

Drafting Number: LLS 11-0576 **Date:** February 21, 2011

Prime Sponsor(s): Rep. Williams A. Bill Status: House Economic and Business Development

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TITLE: CONCERNING THE CREATION OF PREFERENCES FOR CERTAIN BIDDERS IN

STATE CONTRACTING.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
State Expenditures Multiple Sources Cash Funds	Potential increase	Potential increase
State Highway Fund	\$26,713	
FTE Position Change	0.3 FTE	

Effective Date: August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed, and applies to construction contracts awarded as of January 1, 2012.

Appropriation Summary for FY 2011-2012: See State Appropriations section.

Local Government Impact: None.

Summary of Legislation

This bill requires that state agencies, when contracting for construction, prefer Colorado bidders if their offering price is within 5 percent of the low nonresident bidder's price. To obtain a preference, bidders must certify and provide documentation showing compliance with residency requirements, which include being authorized to transact business in the state, maintaining a principal place of business in Colorado, and paying Colorado unemployment compensation taxes in at least 75 percent of the prior 8 quarters. A bidder who is awarded a construction contract on the basis of a residency preference is prohibited from subcontracting more than 20 percent of the work to nonresident contractors.

A state agency may award a construction contract to the low bidder if it determines that applying a residency preference conflicts with federal law. In so doing, the state agency is required to make this determination in writing and post it for public review prior to awarding the contract.

Background

This bill may impact private contractors that work in multiple states due to procurement reciprocity. Colorado is one of approximately 35 states that impose some form of this practice. Under current law, if one state provides a preference to its residential bidders, Colorado will increase bids received from vendors of that state by an equal percentage. For instance, if a contractor based in Alaska receives a 7 percent price preference when bidding for contracts under the State of Alaska, any bids received from those vendors in Colorado would be increased by 7 percent. Accordingly, other states may increase the price of bids receive from Colorado contractors.

State Expenditures

Beginning in FY 2011-12, this bill will increase the cost of construction for state agencies, and create one-time state expenditures of \$26,713 cash funds and 0.3 FTE for FY 2011-12.

Colorado Department of Transportation (CDOT). One-time cash fund expenditures of \$26,713 and 0.3 FTE are required in FY 2011-12 to revise bidding rules.

Construction costs. To the extent that a resident bidder's price would have been up to 5 percent greater than a low nonresident bidder, state costs for construction will increase. As any such amount is based on future solicitations and actual bid prices submitted, the increase in costs has However, it is worth noting that as of December 2010, there were not been estimated. 389 construction projects being managed by the Office of the State Architect (OSA) in the Department of Personnel and Administration (DPA). Some of these contracts span multiple fiscal years, but the combined value of these projects is \$2.65 billion. The OSA does not track whether contracts are awarded to resident or nonresident bidders. Based on averages from the 5 prior calendar years, CDOT issues 162 construction contract worth \$438 million each year. Of this number, 75 percent would be exempt from the bill, and 5 percent would be awarded to nonresident bidders. Assuming that 5 percent of all state construction contracts active in 2010 were awarded to nonresident bidders as offering the lowest price, allowing those prices to be increased by up to 5 percent and awarded to a resident bidder would have increased the price of construction for the state by \$6.9 million. This amount may be reflected over several fiscal years, depending on when the contract was issued.

Procurement costs. The fiscal note assumes that the provision requiring a state agency to write and post a determination that a procurement must be issued to the lowest price bidder, irrespective of residency, in order to comply with federal law will increase the workload of state agencies by a minimal amount. This analysis assumes that such notices can be posted online on agency web sites and/or the Colorado BIDS procurement system website at no cost. Any increases in staff time for writing the determination are anticipated to be minimal and do not require a new appropriation.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 1.

Table 1. Expenditures Not Included Under HB11-1233*		
Cost Components	FY 2011-12	
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,130	
Supplemental Employee Retirement Payments	1,209	
TOTAL	\$3,339	

^{*}More information is available at: http://colorado.gov/fiscalnotes

State Appropriations

Expenditures for the CDOT are made from the State Highway Fund, which is continuously appropriated and requires no separate appropriation by the General Assembly.

Departments Contacted

Corrections	Higher Education	Personnel and Administration
Transportation		