

24-30-1401. Legislative declaration.

PART 14 NEGOTIATION OF CONSULTANTS' CONTRACTS

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.

Source: L. 79: Entire part added, p. 890, § 1, effective July 1. **L. 97:** Entire section amended, p. 108, § 2, effective March 24.

24-30-1402. Definitions.

As used in this part 14, unless the context otherwise requires:

(1) "Certified industrial hygienist" means an individual that is certified by the American board of industrial hygiene or its successor.

(1.5) "Continuing contract" means a contract for professional services entered into pursuant to this part 14 between a state agency and a person, whereby the person provides professional services to the state agency for work of a specified nature as outlined in the contract required by the state agency with no specific time limitation. Any such contract shall provide a termination clause.

(2) "Department" means the department of personnel.

(2.2) "Industrial hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university. The special studies and training of such individual shall be sufficient in the cognate sciences to provide the ability and competency to:

(a) Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

(b) Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

(c) (I) Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

(II) Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in this subsection (2.2).

(III) Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in this subsection (2.2).

(3) "Person" means an individual, a corporation, a limited liability company, a partnership, a business trust, an association, a firm, or any other legal entity.

(3.5) "Practice of industrial hygiene" means the performance of professional services, including but not limited to consulting, investigating, sampling, or testing in connection with the anticipation, recognition, evaluation, and control of those environmental factors or stresses arising in or from the workplace that may cause sickness, impaired health, or significant discomfort to workers or the public. "Practice of industrial hygiene" includes but is not limited to the identification, sampling, and testing of chemical, physical, biological, and ergonomic stresses and the development of physical, administrative, personal protective equipment, and training methods to prevent, eliminate, control, or reduce such factors and stresses and their effects. The term does not include the practice of architecture, as defined in section 12-25-302 (6), C.R.S., or the practice of engineering, as defined in section 12-25-102 (10), C.R.S.

(4) "Practice of landscape architecture" means the performance of professional services such as consultation, investigation, reconnaissance, research, planning, design, or responsible supervision in connection with the development of land areas or land use, where and to the extent that the dominant purpose of any such service is the preservation and development of existing and proposed land features, ground surface, planting, naturalistic features, and esthetic values. "Practice of landscape architecture" includes the design, location, and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this subsection (4), but the term does not include the making of land surveys or final engineered plats for official recording, integration of design of structures of earth, or other construction materials.

(5) "Principal representative" means the governing board of a state department, institution, or agency or, if there is no governing board, the executive head of a state department, institution, or agency, 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" means this state or any department, board, bureau, commission, institution, or other agency of this state.

Source: L. 79: Entire part added, p. 890, § 1, effective July 1. **L. 85:** (6)(b) amended, p. 484, § 3, effective May 24. **L. 90:** (3) amended, p. 447, § 11, effective April 18. **L. 95:** (2) amended, p. 650, § 57, effective July 1. **L. 97:** Entire section amended, p. 109, § 3, effective March 24. **L. 2006:** (3.5) and (6)(a) amended, p. 762, § 21, effective July 1.

24-30-1403. Professional services - listings - preliminary selections.

(1) Any person desiring to provide professional services to a state agency shall annually submit to the department a statement of qualifications and performance data and such other information as may be required by the department. The department 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) For each proposed project for which professional services are required, the principal representative of the state agency for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the department 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 order of preference, no less than three persons ranked in order and deemed to be most highly qualified to perform the required professional services after considering, and based upon, such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, current and projected work loads, the volume of work previously awarded to the person by the state agency, and the extent to which said persons have and will involve minority subcontractors, with the object of effecting an equitable distribution of contracts among qualified persons as long as such distribution does not violate the principle of selection of the most highly qualified person. In selection as mentioned in this section, Colorado firms shall be given preference when qualifications appear to be equal. All selections are subject to approval by the principal representative, and all contracts between the principal representative and such selected professionals shall be consistent with appropriation and legislative intent.

Source: L. 79: Entire part added, p. 891, § 1, effective July 1. **L. 90:** (2) amended, p. 1190, § 7, effective April 18.

24-30-1404. 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 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 contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the principal representative determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(2) If the principal representative is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the principal representative determines to be fair and reasonable, negotiations with that person shall be formally terminated. The principal representative shall then undertake negotiations with the second most qualified person. If the principal representative fails to negotiate a contract with the second most qualified person, the principal representative shall formally terminate such negotiations. The principal representative shall then undertake negotiations with the third most qualified person.

(3) Upon completion of negotiations with the third most qualified person, the principal representative shall be allowed to enter into renegotiations with any or all of the three most qualified persons to arrive at a satisfactory contractual arrangement, if possible. The principal representative shall have the authority to reject all bids and restructure or redesign the proposed project.

(4) Each contract for professional services entered into by the principal representative shall contain a prohibition against contingent fees as follows: The architect, or professional land surveyor, or professional engineer, or landscape architect, as applicable, warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.

(5) Upon any violation of this section, the principal representative shall have the right to terminate the contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, or consideration.

(6) Nothing in this part 14 shall be construed to prohibit continuing contracts between persons providing professional services and state agencies. All selections, contracts, and negotiations undertaken pursuant to this part 14 and all processes and procedures in connection with such matters shall be in conformity with this part 14.

(7) (a) Except as provided in paragraphs (b), (c), (e), (f), and (g) of this subsection (7), 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 determines that the nature of a particular project is such that the deadlines imposed by this section cannot be met, the state agency 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 such 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 24-35-210 (11) in the general appropriation act for expenditures for projects to be financed from net lottery proceeds appropriated for capital construction.

(b) The deadlines established in paragraph (a) of this subsection (7) shall apply to projects funded with net lottery proceeds, but the six-month period shall begin to run only when an agency receives a distribution from such proceeds for a particular project.

(c) This subsection (7) shall not apply to:

(I) Maintenance, repair, and improvement projects included in the capital construction section of the general appropriation act or in any supplemental appropriation act for the division of parks and outdoor recreation and the division of wildlife in the department of natural resources;

(II) The acquisition of any easement by the division of parks and outdoor recreation or the division of wildlife in the department of natural resources;

(III) Grants for off-highway vehicle trail purposes made pursuant to section 33-14.5-106, C.R.S.;

(IV) Projects included in the capital construction section of the general appropriation act for the hazardous materials and waste management division in the department of public health and environment, or in any supplemental appropriation act, which projects

are listed as remediation pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. secs. 9601 to 9674, as amended, brownfields redevelopment, or natural resource damage repair, replacement, or restoration.

(d) The provisions of this subsection (7) shall not be construed to limit the authority of any state agency to amend a contract in order to provide for technical corrections, provision of unanticipated work, extensions of performance periods, or other modifications which are necessary to secure satisfactory completion of the work and provision of goods and services within the scope of the original contract.

(e) In the event that the governor restricts or delays the expenditure of moneys for a project for which a professional services contract is required pursuant to the authority granted the governor in section 24-75-201.5, the running of the six-month deadline imposed in paragraph (a) of this subsection (7) for such projects shall be tolled until such time as the restriction or delay is no longer in effect.

(f) In the event that an appropriation is made to a state agency for allocation to other state agencies, the six-month period shall apply to the execution and encumbrance of a contract by the agency receiving the allocation and shall begin to run from the date of the allocation by the agency that received the original appropriation. Nothing in this paragraph (f) shall be construed to extend the duration of any appropriation.

(g) This subsection (7) shall not apply to a capital construction project at an institution of higher education that is to be constructed solely from cash funds held by the institution.

Source: L. 79: Entire part added, p. 892, § 1, effective July 1. **L. 81:** (3) R&RE, p. 1165, § 1, effective January 1, 1982. **L. 84:** (4) amended, p. 1121, § 23, effective June 7. **L. 89:** (7) added, p. 1027, § 3, effective April 27. **L. 90:** (7) amended, p. 1192, § 1, effective April 12. **L. 91:** (7)(a) amended and (7)(e) added, p. 804, § 1, effective July 1; (7)(a) amended, p. 1059, § 18, effective July 1. **L. 95:** (7)(a) amended and (7)(f) added, p. 164, § 1, effective April 7. **L. 2007:** (7)(a) and (7)(c) amended, p. 494, § 1, effective August 3. **L. 2008:** (7)(c)(II) amended and (7)(c)(IV) added, p. 176, § 14, effective March 24; (7)(a) amended and (7)(g) added, p. 261, § 82, effective March 31.

24-30-1405. Public notice.

When professional services are required to be contracted for, public notice shall be given by the state agency if the basic construction cost of the project is estimated by the state agency to be more than five hundred thousand dollars or if the fee for the professional services is estimated to exceed fifty thousand dollars; except that, for projects under the supervision of the department of transportation, public notice shall be given by the department if the basic transportation-related construction cost of the project is estimated by the department to be more than one million dollars or if the fee for professional engineering or surveying services is estimated to exceed one hundred

thousand dollars. Such 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, such public notice shall be given no later than eight weeks after the date on which the appropriation for the project becomes law. Such public notice shall be given by publication at least two times in one or more daily newspapers of general circulation in this state and 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.

Source: L. 79: Entire part added, p. 893, § 1, effective July 1. **L. 89:** Entire section amended, p. 1026, § 2, effective April 27. **L. 91:** Entire section amended, p. 814, § 1, effective July 1; entire section amended, p. 1060, § 19, effective July 1. **L. 97:** Entire section amended, p. 962, § 1, effective May 21.

24-30-1406. Criminal liability.

(1) Any person, other than a bona fide employee working solely for a person providing professional services, who offers, agrees, or contracts to solicit or secure for any other person state agency contracts for professional services and who, in so doing, receives any fee, commission, gift, or other consideration contingent upon or resulting from the making of the contract commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person providing professional services who offers to pay or does pay any fee, commission, gift, or other consideration contingent upon or resulting from the making of a contract for professional services with a state agency commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any state agency official or employee who solicits or secures or offers to solicit or secure a contract for professional services with a state agency and who is paid any fee, commission, gift, or other consideration contingent upon the making of such contract commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 79: Entire part added, p. 893, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1532, § 246, effective October 1.

24-30-1407 Prior existing design plans.

24-30-1407. 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 is able

to reuse existing drawings, specifications, designs, or other documents from a prior project.

Source: L. 79: Entire part added, p. 893, § 1, effective July 1.

24-30-1408. 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.

Source: L. 83: Entire section added, p. 897, § 1, effective May 10.