contractor shall, at all times, provide protection against weather, so as to maintain all work, materials, apparatus and fixtures free from injury or damages.

D. DUST PARTITIONS

If the Work involves work in an occupied existing building, the Contractor shall erect and maintain during the progress of the work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

E. BENCH MARKS

The Contractor shall maintain any site bench marks provided by the Principal Representative and shall establish any additional benchmarks specified by the Architect/Engineer as necessary for the Contractor to layout the work and ascertain all grades and levels as needed.

F. SIGN

The Contractor shall erect and permit one 4' x 8' sign only at the site to identify the Project as specified or directed by the Architect/Engineer which shall be maintained in good condition during the life of the Project.

G. SANITARY PROVISION

The Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete the Contractor shall promptly remove them from the site, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

ARTICLE 24. CLEANING UP

The Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the work clean unless more exact requirements are specified.

ARTICLE 25. INSURANCE

A. GENERAL LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE

The Contractor shall procure and maintain comprehensive commercial general liability and property damage insurance and comprehensive automobile liability and property damage insurance as hereinafter specified, at his or her own expense, during the life of this Contract. This insurance shall include a provision preventing cancellation without forty-five (45) days' prior Notice by certified mail and shall state whether the coverage is "claims made" or "per occurrence". The Contractor shall obtain "per occurrence" insurance unless otherwise agreed in writing by the Principal Representative. A completed Certificate of Insurance shall be filed with State Buildings Programs within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein.

This insurance must protect the Contractor from all claims for bodily injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with, any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on a Comprehensive Form of Policy. In the event any of the hazards or exposures, normally listed in standard policies as "Exclusions", are involved or required under this Contract, then such hazards or exposures shall be covered and protection afforded under the policy and such exclusions (X), (c) and (u), as excerpted from standard policies, must be removed from the policy as listed below:

"(X) Injury to or destruction of any property arising out of blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery of power transmitting equipment"

"(c) The collapse of or structural injury to any building or structure due to: (1) grading of land, excavating, burrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work; or (2) moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof;"

"(u) (1) injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling; or, (2) injury to or destruction of property at any time resulting there from."

B. WORKERS' COMPENSATION INSURANCE

The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees. This insurance, if issued by a private carrier, shall contain the same forty-five (45) days' Notice of cancellation as required in Article 25, Insurance for the Comprehensive General Liability Insurance. Evidence of such insurance shall be by the issuance of either a Certificate by the State Compensation Insurance Fund (or its successor) or, if issued by a private carrier, the completion of a Certificate of Insurance, and such Certificate shall be filed with the State

Buildings Program. The Certificate shall be filed within ten (10) days after the date of the Notice of Award.

The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

C. *BUILDER'S RISK INSURANCE*

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), the Contractor shall effect and maintain a policy of insurance to provide, at Contractor's expense, All Risk Builder's Risk Insurance Coverage which shall be in the dollar amount of the total Project for which the Work of this Contract is to be done. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

The Contractor shall waive all rights of subrogation as regards the State of Colorado, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. The Insurer shall not void such insurance policy by reason of the Contractor waiving said rights. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts. The insurance shall remain in effect until the Date of Notice specified on the Notice of Acceptance, State Form SC-6.27, whether or not the building or some part thereof is occupied in any manner prior to final acceptance of the Project, and shall remain fully in effect notwithstanding any acceptance of the work of any Subcontractor on the Project. Such insurance shall be in an amount equal to the total insurable value of the construction. Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her

share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

All such insurance shall insure the State of Colorado acting by and through its Principal Representative, the Contractor and his or her Subcontractors at any tier as their interests may appear. The insurance shall include a loss payable provision naming the State Controller, as loss payee.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

The Certificate of Insurance shall specifically state the inclusion of the provisions herein above. A certificate for such insurance shall be filed with State Buildings Programs within ten (10) days after date of Notice of Award. The Insurance shall include a provision preventing cancellation without forty five (45) days' prior Notice in writing by certified mail.

D. *ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS*

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. The clause entitled "Other Insurance Provisions" contained in any policy including the State of Colorado as an additional named insured shall not apply to the State of Colorado;
2. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Contractor;
3. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the

Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification;

4. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the State;
5. Receipt, review or acceptance by the State of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

The Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on State Form s SC-6.22, Performance Bond, and SC-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Contract sum. The expense of these bonds shall be borne by the Contractor and the bonds shall be filed with State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which the Contractor shall furnish to State Buildings Programs within ten (10) days after receipt of Notice from the State or after the Contractor otherwise becomes aware of such conditions.

ARTICLE 27. LABOR AND WAGES

In accordance with laws of Colorado, C.R.S. § 8-17-101, et. seq., as amended, Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article

54B, Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

ARTICLE 28. ROYALTIES AND PATENTS

The Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the work. The Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado harmless from loss on account thereof, in accordance with Article 52C, Indemnification; provided, however, the Contractor shall not be responsible for such loss or defense for any copyright violations contained in the Contract Documents prepared by the Architect/Engineer or the Principal Representative of which the Contractor is unaware, or for any patent violations based on specified processes that the Contractor is unaware are patented or that the Contractor should not have had reason to believe were patented.

ARTICLE 29. ASSIGNMENT

Except as otherwise provided hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by Section 4-9-406, C.R.S., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the State against the Contractor or the assignee.

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

The Contractor shall promptly remove from the premises all work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Architect/Engineer or the Principal Representative, whether incorporated in the Work or not. If such materials shall have been incorporated in the Work, or if any unsatisfactory work is discovered, the Contractor shall promptly replace and re-execute his or her work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or work.

If the Contractor does not remove such condemned or irreparably defective work or material within a reasonable time, the Principal Representative may, after giving a second seven (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another Contractor. If the Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven day period, or if the Contractor shall show good cause in conjunction with submittal of a revised CPM schedule showing when the work will be performed and why such removal of condemned work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or work is in accordance with the Contract Documents, the value of such defective or questionable material or work shall not be included in any application for payment, or if previously included, shall be deducted by the Architect/Engineer from the next application submitted by the Contractor.

If the Contractor does not perform repair, correction and replacement of defective work, in lieu of proceeding by issuance of a Notice of intent to remove condemned work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace

defective work, deduct all costs and expenses of replacement or correction as instructed by the Architect/Engineer from the Contractor's next application for payment in addition to the value of the defective work or material. The Principal Representative may also make an equitable deduction from the Contract sum by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes In The Work.

If the Contractor disagrees with the Notice to remove work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

During construction, whenever the Architect/Engineer has advised the Contractor in writing, in the Specifications, by reference to Article 6, Architect/Engineer Decisions And Judgments, of these General Conditions or elsewhere in the Contract Documents of a need to observe materials in place prior to their being permanently covered up, it shall be the Contractor's responsibility to notify the Architect/Engineer at least forty-eight (48) hours in advance of such covering operation. If the Contractor fails to provide such notification, Contractor shall, at his or her expense, uncover such portions of the work as required by the Architect/Engineer for observation, and reinstall such covering after observation. When a covering operation is continued from day to day, notification of the commencement of a single continuing covering operation shall suffice for the activity specified so long as it proceeds regularly and without interruption from day to day, in which event the Contractor shall coordinate with the Architect/Engineer regarding the continuing covering operation.

ARTICLE 31. APPLICATIONS FOR PAYMENTS

A. CONTRACTOR'S SUBMITTALS

On or before the first day of each month and no more than five days prior thereto, the Contractor may submit applications for payment for the work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. The Contractor shall submit the application for payment to the Architect/Engineer on State forms SC-7.2, Certificate for Contractor's Payment, continuation forms, SC-7.2A and 7.2B if necessary, or such other format as the State Buildings Programs shall approve, in an itemized format

in accordance with the schedule of values or a cost loaded CPM when required, supported to the extent reasonably required by the Architect/Engineer or the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of the Contractor's right to payments as the Architect/Engineer or Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative or the Architect/Engineer, and shall be subject to the right to inspect the materials at the request of either the Architect/Engineer or the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

B. ARCHITECT/ENGINEER CERTIFICATION

In accordance with the Architect/Engineer's agreement with the Principal Representative, the Architect/Engineer after appropriate observation of the progress of the work shall certify to the Principal Representative the amount that the Contractor is entitled to, and forward the application to the Principal Representative. If the Architect/Engineer certifies an amount different from the amount requested or otherwise alters the Contractor's application for payment, a copy shall be forwarded to the Contractor.

If the Architect/Engineer is unable to certify all or portions of the amount requested due to the absence or lack of required supporting evidence, the Architect/Engineer shall advise the Contractor of the deficiency. If the deficiency is not corrected at the end of ten (10) days, the Architect/Engineer may either certify the remaining amounts properly supported to which the Contractor is entitled, or return the application for payment to the Contractor for revision with a written explanation as to why it could not be certified.

C. **RETAINAGE WITHHELD**

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to ten percent (10%) of the amount shown to be due the Contractor on each application for payment shall be withheld until fifty percent (50%) of the work required by the Contract has been performed. Thereafter, the remaining Certificates for Contractor's Payment (SC-7.2) shall be paid without retaining additional funds, if in the opinion of the Architect/Engineer and the Principal Representative, satisfactory progress is being made in the Work. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

D. **RELEASE OF RETAINAGE**

The Contractor may, for satisfactory and substantial reasons shown to the Principal Representative 's satisfaction, make a written request to the Principal Representative and the Architect/Engineer for release of part or all of the withheld percentage applicable to the work of a Subcontractor which has completed the subcontracted work in a manner finally acceptable to the Architect/Engineer, the Contractor, and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing the Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Architect/Engineer or the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's contract with the Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. Neither the Principal Representative nor the Architect Engineer shall be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

The Contractor's obligation under these General Conditions to guarantee work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release; unless a Notice of Partial Substantial Completion is issued for the work subject to the release of retainage.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

The Contractor remains fully responsible for the Subcontractor 's work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers the Contractor 's request for such release satisfactory and supported by substantial reasons, the Architect/Engineer shall make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor 's work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's work and the procedures of Article 41, Completion, Final Inspection, Acceptance and Settlement, shall be followed for that portion of the work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

ARTICLE 32. CERTIFICATES FOR PAYMENTS

State Form SC-7.2, Certificate For Contractor's Payment, and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor 's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

ARTICLE 33. PAYMENTS WITHHELD

The Architect/Engineer, the Principal Representative or State Buildings Programs may withhold, or on account of subsequently discovered evidence nullify, the

whole or any part of any application on account of, but not limited to any of the following:

1. Defective work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of the Contractor to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the contract price then unpaid;
5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the Architect/Engineer;
7. Failure to submit a monthly construction schedule;
8. Failure of the Contractor to keep work progressing in accordance with the time schedule;
9. Failure to keep a superintendent on the work;
10. Failure to maintain as built drawings of the work in progress;
11. Unauthorized deviations by the Contractor from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Architect Engineer, Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Architect/Engineer or the Principal Representative estimates to be required to allow the State to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK

If the Architect/Engineer and the Principal Representative deem it inexpedient to correct work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after consultation with the Architect/Engineer and ten (10) days' Notice to the Contractor of intent to do so, make reasonable reductions from the amounts otherwise due the Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated

reduction. The Contractor may during this period elect to correct or perform the work. If the Contractor does not elect to correct or perform the work, an equitable deduction from the Contract sum shall be made by Change Order, in accordance with Article 35, Changes In The Work, unilaterally if necessary. If either party elects facilitation of this issue after Notice is given, the ten-day notice period shall be extended and tolled until facilitation has occurred.

ARTICLE 35. CHANGES IN THE WORK

The Principal Representative, or such other Procurement Officer as the Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Programs and the State Controller, may order extra work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.

The Architect/Engineer shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, State Buildings Programs, and the State Controller prior to proceeding with the changed work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Programs as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract sum shall be valid unless so ordered.

A. THE VALUE OF CHANGED WORK

1. *The value of any extra work or changes in the Work shall be determined by agreement in one or more of the following ways:*
 - a. *By estimate and acceptance of a lump-sum amount;*
 - b. *By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;*
 - c. *By actual cost plus a fixed fee in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed work.*
2. *Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Architect/Engineer. The value of the change in the Work shall be the Principal Representative's determination of the amount of equitable adjustment attributable to the extra work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims. The Principal Representative is the Procurement Officer for purposes of all of the remedies provisions of the Contract.*
3. *Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.*

B. DETAILED BREAKDOWN

In all cases where the value of the extra or changed work is not known based on unit prices in the Contractor's bid or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the State Buildings Program approves, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Architect/Engineer or the Principal Representative:

1. *Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).*
2. *Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.*
3. *Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change; provided however that additional cost of on-site superintendence shall be allowable whenever in the opinion of the Architect/Engineer the impact of multiple change requests to be concurrently performed will result in inadequate levels of supervision to assure a proper result unless additional superintendence is provided.*
4. *Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.*
5. *Workers' compensation costs, if not included in labor burden.*
6. *The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed work.*
7. *Overhead and profit, as hereafter specified.*
8. *Builder's risk insurance premium costs.*
9. *Bond premium costs.*
10. *Testing costs not otherwise excluded by these General Conditions.*
11. *Subcontract costs.*

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
	D		
To the Contractor or to Subcontractors for the portion of work performed with their own forces:		10%	5%
To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:		5%	5%

Overhead shall include: a) insurance premium for policies not purchased for the Project and itemized above, b) home office costs for office management, administrative and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "work" as used in the proceeding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for work involving both additions and credits in the amount of the Contract sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for

supporting documentation as the Principal Representative and State Buildings Programs approve. This requirement applies equally to work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.

Except for proposals for work involving both additions and credits, changed work shall be adjusted and considered separately for work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise or coordinate the work of persons or firms separately contracted by the Principal Representative.

C. EMERGENCY FIELD CHANGE ORDERED WORK

The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Programs and without the approval of the State Controller, may order extra work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using a State Change Order form (SC-6.31), modified with the words "Emergency Field Change Order" at the top.

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a not to exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Order s where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative and the Architect/Engineer. Weekly cost reports and the final adjustment of the Emergency Field Change Orders amount and the adjustment to the Project time for completion shall be prepared in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Programs to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

D. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended

The amount of money appropriated, as shown on the Agreement (SC 6.21), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Agreement (SC-6.13), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for

any order, directive or instruction by the Architect/Engineer or the Principal Representative to perform work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.

Written assurance shall be in the form of an Amendment to the Contract reciting the source and amount of such appropriation available for the Project. No remedy granting provision of this Contract shall obligate the Principal Representative to seek appropriations to cover costs in excess of the amounts recited as available to pay for the work to be performed.

ARTICLE 36. CLAIMS

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of job site issues, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, the Contractor shall 1) first, seek a decision by the Architect/Engineer, and 2) shall second, informally present the claim to Principal Representative as described hereafter, and 3) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal contract controversy, and 4) seek resolution outside the Contract as provided by the Procurement Code.

If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Architect/Engineer or Principal Representative affecting the scope of the Contractor's work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time, provided that before either proceeding to execute such work (except in an emergency endangering life or property), or filing a Notice of claim, the Contractor shall have obtained or requested a written decision of the Architect/Engineer following the procedures as

provided in Article 6A and B, Architect/Engineer Decisions and Judgments, respectively; provided, however, that in the case of a directed change in the Work pursuant to Article 36A4, no written judgment or decision of the Architect/Engineer is required. If the Contractor is delayed by the lack of a response to a request for a decision by the Architect/Engineer, the Contractor shall give Notice in accordance with Article 38, Delays And Extensions Of Time.

Unless it is the Architect/Engineer's judgment and determination that the work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of work unilaterally directed pursuant to Article 35A4 the Contractor shall also proceed with the work as originally directed while his or her claim is being considered.

The Contractor shall give the Principal Representative and the Architect/Engineer Notice of any claim promptly after the receipt of the Architect/Engineer's decision, but in no case later than three (3) business days after receipt of the Architect/Engineer's decision (or no later than ten (10) days from the date of the Contractor's request for a decision when the Architect/Engineer fails to decide as provided in Article 6). The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes In The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing, with a copy to the Architect/Engineer, within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method

allowed in Article 35A, The Value Of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative 's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with work directed by the Architect/Engineer or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial. Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method allowed in Article 35A, The Value Of Changed Work. In the event of a denial the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission have not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal

Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.

Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Architect Engineer, or the decision of the Principal Representative to deny any claim or denying the contract controversy, shall not be grounds for the Contractor to refuse to perform the work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the work directed.

In all cases where the Contractor proceeds with the work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

ARTICLE 37. DIFFERING SITE CONDITIONS

A. NOTICE IN WRITING

The Contractor shall promptly, and where possible before conditions are disturbed, give the Architect/Engineer and the Principal Representative Notice in writing of:

1. *subsurface or latent physical conditions at the site differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,*
2. *unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.*

The Architect/Engineer shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in the Contractor 's costs of performance of any part of the work required by the Contract Documents, whether or not such work is changed as a result of such conditions, an equitable adjustment shall be made and the Contract sum shall be modified in accordance with Article 35, Changes In The Work.

If the time required for completion of the work affected by such materially differing conditions will extend the work on the critical path as indicated on the CPM schedule, the time for completion shall also be equitably adjusted.

B. LIMITATIONS

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice In Writing, above. The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the State to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.

ARTICLE 38. DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State of Colorado or the Architect/Engineer, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the

Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.

The Contractor shall provide Notice in writing to the Architect/Engineer, the Principal Representative and State Buildings Programs within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.

Provided that the Contractor has submitted reasonable schedules for approval when required by Article 12, Requests for Information and Schedules, if no schedule is agreed to fixing the dates on which the responses to requests for information or detail drawings will be needed, or Shop Drawings, Product Data or Samples are to be reviewed as required or allowed by Article 12B, Schedules, no extension of time will be allowed for the Architect/ Engineer's failure to furnish such detail drawings as needed, or for the failure to initially review Shop Drawings, Product Data or Samples, except in respect of that part of any delay in furnishing detail drawings or instructions extending beyond a reasonable period after written demand for such detailed drawings or instructions is received by the Architect/Engineer. In any event, any claim for an extension of time for such cause will be recognized only to the extent of delay directly caused by failure to furnish detail drawings or instructions or to review Shop Drawings, Product Data or Samples pursuant to schedule, after such demand.

All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Architect/Engineer, the Principal Representative and State Buildings Programs as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule. Where the circumstances make it indisputable in the opinion of the Architect/Engineer that the delay affected the

completion of the Work so directly that the additional notice of the schedule impact by reference to a CPM schedule was unnecessary, a reasonable extension of time may be granted.

Extension of the time for completion of the Work will be granted for delays due to weather conditions only when the Contractor demonstrates that such conditions were more severe and extended than those reflected by the ten-year average for the month, as evidenced by the Climatological Data, U. S. Department of Commerce, for the Project area.

Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have worked but was unable to work, with each separate extension figured to the nearest whole calendar day.

For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

The Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the Architect/Engineer. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the director of State Buildings Programs to appoint such a person, who, if appointed, shall be accepted for this purpose by both the Contractor and the Principal Representative.

The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the Architect/Engineer;
7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in

- paragraphs (1) through (10) this Article 39, Facilitated Negotiation, no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall direct the Architect/Engineer to appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
 10. any discussions and documents prepared exclusively for use in the negotiations shall be deemed to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and Article 52F, Choice of Law; No Arbitration, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.

A partnering plan developed as described in Article 2D, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under \$500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 54, Optional Provisions And Elections. When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

ARTICLE 40. RIGHT OF OCCUPANCY

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and the Contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, however it may be used by the Contractor as a factor in establishing the date of Substantial Completion and shall justify the filing of the Notice required by Article 41A, Notice of Completion.

Prior to any occupancy of the Project, an inspection shall be made by the Architect/Engineer, State Buildings Programs and the Contractor. Such inspection

shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The inspection shall be conducted on the assumption that it shall be the final inspection called for in Article 41B, Final Inspection, unless the Architect/Engineer, State Buildings Programs and the Principal Representative determine that all of the requirements necessary to issue the Notice of Substantial Completion will not be met or satisfied. The Contractor shall assist the Principal Representative in completing and executing State Form SBP-01, Approval Of Beneficial Occupancy, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance And Settlement.

ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Architect/Engineer that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Architect/Engineer or the Principal Representative shall determine after inspection. If the Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.

B. FINAL INSPECTION

Within ten (10) days after the Contractor files written Notice that the Work is substantially complete, the Architect/Engineer, the Principal Representative, and the Contractor shall make a "final inspection" of the Project to determine

whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. The Contractor shall provide the Principal Representative and the Architect/Engineer an updated punch list in sufficient detail to fully outline the following:

1. work to be completed, if any; and
2. work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the Architect/Engineer in sufficient detail to fully outline to the Contractor:

1. work to be completed, if any;
2. work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Architect/Engineer to the Contractor, the Principal Representative, and State Buildings Programs. The Architect/Engineer's final punch list shall control over the Contractor's preliminary punch list.

C. NOTICE OF SUBSTANTIAL COMPLETION

Notice of Substantial Completion shall establish the date of substantial Completion of the Project. The Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. The Notice of Approval of Beneficial Occupancy (SBP-01), if required, has been fully executed;

2. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
3. All required corrections noted on the Building Inspection Record shall have been completed unless the Architect/Engineer, the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
4. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by the Contractor 's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
5. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
6. The Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 54D(2), the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion, or all of the Project, where portions of the Project cannot

meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

The Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Architect/Engineer a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative, the Architect/Engineer and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project. The ability to beneficially occupy a discrete physical portion of the Project shall also be considered.

D. NOTICE OF ACCEPTANCE

The Notice of Acceptance shall establish the completion date of the Project. It shall not be authorized until the Contractor shall have performed all of the work to allow completion and approval of the Closing-Out Checklist/Final Occupancy Permit (SBP-05). It shall not be authorized until the Contract Close-out Punch-list (SBP-06) shall have been prepared and approved containing no more than ten items of work remaining to be completed or repaired.

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the work described in Change Order s executed during late stages of the Project where a later completion date for the Change Ordered work is expressly provided for in the Contract as amended by the Change Order,

provided the work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the work included for which final payment will be made.

E. SETTLEMENT

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Close-out Punch-list (SBP-06) have been completed, the Notice of Acceptance issued, and the Notice of Contractors Settlement published. If the work shall be substantially complete d, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Contractor, the Principal Representative in his or her discretion may release to the Contractor such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Architect/Engineer and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Contractors Settlement and advertise the Project for final payment, the Contractor shall have corrected all items on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the Architect/Engineer:

- a. All guarantees and warranties;
- b. All statements to support local sales tax refunds, if any;
- c. Three (3) complete bound sets of required operating maintenance instructions; and,
- d. One (1) set of as-built Contract Documents showing all job changes.

2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.

Upon completion of the foregoing the Project shall be advertised in accordance with the Notice of Contractor 's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or the Contractor from Subcontractors, suppliers or materialmen based on good

faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided the Contractor has submitted a written Notice to the Architect/Engineer that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the Contractor, the Principal Representative and the State Controller shall withhold from the Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to compete unfinished work or the cost to repair defective work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor, as set forth in the published Notice of Contractors Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to the Contractor all other money not the subject of such action at law or withheld based on the cost to compete unfinished work or the cost to repair defective work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to the Contractor subject to the same conditions regarding unpaid claims.

ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE

The Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. The Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which was not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 45, One-Year Guarantee And Special Guarantees And Warranties.

ARTICLE 43. LIENS

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, § 38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to the Contractor in the amount of such claims.

ARTICLE 44. ONE-YEAR GUARANTEE AND SPECIAL GUARANTEES AND WARRANTIES

A. ONE-YEAR GUARANTEE OF THE WORK

The Contractor shall guarantee to remedy defects and repair or replace the Work for a period of one year from the date of the Notice Substantial Completion or from the dates of any partial Notices of Substantial Completion issued for discrete physical portions of the Work. The Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for,

repair and replace any damage to other work resulting there from, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. The Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that the Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Architect/Engineer or the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other work requiring correction with reasonable promptness. Such Notice shall be in writing to the Architect/Engineer and the Contractor.

The one year guarantee of the Contractor 's work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued, however, it shall run from the last Notice of Substantial Completion with respect to all or any systems common to the work to which more than one Notice of Substantial Completion may apply.

This one-year guarantee shall not be construed to limit the Contractor 's general warranty described in Article 42, General Warranty and Correction of Work After Acceptance, that all materials and equipment are new and of good quality, unless specified to the contrary, and that the Work shall in all respects be free from material defects not permitted by the Specifications and in accordance with the requirements of the Contract Documents.

B. SPECIAL GUARANTEES AND WARRANTIES

In case of work performed for which product, manufacturers or other special warranties are required by the Specifications, the Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative through the Architect/Engineer upon completion of the work.

These product, manufacturers or other special warranties, as such, do not in any way lessen the Contractor 's responsibilities under the Contract. Whenever guarantees or warranties are required by the Specifications for a longer period than one year, such longer period shall govern.

ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION

The Architect/Engineer, the Principal Representative and the Contractor together shall make at least two (2) complete inspections of the work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Six-Month Guarantee Inspection," shall be made approximately six (6) months after date of the Notice of Substantial Completion, unless in the case of smaller projects valued under \$500,000 this inspection is declined in Article 54A, Modification of Article 45, in which case the inspection to occur at six months shall not be required. Another such inspection, the "Eleven-Month Guaranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year guarantees do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be made by the Architect/Engineer and forwarded to the Contractor, the Principal Representative, State Buildings Programs, and all other participants within ten (10) days after the completion of the inspections. The punch list shall itemize all guarantee items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. The Contractor shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a manner satisfactory to the Architect/Engineer, the Principal Representative and State Buildings Programs.

If the Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving the Contractor ten (10) days written Notice of intention to do so.

The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from the Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).

It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.

The Contractor acknowledges that subject to any limitations in the Advertisement for Bids, issued for the Project, the Contractor's bid is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties may have stipulated in the Agreement, which stipulation was based on the Contractor's bid. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.

It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 54D, Modifications of Article 46, are reasonable times for these stages of completion of the Work, taking into such consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If the Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 54D, Modification of Article 46.

The Contractor and the Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially complete and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 54D(1), Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 54D(2), Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 54D, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in the Contractor's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 54D(1) and (2), both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first

instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial Completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.

ARTICLE 47. DAMAGES

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and

not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor; provided however that it shall not be necessary to first obtain or request a written judgment of the Architect/Engineer.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY DAMAGES

A. STATE'S RIGHT TO DO THE WORK

If after receipt of Notice to do so, the Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to the Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due the Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld, provided, however, that the Architect/Engineer shall approve the amount charged to the Contractor by approval of the Change Order.

B. TEMPORARY SUSPENSION OF WORK

The State, acting for itself or by and through the Architect/Engineer, shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

- 1. Unsuitable weather;*
- 2. Faulty workmanship;*
- 3. Improper superintendence;*
- 4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;*
- 5. Loss of, or restrictions to, appropriations;*
- 6. Conditions, which may be considered unfavorable for the prosecution of the Work.*

If it should become necessary to stop work for an indefinite period, the Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and he or she shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.

Notice of suspension of work shall be provided to the Contractor in writing stating the reasons therefore. The Contractor shall again proceed with the work when so notified in writing.

The Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. The Contractor further acknowledges and agrees that in such event that State may, upon Notice to the Contractor, suspend the work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For Convenience of State. If the Contract is not so terminated the Contract sum and the Contract time shall be equitably adjusted at the time the Principal Representative directs the work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

C. DELAY DAMAGES

The Principal Representative and the State of Colorado shall be liable to the Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the work only when and to the limited extent that such hindrance or delay is caused by an

act or omission within the control of the Principal Representative, the Architect/Engineer or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to the Contractor for the payment of such a claim only if the Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the work before proceeding with the changed work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT

A. GENERAL

If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of his or her creditors, or if a receiver should be appointed to take over his affairs, or if he or she should fail to prosecute his or her work with due diligence and carry the work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on the Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases his or her right to exercise such remedy.

In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once, having first obtained the concurrence of the Architect/Engineer in writing that sufficient cause exists to justify such action.

B. CONDITIONS AND PROCEDURES

1. *The Principal Representative may terminate the services of the Contractor, which termination shall take effect immediately upon service of Notice thereof on the Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of his or her service, the Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes over the Work and if the unpaid balance of the contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of the Contractor, such excess shall be paid to the Contractor. If, however, the cost, expenses and damages as certified by the Architect/Engineer exceed such unpaid balance of the contract price, the Contractor and his or her Surety shall pay the difference to the Principal Representative.*
2. *The Principal Representative may require the Surety on the Contractor's bond to take control of the Work and see to it that all the deficiencies of the Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of the Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the work to be done by the Surety, the Surety being substituted for the Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.*
3. *The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of the Contractor, or the Surety if the Surety has been substituted for the Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of*

Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from the Contractor and his or her Surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the Architect/Engineer approves the amount thus charged to the Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes In The Work.

C. ADDITIONAL CONDITIONS

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and the Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by the Contractor shall not be subject to such conversion.

ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE

A. NOTICE OF TERMINATION

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of such termination specifying the extent to which the performance of work under the Contract is terminated and the date upon which such termination becomes effective.

B. PROCEDURES

After receipt of the Notice of termination, the Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable

diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any work terminated by the Notice. With respect to such canceled commitments, the Contractor agrees to:

- 1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or she may require, which approval or ratification shall be final for all purposes of this clause; and,*
- 2. assign to the State, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.*

The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of § 24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.

Subject to the preceding provisions, the Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be

embodied in an Amendment to this Contract and the Contractor shall be paid the agreed amount.

The State may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

The Contractor agrees to transfer title and deliver to the State, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

- a. completed or partially completed plans, Drawings and information;*
- and,*
- b. materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the Notice.*

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§ 24-109-101, et seq., C.R.S., as amended.

ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative and the Architect/Engineer stop work or terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained on any plant or material, and a reasonable profit. If the Architect/Engineer shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is presented and received by the Architect/Engineer, as provided in Article 31, Applications For Payments, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor and the Architect/Engineer within thirty (30) days after the Architect/Engineer's certification, then the Contractor may on ten (10) days' written Notice to the Principal Representative and the Architect/Engineer stop work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount certified by the Architect/Engineer and not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the Contractor may terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained upon any plant or materials, and a reasonable profit. The Principal Representative's right to dispute an amount certified by the Architect/Engineer shall not relieve the Principal Representative of the obligation to pay amounts not in dispute as certified by the Architect/Engineer.

ARTICLE 52. SPECIAL PROVISIONS

A. CONTROLLER'S APPROVAL CRS 24-30-202(1)

This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

B. FUND AVAILABILITY CRS 24-30-202(5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. INDEMNIFICATION

The Contractor shall indemnify and save and hold harmless the State of Colorado and the Principal Representative, its officials, employees and agents, against any and all claims including, but not limited to, suits, actions, damages, liability and court awards including costs, expenses and attorneys fees incurred on account of injuries or damages sustained by any person, persons or property caused in whole or in part by the Contractor, employees, subcontractors, agents or assigns, or as a result of any act or omission, neglect or misconduct by the Contractor, or its employees, agents, subcontractors or assigns, including without limitation, damage to another contractor, neglect in safeguarding the work, defective work or the use of defective materials, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other contractors or assignees, or other parties not under the control of or responsible to the Contractor.

D. INDEPENDENT CONTRACTOR 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION

INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

E. NON-DISCRIMINATION

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

F. CHOICE OF LAW; NO ARBITRATION

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract without application of any choice of law rules that would apply the laws of any other state. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference or otherwise which purports to negate this Article 52F prohibition regarding arbitration in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of the Contract to the extent that the Contract is capable of execution.

The non-binding facilitation of negotiation of disputes and disagreements provided for generally in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall not be construed as providing for arbitration. If as a result of any partnering agreement, other forms of voluntary non-binding alternative dispute resolution are subsequently incorporated by Amendment, such as non-binding mediation, such dispute resolution processes shall also be not deemed to be arbitration.

At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

G. *VENDOR OFFSET SYSTEM CRS 24-30-202(1) & CRS 24-30-202.4*

Pursuant to C.R.S § 24-30-202.4, (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 22, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the State Controller.

H. *EMPLOYEE FINANCIAL INTEREST CRS 24-18-201 & CRS 24-50-507*

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

ARTICLE 53. MISCELLANEOUS PROVISIONS

A. *CONSTRUCTION OF LANGUAGE*

The language used in these General Conditions shall be construed as a whole according to its plain meaning, and not strictly for or against any party. Such construction shall, however, construe language to interpret the intent of the parties giving due consideration to the order of precedence noted in Article 2C, Intent of Documents.

B. *SEVERABILITY*

If any covenant, term, condition, or provision contained in these General Conditions is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such covenant, term, condition, or provision shall be severed or modified to the extent necessary to make it enforceable, and the resulting General Conditions shall remain in full force and effect, and such invalidity or other failure shall not affect the validity of any other covenant, term or provision hereof. Provided the same does not work a substantial injustice, these General Conditions shall be construed as if such invalid portion had not been inserted.

C. SECTION HEADINGS

The section or paragraph headings contained within these General Conditions are inserted for convenience only and shall not be construed to vary or add to the meaning of this Contract.

D. AUTHORITY

Each person executing the Agreement and its Exhibits in a representative capacity expressly represents and warrants that he or she has been duly authorized by one of the parties to execute the Agreement and has authority to bind said party to the terms and conditions hereof.

E. INTEGRATION OF UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties and supercedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

F. VENUE

The parties agree that venue for any action related to performance of this Contract shall be an appropriate District Court of the State of Colorado.

G. NO THIRD PARTY BENEFICIARIES

Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the parties to the Agreement. Nothing contained in the Contract Documents shall give or allow any claim or right of action whatsoever by any other person or entity as beneficiary; all such non-parties shall be deemed incidental beneficiaries only.

H. WAIVER

The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, of the same term upon subsequent breach.

ARTICLE 54. OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article 54 alter the preceding Articles or enlarge upon them as indicated:

The Principal Representative and or the State Buildings Programs shall mark boxes and initial where applicable.

A. MODIFICATION OF ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION

If the box below is marked the six month guarantee inspection is not required.

_____ Principal Representative initial

B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES

If the box is marked the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

_____ Principal Representative initial

C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION –

FACILITATED NEGOTIATIONS

If the box is marked, and initialed by the State as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same where ever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of less than \$500,000.

_____ Principal Representative initial

D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time Of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the parties right to damages only to the extent noted.

1. For the inability to use the Project, for each day after the number of calendar days specified in the Contractor 's bid for the Project and the Agreement for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to _____ (\$) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.

2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor 's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to _____ (\$) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

E. NOTICE IDENTIFICATION

All Notices pertaining to General Conditions or otherwise required to be given shall be transmitted in writing, to the individuals at the addresses listed below, and shall be deemed duly given when received by the parties at their addresses below or any subsequent persons or addresses provided to the other party in writing.

Notice to Principal
Representative:

With copies to:

State Buildings Programs
(or Delegee) State of
Colorado

Notice to Contractor:

With copies to:

INDEX

- 24-30-1301(11), 3
- 38-26-107, 36
- 39-26-114(1)(d), 9
- 8-17-101, 2, 20
- acceptance, 12, 15, 17, 19, 20, 23, 25, 33, 38
- Agreement, 1, 2, 4, 5, 12, 24, 25, 27, 32, 38, 39, 45, 46, 47
- American Society of Testing Materials, 14
- approval, 3, 7, 11, 13, 14, 19, 20, 23, 24, 27, 31, 35, 40, 42, 43
- Architect/Engineer, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44
- Beneficial Occupancy, 1, 2, 33, 34
- Bids, 1, 38
- Bonds, 1, 4
- business days, 2, 6, 28, 29, 30, 33, 41
- Change Order, 2, 4, 5, 10, 13, 14, 21, 24, 25, 26, 27, 29, 31, 32, 35, 38, 40, 46
- claim, 31
- Contract, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47
- contract sum, 10, 11, 13, 14, 20, 21, 24, 25, 26, 29, 30
- contract time, 13
- Contractor, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 47
- correction, 21, 22, 34, 35, 37
- Defect, 5, 7
- Drawings, 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 31, 33, 35, 43
- final acceptance, 2, 16, 17, 19, 23, 35, 37, 38, 39
- final payment, 23, 35, 36, 39
- final settlement, 23, 36
- guarantee, 17, 23, 37, 46
- indemnify, 44
- instructions, 7, 10, 14, 15, 16, 28, 29, 31, 35, 39, 41
- Insurance, 15, 18, 19, 20
- manufacturer's warranty, 17
- Notice, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20, 21, 23, 24, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 47
- observe, 6, 7, 22
- Occupancy, 1, 2, 33, 34, 35
- Owner, 2, 3
- partnering plan, 5, 28, 32
- payment, 1, 4, 20, 21, 23
- precedence, 5, 45
- Principal Representative, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47
- Procurement Officer, 2, 3, 25
- Product Data, 3, 4, 10, 11, 12, 13, 31
- Samples, 3, 4, 10, 11, 12, 13
- SBP-01, 1, 33
- SBP-05, 1, 35
- SBP-B.I.R., 7
- SC-6.13, 1, 2, 4, 27
- SC-6.22, 4, 20
- SC-6.221, 4, 20
- SC-6.26, 38
- SC-6.27, 1, 19
- SC-6.31, 26
- SC-6.312, 25
- SC-7.2, 12, 22, 23
- schedule, 10, 11, 12, 13, 21, 22, 24, 27, 30, 31, 34, 37, 41
- Shop Drawings, 3, 4, 10, 11, 12, 13, 31
- Specifications, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 33, 34, 36, 37, 38
- State Buildings Programs, 1, 6, 7, 8, 11, 12, 14, 15, 17, 18, 19, 20, 24, 25, 27, 30, 31, 33, 34, 35, 37
- State Form, i, 2, 4, 12, 19, 20, 23, 27, 33, 35
- Subcontractor, 3, 9, 14, 15, 18, 19, 23, 34
- substantial completion, 2, 4, 16, 34, 39
- Substantial Completion, 1, 2, 4, 17, 33, 34, 35, 36, 37, 38, 47
- substantially complete, 4, 33, 35, 38
- Surety, 4, 20, 21, 23, 38, 40, 41, 42, 47
- termination, 6, 41, 42, 43
- testing, 7, 12, 14, 17, 34
- time of completion, 30
- warranties, 17, 23, 35, 36, 37, 39
- weather, 17, 25, 30, 31, 40
- Work, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 17, 19, 22, 23, 24, 25, 27, 28, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42

