Chapter 5

CITY, COUNTY, AND SPECIAL DISTRICT CONSTRUCTION PROJECTS

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(1999, 2003, 2005, 2007 & 2010 Supplements)
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§ 5.1 INTRODUCTION

This chapter addresses construction projects with local governmental entities such as counties, cities, towns, special districts, public highway authorities and other governmental and quasi-governmental entities. While some principles of public contracting discussed in Chapter 4, "State Construction Projects," apply to local government, this chapter addresses a number of issues unique to these entities.

Cities, towns, and various authorities often have their own charters, ordinances, enabling statutes or other governing laws containing provisions applicable to construction contracts. This Chapter does not attempt to discuss all of the local laws of each county, city, or other governmental entity within Colorado. While the specific regulations of the entity should be consulted, the general principles discussed in this Chapter can serve as a guide when considering issues related to a local government construction project.

§ 5.2 GENERAL CONSIDERATIONS

While there are many similarities between public and private construction contracts, because a governmental entity exists to serve the public and is in control of public funds, certain restrictions apply to the parties involved in a public project. Such restrictions may impact the creation of the contractual relationship, the contents of the contract itself and how the parties may act during the construction process. Traditionally, most, although not all, public entities could award contracts only after public notice and bidding. The Colorado General Assembly has made other delivery methods possible, as discussed in more detail in § 5.11 of this Chapter. There also are restraints on a public entity's fiscal responsibilities which may impact the formation of a contract and payment for changes and unanticipated conditions. Local governmental entities also may exist only for a specific, limited purpose and may therefore have limitations on their authority that would not be found when dealing with a private entity or a more general public body such as the state or federal government. In contracting with a local public entity, the exact nature of the entity should be understood, along with any particular restraints on its powers.

§ 5.3 NATURE OF PUBLIC ENTITIES AND AUTHORITY TO CONTRACT

As a general rule, counties, cities, and quasi-municipal entities in Colorado have the authority to enter into construction contracts. Such authority derives from the state constitution and the entity's enabling legislation.

§ 5.4 CONSTITUTIONAL PROVISIONS

A number of provisions relevant to construction contracting are contained in article XIV of the Colorado Constitution. This article contains the establishment language for Colorado's counties, as well as a number of regulatory provisions. Section 16 of this article allows counties to adopt home rule charters with their own unique provisions. Relevant county legislation therefore may differ from one county to another, depending on their home rule status. As of January 1999, Pitkin and Weld were the only counties in Colorado that had adopted home rule charters. The City and County of Denver is considered a hybrid with its own charter. In November 1998, Colorado voters approved the formation of the City and County of Broomfield which became effective on November 15, 2001.[1]

Section 17 of article XIV empowers the state legislature to enact laws for the formation and regulation of entities known as regional service authorities. Paragraph (4)(a) of that section provides that such a service authority is "a body corporate and a political subdivision of the state."

C.R.S. §§ 32-7-101, *et seq.*, regulates the formation and governance of Regional Service Authorities. Such entities may exist to provide water and sewer services, urban drainage and flood control, public surface transportation, solid waste collection and disposal, parks and recreation services, libraries, fire protection, hospitals, museums, zoos, art galleries, theatres and other cultural facilities, housing weed and pest control, certain gas and electric services, jails and rehabilitation, and land and soil preservation.[2] These entities may have broad powers, including the authority to enter into contracts, to construct facilities to accomplish the authority's purposes and to levy taxes and sell bonds.[3] There has been little, if any, use of the service authority law, and there have been only one or two attempts to create such entities in Colorado.[4]

Section 18 of article XIV of the state constitution permits counties and other governmental and quasi-municipal corporations to enter into agreements with each other to provide government services. This section further states that nothing in the constitution shall be construed to prohibit various types of governmental cooperation and combinations. Activity that may not be prohibited includes contracts between or among the state and political subdivisions to provide services, legislation creating separate governmental entities to be used by cooperating political subdivisions, and contracts with private persons to provide governmental functions. This section also allows the state legislature to share with, and distribute to, political subdivisions state imposed and collected taxes. The enabling legislation for public highway authorities, for example, states that it was passed specifically to implement this section of the state constitution.[5]

Many municipal services, such as water, sewer, fire protection, and police protection often are provided through intergovernmental agreements between or among different governmental entities. In a construction context, one entity may be acting as an agent for another pursuant to such an agreement. In the event there is a question as to the power of an entity to enter into a contract that may seem beyond the normal powers of such a body, or that raises questions of an inappropriate delegation of municipal power, § 18 of article XIV may provide a state constitutional basis for the validity of such an intergovernmental agreement.

§ 5.5 GENERAL STATUTORY PROVISIONS

General statutes relating to county government are contained in title 30 of the Colorado Revised Statutes. C.R.S. § 30-11-101 provides generally that counties are bodies corporate and politic and enumerates their powers, which include the ability to sue and be sued, own property and "[t]o make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers."[6]

The powers of a county are exercised by its board of commissioners,[7] whose own powers also are enumerated separately by statute.[8] With respect to construction projects, this statute states that a board of commissioners has the ability to build and repair county buildings; to contract loans for building public buildings, or making or repairing public

roads or bridges; to acquire land for, lay out, and construct airports; to construct, improve, and maintain drainage facilities; to construct, maintain, repair, or install curbs, gutters, sidewalks, and related structures; and to maintain historic land and structures.[9]

A county board of commissioners also has the authority to delegate its ability to enter into contracts binding on the county so long as established policies and procedures are followed.[10]

§ 5.6 GENERAL PUBLIC IMPROVEMENT STATUTES

Part 3 of article 20, title 30, Colorado Revised Statutes, is subtitled "Public Projects" and addresses certain issues relating to such projects, as well as a government agency's authority to issue anticipation warrants and certain other funding provisions. C.R.S. § 30-20-301 defines the term "governmental agency" as used in Part 3 as "any county or municipality in the state only."[11] The statute also contains a definition of the term "public project" which is quite broad and includes "any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes. . . ."[12]

This statute is relevant in that such defined "governmental agencies" are granted specific authority to construct any "public project" within, and even outside, their territory limits.[13] Part 4 of article 20 of title 30 grants counties the power to construct water and sewerage facilities and discusses bonds and other revenue sources to pay for such facilities.

§ 5.7 OTHER COUNTY CONSTRUCTION ENTITIES

Colorado statutes also provide for the creation of a number of other entities that may construct public projects and that have certain unique characteristics.

§ 5.7.1—County Public Improvement Districts

C.R.S. §§ 30-20-501, *et seq.*, allows for the formation of County Public Improvement Districts. Such entities are taxing units within a county and may be created to provide fire protection services, or to construct "any public improvement, including, but not limited to, fire protection facilities, grading, paving, curbing, guttering, or otherwise improving the whole or any part of any street or alley, parking and off-street parking facilities, sewer drainage collection systems, storm sewer drainage systems, surface drainage systems, and heating and cooling works and distribution systems. . . ."[14]

Such entities may be created to provide "any public improvement or for the purpose of providing any service so long as the county that forms the district is authorized to perform such service or provide such improvement under the county's home rule charter, if any, or the laws of this state . . ." with certain exceptions as noted.[15]

Public Improvement Districts have broad powers, including the power to have perpetual existence; to sue and be sued; to enter into contracts; to exercise the power of eminent domain; and to acquire, construct, install, and operate the improvements described in the statutes.[16]

With respect to construction projects, there are statutory requirements for public notice and bidding to enter into construction contracts for work or material, or both, involving an expense of $1,000 or more.[17] Such a district ". . . may reject any and all bids, and if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do."[18] Other contracting methods are alsoavailable as provided in the Integrated Delivery Method for County Public Improvements Act, C.R.S. §§ 30-20-1101, *et seq.*

§ 5.7.2—County Local Improvement Districts

County Local Improvement Districts may be formed for the purpose of ". . . constructing, grading, paving, pouring, curbing, guttering, lining or otherwise improving the whole or any part of any street or providing street lighting or drainage facilities in the unincorporated area of a county or wholly or partly within the boundaries of any municipality within the county if such municipality consents by ordinance to such improvements."[19] This list is not exclusive. Such districts also may install or improve water and sewage distribution and collection systems.[20]

Traditionally, all construction contracts by local improvement districts were to be let to the lowest "reliable and responsible" bidder after public advertisement.[21] The district also was empowered to construct the improvement by hiring labor by the day or otherwise purchasing materials, if it believed that the bids were too high or that the county could make the improvement for less than the lowest reliable and responsible bidder.[22] Integrated project delivery methods are available as an alternative, as set forth in C.R.S. §§ 30-20-1101, *et seq.*

The statutes on local improvement districts specifically require that the contractor post a performance bond for any construction project except where the county does the work.[23]

Construction contracts let by local improvement districts must contain certain provisions stating that the contract:

> . . . is subject to the provisions of the laws under which the county exists and of the resolution authorizing the improvement; that the aggregate payment thereon shall not exceed the amount appropriated; that, upon ten days' written notice to the contractor, the work under such contract, without cost or claim against the county, may be suspended for substantial cause; and that, upon complaint of any owner of land to be assessed for the improvement that the improvement is not being constructed in accordance with the contract, the board may consider the complaint and make such order in the premises as shall be just, and such order shall be final.[24]

Additional information on public construction project funding is discussed in § 5.16, below. Other required contract clauses also are discussed in § 5.13, below.

§ 5.8 CITIES AND TOWNS

§ 5.8.1—Structure And Classification

Municipalities in Colorado are classified as either cities or towns, depending on population. While certain grandfather provisions and other statutes relating to formation apply, in general, a city is defined as a municipal corporation having a population of more than 2,000[25] and a town is a municipal corporation with a population of 2,000 or less.[26] As populations change, a municipal entity's classification also may change.[27]

Corporate and municipal authority of a city is vested in a governing body denominated by the city council,[28] with a mayor acting as the chief executive officer.[29] Cities may, in the alternative, choose to follow a city council-city manager structure, whereby the members of the city council appoint a city manager who carries out many of the same duties of a mayor.[30]

The authority of a town is vested in a board of trustees and mayor, each of whom is elected by the general electorate of the town.[31]

§ 5.8.2—Home Rule

Article XIV, § 16 of the Colorado Constitution provides that Colorado counties may adopt a home rule charter. Article XX, § 6 of the Colorado Constitution provides that cities or towns with a population of 2,000 inhabitants also have the power to create a home rule charter.[32] This section further provides that such a charter, and any ordinances adopted by the city or town pursuant to the charter, shall supercede any conflicting state law.

Such home rule power, however, is a limited grant of authority and may be exercised properly only as to matters that are of local concern.[33] The state legislature retains the power to enact controlling laws with respect to matters that are of statewide concern.[34] If a matter has mixed state and local concerns, a home rule municipal ordinance may coexist with a state statute, so long as there is no conflict between the two.[35] If, however, there is a conflict, the state statute will supercede the conflicting provisions of a local ordinance.[36]

Whether a matter is of local, state, or mixed concern is determined on an ad hoc basis, taking into consideration the facts of each case and factors such as: whether there is a need for statewide uniformity of regulation; whether the municipal legislation has impact beyond its territory; whether the matter is one that historically has been governed by state or local government; and whether the state constitution commits the particular matter to state or local regulation.[37]

Zoning has been found to be a matter of local concern.[38] Local building codes containing provisions that arguably were more strict than applicable state statutes also have been upheld as a valid exercise of the municipality's police power.[39]

As to the applicability of construction-related statutes to home rule entities, article XX, § 6 of the Colorado Constitution states, in part: "The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."[40] This language indicates that construction statutes in general would apply to a home rule city or town, unless superseded by the particular laws of the entity.

There is no similar provision relating to counties in the state constitution. Home rule counties are required to provide "all mandatory county functions, services and facilities and shall exercise all mandatory powers as may be required by statute."[41] They also are empowered to provide such permissive functions, services, and facilities and to exercise such permissive powers as may be authorized by statute applicable to all home rule counties, except as may be otherwise prohibited or limited by charter or this constitution."[42] A home rule county thus has broad powers, and its specific resolutions should be consulted to determine if there have been any variations on, or additions to, general statutory provisions.

§ 5.8.3—General Powers

Colorado statutes define cities and towns as bodies politic and corporate with broad powers, including the powers to sue and be sued; to enter into contracts; and to hold, lease, and dispose of real and personal property.[43] They also have the power to erect and care for all necessary public buildings; to construct, maintain, and regulate streets and sidewalks; and a variety of similar municipal facilities.[44] Municipalities also have broad powers with respect to the construction and maintenance of utilities.[45]

§ 5.8.4—Urban Renewal Authorities

With respect to public improvements, municipalities may create urban renewal authorities,[46] which authorities themselves have the power to sue and be sued and to enter into contracts to carry out their powers.[47] Urban Renewal Authorities also have the power to issue bonds to finance their activities.[48]

§ 5.8.5—Downtown Development Authorities

Municipalities may establish Downtown Development Authorities to address the deterioration of central business districts.[49] Such authorities are distinct legal entities with the power to sue and be sued and enter into contracts.[50]They also may buy and sell property and construct improvements thereon.[51]

§ 5.8.6—Special Improvement Districts In Municipalities

Municipalities also may establish special improvement districts within their boundaries, wherein the municipality may construct improvements and assess the costs thereof upon the property especially benefited by such improvements.[52] Such districts are

not separate legal entities, and the contracts for such improvements are let by the municipalities.[53]

There are statutory provisions requiring contracts for the improvements to be let to the lowest reliable and responsible bidder after appropriate advertisement.[54] The municipality has the power to perform the work itself if the bids are "too high" or if the municipality can construct the improvement for less than the lowest reliable and responsible bidder.[55] When the work is done by one other than the municipality, a performance bond is required.[56] As discussed in § 5.11 of this Chapter, other contracting methods are available to municipalities.

A number of provisions relating to payments not exceeding appropriations, suspension of the work, and complaints by affected property owners must be included in contracts for improvements under these provisions.[57]

§ 5.8.7—Municipal Improvement Districts

Improvement districts also may be created within a municipality as separate taxing units for the purpose of constructing improvements within a specified area and with the power to tax property in the district to pay for the improvements.[58] Such districts have separate powers to sue and be sued, to enter into contracts, to borrow money, acquire and construct improvements, and exercise other powers.[59]

Such a district may advertise all construction contracts involving an expense of $1,000 or more for bids, except where the district receives aid from an agency of the federal government.[60] The district also may reject any and all bids or proceed with the work on its own if it appears that it can do so for less than the lowest bid.[61] Integrated project delivery methods are also available.

§ 5.8.8—Business Improvement Districts

Business improvement districts may be created within a municipality.[62] Such districts are separate legal entities with powers to sue and be sued, enter into contracts, and construct improvements within the district.[63] These districts also may levy taxes against commercial properties within their boundaries to raise revenue.[64]

§ 5.9 SPECIAL DISTRICTS

The term "special district" commonly is used to refer to entities that provide limited governmental services such as fire protection, water and sanitation service, park and recreational facilities, health services, ambulance services, tunnels, or some combination thereof. The statutory scheme regulating the creation, organization, consolidation, dissolution, and general governance of special districts is contained in the Special District Act, codified at title 32 of the Colorado Revised Statutes.[65]

A special district is defined by statute as a quasi-municipal corporation and political subdivision of the State of Colorado.[66] As a public entity and an arm of government, special districts must comply with a variety of laws pertinent to similar governmental entities. Their powers are quite broad even though their purpose is limited. Special districts have the power to sue and be sued, to enter into contracts, to borrow money, incur indebtedness, and issue bonds.[67] They also have the power to fix and change ". . . fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district..."[68] and to levy and collect *ad valorem* taxes on taxable property located within the district.[69] Nevertheless, a special district may exercise only those powers expressly conferred on it by the Colorado Constitution or a statute, or those implied powers reasonably necessary to carry out such express powers.[70]

With respect to construction projects, special districts have the power to operate and maintain facilities pertinent to their services. Specific powers and authorities for each type of special district are set forth in the Special District Act.[71]

Colorado also has a number of specific statutory districts created by the state legislature pursuant to title 32, C.R.S. These include the Moffat Tunnel Improvement District,[72] the Regional Transportation District,[73] the Three Lakes Water and Sanitation District,[74] the Urban Drainage Flood Control District,[75] the Scientific and Cultural Facilities District,[76] the Denver Metropolitan Major League Baseball Stadium District,[77] and the Metropolitan Football Stadium District.[78] There also are general provisions for the creation of rail districts.[79]

The legislature has enacted separate statutes defining the powers and procedures for some of these entities. For example, the Metropolitan Football Stadium District has the authority either to renovate Mile High Stadium or to construct a new stadium.[80] The legislature also provided: "The board shall award contracts in excess of three thousand dollars on a fair and competitive basis for the renovation or construction of any works, facility, or project, or portion thereof, or for the performance or furnishing of any labor, material, personal or real property, services, or supplies."[81] The specific statutes pertaining to these entities should be consulted when dealing with such districts.

§ 5.10 OTHER STATUTORY ENTITIES

The legislature has provided for the creation of other public entities in addition to title 32 districts. For example, the Public Highway Authority Law empowers municipalities, counties, or any combination thereof to create public highway authorities for the purpose of constructing beltways around metropolitan areas.[82] The E-470 Public Highway Authority is an example of such an entity.

Governmental entities also may create Rural Transportation Authorities to construct and operate rural transportation systems to transport people or goods within a rural region.[83]

Both of these types of entities have the power to enter into contracts, construct improvements and, to certain limited extents, raise revenues.

§ 5.11 CONTRACTING METHODS

§ 5.11.1—Design/Build Contracting

The traditional method by which governmental entities entered into construction contracts was by hiring an architect or engineer to design a project, publishing notice and receiving sealed bids for the job, and then awarding the contract to the lowest bidder. The anticipated advantage to this project delivery method was to obtain the completed project with the least expenditure of public funds. This contracting method, however, requires an architect or engineer to first design the project and prepare detailed drawings and specifications so that contractors can provide a price for all necessary components of the job. This procedure is referred to as "design/bid/build" after the sequence of events that generally occurs. When this method is used, the architect or engineer first designs the project under a contract with the owner. The owner then enters into a separate contract with a general contractor whose obligation is to construct the project as designed. The architect or engineer generally becomes the owner's representative during the project's construction phase, interprets the drawings and written specifications, and often acts as an arbiter of disputes between the owner and general contractor.

Private project owners found advantages in hiring one firm to both design and construct the project. Known as "design/build," this contracting method is perceived as having a number of advantages. Many owners believe this project delivery method is helpful in that it gives them one point of contact for the entire project, rather than having to deal separately with a designer and a contractor. They also believe that disputes between the designer and contractor can be eliminated. In the traditional "design/bid/build" model, a contractor may assert that a construction problem is the result of incorrect or vague drawings and specifications prepared by the designer while the designer claims it arose due to faulty construction techniques or materials. Such disputes can result in delays to the project and increased costs. By having one party responsible for both the design and construction, such attempts to direct fault are eliminated.

Many also believe that design/build can result in time and cost savings. If the contractor is involved in the design process, he or she may be able to suggest design changes that will make construction less expensive. If this information is provided early in the process, changes can be made without impacting too many completed design features. Construction also can begin on portions of the design, which are completed without waiting for the entire design to be finished, resulting in a finished project sooner. This early start to construction is not possible in the design/bid/build method, since the project cannot go out to bid and, therefore, construction cannot start until the design is finished completely.

The design/build process was unavailable for use on public projects because many statutes required public entities to follow a design/bid/build contracting method. The

Colorado General Assembly passed a bill in the 2007 session allowing the state and many political subdivisions to award construction contracts on a basis other than lowest bid. HB 1342 became effective in early August 2007 and adds provisions addressing construction contracts entered into by the State of Colorado, its counties, municipalities, special districts, and related entities. The new legislation allows various governmental entities to enter into contracts to procure public projects that integrate the project's design, construction, operation, maintenance, financing, and other attributes into a single contract.

State Agencies

Referred to as the "Integrated Delivery Methods for Public Projects Act," the bill provides that any state agency may enter into an integrated project delivery contract for a public project upon the agency's determination that such integrated project delivery "represents a timely or cost-effective alternative for a public project."[84] An "agency" is defined broadly as "any agency department, division, board, bureau, commission, institution, or other agency of the executive, legislative, or judicial branch of the state government that is a budgetary unit exercising construction contracting authority or discretion."[85] "Integrated project delivery" is defined as an agreement between an agency and a single entity for "the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project."[86] Thus, in addition to combining design and construction services, an IPD contract may also include a single entity providing for the project's financing and subsequent operation and maintenance.

State agencies may pre-qualify entities for participation in an IPD contract by publishing a request for qualifications (RFQ).[87] The Act contains a listing of information that may be contained in the RFQ.[88] The agency must then create a "short list" of entities that the agency believes are the most qualified.[89]

Whether or not entities are pre-qualified, a state agency must publish a request for proposals (RFP), and the statute contains a list of minimum criteria that must be used to evaluate the proposals.[90] Such factors include price, design, and technical approach to the project; past performance and experience; project management capabilities including financial, equipment, and personnel resources; and craft labor capabilities.[91] Additional information may be contained in the RFP, such as procedures for submitting proposals and their evaluation, performance standards, budget, scheduling, and other information about the project.[92] The agency may then select the proposal that is "most advantageous and represents the best overall value to the state."[93]

The Act further provides that the entity itself that submits a proposal for an IPD contract need not be licensed to provide professional services, so long as the person or entity actually providing those services as part of the contracting entity is licensed properly.[94]

Agencies are then empowered, if they follow the parameters of the Act, to enter into "any type of contract" that will promote the best interests of the agency, except a cost plus a percentage of cost contract.[95]

Counties

Section 2 of HB 1342 is called the "Integrated Delivery Method for County Public Improvements Act" and addresses design/build and similar contracts in county projects. This section also defines "agency" broadly, as any county, city and county, home rule county, county public improvement district, or "any other district that a county or a city and county may create pursuant to the authority provided in Article 20 of this Title that is a budgetary unit exercising construction contracting authority or discretion, and any special taxing district formed by a home rule county in accordance with the provisions of part 9 article 35 of this title."[96] This definition of "agency" seems to apply to entities such as county public improvement districts and county local improvement districts discussed in §§ 5.71 and 5.72 of this Chapter. The definition of "public project" differs from that used in § 1 of the Act addressing state agencies, but is very broad. This section of the Act also defines "Public Purposes" as including, but not being limited to ". . . the supplying of public water services and facilities, public sewerage services and facilities, and lands, buildings, improvements, equipment, and facilities for public education, to the extent the boundaries of the agency and school district are coterminous."[97]

County agencies also may pre-qualify entities that wish to participate in a project and are required to publish a request for proposals for the project. Unlike projects procured by state agencies, however, there is no mandatory listing of criteria to be used in evaluating proposals, but only a list of suggested items.[98] The basis of selection is that proposal that the county agency believes will provide the "best value" to the county.[99] The same professional licensing provisions apply to county projects, as does the prohibition on entering into cost plus contracts.[100]

Municipalities

Section 3 of the Act is titled the "Integrated Delivery Method for Municipal Public Improvements Act" and contains provisions authorizing cities and towns to enter into design/build and similar contracts. This portion of the Act is very similar to § 2 dealing with counties. "Agency" is defined as "any home rule or statutory city, town, territorial charter city, city and county, or any other political subdivision that a municipality may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion."[101] A municipal special improvement district discussed in § 5.8.6 above appears to be within the "agency" definition. The remaining definitions are the same as those that pertain to county contracts, as are the provisions related to pre-qualification, selection, licensing, and types of contracts that are allowed and prohibited.

Special Districts

The final section of the Act is entitled "Integrated Delivery Method for Special District Public Improvements Act" and contains provisions codified in Title 32 of the Colorado Revised Statutes. This section defines contracting agency as "any special district organized under this title or any other political subdivision that such district may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion."[102] It again has provisions similar to those relating to counties and municipalities, and states that special districts also may employ design/build and other integrated project delivery methods and contracts, other than cost plus agreements.

§ 5.11.2—Bidding Statutes

Integrated project delivery methods referred to in § 5.11.1 above are not the only method by which a governmental entity may procure capital improvements. Traditional bidding methods remain available and will be discussed in this section. No matter what delivery method a governmental entity chooses, the requirements for the respective method must be followed.

As noted in Chapter 4, "State Construction Projects," the Construction Bidding for Public Projects Act addresses public advertisement and bidding for certain public construction contracts.[103] That act expressly states, however, that it does not apply to any ". . . county, municipality, school district, special district, or political subdivision of the state. . . ."[104] The term "municipality" is not defined in that act, but is defined elsewhere as a city or town,[105] and those terms also are defined in title 31 of the Colorado Revised Statutes dealing with municipal government.[106]

There are, however, separate statutes addressing public bidding for some of these excepted entities. For example, one provision states that cities are required to follow bidding procedures with respect to contracts for the construction of public improvements where the cost is $5,000 or more.[107] Failure to comply with these requirements could result in the contract being found void and the person who did any work for the city deemed a volunteer with no entitlement to compensation.[108] Presumably, this result would not occur if the integrated project delivery procedures found in C.R.S. §§ 31-25-1301, *et seq.* were followed instead. As is true with other similar statutes, there is an express prohibition against dividing a project into a number of pieces to get below the dollar limitation and avoid the need for public bidding.[109] A city may, however, reject all of the bids if the city council believes they are too high and may enter into negotiations for a contract, so long as the negotiated price does not exceed the lowest responsible bid.[110]

This statute contains no express requirements as to the advertisement required, but simply states that there must be "ample" advertisement.[111] As is true also with similar statutes, this section states that the contract is to be let to the lowest "responsible" bidder.[112]

An interesting question arises with respect to the application of this statute to home rule cities. Title 31 of the Colorado Revised Statutes is entitled "Government — Municipal." C.R.S. § 31-1-101 contains definitions and begins: "As used in this title, except where specifically defined, unless the context otherwise requires. . . ."[113] The statute then goes on to list a number of definitions. C.R.S. § 31-1-101(2) defines a "city" as a municipal corporation having a population of more than 2,000 incorporated or reorganized pursuant to the provisions of certain statutes.[114]

This section goes on to state that the term "city" ". . . does not include . . . any city or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the Colorado Constitution."[115] No case was found in which a Colorado appellate court specifically considered whether the exclusion of home rule cities from this definition also excludes them from statutory bidding requirements. This language, however,

implies that they would be excluded from the requirements of C.R.S. § 31-15-712. Home rule cities, however, presumably are free to adopt charter provisions requiring bidding for their public projects.

It should be noted that C.R.S. § 31-1-101(6), which is another definition in the same statutory section, defines the term "municipality" as including home rule cities, towns, and cities and counties.[116]

There are statutory procedures for bidding when a contract is let by municipal special improvement districts discussed in § 5.8.6, above.[117] The statute also expressly requires a surety bond for such contracts.[118]

Additionally, bidding procedures are also set forth for Municipal Improvement Districts, referred to in § 5.8.7, above, for projects with a cost of $1,000 or more.[119]

Where a local construction project is funded in whole or in part by the state highway users tax fund, public bidding procedures are provided.[120] The types of local government entities to which these procedures apply are quite broad and are defined as any "municipality, county, home rule county, or home rule city or any agency, department, division, board, bureau, commission, institution, or other authority thereof which is a budgetary unit exercising construction contracting authority or discretion and which is located in a county of thirty thousand persons or more, or a city or town of thirty thousand persons or more. . . ."[121]

Unless integrated project delivery methods are followed, all special districts must publish a notice for bids on all construction projects where the expenditure of public moneys for work, material or both will be $60,000 or more.[122] There is an exception to this requirement in cases where the special district will receive aid from a governmental agency or is making a purchase through the state purchasing program.[123] Special districts may reject any and all bids and may proceed to do the work themselves if it appears that the district can do so for less than the lowest bid.[124]

All contracts for work or material, including services, between a special district and a member of the district's board or the owner of 25 percent or more of the district's territory may be let to that person only if such person is the lowest "responsible and responsive" bidder after public advertisement, regardless of the amount of the contract.[125]

There is no general bidding requirement for contracts let by counties; however, as noted above, County Public Improvement Districts and County Local Improvement Districts must advertise their projects for bids before entering into construction contracts, or follow the requirements of the integrated project delivery statutes.

There also is no specific bidding requirement for school districts, even though they have the power through their boards to own property and ". . . to construct, erect, repair, alter and remodel buildings and structures."[126] It is instructive as to the nature of school districts to note that they may dispose of surplus land without being required to sell the

property to the highest bidder.[127] School districts may be required to follow other public contracting requirements, such as those related to bonds, as discussed in § 5.12, below. The legislature did not discuss school districts in the Act, which allowed the use of integrated project delivery methods by other governmental entities.

§ 5.11.3—Choice Of Bidder

The requirement that a local government award a contract to the "lowest reliable and responsible bidder" still allows the entity some discretion in choosing the final contractor. The state procurement code defines "low responsible bidder" as ". . . any contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a public project, who is the low bidder, and who has furnished bonds or their equivalent as required by law."[128] This definition appears quite limited in that there is no reference to consideration of the experience or skill level of the contractor. This statute, however, is inapplicable to political subdivisions of the state.

With respect to local public entities, Colorado courts specifically have recognized that such an entity apparently has greater discretion as to whom to award the contract.[129] The awarding body may consider not only the pecuniary responsibility of the bidder, but its skill, experience, and integrity as well.[130] Moreover, a court will not interfere with the decision as to which is the lowest reliable and responsible bidder unless there has been fraud, bad faith, or collusion.[131] A special district also may reject all bids submitted, and its decision to do so will be sustained absent a showing of fraud or collusion.[132]

§ 5.11.4—Bid Mistakes And Withdrawal Of Bids

Statutes that govern bidding on state construction projects and the state procurement code contain express provisions regarding the withdrawal of bids.[133] In such cases, a bidder may be permitted to withdraw an "inadvertently erroneous" bid before the award of the contract if the bidder "submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made."[134] There is no similar statute applicable to counties, cities, towns, special districts, or other public entities.

Colorado courts have recognized a narrow equitable exception to the general common law rule that once a bid has been opened it may not be withdrawn. A bidder may be allowed to rescind a bid containing a mistake prior to its acceptance if the bidder establishes to a preponderance of the evidence that the mistake in the bid was of a clerical or mathematical nature, that the mistake was made in good faith and relates to a material aspect of the bid, and that the public authority did not rely to its detriment on the mistaken bid.[135]

The exception appears to be quite narrow. The court of appeals opinion recognizing this equitable remedy noted that if a low bidder fails to prove each of the elements set forth and refuses to enter into a contract pursuant to the bid, the public entity may recover damages in the form of the loss of its bargain in being forced to forego the low bid and award the contract to the next lowest bidder.[136] The court also recognized that a public entity may show a change of position in reliance on the mistaken bid by proving that it incurred expenses as the result of a decision to re-bid the project, or costs as the result of a delay in

the project.[137] It therefore appears that one should not place great reliance on being allowed to take advantage of this equitable remedy in submitting a bid.

If the elements are satisfied, it appears this exception may apply with regard to a bid involving any type of public entity. The court stated: "We agree with the conclusion of the Court of Appeals that under certain circumstances a bidder submitting a bid for *a public construction contract* may be permitted to rescind the bid prior to its acceptance if it reflects a material mistake of fact."[138] The holding of the case does not appear to have been limited to the type of public entity before the court.

As to whether a bid may be withdrawn before opening, it seems that doing so should be allowable. Under the reasoning of the court in the *Powder Horn Constructors* case, it is the opening and acceptance of the bid that results in the contract. If a bid had not been opened, it would be difficult for the owner to argue that it had accepted or relied on unknown terms contained in an unopened bid.

Other states have continued to address situations where a contractor may, or may not, withdraw a bid based on a mistake. For example, in California a subcontractor was not permitted to withdraw a bid containing a mistake after the general contractor had included the subcontractor's numbers in the general's bid and given that bid to a public entity, even though the general contractor learned of the mistake before signing a contract with the owner.[139] The court reasoned that the general contractor already relied to its detriment when it submitted its bid to the owner, even though the contract was not signed until later.[140]

Some states have disallowed withdrawal of mistaken bids where there is no statute covering the issue.[141]

As to the type of conduct resulting in the mistake, other courts have used standards other than the "good faith" test set forth in *Powder Horn Constructors*. For example, in Utah, a court held that a bid could be withdrawn where the bid mistake arose from conduct that did not rise to the level of "gross negligence."[142] In Wisconsin, the court used the standard of "excusable neglect," defined as an error which did not involve a lapse in reasonable business procedures, in determining when a bid could be withdrawn without penalty to the bidder.[143]

§ 5.11.5—Standing To Challenge Bid Awards

Although a public entity may be required to award a contract to the lowest reliable and responsible bidder, a contractor that believes the public entity has acted improperly by awarding a contract to one other than the lowest reliable and responsible bidder may have little recourse. Colorado has recognized that a disgruntled bidder lacks standing to challenge a public entity's award of a contract to one whose bid may have been higher.[144] Additionally, a New York court reiterated that a disgruntled bidder has no standing to force a competing bidder to withdraw its bid which contained a mistake.[145] It also has been determined that statutes that require public bidding create no express or implied remedy for a bidder that believes it has been injured in the process.[146] While this result may seem unusual, the rationale for the rule is that public bidding laws exist to protect the taxpayers

whose money is being spent on the project, and not those who are submitting bids.[147] If an aggrieved bidder also happens to be a taxpayer within the government entity conducting the bidding, it may be able to use its status as such to challenge the process whereby the entity awarded the contract.

§ 5.11.6—Cost Plus Contracting

While the legislature has permitted governmental entities to use delivery methods other than the traditional "design/bid/build," it maintained restrictions on "cost plus" contracts. There are express prohibitions on cost plus contracts by the state and its agencies[148] and a county or its agencies.[149] Such entities still may enter into "cost reimbursement," contracts defined for state contracts as ". . . a contract under which a participating entity is reimbursed for costs that are allowable in accordance with the contract terms and provisions of this article."[150] The county definition is similar and provides: "'Cost-Reimbursement Contract' means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of this part 11."[151]

The legislature did not include these prohibitions with respect to municipal or special district contracts.

§ 5.12 BOND REQUIREMENTS

Performance and payment bonds are required in most construction projects involving public entities. The purpose of these bonds is to provide a source of payment and funding in the event the contractor fails to perform the work or pay those retained to do so.

As a practical matter, performance and payment bonds are required for all contracts entered into by local governments for public improvements where the amount of the contract is in excess of $50,000. One statute requires a payment bond for such contracts with any county, municipality, or school district.[152] A more comprehensive statute requires performance and payment bonds where there is a contract in excess of $50,000 for any public work of the state, or for any county, city and county, municipality, school district, or other political subdivision of the state.[153] Actions to recover on the payment bond required by this latter section are authorized by C.R.S. § 38-26-107(3).

While the state procurement code requires bid bonds for certain contracts with the state of Colorado,[154] there is no corresponding requirement for political subdivisions of the state unless they have chosen to follow the procurement code or have adopted their own requirements. On the other hand, there is no statutory prohibition on such entities requiring a bid bond.

§ 5.13 REQUIRED AND PROHIBITED CONTRACT PROVISIONS

§ 5.13.1—Damages For Delays

A clause in a public works contract that purports to waive or eliminate a contractor's right to recover damages or obtain an equitable adjustment for certain delays will be deemed void.[155] The delays to which this statute applies are those which are "caused in whole, or in part, by acts or omissions within the control of the contracting public entity or persons acting on behalf thereof. . . ." Thus, a public works contract still could limit a contractor's right to recover damages or obtain an adjustment to the contract for delays caused by the contractor, subcontractors, suppliers, or any party other than the owner.

§ 5.13.2—Appropriated Funds

Every public works contract must contain a provision stating that the amount of money appropriated for the project is equal to, or in excess of, the contract amount. Such contracts also must contain a clause prohibiting the issuance of any change order or other directive requiring additional compensable work which would cause the total amount payable under the contract to exceed the amount appropriated unless the contractor is given written assurance by the public entity that lawful appropriations to cover the costs of the additional work have been made or unless the work is covered under a remedy-granting provision in the contract.[156] For purposes of this section, public work contract means "a contract of the state, county, city and county, city, town, school district, special district, or any other political subdivision of the state for the construction, alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other work dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work."[157]

If these provisions are omitted from a public works contract, a contractor can still bring a civil action and recover from a public entity amounts owed under a contract, even if the public entity has failed to comply with appropriation statutes. The purpose of these statutes is discussed more fully in § 5.16, Funding and Appropriations, below.

§ 5.13.3—Prohibited Indemnification Provisions

Any provision in a public construction contract that attempts to cause a contractor to indemnify the public entity for that public entity's own negligence will be deemed void and unenforceable as against public policy.[158] Applicable contracts are any "public contract or agreement for the construction, alteration, repair, or maintenance of any building, structure, highway bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction. . . ."[159] Bonds, insurance contracts, contract clauses regarding insurance or defense costs, and agreements to indemnify or hold harmless a contracting party from liability arising from the negligence of the indemnitor and its subcontractors are exempt from the effects of this statute.[160]

§ 5.13.4—Other Miscellaneous Provisions

As noted above in § 5.7.2, contracts let by county local improvement districts must contain certain language regarding applicable laws and county resolutions, payment and

funding, suspension of the work, and complaints by affected land owner. Similar provisions must be included in contracts let by municipalities for special improvement districts, as discussed in § 5.8.6, above.

§ 5.14 WITHHOLDINGS FROM PROGRESS PAYMENTS (RETAINAGE)

In public construction contracts in excess of $150,000, the contracting entity may withhold 10 percent of all monthly progress payments due to the contractor.[161] After the work is 50 percent complete, the entity must pay the full amount requested in subsequent pay applications if the entity believes that the work is progressing satisfactorily.[162] These payment and withholding provisions apply to counties, cities, cities and counties, towns, districts, and all political subdivisions of the state.[163]

The money retained is to be held until the contract is complete and the work is accepted by the public entity.[164] The public entity may use the withheld funds in the event it becomes necessary for it to take over and complete the project.[165] A contractor can obtain payment of the retained funds by substituting "acceptable securities" with a market value equal to the amount withdrawn with the public entity.[166] "Acceptable securities" are defined as bonds, treasury notes, or treasury bills of the United States; general obligation or revenue bonds of Colorado or any political subdivision of the state; certificates of deposit from a state or national bank or a savings and loan association with its principal office in Colorado where the certificates are insured by the federal deposit insurance corporation or its successor.[167]

Parties that have provided labor or services to the project who have not been paid by the general contractor also may make claims against these withheld funds in the manner described in the following section.

§ 5.15 CLAIMS FOR NONPAYMENT

The traditional mechanic's lien is not available in public projects.[168] The legislature has provided an alternative remedy whereby an unpaid subcontractor or supplier to a contractor or subcontractor may file a verified statement with the public entity setting forth its claim.[169] Upon receipt of the claim, the public entity is required to withhold from future payments to the contractor an amount equal to the amount of the claim.[170]

In order to perfect such a claim, the party must file its verified statement of claim in a prescribed manner and with certain required information before the time of final payment to the contractor.[171] Where the amount of the contract exceeds $50,000, the public entity is required to advertise the time of such final payment at least ten days in advance and must publish the notice twice in a public newspaper of general circulation published in the

counties where the work was contracted for and performed.[172] The claimant must then commence an action to recover the amount of its claim within 90 days of the advertised date of final payment and must file a *lis pendens*, not in the real estate records, but with the board, officer, person, or other contracting body that awarded the contract.[173] After 90 days, the contracting entity must pay the contractor all amounts withheld that are not the subject of a lawsuit and *lis pendens*.[174] Under C.R.S. § 38-26-108, a bond may be substituted for the withheld funds.

There are limitations on who may assert claims under the verified claims statute. The language of the statute indicates that it applies only to those who have provided labor or materials to the contractor or a subcontractor.[175] One case has interpreted the term "subcontractor" to include a sub-subcontractor and allowed a claim by one who supplied materials to a sub-subcontractor.[176] A supplier to a supplier, however, had its claim denied as being beyond the scope of the statute.[177]

The remedy provided by this statutory scheme is in addition to claims that may be asserted against bonds which contractors must provide on public projects.[178] Failure to bring a claim under this section does not relieve the surety on such bonds.[179]

The statute that requires money disbursed to a contractor to be held in trust for the payment of subcontractors and suppliers also may apply to public contracts in that the statute refers to funds paid to any contractor on any construction project, without limiting its provisions to private projects.[180] The trust fund statute may provide an additional remedy against a general contractor that has not made payment to subcontractors or suppliers.

§ 5.16 FUNDING AND APPROPRIATIONS

C.R.S. § 29-1-101 prohibits a local government officer or employee from entering into a contract which will involve an expenditure of funds in excess of the amount appropriated. It further states: "Any contract, verbal or written, made in violation of this section shall be void, and no moneys belonging to a local government shall be paid on such contract."[181] "Local government" is defined very broadly in this article as ". . . any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization or corporation formed by intergovernmental agreement or other contact between or among any of the foregoing."[182]

A previous form of this statute supported a holding that a construction contract may be void if there was no proper appropriation by a local government for the money to be spent under the contract.[183] The rationale behind the decision was that appropriation statutes exist to protect taxpayers from improper use of public moneys and to allow the public to participate in the process of spending public moneys.[184]

Believing that a strict application of this principle could sometimes work a hardship, the courts recognized an exception where property was delivered to a local government pursuant to a contract which was entered into in violation of the entity's budget requirements. The exception, however, was narrow and applied only where the property received by the local government could be returned to the aggrieved party *in specie* and only when returning the property would cause no harm to other property of the local government.[185]

The equitable exception, however, was inapplicable to a contractor's claim against a municipality for extra work performed pursuant to a contract for street improvements.[186] In that case, the court found that if it allowed the claim, the money spent on the construction contract would exceed the appropriation. It also found, and the parties apparently agreed, that the street improvements built by the contractor could not be returned to the contractor without serious damage to other property of the town.

The legislature, in an apparent response to these cases, enacted statutes specifically to address these issues. C.R.S. §§ 24-91-101, *et seq.*, addresses certain aspects of construction contracts with public entities. A "public entity" is defined in that article as ". . . this state or a county, city, city and county, town, or district, including any political subdivision thereof."[187] The statute expressly prohibits a public entity from entering into a contract for the design, construction or both of a public works project unless there has been a lawful appropriation for the project.[188] It also provides that every public works contract must contain provisions stating that the amount appropriated for the contract is equal to or in excess of the amount of the contract and a clause prohibiting the issuance of change orders that would cause the total expenditures to exceed appropriations.[189] A public works contract is defined broadly as: ". . . a contract of the state, county, city and county, city, town, school district, special district, or any other political subdivision of the state for the construction, alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other work dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work."[190]

A contractor can sue the local government to recover money due under a contract if there has been no proper appropriation.[191] Additionally, the defense that there was no money appropriated for the contract or claim can be made unavailable under C.R.S. § 24-91-103.6(4). For this result to obtain, the contractor must comply with all change order, additional work, and other clauses in the contract applicable to the dispute and must submit a sworn statement setting forth the amount of additional compensation claimed, supporting data which is verified to be "accurate and complete to the best of the contractor's knowledge and belief" and a statement that the amount requested accurately reflects what is owed by the public entity.[192]

The statute also provides that a contractor can collect a judgment against a local government even if there has been no appropriation to pay the judgment.[193]

The budget and appropriation statute stating that contracts in excess of the amount appropriated are void remains in effect in Colorado, and the cases holding as invalid claims in excess of amounts appropriated have not been overruled. Additionally, the statute passed to reduce some of the harsh results of that law contains a number of prerequisites which must be followed to avoid the application of the non-appropriation rule. Accordingly, extreme care should be exercised regarding such fiscal issues when dealing with construction contracts, change orders, or claims for additional compensation in public projects. If a situation does not fall entirely within the statutory exceptions, the prior rules and statutes may have continued vitality.

§ 5.17 ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

Some public entities are incorporating alternative dispute resolution provisions in their contracts. The City and County of Denver, for example, almost always includes a provision in contracts let by the Department of Public Works and the Department of Aviation that any dispute between the parties will be resolved through a hearing conducted by the manager of the department, or a hearing officer designated by the manager. These departments have promulgated separate rules relating to how such disputes are to be raised and governing the course and conduct of such hearings. Appeal is limited to a review of the record by the district court pursuant to Rule 106(a)(4), C.R.C.P. The narrow standards of arbitrariness, capriciousness or abuse of authority apply to such a review.

The appropriateness of such a procedure has been challenged on constitutional due process grounds, wherein it has been alleged that the procedure is unfair because the entity that awarded the contract is resolving the dispute. The procedure, however, has been upheld by the Colorado Court of Appeals on the theory that the process is a matter of contract freely entered into by the parties and that if one party objects to the process, it need not participate in the project.[194] That court also noted that similar provisions in federal contracts have been upheld.[195] The Colorado Supreme Court, in addressing these provisions noted also the strong public policy in favor of upholding arbitration and alternative dispute resolution contractual provisions as an additional reason for upholding these clauses.[196]

It thus appears that such dispute resolution provisions will continue to be upheld. Proposed contract language should be reviewed carefully to determine the existence and nature of dispute resolution provisions before a contract is executed.

See Chapter 21, "Arbitration and Mediation of Construction Disputes," for additional and general information on this topic.

NOTES

[1] Colo. Const. art. XX, § 10.
[2] C.R.S. § 32-7-111(1).
[3] C.R.S. § 32-7-113(1).
[4] *See Regional Serv. Auth. v. Board of County Comm'rs of Jefferson County*, 618 P.2d 1105 (Colo. 1980).
[5] C.R.S. § 43-4-502(1)(b). *See also* "The IGA: A Smart Approach for Local Governments," 29 *Colo. Law.* 73 (June 2000); "Cooperative Management of Urban Growth Areas Through IGAs," 29 *Colo. Law.* 85 (Nov. 2000).
[6] C.R.S. § 30-11-101(d).
[7] C.R.S. § 30-11-103.
[8] C.R.S. § 30-11-107.
[9] *Id.*
[10] C.R.S. § 30-11-107(1)(aa).
[11] C.R.S. § 30-20-301(1).
[12] C.R.S. § 30-20-301(2).
[13] C.R.S. § 30-20-302.
[14] C.R.S. § 30-20-503(3).
[15] C.R.S. § 30-20-503(3).
[16] C.R.S. § 30-20-512(1).
[17] C.R.S. § 30-20-512(1)(d).
[18] *Id.*
[19] C.R.S. § 30-20-603(1)(a); *see also* C.R.S. § 30-20-512.5.
[20] C.R.S. § 30-20-603(1)(b).
[21] C.R.S. § 30-20-622(1).
[22] *Id.*
[23] C.R.S. § 30-20-622(2).
[24] C.R.S. § 30-20-623.
[25] C.R.S. § 31-1-101(2).
[26] C.R.S. § 31-1-101(13).
[27] C.R.S. § 31-1-204.
[28] C.R.S. § 31-4-101.
[29] C.R.S. § 31-4-102(2).
[30] C.R.S. §§ 31-4-210, *et seq.*
[31] C.R.S. § 31-4-301.
[32] Colo. Const. art. XX, § 6.
[33] *City and County of Denver v. Sweet*, 329 P.2d 441, 445 (Colo. 1958); *Town of Avon v. Weststar Bank*, 151 P.3d 631 (Colo. 2006).
[34] *Fraternal Order of Police v. City and County of Denver*, 926 P.2d 582, 587 (Colo. 1996).
[35] *U.S. West Communications, Inc. v. City of Longmont*, 924 P.2d 1071, 1077 (Colo. App. 1995), *aff'd*, 948 P.2d 509.
[36] *City and County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).
[37] *City and County of Denver v. Board of Assessment Appeals*, 30 P.3d 177 (Colo. 2001).
[38] *Roosevelt v. City of Englewood*, 492 P.2d 65, 70 (Colo. 1971); *Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs*, 575 P.2d 835, 840 (Colo. 1978).
[39] *See Century Elec. Service & Repair v. Stone*, 564 P.2d 953 (Colo. 1977); *Heron v. City of Denver*, 283 P.2d 647 (Colo. 1955).
[40] Colo. Const. art. XX, § 6.
[41] Colo. Const. art. XIV, § 16(3).
[42] Colo. Const. art. XIV, § 16(4).
[43] C.R.S. § 31-15-101.
[44] C.R.S. §§ 31-15-701, -702, and -711.
[45] C.R.S. § 31-15-707.

[46] C.R.S. §§ 31-25-101, *et seq.* (Urban Renewal Law).
[47] C.R.S. §§ 31-25-105(1)(a) and (1)(b).
[48] C.R.S. § 31-25-109.
[49] C.R.S. §§ 31-25-801, *et seq.* (Downtown Development Authority).
[50] C.R.S. § 31-25-803.
[51] C.R.S. § 31-25-808.
[52] C.R.S. § 31-25-502.
[53] C.R.S. § 31-25-516(1).
[54] *Id.*
[55] *Id.*
[56] C.R.S. § 31-25-516(2).
[57] C.R.S. § 31-25-518.
[58] C.R.S. § 31-25-602.
[59] C.R.S. § 31-25-611.
[60] C.R.S. § 31-25-611(d).
[61] *Id.*
[62] C.R.S. § 31-25-1202.
[63] C.R.S. § 31-25-1212.
[64] C.R.S. § 31-25-1213.
[65] C.R.S. §§ 32-1-101, *et seq.* (Special District Act).
[66] C.R.S. § 32-1-103(20).
[67] C.R.S. § 32-1-1001.
[68] C.R.S. § 32-1-1001(j).
[69] C.R.S. § 32-1-1101.
[70] *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995); *Haggerty v. Poudre Health Services Dist.*, 940 P.2d 1105 (Colo. App. 1997).
[71] *See* C.R.S. §§ 32-1-1002 through -1008.
[72] C.R.S. §§ 32-8-101, *et seq.*
[73] C.R.S. §§ 32-9-101, *et seq.*
[74] C.R.S. §§ 32-10-101, *et seq.*
[75] C.R.S. §§ 32-11-101, *et seq.*
[76] C.R.S. §§ 32-13-101, *et seq.*
[77] C.R.S. §§ 32-14-101, *et seq.*
[78] C.R.S. §§ 32-15-101, *et seq.*
[79] C.R.S. §§ 32-12-101, *et seq.* (Rail District Act of 1982).
[80] C.R.S. § 32-15-106(2)(b).
[81] C.R.S. § 32-15-120.
[82] C.R.S. §§ 43-4-501 and -502.
[83] C.R.S. §§ 43-4-601, *et seq.* (Rural Transportation Authority Law).
[84] C.R.S. § 24-93-104(1).
[85] C.R.S. § 24-93-103(1).
[86] C.R.S. § 24-93-103(4).
[87] C.R.S. § 24-93-105.
[88] *Id.*
[89] C.R.S. § 24-93-105(2).
[90] C.R.S. § 24-93-106.
[91] C.R.S. § 24-93-106(1).
[92] C.R.S. § 24-93-106(3).
[93] C.R.S. § 24-93-106(2).
[94] C.R.S. § 24-93-106(6).
[95] C.R.S. § 24-93-108.
[96] C.R.S. § 30-20-1103(1).
[97] C.R.S. § 30-20-1103(8).
[98] C.R.S. § 30-20-1106.
[99] C.R.S. § 30-20-1106(2).

[100] C.R.S. §§ 30-20-1106(4) and -1108.
[101] C.R.S. § 31-25-1303(1).
[102] C.R.S. § 32-1-1803(1).
[103] *See* C.R.S. §§ 24-92-101, *et seq.* (Construction Bidding for Public Projects Act).
[104] C.R.S. § 24-92-104(3).
[105] C.R.S. § 31-1-101(6).
[106] C.R.S. § 31-1-101(2), (13).
[107] C.R.S. § 31-15-712.
[108] *City of Colorado Springs v. Coray*, 139 P. 1031, 1033 (Colo. App. 1914).
[109] C.R.S. § 31-15-712.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] C.R.S. § 31-1-101.
[114] C.R.S. § 31-1-101(2).
[115] *Id.*
[116] C.R.S. § 31-1-101(6).
[117] C.R.S. § 31-25-516(1).
[118] C.R.S. § 31-25-516(2).
[119] C.R.S. § 31-25-611(d).
[120] C.R.S. §§ 29-1-701, *et seq.*
[121] C.R.S. § 29-1-703(1).
[122] C.R.S. § 32-1-1001(d)(I).
[123] *Id.*
[124] *Id.*
[125] C.R.S. § 32-1-1001(d)(II).
[126] C.R.S. § 22-32-110(1)(b).
[127] *See Williams v. Board of Educ. of East Otero School Dist. R-1*, 749 P.2d 472 (Colo. App. 1987).
[128] C.R.S. § 24-92-102(6).
[129] *Coray*, 139 P. at 1036.
[130] *Id.*
[131] *City of Denver v. Dumars*, 80 P. 114, 117 (Colo. App. 1904); *McNichols v. City of Denver*, 274 P.2d 317, 321 (Colo. 1954).
[132] *Heritage Pools, Inc. v. Foothills Metro. Rec. and Park Dist.*, 701 P.2d 1260, 1263 (Colo. App. 1985).
[133] C.R.S. §§ 24-92-103(6) and 24-103-202(6).
[134] C.R.S. § 24-103-202(6).
[135] *Powder Horn Constructors, Inc. v. City of Florence*, 754 P.2d 356, 363 (Colo. 1988).
[136] *Id.*
[137] *Id.* at 365.
[138] *Id.* (emphasis added).
[139] *Diede Constr., Inc. v. Monterey Mech. Co.*, 22 Cal. Rptr. 3d 763 (Cal. App. 2004).
[140] *Id.*
[141] *City of Cheyenne v. Reiman Corp.*, 869 P.2d 125 (Wyo. 1994); *J. D. Graham Constr., Inc. v. Pryor Public Schs.*, 854 P.2d 917 (Okla. App. 1993).
[142] *Moon Lake Elec. Ass'n, Inc. v. Ultrasystems W. Constructors, Inc.*, 767 P.2d 125 (Utah App. 1988).
[143] *James Cape & Sons Co. v. Mulcahy*, 672 N.W.2d 292 (Wis. App. 2003).
[144] *Ewy v. Sturtevant*, 962 P.2d 991, 995 (Colo. App. 1998); *L & M Enters., Inc. v. City of Golden*, 852 P.2d 1337, 1339 (Colo. App. 1993); *Intermountain Sys. v. Gore Valley & Big Horn Water Dists.*, 654 P.2d 872 (Colo. App. 1982).
[145] *Picone/McCullagh v. Miele*, 724 N.Y.S.2d 473 (N.Y.A.D. 2001).
[146] *L & M Enters., Inc.*, 852 P.2d at 1339.
[147] *Ewy*, 962 P. at 995; *Intermountain Sys.*, 654 P.2d at 872.

[148] C.R.S. § 24-93-108.
[149] C.R.S. § 30-20-1108.
[150] C.R.S. § 24-93-103(3).
[151] C.R.S. § 30-20-1103(3).
[152] C.R.S. § 38-26-105.
[153] C.R.S. § 38-26-106.
[154] C.R.S. § 24-105-201.
[155] C.R.S. § 24-91-103.5.
[156] C.R.S. § 24-91-103.6(2).
[157] C.R.S. § 24-91-103.5(1)(b).
[158] C.R.S. § 13-50.5-102(8).
[159] *Id.*
[160] *Id.*
[161] C.R.S. § 24-91-103.
[162] *Id.*
[163] C.R.S. § 24-91-102(3).
[164] C.R.S. § 24-91-103(1).
[165] C.R.S. § 24-91-104.
[166] C.R.S. § 24-91-105.
[167] C.R.S. § 24-91-102(1).
[168] *Southway Constr. Co. v. Adams City Serv.*, 458 P.2d 250 (Colo. 1969); *Continental Cas. Co. v. Rio Grande Fuel Co.*, 119 P.2d 618 (Colo. 1941).
[169] C.R.S. § 38-26-107.
[170] *Id.*
[171] *Id.*
[172] C.R.S. § 38-26-107(1).
[173] *Id.*
[174] C.R.S. § 38-26-107(3).
[175] C.R.S. § 38-26-107(1).
[176] *South-Way Constr. Co., Inc.*, 458 P.2d at 251.
[177] *Western Metal Lath v. Acoustical and Constr. Supply, Inc.*, 851 P.2d 875, 878-79 (Colo. 1993).
[178] *Colorado Crane & Hauling v. McKee, Inc.*, 761 P.2d 792 (Colo. App. 1988).
[179] *Continental Cas. Co. v. Rio Grande Fuel Co.*, 119 P.2d 618, 621 (Colo. 1941).
[180] C.R.S. § 38-22-127.
[181] C.R.S. § 29-1-110.
[182] C.R.S. § 29-1-102(13).
[183] *Shannon Water and Sanitation Dist. v. Norris and Sons Drilling Co.*, 477 P.2d 476, 478 (Colo. App. 1970).
[184] *Id.*
[185] *Normandy Estates Metro. Rec. Dist. v. Normandy Estates Ltd.*, 553 P.2d 386, 389 (Colo. 1976).
[186] *F.J. Kent Corp. v. Town of Dillon*, 648 P.2d 669 (Colo. App. 1982).
[187] C.R.S. § 24-91-102(3).
[188] C.R.S. § 24-91-103.6(1).
[189] C.R.S. § 24-91-103.6(2).
[190] C.R.S. § 24-91-103.5(1)(b).
[191] C.R.S. § 24-91-103.6(3).
[192] *Id.*
[193] C.R.S. § 24-91-103.6(5).
[194] *Kiewit W. Co. v. City & County of Denver*, 902 P.2d 421, 424 (Colo. App. 1994).
[195] *Id.*
[196] *City and County of Denver v. District Court*, 939 P.2d 1353, 1362 (Colo. 1997).