

# STATE OF COLORADO

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Bill Ritter, Jr.  
Governor

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## VIA EMAIL

January 27, 2009

Charles Ashby  
Denver Bureau Chief  
*Pueblo Chieftain*  
Email: [cashby@chieftain.com](mailto:cashby@chieftain.com)

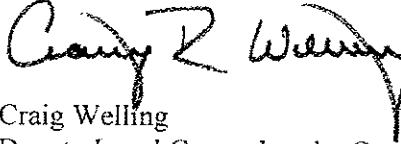
Dear Mr. Ashby:

On Thursday, January 22, 2009, our office received your Colorado Open Records Act request for "[t]he review the DPA has recently completed on the bidding process conducted by the Colorado Department of Corrections for its proposed new central office in Colorado Springs." An identical request was made to the Department of Personnel and Administration ("DPA") that same day. This letter is a response on behalf of both the Governor's Office and DPA.

The Governor's Office and DPA have a single two-page draft letter that is responsive to your request. The unsigned draft letter, which was never finalized, is dated January 12, 2009, and is from DPA Executive Director Rich Gonzalez to the Governor. We believe that this draft letter is exempt from disclosure under CORA as "work product." See C.R.S. § 24-72-202(6.5)(a) (defining work product as "all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority."); C.R.S. § 24-72-204(6)(b)(II) (exempting work product from the definition of "public records"). Nevertheless, the Office of the Governor is opting to provide the draft letter in response to your request. By doing so, the neither the Governor's Office nor DPA are waiving or diminishing their right to assert any privilege or exemption available under CORA or at common law, including but not limited to work product. See, e.g., *People v. Madera*, 112 P.3d 688, 691 (Colo. 2005) (rejecting "a blanket waiver" of privilege).

Subject to the foregoing, I am attaching the document you requested. Should you have any questions, do not hesitate to contact me or Chief Legal Counsel Trey Rogers.

Sincerely,

A handwritten signature in black ink that reads "Craig R. Welling". The signature is written in a cursive style with a large, stylized "R".

Craig Welling  
Deputy Legal Counsel to the Governor

Attachment

Cc: Julie Postlethwait (via email)

# State of Colorado



**Bill Ritter, Jr.**  
*Governor*

**Rich Gonzales**  
*Executive Director*

**Jennifer Okes**  
*Deputy Executive Director*

## DPA

**Department of Personnel  
& Administration**

**Executive Office**  
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Denver, Colorado 80202  
(303) 866-3000  
Fax (303) 866-2102  
[www.colorado.gov/dpa](http://www.colorado.gov/dpa)

January 12, 2009

Honorable Bill Ritter, Jr.  
Governor  
136 State Capitol  
Denver, CO 80203

Dear Governor Ritter,

Pursuant to the direction from the Governor's office, DPA conducted a review of the Colorado Department of Corrections' submission for a Request For Offering (RFO), regarding their central headquarters building. Attached, is a copy of the findings of the review conducted by the Colorado State Purchasing Director and two state agency procurement directors, none of which are affiliated with CDOC or involved in this solicitation.

The findings of the review suggest that the process was conducted in a fair and equitable manner. The process employed by CDOC was not conducted in strict compliance with the State Procurement Code process for a request for proposal, (RFP). However, the process employed by CDOC was confirmed by an informal opinion request from the Attorney General's office. The informal opinion indicated that the CDOC procurement plan was appropriate for the competitive solicitation CDOC was seeking and was not subject to the corresponding provisions of the State Procurement Code.

The review findings did indicate that the process, utilized by CDOC, closely mirrored the RFP component of the procurement code for the State of Colorado. The CDOC process design encouraged competition from offerors, as well as conducted questions and answer meetings for the offerors to explain the process and criteria, and subsequently provide answers to any and all questions from the offerors. The process appears to have been transparent and equitable.

Page two of the findings offers an explanation of the mandatory pre-offoror conference that was held on May 23, 2008, and the subsequent response to specific questions from that conference. Throughout the process, a competitive environment was maintained up to and including the point of the award being made by the Executive Director of CDOC.

Letter to Governor Ritter  
Re: CDOC Review  
January 12, 2009  
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DRAFT

There are two issues which were cited in the DPA review. The first of these was the financial expert evaluation of the price cost considerations for this project. Normally, in the state procurement code for RFP's the financial experts, that were employed by CDOC, would have evaluated the price cost issues independent of the review committee. In CDOC's modified process the individual committee members evaluated the price/cost issue independently. Although the financial experts evaluation might have been more objective, how the experts would have scored the price costs components would be speculative. The second issue which arose as a result of this review is the changing of the time distance factor mid-way through the process. Although it is permissible in the context of this particular process, it would not have been allowed in the procurement code process. The details of these two issues can be found on pages 4 and 5 of the review findings. Although these issues would have been mandated in the state procurement code process for RFP's, it does not appear that these issues would have substantively changed the outcome of the scoring for the RFO's.

In summary, although the process for the RFO's by CDOC did not adhere strictly to the State of Colorado procurement code for RFP's, it very closely mirrored the process. The process engaged by the CDOC nonetheless appears to have been competitive, fair, equitable, and transparent. As an update, it has been determined by CDOC to forego their initial process and follow the process and conditions as set forth in state statute 24-82-801. 24-82-801 mandates legislative review and legislative appropriation for this project if approved.

I would like to thank all of the members of the review team for their diligence and the time away from their schedules to accommodate this review.

Submitted this date.

Sincerely,

Rich Gonzales  
Executive Director

RLG:msr H:Michelle/2009/Correspondence/Ltr to re: CDOC review  
attachments - 2

cc: Jennifer Okes, Deputy Executive Director  
Aristedes Zavaras, Executive Director, Department of Corrections Letter to Governor Ritter