

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 06-1073.01 Bob Lackner

SENATE BILL 06-234

SENATE SPONSORSHIP

Groff, and Grossman

HOUSE SPONSORSHIP

Garcia,

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING BEST VALUE CONSTRUCTION CONTRACTING FOR PUBLIC**
102 **PROJECTS PROCURED BY THE STATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes the state to award a construction contract for a public project through a competitive sealed best value proposals process in accordance with the requirements of the act. Specifies that a best value construction contract shall be solicited through a request for proposals that requires the submission of competitive sealed proposals from responsible offerors qualified to perform the construction contract. Requires the request for proposals to identify the evaluation factors upon

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 1, 2006

SENATE
Amended 2nd Reading
April 28, 2006

which the award shall be based and the relative weight of such factors. Specifies certain evaluation factors to be included at a minimum in the request for proposals.

Requires the award of a best value construction contract to be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state and that represents the best overall value to the state, taking into consideration the price and other evaluation factors set forth in the request for proposals. Prohibits other factors or criteria from being evaluated in making the award determination other than those specified in the request for proposals. Requires the contract file maintained by the state to contain the basis on which the award determination was made.

Requires a request for competitive sealed best value proposals issued pursuant to the act to comply with the existing statutory requirement pertaining to competitive sealed proposals for nonconstruction contracts to the extent that such requirements do not conflict with the requirements of the act. Specifies that, in the case of a conflict, the provisions of the act shall control.

Makes legislative findings and declarations. Makes conforming amendments. Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-92-103 (1), Colorado Revised Statutes, is
3 amended to read:

4 **24-92-103. Construction of public projects - competitive sealed**
5 **bidding.** (1) All construction contracts for public projects shall be
6 awarded by EITHER competitive sealed bidding IN ACCORDANCE WITH THE
7 REQUIREMENTS OF THIS ARTICLE OR BY MEANS OF THE COMPETITIVE
8 SEALED BEST VALUE PROPOSALS PROCESS IN ACCORDANCE WITH THE
9 REQUIREMENTS OF ARTICLE 93 OF THIS TITLE except as otherwise provided
10 in section 24-92-104.

11 **SECTION 2.** Title 24, Colorado Revised Statutes, is amended BY
12 THE ADDITION OF A NEW ARTICLE to read:

13 **ARTICLE 93**

14 **Best Value Construction Contracts**

1 **24-93-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
2 BE CITED AS THE "BEST VALUE CONSTRUCTION CONTRACTING ACT".

3 **24-93-102. Legislative declaration.** (1) THE GENERAL
4 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

5 (a) CONSTRUCTION CONTRACTS FOR PUBLIC WORKS PROJECTS
6 REQUIRE MASSIVE INVESTMENTS OF STATE RESOURCES AND AFFECT
7 CRITICAL GOVERNMENT OPERATIONS AND INFRASTRUCTURE FACILITIES.
8 IT IS THEREFORE ESSENTIAL THAT CAPITAL CONSTRUCTION PROJECTS BE
9 DELIVERED IN THE MOST TIMELY, COST-EFFECTIVE MANNER POSSIBLE AND
10 THAT THE STATE SECURE MAXIMUM VALUE FROM ITS PUBLIC WORKS
11 INVESTMENTS.

12 (b) DUE TO THE INHERENT COMPLEXITIES AND UNIQUE DEMANDS
13 OF CONSTRUCTION CONTRACTING, IT IS OFTEN NOT POSSIBLE TO OBTAIN
14 BEST VALUE RESULTS BY AWARDING CONTRACTS SOLELY ON THE BASIS OF
15 THE LOWEST BID BECAUSE OF THE NEED TO CAREFULLY CONSIDER AND
16 EVALUATE CERTAIN NONPRICE QUALIFICATION FACTORS AFFECTING
17 PROJECT PERFORMANCE, INCLUDING CONTRACTOR EXPERIENCE, PAST
18 PERFORMANCE, MANAGEMENT PLANS, SUBCONTRACTING PLANS, AND
19 CRAFT LABOR RESOURCES.

20 (c) IN ENACTING THIS ARTICLE, THE GENERAL ASSEMBLY
21 AUTHORIZES STATE AGENCIES TO MAKE FULL USE OF THE COMPETITIVE
22 SEALED BEST VALUE PROPOSALS PROCESS AUTHORIZED BY THIS ARTICLE
23 TO PROCURE CONSTRUCTION PROJECTS IN A MANNER THAT WILL ALLOW
24 THE STATE TO OBTAIN THE BEST OVERALL VALUE AND MOST
25 ADVANTAGEOUS RESULTS.

26 **24-93-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
27 CONTEXT OTHERWISE REQUIRES:

1 (1) "BEST VALUE CONSTRUCTION CONTRACT" MEANS A
2 CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT AWARDED THROUGH A
3 COMPETITIVE SEALED BEST VALUE PROPOSALS PROCESS IN COMPLIANCE
4 WITH THE PROVISIONS OF THIS ARTICLE.

5 (1.5) "ENERGY STAR" MEANS THE VOLUNTARY PARTNERSHIP
6 AMONG THE UNITED STATES DEPARTMENT OF ENERGY, THE UNITED
7 STATES ENVIRONMENTAL PROTECTION AGENCY, PRODUCT
8 MANUFACTURERS, LOCAL UTILITIES, AND RETAILERS DESIGNED TO
9 ENCOURAGE LARGE SCALE BUYERS AND INDIVIDUAL CONSUMERS TO
10 PURCHASE ENERGY-EFFICIENT PRODUCTS.

11 (2) "LEED CERTIFICATION" MEANS THE CERTIFICATION OF A
12 PROJECT OR FACILITY THROUGH LEADERSHIP IN ENERGY AND
13 ENVIRONMENTAL DESIGN, AND CONSIST OF A VOLUNTARY,
14 CONSENSUS-BASED NATIONAL STANDARD FOR DEVELOPING
15 HIGH-PERFORMANCE, SUSTAINABLE BUILDINGS.

16 (3) "MANAGEMENT PLAN" MEANS THE PLAN OFFERED BY THE
17 OFFEROR FOR MANAGING THE CONSTRUCTION CONTRACT THAT IDENTIFIES
18 THE KEY MANAGEMENT PERSONNEL THAT WILL BE USED FOR THE PROJECT,
19 THE PROPOSED PROJECT SCHEDULE, THE OFFEROR'S QUALITY CONTROL
20 PROGRAM AND PROJECT SAFETY PROGRAM, AND ANY OTHER INFORMATION
21 THAT DEMONSTRATES THE OFFEROR'S COMPETENCY TO PERFORM THE
22 CONTRACT, INCLUDING ITS TECHNICAL QUALIFICATIONS AND RESOURCES.

23 (4) "PAST PERFORMANCE" MEANS THE OFFEROR'S EXPERIENCE,
24 EXPERTISE, AND PERFORMANCE IN CONNECTION WITH PRIOR
25 CONSTRUCTION CONTRACTS, INCLUDING ITS PERFORMANCE IN THE AREAS
26 OF COST, QUALITY, SCHEDULE, SAFETY, COMPLIANCE WITH PLANS AND
27 SPECIFICATIONS, AND ADHERENCE TO APPLICABLE LAWS AND

1 REGULATIONS.

2 (5) "REGISTERED APPRENTICESHIP TRAINING PROGRAM" MEANS AN
3 APPRENTICESHIP TRAINING PROGRAM THAT PROVIDES TRAINING IN
4 CONSTRUCTION INDUSTRY SKILLS OR TRADES IN ACCORDANCE WITH
5 STANDARDS REGISTERED WITH AND APPROVED BY THE UNITED STATES
6 DEPARTMENT OF LABOR OR A STATE APPRENTICESHIP AGENCY.

7 **24-93-104. Competitive best value proposals process. (1)**

8 SUBJECT TO THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, A
9 CONSTRUCTION CONTRACT FOR A PUBLIC PROJECT MAY BE AWARDED
10 THROUGH A COMPETITIVE SEALED BEST VALUE PROPOSALS PROCESS IN
11 ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

12 (a) A BEST VALUE CONSTRUCTION CONTRACT SHALL BE SOLICITED
13 THROUGH A REQUEST FOR PROPOSALS THAT SHALL REQUIRE THE
14 SUBMISSION OF COMPETITIVE SEALED PROPOSALS FROM RESPONSIBLE
15 OFFERORS QUALIFIED TO PERFORM THE CONSTRUCTION CONTRACT; AND

16 (b) THE REQUEST FOR PROPOSALS REQUIRED BY PARAGRAPH (a) OF
17 THIS SUBSECTION (1) SHALL IDENTIFY THE EVALUATION FACTORS UPON
18 WHICH THE AWARD SHALL BE BASED AND THE RELATIVE WEIGHT OF SUCH
19 FACTORS. AT A MINIMUM, THESE EVALUATION FACTORS SHALL INCLUDE:

20 (I) THE OFFEROR'S PROPOSED PROJECT PRICE;

21 (II) THE OFFEROR'S MANAGEMENT PLAN FOR THE PROJECT;

22 (III) PAST PERFORMANCE OF THE OFFEROR AND THE OFFEROR'S
23 PRIMARY SUBCONTRACTORS;

24 (IV) PARTICIPATION BY THE OFFEROR AND ITS PRIMARY
25 SUBCONTRACTORS IN REGISTERED APPRENTICESHIP TRAINING PROGRAMS;

26 (V) THE EXPERIENCE OF THE OFFEROR AND ITS PRIMARY
27 SUBCONTRACTORS WITH LEED CERTIFICATION OR ENERGY STAR

1 BENCHMARKING OF PROJECTS; AND
2 (VI) ANY OTHER FACTORS THAT ARE RELEVANT TO THE
3 SUCCESSFUL PERFORMANCE OF THE CONSTRUCTION PROJECT.
4 (2) NO REQUEST FOR PROPOSALS REQUIRED BY PARAGRAPH (a) OF
5 SUBSECTION (1) OF THIS SECTION SHALL IDENTIFY ANY EVALUATION
6 FACTOR UPON WHICH A CONTRACT AWARD SHALL BE BASED, INCLUDING
7 WITHOUT LIMITATION, ANY OF THE EVALUATION FACTORS SPECIFIED IN
8 SUBPARAGRAPHS (I) THROUGH (VI) OF PARAGRAPH (b) OF SUBSECTION (1)
9 OF THIS SECTION, THAT IS IN CONFLICT WITH ANY FEDERAL LAW OR
10 FEDERAL RULE.

11 **24-93-105. Award determination.** THE AWARD OF A BEST VALUE
12 CONSTRUCTION CONTRACT SHALL BE MADE TO THE RESPONSIBLE OFFEROR
13 WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE THE MOST
14 ADVANTAGEOUS TO THE STATE AND THAT REPRESENTS THE BEST OVERALL
15 VALUE TO THE STATE, TAKING INTO CONSIDERATION THE PRICE AND OTHER
16 EVALUATION FACTORS SET FORTH IN THE REQUEST FOR PROPOSALS IN
17 ACCORDANCE WITH SECTION 24-93-104 (3). NO OTHER FACTORS OR
18 CRITERIA SHALL BE EVALUATED IN MAKING THE AWARD DETERMINATION
19 OTHER THAN THOSE SPECIFIED IN THE REQUEST FOR PROPOSALS. THE
20 CONTRACT FILE MAINTAINED BY THE STATE SHALL CONTAIN THE BASIS ON
21 WHICH THE AWARD DETERMINATION WAS MADE.

22 **24-93-106. Compliance with other provisions - conflicts.** A
23 REQUEST FOR COMPETITIVE SEALED BEST VALUE PROPOSALS ISSUED
24 PURSUANT TO THIS ARTICLE SHALL OTHERWISE COMPLY WITH THE
25 REQUIREMENTS OF SECTION 24-103-203 CONCERNING COMPETITIVE
26 SEALED PROPOSALS FOR NONCONSTRUCTION CONTRACTS TO THE EXTENT
27 THAT SUCH REQUIREMENTS DO NOT CONFLICT WITH THIS ARTICLE. IN THE

1 CASE OF A CONFLICT, THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

2 **SECTION 3.** 24-103-201 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **24-103-201. Methods of source selection.** (1) Unless otherwise
5 authorized by law, all state contracts shall be awarded by competitive
6 sealed bidding pursuant to section 24-103-202, except as provided in:

7 (g) ARTICLE 93 OF THIS TITLE.

8 **SECTION 4. Effective date - applicability.** (1) This act shall
9 take effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly that is
11 allowed for submitting a referendum petition pursuant to article V,
12 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
13 die is on May 10, 2006); except that, if a referendum petition is filed
14 against this act or an item, section, or part of this act within such period,
15 then the act, item, section, or part, if approved by the people, shall take
16 effect on the date of the official declaration of the vote thereon by
17 proclamation of the governor.

18 (2) The provisions of this act shall apply to requests for proposals
19 issued on or after the applicable effective date of this act.