

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0149.01 Jason Gelender x4330

SENATE BILL 19-076

SENATE SPONSORSHIP

Scott,

HOUSE SPONSORSHIP

(None),

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROCUREMENT OF CONSULTING ENGINEER SERVICES**
102 **FOR DEPARTMENT OF TRANSPORTATION CONSTRUCTION**
103 **PROJECTS.**

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://leg.colorado.gov>.)

The bill requires the department of transportation (CDOT) to procure construction management and construction engineering services to be provided by a consulting engineer for a CDOT construction project through a fixed bid for all services to be provided by the consulting engineer for the project and prohibits CDOT from paying the consulting

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

engineer by the hour.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) When the department of transportation contracts with a
5 consulting engineer for construction management and construction
6 engineering services for a construction project, it typically pays the
7 consulting engineer by the hour instead of requiring the consulting
8 engineer to submit a fixed bid for all services to be provided for the
9 project.

10 (b) Both the department of transportation and the general
11 contractor for a construction project have a strong interest in successfully
12 completing the project as quickly and efficiently as possible because
13 completing the project quickly and efficiently:

14 (I) Saves the department money that the department can use to
15 complete other projects and provide a safer and more effective
16 transportation system; and

17 (II) Allows the general contractor, who typically must submit a
18 fixed bid for the completion of the project in accordance with specified
19 performance requirements and deadlines, to avoid penalties for failing to
20 complete the project in accordance with the requirements and deadlines,
21 devote more resources to other projects, make more money, and provide
22 more jobs for Colorado workers.

23 (c) When the department of transportation contracts with a
24 consulting engineer for construction management and construction
25 engineering services for a construction project and pays the consulting

1 engineer by the hour, the consulting engineer has a financial incentive to
2 work as many hours as possible. This incentive is at odds with the interest
3 of the department and the general contractor in successfully completing
4 the project as quickly and efficiently as possible because the general
5 contractor's ability to successfully complete the project depends in part on
6 the consulting engineer's ability to competently and efficiently provide
7 construction management and construction engineering services and
8 expeditiously obtain required approvals from the department for any
9 project changes that the consulting engineer recommends.

10 (d) In order to better align the incentives of the consulting
11 engineer who provides construction management and construction
12 engineering services for a department of transportation project with the
13 interest of the department and the general contractor for the project in
14 successfully completing the project as quickly and efficiently as possible
15 without compromising or infringing upon the exercise of independent
16 professional judgment by the consulting engineer, and in order to hold
17 both the general contractor and the consulting engineer accountable for
18 their performance in providing services related to the project in a fair
19 manner, it is necessary and appropriate to require a consulting engineer
20 to submit a fixed bid for all construction management and construction
21 engineering services to be provided by the consulting engineer for the
22 project rather than allowing the department to pay the consulting engineer
23 by the hour.

24 **SECTION 2.** In Colorado Revised Statutes, **add** 24-92-115 as
25 follows:

26 **24-92-115. Department of transportation construction projects**
27 **- fixed bid requirement for services provided by consulting engineers.**

1 (1) WHENEVER IT IS NECESSARY FOR THE DEPARTMENT OF
2 TRANSPORTATION TO CONTRACT WITH A CONSULTING ENGINEER TO
3 PROVIDE CONSTRUCTION MANAGEMENT OR CONSTRUCTION ENGINEERING
4 SERVICES FOR A PUBLIC PROJECT, THE DEPARTMENT SHALL REQUIRE A
5 CONSULTING ENGINEER WHO IS INTERESTED IN PROVIDING THE SERVICES
6 TO SUBMIT A FIXED BID FOR ALL SERVICES TO BE PROVIDED FOR THE
7 PROJECT AND SHALL NOT PAY THE CONSULTING ENGINEER WHO PROVIDES
8 THE SERVICES BY THE HOUR.

9 (2) NOTHING IN THIS SECTION IS INTENDED TO OR SHALL BE
10 CONSTRUED TO ALTER OR EXPAND THE SCOPE OF THE AUTHORITY OF ANY
11 CONSULTING ENGINEER WITH RESPECT TO A PUBLIC PROJECT.

12 **SECTION 3. Effective date - applicability.** This act takes effect
13 July 1, 2019, and applies to department of transportation construction
14 project solicitations, including but not limited to requests for proposals
15 and requests for bids, issued on or after said date.

16 **SECTION 4. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.