


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 12-0462

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Prime Sponsor(s): Rep. Lee

Bill Status: House SVMA

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TITLE: CONCERNING THE CREATION OF CERTAIN PROCUREMENT PREFERENCES TO BE APPLIED IN THE STATE PROCUREMENT PROCESS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue	Potential increase.	
State Expenditures		
<u>Total</u>	<u>\$80,667</u>	At least <u>\$171,469*</u>
General Fund	62,767	62,908
Various Cash Funds		19,583
State Highway Fund	17,900	35,458
Reappropriated Funds		6,177
Federal Funds		47,343
FTE Position Change	0.9 FTE	2.8 FTE
Effective Date: July 1, 2012, unless a referendum petition is filed.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Local Government section.		

**The funding sources provided are an estimate based on affected agencies' funding sources at the department level.*

Summary of Legislation

This bill directs state agencies to grant up to a 5 percent preference to bidders for contracts expected to cost more than \$500,000. The bill also directs state agencies to offer a 2.5 percent preference to bidders who are veterans for contracts for the purchase of goods or services.

For construction contracts, the bill requires state agencies to grant *up to a 5 percent preference* to bidders, as follows:

- **a 3 percent preference to a bidder** who certifies that at least 90 percent of the employees who will complete the contracted work are Colorado residents;
- **an additional 1 percent preference** if the bidder certifies that it will offer health care and retirement benefits to the employees who will perform the contracted work; and
- **an additional 1 percent preference** if the bidder certifies that the employees who will perform the contracted work will have access to a federally qualified apprenticeship training program.

For contracts for the purchase of goods or services, the bill requires state agencies to grant *up to a 7.5 percent preference* to bidders, as follows:

- **a 3 percent preference to a bidder** who certifies that at least 90 percent of the employees who will complete the contracted work are Colorado residents;
- **an additional 2 percent preference** if the bidder certifies that it will offer health care and retirement benefits to the employees who will perform the contracted work; and
- **a 2.5 percent preference** if the bidder certifies that a majority of its business is veteran-owned.

The 90 percent Colorado resident and veteran business preferences may not be offered to a noncompliant bidder, and a bidder may not use a preference to satisfy a minimum requirement of a contract. The Department of Personnel and Administration (DPA) is directed to promulgate rules for the administration of each preference, including a process for a bidder to certify, and an agency to verify, the bidder's eligibility for each preference.

Background

State procurement of goods and services. The purchase of goods and services by Colorado state agencies is generally governed by the state procurement code. 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 such as local governments, may opt *in* to the rules. Procurement policy and rule-making for participating state agencies is overseen by the DPA. Procurement rules are in effect for most procurements, except those for professional services, road and bridge construction, public printing, goods for public resale, intergovernmental agreements, or in the case of emergencies.

Construction contracts. The construction, renovation, repair, or demolition of state-owned facilities is also governed by statute, but contracting for such projects is not included in the state procurement code. Rules concerning contracting for construction projects apply to all state agencies, including higher education institutions and the legislative and judicial branches. Most construction contracting is overseen by the Office of the State Architect, within the DPA. Current law requires that construction projects financed in whole or part by state funds employ a workforce of at least 80 percent Colorado residents for certain classifications of skilled and common labor.

State Expenditures

This bill will increase state expenditures by \$80,667 and 0.9 FTE in FY 2012-13, as shown in Table 1, and by at least \$171,469 and 2.8 FTE in FY 2013-14, as shown in Tables 1 and 2. These costs are based mainly on increased workload for verification of contracts, but also include some one-time costs for the Colorado Department of Transportation (CDOT) to update contract materials. This fiscal note assumes that General Fund moneys will be needed, but the exact fund sources will vary by agency. The potential impact of the bill on contracting costs is not included in Tables 1 or 2, but is described in greater detail below.

Table 1. DPA and CDOT Expenditures Under HB 12-1113		
Cost Components	FY 2012-13	FY 2013-14
Personal Services	\$57,679	\$38,031
FTE	0.9	0.6
Operating Expenses and Capital Outlay	5,088	570
Updating Contracting Manuals (CDOT)	17,900	0
TOTAL	\$80,667	\$38,601

The Department of Personnel and Administration will require 0.9 FTE at a cost of \$62,767 for FY 2012-13, and 0.6 FTE at a cost of \$38,601 in FY 2013-14 and in future years. This amount will be payable from the General Fund and includes operating expenses and capital outlay. These costs are required to promulgate and manage new rules and to support certification of a vendor's eligibility for certain preferences. This fiscal note assumes that verification of a bidder's eligibility will only occur during the contracting process, rather than throughout the term of a contract.

The Colorado Department of Transportation (CDOT) will have to modify both its construction manuals and its construction management software to incorporate the requirements of this bill. These modifications are expected to require an estimated 480 hours of labor by a professional engineer at a one-time cost of \$17,900 in FY 2012-13. These costs will be paid from the State Highway Fund, which is continuously appropriated to the department.

All state agencies. The bill directs state agencies to verify a bidder's eligibility for each preference. The verification process will be determined by rules promulgated by the DPA after the bill becomes law. Several state agencies will experience increased staff costs, which will vary by the volume and complexity of contracts issued by each agency, and depend on the level of review required by the DPA rules. This fiscal note assumes that the promulgation of rules and training of agency staff will take several months, and that the new verification procedures will not go into effect until FY 2013-14.

This fiscal note assumes that the verification process will require an additional 4 hours per bid per contract, that the average contract receives 4 bids, and the total workload will increase by 16 hours per contract. Table 2 lists agencies with eligible contracts over \$500,000 issued since the beginning of FY 2010-11, as recorded in the state contracting database. The listed agencies issued a high enough volume of contracts to qualify for at least 0.1 additional FTE, based on the formula above. The staffing level for two agencies rises to the 0.5 FTE minimum required for standard operating and capital outlay expenses. These costs are reflected as additional costs in Table 2. Staffing is assumed to be at the General Professional IV level for all agencies.

Table 2. HB 12-1113 Expenditures Beginning in FY 2013-14 by Agency					
Agency	Number of Eligible Contracts*	Staff Time Required (Hours)	Additio nal Costs	FTE	Total
Corrections	18	288	N/A	0.1	\$5,680
Health Care Policy and Financing	65	1,040	2,827	0.5	31,225
Human Services	53	848	N/A	0.4	22,718
Natural Resources	13	208	N/A	0.1	5,680
Public Health and Environment	14	224	N/A	0.1	5,680
Revenue	14	224	N/A	0.1	5,680
Transportation	114	1,824	5,088	0.9	56,204
Total	291	4,656	7,915	2.2	\$132,866

* The number of eligible contracts is an estimate based on a survey of the information listed in the state contracting website.

Increased contracting costs. This bill may increase the cost of some construction contracts for state agencies by up to 5 percent, or \$25,000 per \$500,000 expended. A bidder for a construction contract that certifies that it will employ at least 90 percent Colorado residents, offer health care and retirement benefits to its employees, and provide access to a federally qualified apprenticeship training program could submit a bid up to 5 percent greater than the next lowest bid and win the contract. Therefore, the overall cost of construction projects could increase by as much 5 percent.

This bill may increase the cost of some contracts for the purchase of goods or services for state agencies by up to 7.5 percent, or \$37,500 per \$500,000 expended. A bidder for a contract for goods or services that certifies that it will employ at least 90 percent Colorado residents, offer health care and retirement benefits to its employees, and that the business is veteran owned could submit a bid up to 7.5 percent greater than the next lowest bid and win the contract.

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 3.

Table 3. Expenditures Not Included Under HB 12-1113*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,597	\$3,690
Supplemental Employee Retirement Payments	3,075	2,334
TOTAL	\$8,672	\$6,024

**More information is available at: <http://colorado.gov/fiscalnotes>*

Departmental Difference

In addition to the CDOT expenditures reflected in Tables 1 and 2, CDOT also believes this bill will preclude the department from accessing its annual apportionment of federal highway funding, which is projected to be \$398.7 million for FY 2012-13. Typically, the annual apportionment is consistently \$500 million. The department explains that its participation in the federal highway program is voluntary, and certain costs for eligible projects are reimbursed from the federal treasury provided CDOT abides by federal law. Federal law generally prohibits bidder preferences in contracting. CDOT believes that it would have no legal authority to disregard the provisions of SB 12-001, as introduced, therefore making it ineligible for federal highway funding. These costs are not included in the fiscal note because it is not clear how any potential conflict would be resolved.

State Appropriations

For FY 2012-13, the Department of Personnel and Administration requires a General Fund appropriation of \$62,767 and 0.9 FTE. The Department of Transportation does not require an appropriation as State Highway Funds are continuously appropriated to the department.

Departments Contacted

All Departments