



CO L O R A D O

**Department of Public
Health & Environment**

2016 Request for Applications (RFA)

Water Quality Control Division Grants and Loans Unit

Water Quality Improvement Fund Grant

**APPLICATIONS OPEN
SEPTEMBER 15 – OCTOBER 14, 2016**

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1.0 Overview of Grant Program

The purpose of the Water Quality Improvement Fund (WQIF) is to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations. In addition, House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters.

1.1 Grant Program Background, Goals, and Priorities

In 2006 the Colorado General Assembly created the Water Quality Improvement Fund (WQIF) codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act (Act) with the purpose of the fund to improve water quality in Colorado by providing grant funds for water quality improvement projects using civil penalties from water quality violations. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission (Commission) with the authority to promulgate, implement and administer this regulation.

The Commission adopted the revised WQIF Rules (5 CCR 1002-55) on June 11, 2012. The Rules provide the eligibility and prioritization criteria that will be used to award grants from the WQIF. Funding is dependent upon annual spending authority from the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006 and penalties paid into the fund.

Please refer to the “Regulation 55, State Funded Water and Wastewater Infrastructure Programs” and related documents that authorize use of the WQIF located at (<https://www.colorado.gov/pacific/cdphe/water-quality-control-commission-regulations>).

1.2 Eligibility and Program Funding

Governmental agencies; publicly owned water systems; private not-for-profit public water systems; not-for-profit watershed groups; not-for-profit stormwater program administrators in accordance with 25-8-802 C.R.S.; not-for-profit training providers; and private landowners impacted by a water quality violation are eligible to apply for grant funds.

Entities that pay a Colorado Water Quality Control Act civil penalty are **prohibited** from receiving a grant from the WQIF for a period of 5 years from the date of the payment of the penalty.

This RFA, and the resulting projects are 100% funded by cash funds from civil penalties from water quality violations. These funds are utilized by the Water Quality Control Division (Division) to support a variety of activities that are necessary to accomplish the requirements of the Clean Water Act.

This grant is classified as State dollars. If acceptance of this grant exceeds your spending limitations it could jeopardize your ability to accept these funds. It is the responsibility of the awardees to comply with TABOR requirements.

All civil penalties collected by the Division shall be transmitted to the state treasurer for deposit to the credit of the Fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The Division will post on its web page (<https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund>) a list of violators that have paid into the Water Quality Improvement Fund.

Total funding allocation for State Fiscal Year 2017 will include \$728,837 of which \$50,000 will be available for Category 1 projects. The remaining funds will be allocated to Categories 2-4.

The allocations from the funds will be distributed as follows:

- 1.2.1 Category 1 - Stormwater management training and best management practices training to reduce the pollution of state waters. For State SFY 2016-17 the Division will allocate up to \$50,000 of

available funds to Category 1 with no one project receiving more than \$50,000. The funding period will be February 1, 2017 - June 30, 2017.

- 1.2.2 Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation. Category 2 allocation is 10% of available funds following allocation to Category 1 projects (Total Category 2: \$67,883). The funding period is anticipated to begin February 1, 2016 not to exceed June 30, 2019.
- 1.2.3 Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan. Category 3 allocation is 60% of available funds following allocation to Category 1 projects (Total Category 3: \$407,302); no one project can receive more than 25% of the available funds allocated to this category. The funding period is anticipated to begin February 1, 2016 not to exceed June 30, 2019.
- 1.2.4 Category 4 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the Commission. Category 4 allocation is 30% of available funds following allocation to Category 1 projects (Total Category 4: \$203,651). **A separate RFA will be issued for Category 4 projects at a later date utilizing the WQCC approved 2016 Nonpoint Source Funding Cycle List. Expenditure time frames will also be determined by the Nonpoint Source Program.**

The project start date of February 1, 2017 may vary, due to the time to finalize the Scope of Work (SOW), obtain signatures, and process the State of Colorado Contract or Purchase Order (refer to section 5.2). **The awardees are not authorized to begin work until the Purchase Order or Contract has been signed and dated by the appropriate state designee.** Work conducted outside the effective start and end date of the grant will not be eligible for reimbursement under this grant.

Any funds not utilized in one category may be redistributed among the remaining categories based on their relative percentage of funding. Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

Because this award involves the expenditure of cash funds, any ensuing agreement is subject to, and contingent upon, the continued availability of those funds for payment pursuant to the terms and conditions of the agreement. Funding is also contingent upon the continued need for the service and the applicant's performance in completing the Scope of Work to the satisfaction of the State.

2.0 Overview of Grant Process

This section provides an overview of the grant process, including the projected grant program timeline, the application review process, and post-award contracting and reimbursement information.

2.1 Timeline

| Timeline | |
|---|---|
| September 15, 2016 | Release of Request for Applications |
| September 29, 2016 Cut off at 2:00 p.m. MDT. | Deadline for submitting questions regarding the RFA to the Grants and Loans Unit via e-mail. See section 2.5. |
| October 6, 2016 | Responses to questions will be posted at https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund |
| October 14, 2016 Cut off at 2:00 p.m. MDT. | Deadline for receipt of grant applications. |
| Week of November 7, 2016 | Anticipated completion of application reviews and prioritization |
| Week of November 14, 2016 | Prioritization and grant recipients will be notified and announced on website https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund |
| Week of December 5, 2016 | Signed agreement submitted to the Grants and Loans Unit Grant Administrator |
| February 1, 2017 | Anticipated project start date |

Please note: Category 1 projects must complete project and expend award funds no later than June 30, 2017. Category 2 and 3 projects must complete project and expend award funds no later than June 30, 2019.

2.2 Project Prioritization Criteria

If the WOIF lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds in any of the priorities, further prioritization criteria will be applied as identified in Section 2.3, Figure 1 and 2. The Division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Regulation 55, Section 55.4 are as follows:

2.2.1 Category 1 - Stormwater management training and best management practices training to reduce the pollution of state waters.

- Priority 1 - Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.
- Priority 2 - Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regards to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no- or low-cost training. A specific project may meet Priority 1 criteria over multiple years during the period that the training is being developed and established.

Additional prioritization criteria will include the water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria are included in Section 2.3 Figure 1.

2.2.2 Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

- Priority 1 - Projects that address impacts to a water supply designated use.
- Priority 2 - Projects that address impacts to a recreation designated use.
- Priority 3 - Projects that address impacts to an aquatic life designated use.
- Priority 4 - Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria can be found in Section 2.3 Figure 2.

2.2.3 Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

- Priority 1 - Projects that improve water quality in the community or water body impacted by a violation.
- Priority 2 - Planning, design, construction, or repair of stormwater projects.
- Priority 3 - Projects identified on the current year's Water Pollution Control Revolving Fund Intended Use Plan which may be located on the webpage at (<https://www.colorado.gov/pacific/cdphe/wq-eligibility-survey>).

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria are the same as Category 2 and found in Section 2.3 Figure 2.

2.3 Project Prioritization Tables

A technical review of each application will be performed. Each applicant must submit items outlined in Section 3.0 and listed on the application checklist on page 1 of the application. After the division verifies the applicant's Category and Priority, applicants will be scored based on the ranking system found in Section 2.3, Figure 1 and 2, if there are more applicant requests than funding.

Figure 1

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

| | Prioritization Factor | Points |
|---|---|--------|
| Match Funds | | |
| 1 | Match Equals % of the project cost: | |
| | 10% -20% | 5 |
| | 21%-40% | 10 |
| | 41%-60% | 15 |
| | 61% or Greater | 20 |
| Water Quality Benefit* | | |
| 2 | Project provided tools to improve or maintains water quality of the water body that will receive discharge from the activities addressed. Improvement (Reduces loading of pollutant(s) of concern) | 20 |
| | Maintenance (Protects current water quality from future degradation) | 10 |
| Readiness to Proceed | | |
| 3 | Participants in the proposed training are knowledgeable of, and have a history of providing services to stakeholder communities in Colorado who will be targeted by the training. | 5 |
| | Participants in the proposed training have a history of successful development and implementation of training programs. | 10 |
| | Participants in the proposed training have demonstrated expertise in the subject matter to be addressed by the training. | 5 |
| | Project has funding secured or formerly committed to by participating entities. | 5 |
| Total Population Receiving Training^ | | |
| 4 | Population Receiving Training per \$1,000 in grant money provided. | |
| | ≤1 | 5 |
| | >1 and <4 | 10 |
| | ≥4 or greater | 15 |

*The Division may adjust points to account for the expected impact and mitigation of that impact addressed by the training. Any adjustment will include a qualitative and/or quantitative comparison to other grant applications being considered.

^The Division may adjust points to address training that will provide for additional resources for populations not directly receiving the training funded by the grant. Examples include grant funding used to establish future sustainable training for additional populations or for train the trainer scenarios. Any adjustment will include a qualitative and/or quantitative comparison to other grant applications being considered.

NOTE: Projects are funded based on the highest points in priority 1 first and then priority 2. In the event that two or more projects are tied, the highest total Water Quality Benefit scores will be used to break the tie. Should a tie between projects remain after sorting by the Water Quality Benefit scores, the total Readiness to Proceed scores will be reviewed and the tied projects will be ranked from highest to lowest. This procedure will continue systematically through the remaining scoring categories (Total Population) until the tie can be broken. The final tie breaker will be the % of match allocated to the project.

Figure 2

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

| | Prioritization Factor | Points |
|---------------------------------|--|---------------------|
| Financial /Affordability | | |
| 1 | Median Household Income (MHI) of service area* < 40% of state MHI Between 40% and 60% of state MHI Between 60% and 80% of state MHI | 30 20 10 |
| 2 | Population Served Criteria < 500 Between 500 and 999 Between 1,000 and 5,000 > 5,000 | 30 20 10 0 |
| Water Quality Benefit | | |
| 3 | Project improves or maintains water quality of the water body that will receive discharge Improvement (Reduces loading of pollutant(s) of concern) Maintenance (Protects current water quality from future degradation) | 20 10 |
| 4 | Project corrects surface or groundwater pollution that is a documented health hazard | 15 |
| Permit Compliance | | |
| 5 | Project is designed to maintain permit compliance or meet new permit effluent limits Project addresses a facility's voluntary efforts to resolve a possible violation and will mitigate the issuance of a Consent Order or other enforcement action Project addresses an enforcement action by a regulatory agency and the facility is currently in significant non-compliance | 15 10 5 |
| Readiness to Proceed | | |
| 6 | Project has secured one or more of the following: Request for PELs Submitted Site Application Submitted and Approved Plans and Specification Submitted Plans and Specification Approved | 5 10 5 10 |
| 7 | Project implements one or more of the following planning instruments: Watershed Management Plan; Source Water Protection Plan; Nonpoint Source Management Plan; Approved 305(b) Report Category 4b designation; Nutrient Management Plan; Comprehensive Land Use Planning | 5 |
| 8 | Project has funding secured by multiple financial assistance provider(s) | 10 |
| Match | | |
| 9 | Match Equals % of the project cost: 10% -20% 21%-30% 31%-40% 41% or Greater | 5 10 15 20 |

*Percent of MHI will be calculated using the most current MHI data that is available.

Projects are funded based on the highest points in priority 1 first and then priority 2, etc. In the event that two or more projects are tied, the highest total Water Quality Benefit scores will be used to break the tie. Should a tie between projects remain after sorting by the Water Quality Benefit scores, the total Financial/Affordability scores will be reviewed and the tied projects will be ranked from highest to lowest. This procedure will continue systematically through the remaining scoring categories (Permit Compliance, etc.) until the tie can be broken. The final tie breaker will be the % of match allocated to the project.

2.4 Post Award Requirements

A signed Scope of Work and budget must be submitted to CDPHE following discussion with the WQIF Grant Administrator and no later than two weeks after notice of award. Failure to complete this promptly may result in a reduced timeline for use of the grant award. Awardee(s) must comply with the standard terms and conditions of the agreement, including insurance requirements, common to CDPHE contracts.

Insurance Requirements/W-9

Successful applicants shall comply with the State's insurance requirements to protect the grantee and the state from any damages or loss. The grantee will need to submit certificates of insurance demonstrating coverage for Professional Liability and other coverage required by the State as outlined below. Do not submit your proof of insurance with the application. The State will request that you submit proof of insurance, usually when you submit signed copies of the contract, at a later date. Basic insurance requirements are addressed in the General Provisions of the Contract Template (**Attachment 2.4**).

Project expenses will only be reimbursed one time per month for expenses incurred in the previous month. Awardees will be requested to submit a signed Standardized Invoice form to the Grants and Loans Unit administrator along with any supporting documentation/invoices required to substantiate request. This form will be made available to successful award applicants during the contracting process.

Please note:

Category 1 projects must complete project and expend award funds no later than June 30, 2017. Category 2 and 3 projects must complete project and expend award funds no later than June 30, 2019.

2.5 Questions on the RFA

Questions regarding the requirements of the RFA should be submitted electronically to the Grants and Loans Unit email cdphe_grantsandloans@state.co.us (subject line: WQIF Grants Program Questions). E-mail is the preferred method of submitting inquiries concerning the RFA.

Deadline for submitting questions is September 29, 2016. Questions will be received up until 2:00 p.m. MDT. Answers to questions will be posted on the Grants and Loans Unit web page at <https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund> by October 6, 2016. Applicants should not rely on any other statements that alter any specification or other term or condition of the RFA.

The preferred method of submission is e-mail. If you are unable to submit electronically, written inquiries may be sent by courier or certified mail to be received by the deadline to the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-GLU
Grants and Loans Unit
Attention: Bradley Monson
WQIF Grants RFA - Application
4300 Cherry Creek Drive South
Denver, CO 80246-1530

For general inquiries, please email cdphe_grantsandloans@state.co.us (subject line: WQIF Grants Program Questions).

3.0 Preparing an Application

Applications submitted under this RFA must align with the bold titles similar to Section 3.1 - 3.3, below. Applications should be consecutively numbered, 8.5x11-inch pages, 10 pages or less, standard 12-point type with 1-inch margins. Each section must be labeled as described in the Request for Application; the cover sheet must be signed by the authorized official; no co-applicants are allowed; application and attachments are in one single PDF document (if sending electronically); and PDF file size is no larger than 10 MB (megabytes). Failure to adhere to format requirements may lead to an application being disqualified. The following table summarizes the contents of the application.

| |
|---|
| Application Contents |
| 3.1 WQIF Grant Application |
| W-9 |
| 3.2 Work Plan Table |
| 3.3 Budget (provide narrative and use form provided) |
| Description of equipment greater than \$5,000 to be purchased |

In addition to the above mentioned, all Non-governmental agency applicants **must** submit the following (failure to submit these forms by the application deadline will result in the application being considered incomplete and not accepted for consideration).

- Proof of Signature Authority

- Proof of liability insurance

- Copy of Colorado's Secretary of State Certificate of Good Standing letter (for-profit or not-for-profit 501©(3) entities only)

3.1 WQIF Grant Application

Please complete the form thoroughly to avoid disqualification due to lack of information.

3.2 Work Plan Table

Section 3.2 of the application is a CDPHE project Work Plan Table to include completion dates for deliverables. This includes all activities (tasks) necessary to complete the project identified in the application. Instructions are provided to assist you in the completion of the table.

Examples for Category 2 and 3 projects may include:

- Task 1 - Preliminary Engineering Report

- Task 2 - Design Document

- Task 3 - Bid Documents

- Task 4 - Construction

Submit a work plan that describes how the applicant will carry out the scope of work. Responses must address and clearly identify each of the deliverables in the order presented. *SOW Work Plan Table* templates are included as **Attachment 3.2: Work Plan Template**. See the guidelines below.

Define the work to be completed including a description of all elements of the project.

List all specific objectives in the table. Organize objectives by S.M.A.R.T (Specific, Measurable, Achievable, Realistic and Timely) outcome objectives. Each objective shall directly address a specific goal area and strategy; express the intended outcomes, results or accomplishments of individual project activities; describe the intended target populations, if appropriate.

List a minimum of one and a maximum of 10 activities employed in accomplishing the project goals/objectives; list major sub-activities as needed.

List the actual results you expect to achieve by meeting the goals/activities.

List standards and requirements that will be used to establish quality and ensure the activities will provide the expected results. Often multiple sources of requirements exist/apply including Colorado Statute, Board of Health rules, and State, Federal and industry requirements.

List what will be measured to ensure the expected results of the activities have been achieved.

Enter each expected deliverable related to the objective and include a description of the party responsible for completion (if applicable) and the completion date(s). Deliverables are typically tangible objects produced as a result of the activities performed. They are “delivered” to the State as evidence of compliance (or not) with standards and requirements for performance and can be an indication of the progress made. Examples of deliverables may be reports, tracking logs, meeting minutes, copies of professional licenses, data entered, or some other element of a project.

3.3 Budget

Provide a budget narrative describing how project costs are determined and how they relate to the project. Indicate any other funding sources that will be used for this including self funded portions. Applications will be reviewed for budget completeness.

Use the standardized format (Section 3.3 of this document) to provide a *lump sum by task* (i.e., Task 1, 2, and 3) project budget starting February 1, 2017. Again, Category 1 projects must complete and expend funds no later than June 30, 2017. Category 2 and 3 projects have until June 30, 2019 to complete. All expenses for the project period must occur between the start date of an agreement and end date of the agreement. No services or purchases will be reimbursed if service occurs prior to start date or after end date of the agreement. Equipment purchases will not be reimbursed if said purchases were procured outside of the effective dates of the agreement. **There will be no reimbursement of pre-award costs.** The Colorado Department of Public Health and Environment reserves the right to deny requests for any item listed in the budget that is deemed to be unnecessary for the implementation of the project.

4.0 Submitting an Application

Applications must be received electronically no later than the due date and time indicated in this RFA. The full electronic application, including any appendices, must be contained in a single document and submitted in PDF (read-only) format. Please e-mail your application and all attachments to Bradley Monson, Project Manager, at cdphe_grantsandloans@state.co.us (subject line: WQIF Grants Program Application Submittal). Please do not send an electronic file larger than 10 MB (megabytes) or the e-mail may not be successfully delivered to the department’s internal e-mail system. It is the responsibility of the applicant to ensure the delivery of the application packet by the prescribed deadline.

If unable to submit electronically, one (1) CD copy and 1 hardcopy of the full application and attachments may be sent by courier or certified mail to the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-GLU
Grants and Loans Unit
Attention: Bradley Monson
WQIF Grants RFA - Application
4300 Cherry Creek Drive South
Denver, CO 80246-1530

The deadline for receipt of applications is **2:00 PM on October 14, 2016**. Applications received after this deadline will **not** be accepted. Incomplete applications will **not** be considered. Failure to adhere to any of the required information within the RFA will disqualify the application. All applicants will receive e-mail notification of receipt of their application within two (2) business days. If you do not receive an e-mail

notification after two (2) business days, contact Bradley Monson immediately at 303-692-2286. Please do not send both an electronic application and an application by courier or certified mail.

5.0 Administrative Information

By submission of an application, the applicant agrees as follows:

5.1 Acceptance of RFA Terms

An application submitted in response to this RFA shall constitute a binding offer. The autographic signature of the applicant or of a designee legally authorized to execute contractual obligations shall indicate acknowledgment of this condition. A submission in response to this RFA acknowledges acceptance by the applicant of all terms and conditions, including compensation, as set forth herein.

5.2 Colorado Contract General Provisions and Special Provisions

A contract will be used for awards over the amount of \$25,000.00. The State of Colorado will incorporate standard General Provisions and Special Provisions into any contract resulting from this RFA. Minor elements of the General Provisions may be negotiable. The terms of the Special Provisions are non-negotiable.

A sample of the most recent version of the General Provisions and Special Provisions can be found in **Attachment 3.4: *General and Special Provisions-Contract Template***. Provisions that actually appear in the final contract will reflect the approved State version at the time of contract execution.

A purchase order will be used for awards under the amount of \$25,000.00. Purchase Order Terms and Conditions can be found in **Attachment 3.5**.

5.3 Modification or Withdrawal of Applications

Applications may be modified or withdrawn by the applicant prior to the established submission due date and time.

5.4 Addendum or Supplement to Request for Applications

In the event that it becomes necessary to revise any part of this RFA, a modification will be posted at (<https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund>). It shall be the responsibility of the applicants to regularly monitor the web site for any such postings. Failure to retrieve such modifications, and include these provisions in your application, may result in your application being disqualified.

Should the applicant find any part of the solicitation to be discrepant, incomplete, or otherwise questionable in any respect, the applicant shall be responsible to call such matters to the attention of the purchasing agent immediately. Failure to do so shall be at the applicant's risk. Amendments to this solicitation will be official only if published on (<https://www.colorado.gov/pacific/cdphe/water-quality-improvement-fund>). Applicants should not rely on verbal statements that alter this solicitation.

5.5 Rejection of Applications

The State of Colorado reserves the right to reject any or all applications received in response to this RFA, to waive informalities and minor irregularities in applications received, and to accept any portion of an application or all items proposed if deemed in the best interest of the State of Colorado to do so.

5.6 Confidential/Proprietary Information

Any restrictions of the use or inspection of material contained within the application shall be clearly stated in the application itself. Written requests for confidentiality shall be submitted by the applicant with the application. The applicant must state specifically what elements of the application are to be considered confidential/proprietary and must state the statutory basis for the request under the Public (open) Records Act. (§24-72-201 et seq., C.R.S.)

Confidential or proprietary information must be readily identified, marked and separated from the rest of the application. Co-mingling of confidential and/or proprietary and other information is NOT acceptable. Neither an application in its entirety, nor application price information will be considered confidential and proprietary. Any information that will be included in any contract resulting from the RFA cannot be considered confidential.

The CDPHE will make a written determination as to the apparent validity of any written request for confidentiality. In the event CDPHE does not concur with the applicant's request for confidentiality, the written determination will be sent to the applicant. Ref §24-72-201 et seq., C.R.S., as amended, Public (open) Records Act.

Applicant(s) acknowledge that they may come into contact with confidential information contained in the records or files of the State in connection with any resulting contract or in connection with the performance of its obligations under any resulting contract. The awarded applicant(s) shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the State.

The awarded applicant(s) shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirement before the employee is permitted access to confidential data. Awarded applicant(s) shall provide and maintain a secure environment that ensures confidentiality. The confidentiality of all information will be respected and no confidential information shall be distributed or sold to any third party nor used by awarded applicant(s) or its assignees and/or subcontractors in any way except as authorized by this contract. Confidential information shall not be retained in any files or otherwise by awarded applicant(s). Disclosure of such information may be cause for legal action against the awarded applicant(s). Defense of any such action shall be the sole responsibility of the awarded applicant(s). Unless directed otherwise, awarded applicant(s) is required to keep all State information in a secure, confidential manner.

5.7 Response Material Ownership

The State of Colorado has the right to retain the original application and other RFA response materials for our files. As such, the State of Colorado may retain or dispose of all copies as is lawfully deemed appropriate. The State of Colorado has the right to use any or all information/material presented in reply to the RFA, subject to limitations outlined in the Proprietary/Confidential Information clause. Applicant expressly agrees that the State may use the materials for all lawful State purposes, including the right to reproduce copies of the material submitted for purposes of evaluation, and to make the information available to the public in accordance with the provisions of the Public Records Act.

5.8 RFA Cancellation

The State reserves the right to cancel this Request for Application in its entirety or individual phases at any time, without penalty.

5.9 Conflict of Interest/Organizational Conflict of Interest

By submission of a RFA response, the applicant agrees that at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services and obligations. The applicant shall guarantee that in the performance of the contract they shall not employ any person having any such known interest. Applicants are required to disclose all current or pending projects with the State of Colorado, and/or political subdivisions. Applicants must include all potential conflicts related to this solicitation and any other services related to this project at the time of response submission and during contract performance. Applicants must explain any State employment affiliation.

Any business entity or person is prohibited from being awarded a contract if the business entity or person has an "Organizational Conflict of Interest" with regard to this solicitation and the resulting contract(s).

No person or business entity who was engaged by the State to prepare the original RFA shall be eligible to participate (directly or indirectly) in the submission of an application for this solicitation, IF:

1. Such person or entity had prior access to source selection information related to this procurement process, and
2. That prior access included, but was not limited to: requirements, statements of work, or evaluation criteria.

The State considers such engagement or access to be an Organizational Conflict of Interest, which would cause such business entity or person to have an unfair competitive advantage.

If the State determines that an Organizational Conflict of Interest exists, the State, at its discretion, may cancel the contract award. In the event the successful applicant was aware of an Organizational Conflict of Interest prior to the award of the contract and did not disclose the conflict to the procuring agency, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed by subcontractors in connection with the performance of the contract, with the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

5.10 Present/Former Employee Standards of Conduct - Disclosures

Pursuant to sections 24-18-101 and 201, et. seq., C.R.S., and section 24-50-507, C.R.S., former and present public employees and officials may not "be interested" in some State Agency contracts and are prohibited from engaging in certain activities in relation to State contracts. The State reserves the right to void or terminate contracts entered into in contravention of those provisions, or contracts in which a current State employee performs any contract administration function involving the use of State time or resources or that is otherwise contrary to State law.

Notwithstanding the disclosure provisions in section 24-18-201, C.R.S., the State reserves the right to disqualify any application, or void or terminate any contract involving the participation or use of a present or former employee within the meaning of that section where such disqualification or termination is deemed to be in the best interest of the State. At the time of the submission of any application, the contractor shall disclose to the Procuring Agency the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of receipt of applications) participating in development of the application. Further, the contractor shall disclose during contract performance the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of any resulting contract or purchase order).

5.11 Alternative Bids or Offers/Affiliated Vendors

Unless otherwise permitted by the Procuring Agency, alternative applications by any vendor are not permitted. Unless otherwise permitted by the Procuring Agency, applications by affiliated vendors are not permitted except in accordance with this paragraph. An affiliated vendor is one who is controlled or owned by another vendor responding to this solicitation, or owned or controlled by a third person or other entity that controls or owns two vendors responding to this solicitation. "Affiliation" includes one person's having a substantial role in the preparation of offers by two vendors responding to this solicitation. A submission of an application in connection with any solicitation represents a certification that the applicant is not affiliated with any known vendor also submitting an application in response to the solicitation, except to the extent the nature of such affiliation is described with particularity. The State reserves the right to disqualify any application by, or void any resulting purchase order or contract with, any vendor responding to a solicitation in violation of this provision or the following certificate of independent price determination.

5.12 Certification of Independent Price Determination

1. By submission of this application, each applicant certifies, and in the case of a joint application, each party thereto certifies as to its own organization, that in connection with this procurement:

- i. The prices in this application have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other applicant or with any competitor;
 - ii. Unless otherwise required by law, the prices which have been submitted in this application have not been knowingly disclosed by the applicant and will not knowingly be disclosed by the applicant prior to opening, directly or indirectly to any other applicant or to any competitor; and
 - iii. No attempt has been made or will be made by the applicant to induce any other person or firm to submit or not submit a application for the purpose of restricting competition.
- 2. Each person signing the Request for Application Cover Sheet & Signature Page of this application certifies that:
 - i. The signing individual is the person in the applicant's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to K.(1)(a) through K.(1)(c) above; or
 - ii. He/She is not the person in the applicant's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision, in certifying that such persons have not participated, and will not participate, in any action contrary to (1)(a) through (1)(c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to K.(1)(a) through K.(1)(c) above.
- 3. An application will not be considered for award where K.(1)(a), K.(1)(c), or K.(2) above have been deleted or modified. Where K.(1)(b) above has been deleted or modified, the application will not be considered for award unless the applicant furnishes with the application a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency (CDPHE) determines that such disclosure was not made for the purpose of restricting competition.

5.13 Selection of Successful Application and Notice of Intent to Award

The State reserves the right to make an award on receipt of initial applications, so applicants are encouraged to submit their most favorable application at the time established for receipt of applications. Applicants not meeting the requirements identified in the RFA shall be ineligible for further consideration. The State may conduct discussions with applicants in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award) for the purpose of promoting understanding of the State's requirements and the applicant's application, to clarify requirements, make adjustments in services to be performed, and in prices. Changes to applications, if permitted, will be requested in writing from applicants. If application revisions are permitted after oral presentations and discussions, a date will be established in writing by the State for submission of best and final offers (BAFO). Applicants will not be provided an opportunity for comprehensive application revisions.

Upon review and approval of the evaluation committee's recommendation for award, the CDPHE will issue "Notice of Intent to Make an Award" letter(s) to all applicants.

5.14 Requirement for Valid Contract

The State Agency will not be responsible for any products delivered or services performed prior to issuance of a purchase order signed by an authorized representative of the State Agency's purchasing department, or a contract signed by a duly authorized representative of the State Agency and approved by the State Controller or designee.

5.15 Vendor Forms

In the event applicant's form(s) or part(s) of forms are included as an attachment(s) applicant agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document shall supersede and control over those contained in the applicant's form(s)

regardless of any statement to the contrary in an applicant form(s). Unless the State specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

5.16 Award of Contract/Standard (Model) Contract/Legislative Changes

The award will be made to that applicant(s) whose application, conforming to the RFA, has been determined to be responsive and responsible and most advantageous to the State of Colorado, considering the evaluation factors set forth in this announcement. A contract must be completed and signed by all parties. In the event the parties are unable to enter into a contract in a reasonable timeframe, the State may elect to rescind the "Notice of Intent to Make an Award" communication and make the award to the next most responsive and responsible applicant. The successful applicant(s) is required to enter into a formal Contract with CDPHE. The State of Colorado reserves the right to amend the contract in response to future legislative changes that affect this project.

5.17 Reciprocity

Reciprocity is mandated by statute. C.R.S. §8-18-101 states, "When a contract for commodities or services is to be awarded to a bidder, a resident bidder...shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident".

5.18 Term of the Contract

This RFA may result in one or more multiple year contracts with renewal periods not to exceed three years. The Contract may be renewed for up to one additional year, at the sole discretion of the State, contingent upon contractual requirements being satisfied and funds being appropriated, budget, and otherwise made available.

5.19 Acceptance of Application Content

The contents of the application (including persons specified to implement the project) of the successful applicant will become contractual obligations if acquisition action ensues. Failure of the successful applicant to accept these obligations in a contract, purchase document, delivery order or similar acquisition instrument may result in cancellation of the award and such applicant may be removed from future solicitations.

5.20 Order of Precedence

In the event of any conflict or inconsistency between terms of this request for application and the offer, such conflict or inconsistency shall be resolved first, by giving effect to the terms and conditions of the contract, second to the request for application, and third, to the application.

5.21 Venue

The parties agree that the venue for any action related to performance of this application shall be in the City and County of Denver, Colorado.

5.22 Withholding of Debts Owed to State Agencies

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 balance 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 any 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 Controller.

5.23 State Ownership of Contract Products / Services

All products/services produced in response to the contract resulting from this RFA will be the sole property of the State of Colorado, unless otherwise noted in the RFA.

5.24 Incurring Costs

The State of Colorado is not liable for any cost incurred by applicants prior to issuance of a legally executed contract or procurement document. No property interest of any nature shall occur until a contract is awarded and signed by all concerned parties.

5.25 Non-Discrimination

The applicant shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

5.26 Parent Company

If an applicant is owned or controlled by a parent company, the name, main office address, and parent company's tax identification number must be provided in the solicitation response. The tax identification number provided must be that of the applicant responding to the RFA. The applicant must be a legal entity with the legal right to contract and must be registered in the State of Colorado to conduct business.

5.27 News Releases

No news releases pertaining to this RFA shall be made prior to execution of the contract without prior written approval of CDPHE.

5.28 Contract Cancellation

CDPHE reserves the right to cancel, for cause, convenience, or lack of fiscal funding, any contract resulting from this RFA by providing timely notice to the contractor.

5.29 Taxes

CDPHE, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K). CDPHE's Colorado State and Local Sales Tax Exemption Number is 98-02565. Applicant is hereby notified that when materials are purchased in certain political sub-divisions (for example in the City of Denver) the applicant may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

5.30 Assignment and Delegation

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the contract without the prior written consent of the other party.

Awarded contractor(s) will be allowed to subcontract portions of this RFA. Awarded contractor(s) shall be fully accountable to the CDPHE and shall ensure that all subcontractors agree to and comply with the terms and conditions of the contract. During contract performance, the CDPHE may request and an awarded vendor(s) shall provide proof of subcontractor compliance with CDPHE terms and conditions.

5.31 Availability of Funds

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado.

5.32 Selection and Evaluation:

An Evaluation Committee will evaluate the merits of applications received in accordance with the evaluation factors stated in this RFA and identify the application that is most advantageous to the state. While numeric evaluations may be used in some aspects of the process to identify strengths and weaknesses of applications, and to establish a ranking, the final decision will be a business decision by the State and will not be based on a numerical score. A Decision Memorandum will document the basis for the award decision.

The technical aspects of applications will be assessed based on the soundness of the applicant's approach and the applicant's understanding of the requirement. Past experience/qualifications will

be assessed by considering the extent to which the qualifications, experience, and past performance are likely to foster successful, on-time performance. Technical and past experience assessments may include a judgment concerning the potential risk of unsuccessful or untimely performance, and the anticipated amount of State resources necessary to insure timely, successful performance based on requirements of Procurement Code C.R.S. §24-103-401 et.seq and C.R.S. §24-103.5-101 et.seq. The State reserves the right to include the State of Colorado and other states as additional references and may use all information available regarding past performance as defined in C.R.S. §24-102-205 et.seq. The State also reserves the right to call references only on the selected applicant(s) as a method of determining responsibility.

Failure of the applicant to provide any information requested in this RFA may result in disqualification of the application. This responsibility belongs to the applicant.

Applicants should not assume that they will have an opportunity for oral presentations or revisions of applications, so they should submit their most favorable applications as their initial application. If award is not made on receipt of initial applications, applicants in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award) may be provided an opportunity to make an oral presentation. The oral presentation may be held for the purpose of clarification and to ensure full understanding of and responsiveness to solicitation requirements.

If application revisions are permitted after oral presentations and discussions, a date will be established in writing by the State for submission of best and final offers. Applicants will not be provided an opportunity for comprehensive application revisions.

The apparently successful applicant may be required to submit for the most current reported period and a reasonable number of previous years (in order of preference) an audited financial statement, a financial statement reviewed by a certified public accountant, a third-party prepared financial statement if an audited or reviewed statement is not available, or another financial statement prepared in the routine course of the applicant's business, in order to assist the State in making its determination of applicant responsibility in accordance with C.R.S. §24-103-401.