

Office of the State Architect OSA 101 Consultant Contracting

January 2023



SYLLABUS

- Introduction: History, The Basics, Delegation
- Module 1: Consultant Contracting
- Module 2b: Contractor Contracting
- Module 3: All other relevant Statutes
- Module 4a: Procurement Code/Rules CRS 24-101 - 112
- Module 4b: Fiscal Rules CRS 23-30-202
- Module 5: Basic Steps Checklist



The Basics

- Procedures are governed by CRS § 24-30 Part 14: Negotiation of Consultants' Contracts
- Specific to licensed Architects, Engineers, Land Surveyors, Landscape Architects and Industrial Hygienists (defined by DORA)
- Selection of these five professional services is always based on qualifications never on price
- Selection is not governed by the procurement code, therefore, no protest rights
- Because of professional liability, encumbrance is always a contract. NEVER a Purchase Order



Consultant Solicitations

Three Thresholds to consider

- Discretionary - > \$25 K
 - No solicitation or interview is necessary
- < \$25 K in Design Fee and added services and < \$100K in construction
- < \$100 K in Design Fee and added services or < \$100K in construction

ALWAYS A QUALIFIED SELECTION NEVER A BID!



< \$25 K or < \$100K in construction

- Must interview three professional firms
- Document questions/responses for project file - CANNOT ASK FOR A COST
- Select most qualified vendor
- Send contract agreement and terms & conditions template to vendor while simultaneously requesting a proposal based on the scope of work



< \$100 K in Design Fee or < \$100K in construction

- Requires a formal Request for qualifications
- Solicitation must have a Fixed Limit of Construction
- Must be advertised for 15 days
- Requires formal interviews

RFQ DECISION ITEMS

- Mandatory Pre-submittal Conference needed
- Screening panel
- Interview panel
- Interview location
- Primary contact during solicitation
- Scoring criteria and weights on Appendix A
- Condition Precedent - Are all funds available
- Additional Advertisement posting(s) sites



Condition Precedent

- Must be noted in the solicitation
- Use when:
 - Funds have not been fully appropriated
 - Desire to retain A/E for future phases
 - Concerned about the performance
 - Scope is so undefined, that further design or construction may not take place



Selection Process

Two Step Selection Process - Qualifications and Interview.

- After shortlisting Qualifications
 - Issue letters of regret
 - Issue letter of interview with time and date of each interview
- After Scoring Interviews
 - Issue letters of regret
 - Negotiate final proposal from selected vendor



Consultant Contracts

There are three contract templates:

- SC-5.1 Architect / Engineer Agreement - D/B/B and results in construction
- SC-5.2 Architect / Engineer Agreement - CMGC and results in construction
- SC-5.3 Consultant Agreement - Professional services that do not result in construction

Note: The DBB and Consultant Contract is waived from Controller and legal review but not Personal Services Review



General Requirements

State agencies must enter in Contract Mgmt System if fee is greater than \$100k (CMS #)

Project Number and Name exactly as provided by State Controller

Must use full agency name

Must use legal name of vendor

Follow the Comments provided by SBP



Contract Format - Construction

- Contracts for construction have two parts
 - Agreement
 - Terms and Conditions (T&C)
 - The numbering in the agreement corresponds to the T&C's

3	ARTICLE 3 BASIS OF COMPENSATION
3.1	PAYMENT.....
3.1.1	The Total Compensation
3.1.2	Monthly Payments
3.5	CONDITION PRECEDENT
12	ARTICLE 12 MISCELLANEOUS PROVISIONS.....
12.26	DESIGNATED REPRESENTATIVES

See how the Table of Contents skips from 3.1 to 3.5

The only section of Article 12 that is in the agreement is 12.26. Sections 1-25 are in the T&C

Recitals

This not a
Statement of
Work

RECITALS:

WHEREAS, the Principal Representative intends to procure Insert Project Name as provided by the State Controller's Office hereinafter called the Project; and

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment In Fund Number Insert Fund Number Here, Account Number Insert Account Number here; and

WHEREAS, the State has **Appropriated** and the Principal Representative has been authorized to expend the total sum of Insert dollar value written in words Dollars (\$) for this project including all professional services, construction/improvements, project contingencies, furnishings, movable equipment, reimbursable expenses and miscellaneous expenses; and

(WHEREAS, funds are available for only a portion of the services defined herein, as more fully described in the funding Condition Precedent clause in Article 3.5)

WHEREAS, the Principal Representative has established the **Fixed Limit of Construction Cost** in the amount of Insert dollar value written in words Dollars (\$) and

Project Cost

FLC - Total
construction
funds available

Reimbursables

In the following example, the contract has been modified to include electronic and hard copy documents:

Bidding Phase

The Architect/Engineer shall furnish copies of the Construction Documents as follows, subject to limitations hereinafter set forth:

- a) For Bidding Documents: (1) electronic sets to enable distribution among prime contractors and subcontractors in accordance with the advertisement for bids.
- b) For Contract Documents: The Principal Representative will require up to (3) sets. The Contract Documents bearing the seal and the signature of the Architect/Engineer and the appropriate responsible professional Engineering Consultants are to be signed by the Contractor and the Principal Representative at the Contractor's contract signing conference. The Architect/Engineer acknowledges that prior to the contract signing conference and State Buildings Program authorizing the Notice to Proceed State Form SBP-6.26, a Letter of Compliance must be obtained from the State's Code Review Agent verifying that the contract Documents and all addenda, value engineering recommendations and all other changes to the bidding documents are in compliance with the applicable codes as adopted by State Buildings Program as indicated in **Exhibit C**.
- c) For Construction: Each prime contractor shall be furnished with (3) sets or partial sets of the Contract Documents to enable prompt prosecution of the work.
- d) (6) complete sets of drawings and specifications and one electronic set shall be the maximum required to be furnished by the Architect/Engineer. The Principal Representative will pay for all other sets of documents or partial sets of documents required at the cost of reproduction.



Condition Precedent

CONDITION PRECEDENT

(At the time of the execution of this Agreement, there are sufficient funds budgeted and appropriated to compensate the Architect/Engineer only for performance of the services through and including Insert the phases that have been fully funded Therefore, it shall be a Condition Precedent to the Architect/Engineer's performance of the remaining services specified in Insert the parts of Article 1.2 that describes the services not fully funded and the State's liability to pay for such performance, sufficient funding must be appropriated and made available to the Principal Representative for the Project prior to _____ and, as a further Condition Precedent, a written Amendment is entered into in accordance with the State of Colorado Fiscal Rules, stating that additional funds are lawfully available for the project. If either Condition Precedent is not satisfied by _____, the Architect/Engineer's obligation to perform services for Insert the scope of work or phases that will be completed as part of the Condition Precedent and the State's obligation to pay for such service is discharged without liability to each other. If funding is eventually made available after _____, the Architect/Engineer has no right to perform services under Insert the parts of Article 1.2 that describes the services not fully funded of this Agreement and the state has no right to require the Architect/Engineer to perform the said services.)



Exhibits

Required:

- Consultant Proposal
- Certificate of Insurance - (Professional Liability is not required for studies)
- Wage Rates Schedule
- Reference Code Compliance Policy w/ dates

Optional:

- Design Requirements
- Facilities Program Plan/Master Plans etc
- Sustainability Goals



Signatures

In this order:

- 1) Consultant
- 2) Principal Representative¹
- 3) State Buildings Program Delegate
- 4) Agency Controller or higher education CFO or delegate.

¹ Principal Representative is defined in CRS 24-30-1301 (14) means the governing board of a state agency or state institution of higher education, or the governing board's designee, or, if there is no governing board, the executive head of a state agency or state institution of higher education, as designated by the governor or the general assembly, or such executive head's designee.



Contract Format - Non-Construction

- Use for project management, Industrial hygienists, planning studies, assessments etc.
- Consultant Contracts are general in nature therefore Scope of Work is dependent on the RFQ and their proposal
- General guidelines are the same for this contract



A SNAPSHOT OF THE STATUTE

An Act

C.R.S. Title 24 Article 30 Part 14 Negotiation of consultant Contracts

24-30-1401 (2022). Legislative declaration

The purpose of this part 14 is to provide managerial control by the state over competitive negotiations for the acquisition of the professional services provided by architects, industrial hygienists, engineers, landscape architects, and land surveyors. It is hereby declared to be the policy of this state to publicly announce requirements for such professional services, to encourage all qualified persons to put themselves in a position to be considered for a contract, and to negotiate contracts for such professional services on the basis of demonstrated competence and qualification for the types of professional services required and on the basis of the furnishing of such professional services at fair and reasonable fees.

Consultants are always qualification based selections

A solicitation for A/E is never a Bid or an RFP....
It is ALWAYS an RFQ



24-30-1402

(5) "Principal representative" means the governing board of a state agency or state institution of higher education or, if there is no governing board, the executive head of a state agency or state institution of higher education, as designated by the governor or the general assembly.

(6) "Professional services" means those services within the scope of the following:

(a) The practice of architecture, as defined in section 12-25-302 (6), C.R.S.;

(b) The practice of engineering, as defined in section 12-25-102 (10), C.R.S.;

(c) The practice of professional land surveying, as defined in section 12-25-202 (6), C.R.S.;

(d) The practice of landscape architecture, as defined in subsection (4) of this section;

(e) The practice of industrial hygiene, as defined in subsection (3.5) of this section.

(7) "State agency" has the same meaning as set forth in section 24-30-1301 (17).

(8) "State institution of higher education" has the same meaning as set forth in section 24-30-1301 (18).

24-30-1403 (2022). Professional services – listings – preliminary selections

(1) Any person desiring to provide professional services to a state agency or a state institution of higher education shall annually submit to the office of the state architect a statement of qualifications and performance data and such other information as may be required by the office. The office may request such person to update such statement before the anniversary date in order to reflect changed conditions in the status of such person.

(2) (a) For each proposed project for which professional services are required and where the fee for such professional services is estimated to equal or exceed twenty-five thousand dollars, the principal representative of the state agency or state institution of higher education for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the office of the state architect and shall conduct discussions with no less than three persons regarding their qualifications, approaches to the project, abilities to furnish the required professional services, anticipated design concepts, and use of alternative methods of approach for furnishing the required professional services. The principal representative shall then select, in

24-30-1404 (2022). Contracts

(1) The principal representative shall negotiate a contract with the highest qualified person providing professional services for such services at compensation which the principal representative determines in writing to be fair and reasonable. In making such decision, the principal representative shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. For all lump-sum or cost-plus-a-fixed-fee professional service contracts, the principal representative shall require the firm receiving the award to execute a certificate stating that wage rates and other factual unit costs supporting the compensation to be paid by the state agency or state institution of higher education for the professional services are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required shall

“Six Month Rule”

C.R.S 24-30-1404

(7) (a) Except as provided in subsections (7)(b), (7)(c), (7)(e), (7)(f), (7)(g), and (7)(h) of this section, any professional services contract entered into pursuant to the provisions of this part 14 shall be executed and encumbered within six months after the date on which the appropriation that includes the project for which the professional services are required becomes law. If no professional services contract is required for a particular project, the contract with the contractor for the project shall be entered into within six months after the appropriation. If a state agency or state institution of higher education determines that the nature of a particular project is such that the deadlines imposed by this section cannot be met, the state agency or state institution of higher education may request the capital development committee to recommend to the controller that the deadline be waived for that project. The controller, in consultation with the capital development committee may grant a waiver from the deadlines. This subsection (7) shall not apply to projects under the supervision of the department of transportation. This subsection (7) shall not affect any priority established pursuant to section 44-40-111 (11) in the general appropriation act for expenditures for projects to be financed from net lottery proceeds appropriated for capital construction.

Solicitation Requirements

24-30-1405 (2022). Public notice

When professional services are required to be contracted for, public notice shall be given by the state agency or state institution of higher education if the basic construction cost of the project is estimated by the state agency or state institution of higher education to be more than one million dollars or if the fee for professional services is estimated to exceed one hundred thousand dollars. The public notice shall be given at least fifteen days prior to the selection of the three or more most highly qualified persons by the principal representative pursuant to section 24-30-1403 (2), and, except for projects under the supervision of the department of transportation, the public notice **shall be given no later than eight weeks after the date on which the appropriation for the project becomes law.** The public notice shall be given by publication at least once in one or more daily newspapers of general circulation in this state or in an electronic medium approved by the executive director of the department of personnel. The public notice shall contain a general description of the proposed project and shall indicate the procedure by which interested persons may apply for consideration for the contract.



Prior Existing Design Plans

24-30-1407 (2022). Prior existing design plans

Notwithstanding any other provision of this part 14 or of part 13 of this article, there shall be no public notice requirement or utilization of the selection process as provided for in this part 14 or

in part 13 of this article for projects in which the state agency or state institution of higher education is able to reuse existing drawings, specifications, designs, or other documents from a prior project.

Emergency Procurement

Remember that Professional Services are Exempt from State Procurement Code:

24-30-1408 (2022). Emergency contracts

In a situation for which the principal representative determines it is necessary to make emergency contracts because there exists a threat to public health, welfare, or safety under emergency conditions, there is no requirement of public notice, or of compliance with the selection process pursuant to this part 14, but the principal representative shall document, in writing, the basis for the emergency and for the selection of the particular person to provide professional services.

An emergent need for professional services is up to the Principal Representative (Not the Procurement Official)



Questions?

Please send to:

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Manager of State Buildings Program

