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HOUSE BILL 07-1220

BY REPRESENTATIVE(S) Kefalas, Weissmann, Borodkin, Carroll M., Carroll T., Fischer, Frangas, Green, Hodge, Jahn, Kerr A., Labuda, Levy, Madden, McGihon, Merrifield, Peniston, Solano, and Todd;
also SENATOR(S) Groff, Bacon, Boyd, Sandoval, Shaffer, Tapia, Tupa, Veiga, Williams, and Windels.

CONCERNING A PREFERENCE FOR THE PURCHASE OF ENVIRONMENTALLY PREFERABLE PRODUCTS BY GOVERNMENTAL ENTITIES.

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

SECTION 1. Part 2 of article 103 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-103-207.5. Purchasing preference for environmentally preferable products - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ENVIRONMENTALLY PREFERABLE PRODUCTS" MEANS PRODUCTS OR SERVICES THAT HAVE A LESSER OR REDUCED ADVERSE EFFECT ON HUMAN HEALTH AND THE ENVIRONMENT WHEN COMPARED WITH COMPETING PRODUCTS OR SERVICES THAT SERVE THE SAME PURPOSE. THE PRODUCT OR SERVICE COMPARISON MAY CONSIDER SUCH FACTORS AS THE AVAILABILITY OF ANY RAW MATERIALS USED IN THE PRODUCT OR SERVICE BEING PURCHASED AND THE AVAILABILITY, USE,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PRODUCTION, SAFE OPERATION, MAINTENANCE, PACKAGING, DISTRIBUTION, DISPOSAL, OR RECYCLABILITY OF THE PRODUCT OR SERVICE BEING PURCHASED.

(2) IN CONNECTION WITH THE PURCHASE OF PRODUCTS OR SERVICES, A GOVERNMENTAL BODY SHALL AWARD THE CONTRACT TO A BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS SUBJECT TO THE CONDITIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(3) THE PREFERENCE SPECIFIED IN SUBSECTION (2) OF THIS SECTION SHALL APPLY ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(a) THE QUALITY OF THE ENVIRONMENTALLY PREFERABLE PRODUCTS MEETS THE SPECIFICATION OF THE BID.

(b) THE ENVIRONMENTALLY PREFERABLE PRODUCTS ARE SUITABLE FOR THE USE REQUIRED BY THE PURCHASING ENTITY.

(c) ANY BIDDER ABLE TO OFFER ENVIRONMENTALLY PREFERABLE PRODUCTS IS ABLE TO SUPPLY SUCH PRODUCTS IN SUFFICIENT QUANTITY, AS INDICATED IN THE INVITATION FOR BIDS.

(d) THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY PREFERABLE PRODUCTS DOES NOT EXCEED THE LOWEST BID OR QUOTED PRICE FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY MORE THAN FIVE PERCENT.

(e) THE HEAD OF THE GOVERNMENTAL BODY OR OTHER OFFICIAL CHARGED BY LAW WITH THE DUTY TO PURCHASE PRODUCTS HAS MADE A DETERMINATION THAT THE GOVERNMENTAL BODY IS ABLE TO PURCHASE THE ENVIRONMENTALLY PREFERABLE PRODUCTS OUT OF THE GOVERNMENTAL BODY'S EXISTING BUDGET WITHOUT ANY FURTHER SUPPLEMENTAL OR ADDITIONAL APPROPRIATION.

(f) SELECTING AN ENVIRONMENTALLY PREFERABLE PRODUCT WOULD NOT BE OTHERWISE DISADVANTAGEOUS TO THE STATE UPON CONSIDERATION OF ANY ONE OR MORE OF THE FACTORS SPECIFIED IN PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (3), SINGLY OR IN COMBINATION.

(4) IF THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY

PREFERABLE PRODUCTS EXCEEDS THE BID OR QUOTED PRICE FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE BY MORE THAN FIVE PERCENT, A GOVERNMENTAL BODY MAY AWARD THE CONTRACT TO A BIDDER WHO OFFERS ENVIRONMENTALLY PREFERABLE PRODUCTS WHERE THE GOVERNMENTAL BODY DEMONSTRATES, ON THE BASIS OF A COST OF OWNERSHIP LIFE-CYCLE ANALYSIS, THAT LONG-TERM SAVINGS TO THE STATE WILL RESULT FROM ENVIRONMENTALLY PREFERABLE PURCHASING IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. NOTHING IN THIS SECTION SHALL REQUIRE THAT A GOVERNMENTAL BODY PERFORM A COST OF OWNERSHIP LIFE-CYCLE ANALYSIS IN CONNECTION WITH THE PURCHASE OF ANY PRODUCTS.

(5) (a) ANY BIDDER THAT SEEKS TO QUALIFY FOR THE PREFERENCE CREATED BY SUBSECTION (2) OF THIS SECTION SHALL PROVIDE DOCUMENTATION TO THE GOVERNMENTAL BODY INVITING THE BID THAT THE PRODUCTS OFFERED BY THE BIDDER ARE ENVIRONMENTALLY PREFERABLE. THIS REQUIREMENT MAY BE SATISFIED BY SUBMISSION OF ANY OF THE FOLLOWING:

(I) A COST OF OWNERSHIP LIFE-CYCLE ANALYSIS CONDUCTED ON THE APPLICABLE PRODUCT OR SERVICE THAT HAS BEEN CONDUCTED IN ACCORDANCE WITH APPLICABLE STANDARDS AS DETERMINED BY THE PURCHASING GOVERNMENTAL BODY OR BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION OR ANY SUCCESSOR ORGANIZATION;

(II) A REFERENCE TO AN EXISTING ENVIRONMENTALLY PREFERABLE PRODUCT LIST MAINTAINED BY A STATE OR THE FEDERAL GOVERNMENT THAT CONTAINS THE PRODUCT OR SERVICE; OR

(III) A REFERENCE TO A NATIONALLY RECOGNIZED THIRD-PARTY CERTIFICATION ENTITY THAT HAS CERTIFIED THE PRODUCT OR SERVICE AS ENVIRONMENTALLY PREFERABLE ON THE BASIS OF A VALID COST OF OWNERSHIP LIFE-CYCLE ANALYSIS.

(b) THE GOVERNMENTAL BODY MAY RELY IN GOOD FAITH ON ANY FORM OF DOCUMENTATION THAT SATISFIES THE REQUIREMENT OF PARAGRAPH (a) OF THIS SUBSECTION (5).

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IF NONE OF THE FORMS OF DOCUMENTATION SPECIFIED IN PARAGRAPH (a) OF

THIS SUBSECTION (5) APPLY TO THE PRODUCT OR SERVICE BEING PURCHASED, THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO THE PURCHASE OF THE PRODUCT OR SERVICE.

(6) A GOVERNMENTAL BODY SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THE RESULTS OF ANY COST OF OWNERSHIP LIFE-CYCLE ANALYSIS USED TO JUSTIFY THE PURCHASE OF ANY ENVIRONMENTALLY PREFERABLE PRODUCTS IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION DURING THE PREVIOUS FISCAL YEAR.

(7) IN CONNECTION WITH ANY COST OF OWNERSHIP LIFE-CYCLE ANALYSIS UNDERTAKEN IN CONNECTION WITH ANY PURCHASE UNDER THIS SECTION OF A PRODUCT OR SERVICE THAT INVOLVES THE REPLACEMENT OF EXISTING ELECTRICAL, NATURAL GAS, OR STEAM SERVICE, THE COST ANALYSIS SHALL CONSIDER ANY STRANDED UTILITY COSTS.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to bids for contracts solicited on or after the applicable effective date of this act.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO