

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0576.01 Nicole Myers

HOUSE BILL 11-1233

HOUSE SPONSORSHIP

Williams A.,

SENATE SPONSORSHIP

(None),

House Committees
Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF PREFERENCES FOR CERTAIN BIDDERS**
102 **IN STATE CONTRACTING.**

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 creates a preference for resident bidders in state contracts for construction projects. The bill specifies that a state agency shall award a construction contract to the low resident bidder, so long as the bid does not exceed the low nonresident bidder's bid by more than 5%. A bidder that wants to qualify for the preference is required to certify to

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.

the state agency that invited the bid that the bidder is a resident bidder. A bidder who is awarded a construction contract on the basis of the preference is prohibited from subcontracting more than 20% of the work to nonresident contractors.

If a state agency determines that compliance with the requirements of the resident bidder preference would conflict with the requirements of federal law, the state agency may award the contract to the low bidder without consideration of the residency of the bidder. The bill requires this determination to be made in writing and publicly posted for review by resident and nonresident bidders prior to awarding the contract.

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

2 **SECTION 1.** 24-92-102, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **24-92-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (8.5) "RESIDENT BIDDER" MEANS:

7 (a) A PERSON, PARTNERSHIP, CORPORATION, OR JOINT VENTURE
8 THAT IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO AND THAT
9 MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN COLORADO; OR

10 (b) A PERSON, PARTNERSHIP, CORPORATION, OR JOINT VENTURE
11 THAT:

12 (I) IS AUTHORIZED TO TRANSACT BUSINESS IN COLORADO;

13 (II) MAINTAINS A PLACE OF BUSINESS IN COLORADO; AND

14 (III) HAS PAID COLORADO UNEMPLOYMENT COMPENSATION TAXES
15 IN AT LEAST SEVENTY-FIVE PERCENT OF THE EIGHT QUARTERS
16 IMMEDIATELY PRIOR TO BIDDING ON A CONSTRUCTION CONTRACT FOR A
17 PUBLIC PROJECT.

18 **SECTION 2.** 24-92-103 (7), Colorado Revised Statutes, is
19 amended to read:

20 **24-92-103. Construction of public projects - competitive sealed**

1 **bidding.** (7) SUBJECT TO THE PROVISIONS OF SECTION 24-92-103.5, the
2 contract shall be awarded with reasonable promptness by written notice
3 to the low responsible bidder THAT IS A RESIDENT BIDDER AND whose bid
4 meets the requirements and criteria set forth in the invitation for bids IF
5 THE RESIDENT BIDDER'S BID IS NOT MORE THAN FIVE PERCENT HIGHER
6 THAN THE BID OF THE LOW RESPONSIBLE NONRESIDENT BIDDER THAT IS
7 NOT A RESIDENT BIDDER. In the event that all bids for a construction
8 project exceed available funds, as certified by the appropriate fiscal
9 officer, the responsible officer is authorized, in situations where time or
10 economic considerations preclude resolicitation of work of a reduced
11 scope, to negotiate an adjustment of the bid price with the low responsible
12 bidder in order to bring the bid within the amount of available funds;
13 except that the functional specifications integral to completion of the
14 project may not be reduced in scope, taking into account the project plan,
15 design, and specifications and quality of materials.

16 **SECTION 3.** Article 92 of title 24, Colorado Revised Statutes, is
17 amended BY THE ADDITION OF A NEW SECTION to read:

18 **24-92-103.5. Resident bidder preference - requirements -**
19 **exception.** (1) A RESIDENT BIDDER THAT SEEKS TO QUALIFY FOR THE
20 PREFERENCE ALLOWED PURSUANT TO SECTION 24-92-103 (7) SHALL
21 CERTIFY TO THE AGENCY OF GOVERNMENT THAT INVITED THE BID AND
22 PROVIDE DOCUMENTATION CONFIRMING THAT THE BIDDER IS A RESIDENT
23 BIDDER. THE AGENCY OF GOVERNMENT MAY RELY IN GOOD FAITH ON
24 SUCH CERTIFICATION AND DOCUMENTATION.

25 (2) A RESIDENT BIDDER THAT IS AWARDED A CONTRACT ON THE
26 BASIS OF THE RESIDENT BIDDER PREFERENCE ALLOWED PURSUANT TO
27 SECTION 24-92-103 (7) SHALL NOT SUBCONTRACT MORE THAT TWENTY

1 PERCENT OF THE WORK COVERED BY THE CONTRACT TO NONRESIDENT
2 CONTRACTORS.

3 (3) IF THE RESPONSIBLE OFFICER OF AN AGENCY OF GOVERNMENT
4 THAT INVITES A BID DETERMINES THAT COMPLIANCE WITH THE
5 REQUIREMENTS OF THE RESIDENT BIDDER PREFERENCE ALLOWED
6 PURSUANT TO SECTION 24-92-103 (7) WOULD CONFLICT WITH THE
7 REQUIREMENTS OF FEDERAL LAW, THE AGENCY OF GOVERNMENT MAY
8 AWARD THE CONTRACT TO THE LOW RESPONSIBLE BIDDER WITHOUT
9 CONSIDERATION OF THE RESIDENCY OF THE BIDDER. A DETERMINATION
10 PURSUANT TO THIS SUBSECTION (3) SHALL BE MADE IN WRITING AND
11 PUBLICLY POSTED FOR REVIEW BY RESIDENT AND NONRESIDENT BIDDERS
12 PRIOR TO AWARDING THE CONTRACT.

13 **SECTION 4. Applicability.** This act shall apply to contracts
14 awarded on or after January 1, 2012.

15 **SECTION 5. Act subject to petition - effective date.** This act
16 shall take effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part shall not take effect
22 unless approved by the people at the general election to be held in
23 November 2012 and shall take effect on the date of the official
24 declaration of the vote thereon by the governor.