



OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAM
POLICIES AND PROCEDURES

PUBLIC PROJECTS

House Bill HB13-1292 enacted into law during the 2013 legislative session, amended various solicitation and reporting requirements of public projects as highlighted in *italics* below and will apply to new contracts which the invitation for bids or the request for proposals was issued on or after January 1, 2014. House Bill HB14-1224 (C.R.S. § 24-103-905) enacted into law during the 2014 legislative session sets a Service-Disabled Veteran Owned Small Business (SDVOSB) goal of at least 3% for new contracts awarded after July 1, 2014. SB19-196 enacted into law apprenticeship utilization requirements and prevailing wage for public projects beginning July 1, 2021.

Definitions

Public Project – Per C.R.S. § 24-103-908 (1), means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of public health, welfare, or safety and any maintenance programs for the upkeep of such projects and (b), to projects for which appropriation or expenditure of funds equal or exceeds **\$500,000**.

Public project -- Per C.R.S. § 24-92-102 (8)

- (a) Means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects.
- (b) Except as provided in paragraph (c) of this subsection (8), “public project” does not include any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed five hundred thousand dollars in the aggregate for any fiscal year. Nothing in this paragraph (b) shall affect the requirements for the delivery of bonds or security pursuant to sections 24-105-202, 38-26-105, and 38-26-106, C.R.S.
- (c) “Public project” does not include any project under the supervision of the department of transportation for which appropriation or expenditure of funds may be reasonably expected not to exceed one hundred fifty thousand dollars in the aggregate of any fiscal year.

Public project -- Per C.R.S. § 24-92-201 (5) means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of public health, welfare, or safety and any operation or maintenance programs for the operation and upkeep of such projects. “Public project” includes any work, construction, or repair performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more agencies of government.

Colorado Labor – Per C.R.S. § 8-17-101(2)(a), means any person who is a resident of the state of Colorado at the time of the public works project

Public Works – As per Procurement Rule R24-103-910(5)(b), shall have the same definition as “Public Project” as defined in C.R.S. § 24-92-102(8) and 24-103-908(1).

Resident Bidder -- As per Procurement Rule R24-103-301(37) and C.R.S. § 24-103-908, means a person, partnership, corporation, or joint venture which is authorized to transact business in Colorado, maintains a place of business in Colorado and pays unemployment compensation taxes.

State Agency – As Means this state or department, institution, or other agency of the state, including institutions of higher education.

SBP – State Buildings Program is within the Office of the State Architect which is within the Colorado Department of Personnel & Administration.

Excerpts from Fiscal Rules 4-1 Capital Construction Administration

- Formal contracts shall be required when expending funds in excess of \$150,000 appropriate for emergency maintenance projects including construction services or installation of fixed equipment unless previous approval has been obtained from the Office of the State Architect to use a purchase order.
- Approved formal contracts are available on the website of the Office of the State Architect.

Process for State Agencies/Institutions for Public Projects

- The SBP Delegate at all state agencies will review all construction projects with an OSA contracted code consultant to determine if a plan review and building inspections are required. They shall also be responsible for determining if the services of an Architect/Engineer are required.
- Solicitations
 - Advertisement for Bids (AFB) A ColoradoVSS or Rocky Mountain E-Purchasing/BidNet Direct (only as authorized by DPA) notice must be used and contracts may be awarded by Competitive Sealed Bidding per Procurement Rule R24-105-101 with adequate public notice given at least fourteen days prior to opening of bids or Competitive Sealed Best Value Bidding per Procurement Rule R24-105-101-03 and C.R.S. § 24-92-103.5(a), with adequate public notice given at least thirty days prior to the opening of bids. or,
 - Request for Proposals (RFP) A ColoradoVSS or Rocky Mountain E-Purchasing (only as authorized by DPA) notice may be used and contracts may be awarded by an Integrated Project Delivery Method (IPD) per C.R.S. § 24-93-101, with adequate public notice given at a minimum of thirty calendar days prior to submission of proposals. (Refer to Integrated Delivery Methods Policy and Procedures on OSA web site). Note in an Integrated Project Delivery that Step 1 Request for Qualifications must be advertised for a minimum of 15 days and the shortlisted firms must be posted for an additional 30 days prior to the proposals being due.
 - Rationale for selecting the contracting method by State agency (type of AFB or RFP) to be posted on its web site per C.R.S. § 24-93-109. Rationale should include but not be limited to project schedule impacts, cost limitations, complexity of work and any other specific requirements of the project impacting the selection of the contracting method. The **posting of the agency's written rational** should be made on the date of the first published solicitation and remain for not less than thirty (30) calendar days in a conspicuous web site location of the state agency under the title – "Reporting Requirements for Public Projects as per HB13-1292". (Does not apply to any project that receives federal moneys and does not apply to the selection of the Sealed Best Value Bidding Contracting Method).
 - No newspaper advertisement required.
- Colorado Labor shall be employed to perform at least eighty percent (80%) of the work on a public works project per C.R.S. § 8-17-101. ColoradoVSS or Rocky Mountain E-Purchasing (only as authorized by DPA) notice to require bidder to indicate 80% Colorado labor in bid or proposal and provide written justification if the 80% Colorado labor is not included in the bid. **The justification is a requirement of the bid or proposal submittal.** State Agency shall waive the 80% requirement and post justification on its web site; if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work and, if compliance with the 80% would create an undue burden that would substantially prevent a project from proceeding to completion. **Posting of the agency's written waiver** should include but not be limited to contractor's justification for insufficient available Colorado labor and the agency's determination that there is an undue burden negatively impacting the project schedule, budget/appropriation, quality/standards of care or any other specific requirement of the project due to compliance with the 80% Colorado labor requirement. The posting of rational should be made on the date of the award and remain for not less than thirty (30) calendar days in a conspicuous website

location of the state agency under the title "Reporting Requirements for Public Projects per HB13-1292".

- Contract Performance outside the United States or Colorado* per Procurement Rules R24-102-206-01 and R24-102-206-02. ColoradoVSS or Rocky Mountain E-Purchasing (only as authorized by DPA) notice to contain a clause requiring the contractor to provide in a written statement of work to the state agency whether it anticipates subcontracting any services outside the United States or Colorado, the types of services that will be performed and the location and the reason why it is necessary or advantages to do so. **The written statement is a requirement of the bid or proposal submittal and contract** (Does not apply to any project that receives federal moneys). If contractor fails to notify the state agency of any outsourced services, the state agency may terminate the contract.
 - Each contract for construction services entered into by a state agency will contain a clause requiring the **contractor to disclose in writing to the state agency** within twenty days of decision to perform or subcontract services outside the United States or Colorado per Procurement Rules R24-102-206-01 and R24-102-206-02.
 - Each state agency is required to provide **written notice to the Department of Personnel & Administration/Division of Finance and Procurement** for each contract it awards with services performed outside the United States or Colorado to be posted on the State Purchasing Website per Procurement Rules R24-102-206-01 and R24-102-206-02.
 - Each state agency is required to submit an **annual report to the general assembly** of contracts from the previous year that were awarded for any work performed outside the United States or state separating data by type of contract, percentage of total services performed by contractor and or subcontractor and initiatives that the state agency has taken to actively reduce services performed outside the United States or Colorado per Procurement Rules R24-102-206-01 and R24-102-206-02.
 - Each contract for construction services issued through an invitation for bid or the request for proposal prior to January 1, 2014 and is renewed (through a contract modification document to revise the original scope of work) on or after January 1, 2014 must contain the same written notice clause and comply with the same reporting requirements as construction services contracts where the invitation for bid or the request for proposal was issued on or after January 1, 2014.
- Bid Preference shall be applied per Procurement Rule R24-103-908(2)(a). ColoradoVSS or Rocky Mountain E-Purchasing (only as authorized by DPA) notice to contain a clause to nonresident bidders from a state that provides a percentage bidding preference to bidders from that state that a comparable percentage disadvantage will be applied to the bid of that nonresident bidder and that additional information may be obtained from the department of Personnel and Administration's (DPA) web site. (Refer to the State Purchasing & Contracts Office web site for a list of all bidding preferences per state). Does not apply to any project that receives federal moneys.
 - Contract required as commitment voucher per Fiscal Rules.
 - Bid bond required.
 - Performance bond required.
 - Labor and material payment bond required.
- Use of Foreign-produced goods* per C.R.S. § 24-103-910. For Projects over \$500,000, **at each project close out**, the state agency will submit in a written disclosure to OSA the Five Most Costly Goods, total cost and country of origin of the goods and any applicable federal domestic content preferences incorporated into the project, including iron, steel, or related manufactured goods as provided by the contractor per contract pre-settlement requirement. The agency information is to be submitted with the **Exhibit L-2**, Budget Reconciliation/Project Evaluations Transmittal and will then be published in the OSA annual report to the Capital Development Committee in December and will then be available on the OSA web site. (Refer to Project Monitoring and Cost Management Guidelines Policy and Procedures for Exhibit L-2). Does not apply to any project that receives federal moneys.
 - In the case of iron or steel product, the product will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States.

The manufactured good is deemed a product manufactured predominantly of steel or iron if the product consists of more than fifty percent steel or iron content when it is delivered to the job site for installation.

- In the case of a manufactured good, a good will be considered manufactured in the United States if all of the manufacturing process for the final product take place in the United States irrespective of the origin of the manufactured good's subcomponents.
- Service-Disabled Veteran Owned Small Business¹ Does not apply to contracts not subject to the Procurement Code.
 - Each solicitation by a state agency for construction services shall contain a clause requiring the bidder to disclose if they are a Service-Disabled Veteran Owned Small Business (SDVOSB). A SDVOSB must be incorporated or organized in Colorado or maintains a place of business or has an office in Colorado and who is officially registered and verified as a SDVOSB by the Center for Veteran Enterprise within the U.S. Department of Veterans Affairs.
 - As a requirement of the bid or proposal submittal the bidder shall provide proof of current registration.
 - Each state agency is responsible for manually or systematically tracking necessary information for reporting annually by August 31 each year to the Department of Personnel & Administration State Purchasing Office.
 - Annual reporting to include:
 - Total number of contracts awarded to SDVOSBs
 - Total number of contracts awarded
 - Total dollar amount of contracts awarded to SDVOSBs
 - Percentage dollar amount of contracts awarded SDVOBs to total dollar amount of contracts awarded
 - Total number of SDVOSB that responded to solicitations or proposals
 - Total number of respondents to solicitations or proposals
- **Apprenticeship Utilization Requirements** - Per C.R.S. § 24-92-115 (effective July 1, 2021). For all Public Projects one million dollars or more that does not receive federal money, the contractor is required to submit Apprenticeship Certification prior to the execution of the contract for all mechanical, sheet metal, fire suppression, sprinkler fitting, electrical, and plumbing work required on the project. Documentation shall:
 - Certify that all firms participate in apprenticeship programs registered with the United States department of labor's employment and training administration or state apprenticeship councils recognized by the United States department of labor;
 - Have a proven record of graduating a minimum of fifteen percent of its apprentices for at least three of the past five years;
 - Supplies supporting documentation from the United States department of labor's office of apprenticeship verifying the information provided in the certification.

This certification is required to be publicly posted within 30-days of receipt from the contractor by the agency/institution (C.R.S. § 24-92-115 (2))

Upon evaluation of the submitted bids, the contracting agency of government may waive the requirements of apprenticeship if it is determined that there is substantial evidence that there were no

¹ Does not apply to projects for Institutions of Higher Education that have opted out of the State Procurement Code.

responsive, eligible subcontractors available to fulfill the mechanical, electrical, or plumbing portions of the contract. All waivers and the specific rationale for granting the waiver shall be posted on its website.

- **Prevailing Wage on Public Projects** Per C.R.S. § 24-92-202
Except as otherwise provided in subsection (2) of this section, any contractor who is awarded a contract for a public project by an agency of government in the amount of five hundred thousand dollars or more, and any subcontractors working on the public project, shall pay their employees at weekly intervals and shall comply with the enforcement provisions established in section 24-92-209. This part 2 applies to a contract for a public project awarded pursuant to part 1 of this article 92 and to an integrated project delivery contract for a public project awarded pursuant to article 93 of this title 24. This part 2 does not apply to contracts for public projects that receive federal funding.

Beginning January 1, 2022 the following Policies and Procedures are applicable for Prevailing Wage.

- Agencies and institutions shall utilize OSA solicitation and contract templates containing apprenticeship and prevailing wage requirements. Wage determinations, apprenticeship contribution rate and fringe benefit requirements shall be included in the solicitation of each Public Project.
- Wage determinations (WDs) and Local apprenticeship rates shall be made available on a cloud-based database approved by the Department of Personnel & Administration and the Governor's Office of Information Technology. OSA and the Colorado Department of Labor & Employment are required to have access to all information uploaded into the database for reporting and enforcement.
- Prior to site mobilization, agencies/IHE's shall provide the poster, available on the OSA website, that contains the current prevailing wage rates to be posted on the jobsite and readily accessible to all workers on the project.
- Agencies/IHE's shall review monthly payroll reports in a timely manner as required by the state contract; If the contractor or any subcontractor fails to pay wages as defined in the solicitation/contract, the agency/IHE shall not approve that portion of the pay application until the contractor furnishes sufficient evidence that such wages have been paid.
- Contractors shall maintain a daily log. The log shall include, at a minimum, for each employee their name, primary job title, and employer. The log shall be available for inspection on the site at all times by the contracting agency/IHE and SBP.
- Upon receipt of a complaint from an employee, a former employee, the agency/IHE shall report any perceived violation to the contractor within forty-eight hours of being made aware of the perceived violation. In connection with the perceived violation:
 - The agency/IHE shall allow the contractor to cure the perceived violation within fifteen calendar days if the contractor can demonstrate the instance in question was the result of legitimate administrative error.
 - If the contractor does not remedy the perceived violation within fifteen calendar days or if the agency determines that the perceived violation was willful, the contracting agency shall report the perceived violation to the Colorado Department of Labor and Employment for investigation.

References

C.R.S. 24-91-101-110 Construction Contracts with Public Entities
C.R.S. 24-92-101-210 Construction Bidding for Public Contracts
C.R.S. 24-93-101-109 Construction Contracts
Colorado Procurement Code effective 8/9/2017
Colorado Procurement Rules Effective 02/25/2022
The applicable Procurement Code for individual Institutions of Higher Education
Colorado Fiscal Rules effective 07/1/2023
Office of the State Architect: *Policies and Procedures Basic Steps Checklist*