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PREFERENCES IN STATE PROCUREMENT

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The purchase of goods and services by Colorado state agencies is generally governed by the state procurement code.[1] This code is designed to save the state money on purchases made with state funds though a competitive bidding process. This issue brief outlines the agencies and types of purchases subject to state procurement rules, explains the vendor selection process, and describes the types of preference that exist for awarding contracts.

Procurement

Agencies subject to procurement rules. Under current law, state procurement rules only apply to executive branch agencies, although higher education institutions may opt out of these rules. The legislative and judicial branches, and political subdivisions of the state, may opt *in* to the rules.

Procurement policy and rule-making for participating state agencies is overseen by the Department of Personnel and Administration (DPA). Participating state agencies are classified as either Group I, which permits employees to conduct limited, specified purchasing activities, or as Group II, which grants employees full "delegated" purchasing authority.

Purchases subject to procurement rules. Procurement rules apply in most purchasing situations, with the exception of purchases for professional services, road and bridge construction, public printing, goods for public resale, intergovernmental agreements, or in the case of emergencies. There are three main types of procurement used by state agencies:

- *contracts* for a specific quantity of goods or services at a specified price;
- *price agreements* for unknown quantities of goods and services at a specified, per-unit price, such as furniture or medical supplies; and
- *small purchases* of one-time or low dollar value items made with a purchase order, procurement card, or commitment voucher.

Vendor selection and competition. A number of formal and informal methods exist for selecting vendors. These methods vary based on the anticipated value or type of procurement. Generally, small purchases and emergency procurements are done on an informal basis without public notice or competition. Competitive bidding is required for goods valued at more than $10,000, or construction and services valued at more than $25,000, unless the state can document only one vendor is qualified to be the "sole source." Depending on the dollar amount of the procurement, competition can range from seeking documented quotes from staff-selected vendors to issuing a public invitation to bid through the state's electronic BIDS system.

[1] Articles 101 to 112 of Title 24, C.R.S.

Awarding contracts. Small purchases do not typically include a formal award, but are given to the lowest priced vendor. In Colorado, as in most states, larger procurements are awarded to the bidder that offers the lowest-price bid or, in certain cases, to the bidder that provides the best value.

Preferences Programs

Many states express a preference for procuring goods and services from resident bidders. Other types of preference exist for procuring specific products or buying from specific groups. Colorado law establishes purchasing preferences in situations where two or more competing bids are tied for low cost, and as a means to consider factors other than cost when awarding contracts for goods and services.

Preference for resident bidders. Many states grant some form of preference to its resident bidders. Almost 75 percent of the states have "low-tie bid" laws, meaning that if a resident and non-resident vendor offer equal low bids, the award is made to the resident bidder. About 25 percent of the states offer a specific percent discount in the overall bid price of resident vendors for the purposes of determining the lowest bid price and making an award. Some states offer both forms of preference to its resident bidders. Table 1 shows states with resident bidder preferences.

Table 1. State Resident Bidder Preferences

Preference for Resident Bidders in Low-Tie Bid	Percent Discount for Resident Bidders
AL, AR, CA, CO, CT, FL, GA, IA, ID, KY, LA, MD, ME, MN, MO, MS, NC, ND, NE, NJ, NM, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WV, and WY	AK, AR, AZ, CA, ID, IN, NC, NM, OH, SC, WV, and WY

Reciprocity laws. Some states penalize out-of-state vendors if a vendor's home state grants a percent discount to its resident bidders. States with reciprocity laws inflate bids from these out-of-state vendors by a percent equal to the discount allowed by the home state. A total of 36 states, including Colorado, have reciprocity laws. According to the DPA, application of low-tie bid and reciprocity laws in Colorado is infrequent. Reciprocity laws are not enforced in many states when they conflict with federal law. Also, Ohio does not enforce its reciprocity law with its border states.

Preference for specific products. Many states allow specific or broad preferences for state-produced agriculture and/or forestry products (18 states), environmental products (37 states), American-made products (17 states), or state-produced goods (20 states). Product preferences are typically offered only when use of the products does not increase the price of the bid. However, several states offer specific percentage preferences for certain products. Several states also offer a 5 percent preference for state-produced goods.

Preference for specific groups. Several states have procurement preferences for specific groups of people. These preferences are independent of any federal- or state-assistance programs and may be offered to persons with disabilities, veterans, small businesses, or minority- or women-owned businesses. Group preferences may include non-competitive set-asides, which allow states to prioritize bids from certain groups. A total of 26 states, including Colorado, have set-aside programs that prioritize the purchase of certain products from persons with disabilities. In 12 states, set-asides of up to 25 percent of all state contracts are available for small, minority-owned, or women-owned businesses. Group preferences can also include group-specific percentage preferences, as shown in Table 2.

Table 2. State Group Percentage Preferences

Persons with Disabilities	Veterans and Service- Disabled	Minority-Owned, Women-Owned, and Small Businesses
AK, HI, and MN	AK, CA, MD, MI, MN, MO, NV, WI, and WV	CA, CT, IN, MA, MD, MN, and WI