

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0224.02 Nicole Myers x4326

HOUSE BILL 14-1070

HOUSE SPONSORSHIP

Lawrence,

SENATE SPONSORSHIP

(None),

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REQUIREMENT THAT A COUNTY GOVERNMENT USE
102 A COMPETITIVE BIDDING PROCESS FOR PROCUREMENT
103 CONTRACTS OVER A CERTAIN DOLLAR AMOUNT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires a county government to procure construction through a competitive bidding process if a single contract for construction may be reasonably expected to cost \$100,000 or more. Competitive bidding may include competitive sealed bidding, design-build proposals,

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.

construction manager general contractor proposals, or any other form of competitive contracting method that the county chooses.

The bill includes an exception to the competitive bidding process requirement if the county government does not receive any bids, the county government has rejected all bids, or the responsible officer determines that it is necessary to make contracts under emergency conditions because a threat to public health, welfare, or safety exists. The bill requires county governments to issue an invitation for bids with adequate public notice. The county is required to open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and the name of each bidder shall be open to public inspection.

The bill prohibits a county government from dividing the procurement of construction into 2 or more separate projects for the sole purpose of evading or attempting to evade the competitive bidding process requirement.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 7 to article
3 11 of title 30 as follows:

4 PART 7

5 BIDDING FOR COUNTY GOVERNMENT

6 PROCUREMENT CONTRACTS

7 **30-11-701. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 HEREBY FINDS AND DECLARES THAT:

9 (a) THE CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS
10 THAT SERVE COUNTY GOVERNMENT CONSTRUCTION PROJECTS ARE A
11 SUBSTANTIAL PART OF THE COLORADO ECONOMY;

12 (b) ENCOURAGING COUNTY GOVERNMENTS TO EXPAND
13 CONSTRUCTION PROJECTS THAT MAY BE NORMALLY SELF-PERFORMED BY
14 COUNTY GOVERNMENTS TO THE PRIVATE SECTOR FOR BIDDING WHEN THE
15 PROJECT IS REASONABLY EXPECTED TO COST OR EXCEED ONE HUNDRED
16 THOUSAND DOLLARS MAY LEAD TO DECREASED COST TO THE TAXPAYER

1 AND STIMULATE A GREATER PARTICIPATION OF THE PRIVATE SECTOR
2 CONTRACTORS, THEREBY STIMULATING THE ECONOMY; AND

3 (c) ENCOURAGING GREATER PARTICIPATION BY LOCAL SMALL
4 CONTRACTORS AND SUBCONTRACTORS IN COUNTY GOVERNMENT
5 CONSTRUCTION PROJECTS WILL ALSO INCREASE ECONOMIC GROWTH AND
6 VITALITY THROUGHOUT THE STATE.

7 **30-11-702. Definitions.** AS USED IN THIS PART 7, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING,
10 ALTERING, REPAIRING, IMPROVING, DEMOLISHING, OR RENOVATING ANY
11 PUBLIC STRUCTURE, BUILDING, ROAD, BRIDGE, WASTE TREATMENT
12 FACILITY, WATER COLLECTION AND TREATMENT FACILITY, OR ANY OTHER
13 PUBLIC IMPROVEMENTS OF ANY KIND TO ANY PUBLIC REAL PROPERTY.

14 "CONSTRUCTION" INCLUDES CAPITAL CONSTRUCTION, CONTROLLED
15 MAINTENANCE, AND DESIGN BUILD CONTRACTS.

16 (2) "CONTRACT" MEANS ANY TYPE OF AGREEMENT, REGARDLESS
17 OF WHAT IT MAY BE CALLED, FOR THE PROCUREMENT OF COUNTY
18 GOVERNMENT CONSTRUCTION PROJECTS.

19 (3) "COUNTY" MEANS A COUNTY, A HOME RULE COUNTY, OR ANY
20 AGENCY, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION,
21 INSTITUTION, OR AUTHORITY THEREOF THAT IS A BUDGETARY UNIT
22 EXERCISING CONTRACTING AUTHORITY OR DISCRETION.

23 **30-11-703. Competitive bidding process.** (1) A COUNTY
24 GOVERNMENT SHALL ADVERTISE FOR COMPETITIVE BIDDING ALL COUNTY
25 GOVERNMENT CONSTRUCTION PROJECTS THAT ARE REASONABLY
26 EXPECTED TO COST OR EXCEED ONE HUNDRED THOUSAND DOLLARS.
27 COMPETITIVE BIDDING MAY INCLUDE COMPETITIVE SEALED BIDDING,

1 DESIGN-BUILD PROPOSALS, CONSTRUCTION MANAGER GENERAL
2 CONTRACTOR PROPOSALS, OR ANY OTHER FORM OF COMPETITIVE
3 CONTRACTING METHOD THAT THE COUNTY CHOOSES. TO DETERMINE THE
4 EXPECTED COST OF A COUNTY GOVERNMENT CONSTRUCTION PROJECT, THE
5 COUNTY MAY REFER TO CURRENT COST DATA INFORMATION FROM THE
6 COLORADO DEPARTMENT OF TRANSPORTATION OR DATA FROM ANY
7 NORTH AMERICAN SUPPLIER OF CONSTRUCTION COST INFORMATION USED
8 IN THE PRIVATE SECTOR.

9 (2) A COMPETITIVE BIDDING PROCESS IS NOT REQUIRED WHEN:

10 (a) THE COUNTY DOES NOT RECEIVE ANY BIDS, THE COUNTY HAS
11 RECEIVED ONLY ONE BID, OR THE RESPONSIBLE COUNTY OFFICER HAS
12 REJECTED ALL BIDS BECAUSE THEY ARE NONRESPONSIVE, CONTAIN
13 MATERIAL BID ERRORS, OR ARE EXCESSIVE IN COST OR TIME FOR THE WORK
14 TO BE DONE. THE COUNTY SHALL INCLUDE A WRITTEN DETERMINATION IN
15 THE CONTRACT FILE OF THE BASIS FOR DETERMINING THAT ANY BID
16 RECEIVED IS NONRESPONSIVE, CONTAINS MATERIAL BID ERRORS, OR IS
17 EXCESSIVE IN COST OR TIME FOR THE WORK TO BE DONE.

18 (b) THE PROJECT IS FOR AN EMERGENCY CONDITION BECAUSE A
19 THREAT TO PUBLIC HEALTH, WELFARE, OR SAFETY EXISTS WHERE TIMING
20 AND COST ARE CRITICAL TO THE FUNCTIONS OF THE COUNTY GOVERNMENT
21 TO REMEDY SUCH EMERGENCY. THE COUNTY SHALL INCLUDE A WRITTEN
22 DETERMINATION OF THE BASIS FOR THE EMERGENCY IN THE CONTRACT
23 FILE.

24 (3) THE COUNTY GOVERNMENT SHALL ISSUE AN INVITATION FOR
25 BIDS AND SHALL INCLUDE A PURCHASE DESCRIPTION AND ALL
26 CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE
27 PROCUREMENT.

1 (4) ADEQUATE PUBLIC NOTICE OF THE INVITATION FOR BIDS SHALL
2 BE GIVEN A REASONABLE TIME PRIOR TO THE DATE SET FORTH THEREIN
3 FOR THE OPENING OF BIDS. SUCH NOTICE MAY INCLUDE PUBLICATION IN A
4 NEWSPAPER OF GENERAL CIRCULATION.

5 (5) BIDS SHALL BE OPENED PUBLICLY IN THE PRESENCE OF ONE OR
6 MORE WITNESSES AT THE TIME AND PLACE DESIGNATED IN THE INVITATION
7 FOR BIDS. THE AMOUNT OF EACH BID AND SUCH OTHER RELEVANT
8 INFORMATION AS MAY BE SPECIFIED BY THE COUNTY, TOGETHER WITH THE
9 NAME OF EACH BIDDER, SHALL BE ENTERED ON A RECORD, AND THE
10 RECORD SHALL BE OPEN TO PUBLIC INSPECTION. AFTER THE TIME OF THE
11 AWARD, ALL BIDS AND BID DOCUMENTS SHALL BE OPEN TO PUBLIC
12 INSPECTION IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS
13 24-72-203 AND 24-72-204, C.R.S.

14 **30-11-704. Prohibition of dividing work of state-funded public**
15 **project.** A COUNTY GOVERNMENT SHALL NOT DIVIDE THE PROCUREMENT
16 OF CONSTRUCTION INTO TWO OR MORE SEPARATE PROJECTS FOR THE SOLE
17 PURPOSE OF EVADING OR ATTEMPTING TO EVADE THE REQUIREMENTS OF
18 THIS PART 7.

19 **SECTION 2. Applicability.** This act applies to new contracts for
20 which the invitation for bids or the request for proposals is issued on or
21 after July 1, 2014.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.