University of Colorado

Boulder | Colorado Springs | Denver | Anschutz Medical Campus

PROCUREMENT RULES

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UNIVERSITY OF COLORADO
PROCUREMENT RULES

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UNIVERSITY OF COLORADO PROCUREMENT RULES

SECTION I INTRODUCTION

Pursuant to Section 24-101-105 of the **C.R.S.**, on January 20, 2005, the Board of Regents adopted a resolution exempting the University of Colorado from the State of Colorado Procurement Code and Rules to be effective July 1, 2005.

SECTION II AUTHORITY & DELEGATION

A. Authority for the Procurement of Goods and Services

The Constitution and statutes of the State of Colorado vest the supervision of the University in the Board of Regents, which includes the authority for **Procurement**. The Board of Regents has delegated to the President the administration of the University pursuant to its policies, including the authority for **Procurement**, and to delegate that authority to other University officials. Upon the effective date of these Procurement Rules (Rules), all **Procurement** authority of the President of the University shall be delegated to the University Associate Vice President/Chief Procurement Officer. The Associate Vice President/Chief Procurement Officer may further delegate his/her authority to persons in University departments for the efficient operation of the University. The Associate Vice President/Chief Procurement Officer is the only person authorized to purchase **Goods** and **Services** for the University, unless such specific delegation of authority is made to another employee. Since no rules can cover all eventualities, exceptional cases will be resolved as circumstances and prudent business practices warrant. No employee of the University is empowered to incur any obligation or make any commitment on behalf of the University for the **Procurement** of **Goods** or **Services**, except as provided under these Rules.

Consistent with the provisions of these Rules, the Associate Vice President/Chief Procurement Officer may adopt operational procedures governing the internal **Procurement** functions of the University, including purchases at the department level using the University's procurement card and purchase orders totaling $10,000 or less.

Under these Rules, the Procurement Department is the final authority at the University for the selection of suppliers and the sole authority for the commitment of University funds with respect to the **Procurement** of **Goods** and **Services**.

B. Authority for the Procurement of Construction

Procurement authority for **Construction** is a shared endeavor between a **Campus Facilities Department** and the University Procurement Department. The **Campus Facilities Department** will lead this endeavor through the campus Office of the State Architect/State Building Program Delegate (**OSA Delegate**). C.R.S. § 24-101-105 does not extend the authority to opt out of all state statutes governing capital construction procurement and contracting. The Colorado Department of Personnel and Administration, State Buildings Programs (SBP), retains authority over many aspects of capital construction at institutions of higher education. The SBP, through the Office of the State Architect (OSA), has substantially delegated its authority to an **OSA Delegate** at each University campus. To the extent that the State Purchasing Code and Rules govern construction procurement and contracting, the University follows those authorities consistent with its delegated authority. The **Campus Facilities Department** is responsible for conducting and managing all construction and professional services supplier selection processes (as that term is defined in C.R.S. 24-30-1402(6)), under the delegated authority and assistance of the Procurement Department to ensure compliance with the applicable federal, state and University procurement laws and rules.

The Associate Vice President/Chief Procurement Officer may, from time to time, amend these Rules.

SECTION III PURPOSE

These Rules are designed to support and facilitate the educational, research, and public service missions of the University through the acquisitions of **Goods, Services**, and **Construction** by applying best methods and business practices that provide for public confidence in the University.

Within the context of the University environment, these Rules ensure a **Procurement** process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the **Procurement** process, and uniform **Procurement** procedures.

SECTION IV APPLICABILITY

A. General Applicability

These Rules apply to all purchases of **Goods, Services**, and **Construction** regardless of funding source**.**

B. Exclusions

These Rules do not apply to the following situations:

1. No University funds are expended or the **Contract** is **Revenue-Producing**. The University shall maximize the return to the University when **Revenue-Producing Contracts** are involved. However, in the case of **Revenue-Producing Contracts** for which the University is considering more than one supplier, the Procurement Department will conduct a competitive **Solicitation**.
2. Numbering preserved.
3. The **Procurement** is between the University and a **Public Entity**.
4. The **Procurement** is for **Services** provided by architects, engineers, landscape architects, industrial hygienists and land surveyors. (See **C.R.S.** §§ 24-30-1401 through 24-30-1407.)
5. A supplier's item is to be procured for **Resale**.
6. The **Procurement** of **Services** from a specific supplier is necessary to comply with the specific terms and conditions of a sponsored project grant or contract.
7. The **Procurement** is for the lease, sale, purchase, transfer, disposal or any other transaction involving an interest in real property.
8. The **Procurement** is for an employment contract.
9. The Procurement is for insurance policies and/or benefits for the University and its employees.
10. The Procurement is for a Standard Sole Source.

SECTION V ETHICS

A. Conflict of Interest

The University of Colorado Administrative Policy Statement "Conflicts of Interest and Commitment in Research and Teaching" defines the processes to be followed in articulating and resolving conflicts of interest at the University. When the Procurement Department or **Campus Facilities Department** has reason to believe that a conflict of interest may exist in the **Procurement** of **Goods**, **Services**, or **Construction** it will direct the affected department to comply with the procedures described in this policy.

B. Code of Ethics

All parties involved in the negotiation, performance, or administration of University **Contracts** are bound to act in good faith. Any person employed by the University who purchases **Goods, Services**, or **Construction** or is involved in the **Procurement** process for the University, shall be held to the highest degree of trust and shall be bound to the University of Colorado Procurement Code of Ethics included with these Rules as Appendix A.

C. Supplier Shows

Supplier shows, which include open houses, product exhibits, or product demonstrations, must be approved in advance by the Associate Vice President/Chief Procurement Officer in order to:

- protect the integrity of the University's **Procurement** process;
- protect the viability of University-wide price agreements; and
- ensure fairness to all suppliers.

The sponsoring University department shall notify the Associate Vice President/Chief Procurement Officer as far in advance as possible but at least ten (10) business days prior to the supplier show. A supplier show is a product demonstration or exhibit to which more than one University department is invited by a supplier for the purposes of marketing **Goods**, **Services**, or **Construction**. A product or equipment demonstration to a single University department is not a supplier show. The Associate Vice President/Chief Procurement Officer has the final authority to determine what constitutes a supplier show.

SECTION VI PROCUREMENT METHODS

A. General Solicitation Rules

1. Solicitation Policy

It shall be the policy of the University to purchase **Goods, Services**, and **Construction** in a manner that affords suppliers a fair and equal opportunity to compete. **Solicitations** should only be issued when there is a valid **Procurement** need. **Solicitations** should not be issued to obtain estimates or to "test the water."

2. Solicitation Thresholds

a. $10,000 or less – campus departments have **Procurement** authority;

b. $10,001 through $250,000 – purchases of **Goods**, **Services, and Construction** are processed at the discretion of the **Purchasing Agent**, and may require the campus department to obtain informal price quotes documented through the requisition process**;** for federally funded purchases, competition is required for all purchases totaling more than the Federal Uniform Guidance micro-purchase threshold;

c. $250,001 through $499,999– competition for **Goods**, **Services**, and **Construction** is sought via the **Documented Quote** or other approved **Procurement** process. For **Construction**, competition may also be obtained through a **Standing Order Contractor** (SOC), **Job Order Contracting** (JOC) process, or another internal sealed quote process;

d. $500,000 and greater – competition for **Goods**, **Services**, and **Construction** is sought via the **Invitation for Bids**, **Request for Proposals**, or **Invitation to Negotiate** process. A **Request for Qualifications** may be used to prequalify suppliers prior to a competitive **Solicitation** being issued.

3. Solicitation Notification

An electronic **Solicitation** notification system is the required method for advertising competitive **Solicitations** for **Goods**, **Services**, and **Construction**. Other methods of notification may also be used at the discretion of the **Purchasing Agent**.

4. **Specifications**

a. **Purchasing Agents** shall issue **Goods** or **Service Specifications** which are not unduly restrictive. **Brand Name Specifications, Brand Name** or **Equal Specifications**, or **Qualified Products Lists** may be used in competitive **Solicitations**. Furthermore, **Brand Name Specifications** shall only be used in accordance with Section VI.E.1. on **Sole Source Procurements**. When appropriate, **Specifications** issued and/or used by the Federal government, other **Public Entities**, or professional organizations may be referenced by the University. Suppliers may be required to certify that these standardized **Specifications** have been met.

b. For **Construction Specifications**, products may be described as a Basis of Design. Basis of Design shall define the performance requirements only and not the Brand Name.

c. Prospective suppliers may be prequalified for specific **Goods**, **Services**, and **Construction**. The prequalification may be for up to five years or for one year with multiple one- year options for renewal as defined in the **Solicitation**. Prequalification for periods in excess of five years require the written approval of the Associate Vice President / Chief Procurement

Officer or their designee.

5. Solicitation Conferences

Solicitation conferences may be conducted to explain **Procurement** requirements. They shall be announced in the **Solicitation**. The conference should be held long enough after the **Solicitation** has been issued to allow suppliers to become familiar with it but with adequate time before the **Solicitation** due date to allow suppliers consideration of the conference results in preparing their **Quotes/Bids/Proposals**.

Nothing stated at the conference shall change the **Solicitation** unless a change is made by written amendment, posted on the electronic **Solicitation** notification system.

6. Addendums to **Solicitations**

Addendums to **Solicitations** shall be identified as such and may require that the suppliers acknowledge receipt of all addendums issued. Addendums shall be posted on the electronic **Solicitation** notification system with sufficient time to allow suppliers to consider them in preparing their **Quotes / Bids / Proposals**. If the due date set will not permit such preparation, the due date shall be extended.

7. Solicitation Receipt, Opening & Recording

a. Receipt

Each response shall show the date and time of receipt. Responses to competitive **Sealed Solicitations** shall be submitted via the electronic Solicitation notification system; the system shall not allow the viewing of or opening of responses until the due date and time if a Sealed Solicitation. Acceptance of responses submitted by means other than through the electronic Solicitation notification system shall be on a case-by-case basis and shall require a written Determination.

b. Opening and Recording

Competitive **Sealed Solicitation** openings shall be conducted using the electronic Solicitation system. Responses shall be opened and archived within the electronic Solicitation system.

c. Confidential Data

Confidential information includes, but is not limited to, trade secrets, privileged information, and confidential commercial and financial information furnished by the supplier and which may be withheld from inspection by the University pursuant to the Colorado Open Records Act, **C.R.S.** § 24-72-2043(3)(A)(IV). The supplier may submit written requests for confidentiality to the **Purchasing Agent** pursuant to the **Solicitation** terms and conditions. Neither a response in its entirety nor price information will be considered confidential information.

(i) The **Purchasing Agent** shall determine the validity of any written requests for confidentiality and shall provide a written **Determination** of the findings to the supplier if the University disagrees with the request for confidentiality.

(ii) If the **Purchasing Agent** and the supplier do not agree upon the nondisclosure of confidential information, the supplier may withdraw its response. After **Award**, all responses shall be open to public inspection with the exception of confidential information.

d. Withdrawals of Responses & Mistakes in Responses

(i) Withdrawal of Responses Prior to Due Date and Time

Any responses may be withdrawn prior to the specified due date and time from

the offeror via the electronic Solicitation notification system.

(ii) Withdrawal of Responses after Due Date and Time but Prior to **Award**
The Associate Vice President/Chief Procurement Officer may allow a response to be withdrawn after the specified due date and time but prior to **Award,** provided:

(a) the supplier provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or

(b) the mistake is clearly evident on the response; or

(c) it is found by the Associate Vice President/Chief Procurement Officer unconscionable not to allow the response to be withdrawn.

(iii) Mistakes

(a) Confirmation of Response
When it appears from a review of the response that a mistake has been made, the supplier will be asked to confirm the response. Situations in which confirmation should be requested include apparent errors or a price unreasonably lower than other submitted prices. Upon acknowledgment that an error was made, the supplier may have its response considered as-is or may withdraw its response if the conditions set forth in this section are met.

(b) Minor Informalities
Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other suppliers; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The **Purchasing Agent** may waive such informalities or allow the supplier to correct them depending on which is in the best interest of the University.

(c) **Determinations** Required
Any decision to permit or deny correction or withdrawal of a response under this section shall be supported by a written **Determination** prepared by the **Purchasing Agent**.

e. Evaluation and **Award**
All responses shall be evaluated as outlined in the **Solicitation**. The **Purchasing Agent** shall ensure that the **Award** decision treats all suppliers equitably.

(i) The **Purchasing Agent** shall make purchases from, and **Award Contracts** to, **Responsible** suppliers only.

(ii) Tie **Quotes/Bids**.
If tie **Quotes/Bids** are **Responsive Quotes/Bids** from **Responsible** suppliers that are identical in price, terms, and conditions and which meet all the requirements and criteria set forth in the **Solicitation** then the **Purchasing Agent** shall flip a coin in the presence of another person to determine the **Awarded** supplier, unless a Federal regulation requires a different tie breaker process.

8. Cancellation of **Solicitations**

a. Reasons for Cancellations
Any **Solicitation** may be cancelled in whole or in part at any point in the process when it is in the best interest of the University as determined by the Associate Vice President/Chief Procurement Officer or designee. Approval to cancel will be obtained

from the Associate Vice President/Chief Procurement Officer prior to cancellation. The reason(s) for doing so shall be made part of the file and may include the following:

i. the University no longer requires the **Goods**, **Services**, or **Construction**;
ii. the University no longer can reasonably expect to fund the **Procurement**;
iii. proposed amendments to the **Solicitation** would be of such magnitude that a new **Solicitation** is desirable;
iv. ambiguous or otherwise inadequate **Specifications** were part of the **Solicitation**;
v. the **Solicitation** did not provide for consideration of all factors of significance to the University;
vi. prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;
vii. all otherwise **Acceptable Bids** or **Proposals** received are at clearly unreasonable prices;
viii. the University has reason to believe that the **Bids** or **Proposals** may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all suppliers that submitted **Bids** or **Proposals**; or
ix. the number of responses is not sufficient to ensure **Adequate Competition**.

b. Notice

When a **Solicitation** is cancelled, notice of cancellation shall be posted on the electronic **Solicitation** notification system to notify all suppliers. The reason for cancellation or rejection shall be made a part of the **Procurement** file.

c. Disposition of **Bids** or **Proposals**

When **Bids** or **Proposals** are rejected, or a **Solicitation** is cancelled after **Bids** or **Proposals** are received, the **Bids** or **Proposals** which have been submitted shall be retained in the **Procurement** file.

B. Procurement Procedures for Purchases totaling less than $500,000

Procurements shall not be artificially divided so as to constitute small-dollar purchases as defined under this section. All purchases, including small-dollar purchases, are subject to the requirement that prices paid be fair and reasonable (**C.R.S.** §24-30-202(2)).

1. Small-Dollar Purchases – Purchases totaling $10,000 or less

The University has developed mechanisms for the purchase of most **Goods**, **Services**, and **Construction** totaling $10,000 or less.

a. Small Dollar Purchase Order

(i) University departments may issue purchase orders for purchases totaling $10,000 or less; this is the preferred option for small-dollar purchases.

b. Procurement Card

The University procurement card may be used for purchases totaling $5,000 or less when a purchase order is not an option. Exceptions up to $10,000 may be granted on a limited basis with approval from the campus Controller.

2. Purchases totaling $10,001 through $250,000

Purchases totaling $10,001 through $250,000 are processed at the discretion of the

Purchasing Agent and may require the campus department to obtain informal price quotes documented through the requisition process; for federally funded purchases, competition is required for all purchases totaling more than the Federal Uniform Guidance micro-purchase threshold.

3. Purchases totaling $250,001 through $499,999

a. **Documented Quote**

Purchases totaling $250,001 through $499,999 may be purchased using the **Documented Quote** or other approved **Procurement** process. For **Construction**, competition may also be obtained through a **Standing Order Contractor** (SOC), **Job Order Contracting** (SOC) process, or another internal sealed quote process;

b. For **Goods**, **Services**, and **Construction Procurements**, neither the **Solicitation** nor the supplier's response constitutes an "offer"; therefore, **Responsiveness** at the time of receipt is not an absolute criterion. The **Purchasing Agent** will determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely the price. "Acceptable" means that the **Goods** or **Services** will meet the University's needs and that the price is fair and reasonable. The ensuing purchase order shall constitute an offer. The supplier may accept by performance, unless the purchase order expressly requires acceptance by written acknowledgment.

c. The choice of supplier for **Goods**, **Services**, and **Construction** must be based on which acceptable response is most **Advantageous** to the University, with price/cost being a consideration. The basis for the selection must be documented and will be final.

d. **Documented Quotes** must be advertised in accordance with Section VI.A.3. **Solicitations** must remain posted for at least three working days unless the Associate Vice President/Chief Procurement Officer provides a **Determination** that a lesser time is required in order to meet an immediate University need.

e. The **Purchasing Agent** may negotiate with any supplier to clarify its **Quote** or to effect modifications that will make the **Quote** acceptable or make the **Quote** more **Advantageous** to the University. However, in the negotiation process, the terms of one supplier's **Quote** shall not be revealed to a competing supplier, and all **Quotes** will be kept confidential until a purchase order is issued.

f. **Quotes** shall be submitted via the electronic **Solicitation** notification system. Acceptance of quotes through means other than the electronic **Solicitation** notification system shall be on a case-by-case basis and shall require a written Determination.

g. **Competitive Reverse Auctions**. **Contracts** for **Goods** and **Services** may be awarded by **Competitive Reverse Auctions** if the **Purchasing Agent** determines that **Adequate Competition** can be achieved.

C. Procurement Procedures for Purchases totaling $500,000 or more

1. Invitation for Bids

a. Use of **Invitation for Bids**

Invitation for Bids is a method of **Procurement** which results in a **Contract** being **Awarded** to the lowest **Responsive Bid** from a **Responsible** bidder based on the **Specifications** set forth in the **Solicitation**. Typical reasons why an **IFB** may be used include:

(i) the **Award** will be made on the basis of price; or

(ii) it is not necessary to conduct negotiations with the responding bidders about their

Bids.

b. **Solicitation** Time
The minimum time for the **IFB** opening date shall be not less than fourteen (14) calendar days after posting **Solicitations** on the electronic **Solicitation** notification system. When special requirements or conditions exist, the Associate Vice President/Chief Procurement Officer may shorten the **IFB** time but in no case shall the time be shortened in order to reduce competition. **Solicitation** periods of less than fourteen (14) calendar days shall be documented as to why a reduced **IFB** period was required.

c. **Advertisement**
IFBs must be advertised in accordance with Section VI.A.3. Late responses received after the due date and time shall not be allowed. Responses received after the due date and time due to uncontrollable circumstances will be evaluated on a case-by-case basis; acceptance of such responses will be at the sole decision of the University.

d. **IFB** Opening
All IFBs shall be opened and reviewed via the electronic Solicitation system. The name of each bidder, amount of **Bid**, delivery and other relevant information shall be entered into the record via the electronic Solicitation system and the record shall be available for public inspection. Other information related to a **Bid**, or a bidder's **Responsiveness**, may be withheld from inspection until questions concerning such information are resolved. After **Award**, all **IFB/Bid** documents, and a complete **Bid** analysis, shall be open to public inspection via Colorado Open Records Act, **C.R.S.** §§ 24-72-101 *et seq.,* except to the extent the University has approved a bidder's request that information be held confidential as set forth in Section VI.A.7.c.

e. **Award**
All **Goods** and **Services**, and **Construction** shall be evaluated for **Acceptability** against the **Specifications** and/or brand names used as a reference and other evaluation criteria as set forth in the **IFB**. Following determination of **Acceptability**, **Bids** shall be evaluated to determine which bidder offers the lowest costs to the University in accordance with the **Specifications**, taking into account any lifecycle cost formulas stated in the **IFB**.

f. Multi-Step **Sealed IFBs**
A multi-step **Sealed IFB** is a two-phase process. The technical first phase is composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the University. The second phase considers only those bidders whose technical offers were determined to be **Acceptable** during the first phase. At this time, their price **Bids** will be opened and considered. The process is designed to obtain the benefits of competitive **Sealed** bidding by **Award** of a **Contract** to the lowest **Responsive**, **Responsible** bidder, and at the same time obtain the benefits of the **Request for Proposals** procedure through the **Solicitation** of technical offers and the conduct of discussions to evaluate and determine the **Acceptability** of technical offers.

g. **Best Value Invitation for Bids**

(i) Use of **Best Value IFB**

A **Best Value IFB** is used where the **IFB** specifically allows for **Enhancements**, **Options**, and/or **Alternatives**. A **Best Value IFB** must include a **Base Bid** statement and, when used for **Construction**, shall be in accordance with C.R.S. §§ 24-92-103.5 and 24-92-103.7.

(ii) Written **Determination**

The **Purchasing Agent** shall provide a written **Determination** for approval to the Associate Vice President/Chief Procurement Officer prior to the use of a **Best Value IFB**. The written **Determination** must explain why the **Best Value IFB** is appropriate for the **Good** or **Service** being solicited. A written determination is not required for the procurement of **Construction**.

(iii) Evaluation
The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the **Enhancements, Options,** or **Alternatives**. Based on the evaluation of the cost of the **Base Bid**, the dollar value of **Enhancements, Options,** or **Alternatives**, and the **Determination** of which best meet the needs of the University, an **Award** shall be made to the bidder providing the **Best Value** to the University. For **Construction,** the criteria shall be those in C.R.S. § 24-92-103.5(3).

h. Competitive Reverse Auctions
Contracts for **Goods** and **Services** may be **Awarded** by **Competitive Reverse Auctions** if the **Purchasing Agent** determines that **Adequate Competition** can be achieved.

2. Request for Proposals

a. Use of **Request for Proposals**
Request for Proposals (RFP) will be used for the **Solicitation** of competitive **Sealed Proposals** $500,000 or more which are evaluated on the basis of factors that include but are not limited to price. Evaluations shall be based on the factors set forth in the **RFP** in order to determine which **Proposal(s)** best meet(s) the needs of the University.

(i) Evaluation Committee
A committee of no less than three individuals shall evaluate all **Responsive Proposals.**

b. **Solicitation** Time
RFPs will be open for a minimum of thirty (30) calendar days unless a shortened time frame is approved in writing by the Associate Vice President/Chief Procurement Officer.

c. Advertisement
RFPs will be advertised in accordance with Section VI.A.3.

d. Late Responses
Responses received after the due date and time shall not be allowed. Responses received after the due date and time due to uncontrollable circumstances will be evaluated on a case-by-case basis; acceptance of such responses will be at the sole decision of the University.

3. Invitation to Negotiate

a. Use of **Invitation to Negotiate**
Invitation to Negotiate (ITN) will be used for the **Solicitation** of competitive **Sealed Proposals** $500,000 or more to determine the best method for achieving a specific goal or solving a particular problem. Through the **ITN**, the University will identify one or more responsive suppliers with which the University may negotiate to determine the response that is most advantageous to the University. Unless otherwise specified, the rules under **Request for Proposals** shall apply to **Invitations to Negotiate**.

b. Negotiations and Award
(i.) The **ITN** will describe which items can be negotiated and which are non-negotiable.

Through the evaluation process, the University will determine the competitive range of responses reasonably susceptible of award, the University, at its discretion, may hold discussions with any or all responsive suppliers who submit responses for the purpose of clarification to ensure understanding of the **Solicitation** requirements and the supplier's response. Suppliers shall be accorded fair and equal treatment. The evaluation, including the results of any discussions, shall result in the determination of a competitive range of responses reasonably susceptible of award.

(ii.) The University shall commence negotiations with those suppliers whose responses are determined to be in the competitive range. The University may discontinue negotiations with a supplier if the University determines that the response is no longer reasonably susceptible of award. The purpose of negotiations is to facilitate a **Contract** that will be most advantageous to the University, taking into consideration cost and the other evaluation factors set forth in the **ITN**.

(iii.) The committee(s) established to evaluate the responses and negotiate with suppliers whose proposals are in the competitive range shall make a recommendation to the **Purchasing Agent**. If the **Purchasing Agent** approves the recommendation, an award shall be made in accordance with the recommendation.

(iv.) The award shall be made to the responsible supplier whose response is determined in writing to be the most advantageous to the University, taking into consideration the price and evaluation factors set forth in the **ITN** and the result of negotiations. No other factors or criteria shall be used in the evaluation. The **Procurement** record shall contain the basis on which the award was made and why the award provides the best value to the University.

D. Competitive Negotiation

Contracts may be awarded by **Competitive Negotiation**

1. A **Contract** may be awarded by **Competitive Negotiation** after an unsuccessful **Invitation for Bids** or **Request for Proposals** process if the Associate Vice President/Chief Procurement Officer or **OSA Delegate** determines that time does not permit re-solicitation.

2. An **Invitation for Bids** or **Request for Proposals** process is unsuccessful if:
   a. all offers received are unreasonable or uncompetitive;
   b. the low **Bid** exceeds available funds, as certified in writing by the appropriate fiscal officer;
   c. the **Solicitation** has been properly cancelled in accordance with the provisions of Section VI.A.8; or
   d. the number of **Responsive** offers is not sufficient to ensure **Adequate Competition**.

3. The **Competitive Negotiation** process shall include all suppliers who responded to the **Solicitation** or any rebid and may include other suppliers capable of fulfilling the University's needs.

4. The Procurement Department may set reasonable times and locations for participation in the **Competitive Negotiation**, reflecting the fact that time constraints are the basis for the **Competitive Negotiation** process.

5. Each supplier with whom the Procurement Department negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each supplier, and in no case shall the terms of any supplier's offer be communicated to any other supplier until an intent to award notice has been issued. Any

change in requirements shall be communicated to all suppliers.

6. A supplier may be eliminated from the process upon a **Determination** that its offer is not reasonably susceptible of being selected for **Award**.

7. The **Award** shall be made to the supplier whose offer is most **Advantageous** to the University. The Associate Vice President/Chief Procurement Officer shall make a written **Determination** that identifies the nature of the discussions with each supplier and that states why the selected offer is the most **Advantageous** to the University.

E. Exceptions to Competitive Solicitation Process

1. Sole Source Procurements

Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude the use of a competitive process. A **Sole Source Procurement** is justified when there is only one **Good**, **Service**, or **Construction** that can reasonably meet the need and there is only one supplier who can provide the **Good**, **Service**, or **Construction**. A requirement for a particular proprietary item (i.e., a **Brand Name Specification**) does not justify a **Sole Source Procurement** if there is more than one potential supplier for that **Good**, **Service**, or **Construction**. Price is not a consideration to justify a **Sole Source Procurement**. In cases of reasonable doubt, competition will be solicited.

a. Continuing Need for **Sole Source**

The Procurement Department shall take reasonable steps to avoid using **Sole Source Procurement** except in circumstances where it is both necessary and in the best interests of the University. The Procurement Department shall take action, whenever possible, to avoid the need to continue to procure the same **Goods, Services**, and/or **Construction** without competition.

b. **Sole Source Procurement** Procedures

(i) The requesting department shall submit the Procurement Department's electronic Sole Source Justification form along with any other pertinent information regarding the **Sole Source Procurement**; e.g. supplier quote, literature, etc.

(ii) The Procurement Department is the final authority for approval of **Sole Source Procurements** of **Goods and Services.** The **OSA Delegate** is the final authority of Sole Source Procurements of **Construction**.

(iii) The **Purchasing Agent** has a duty to negotiate the most favorable price, terms and conditions notwithstanding the **Sole Source** nature of the **Procurement**. The **Purchasing Agent** is required to make a written **Determination** that the price is fair and reasonable.

2. Emergency **Procurements**

a. Defined

When an emergency condition exists that prevents the use of a competitive **Procurement** method, the University may conduct a **Procurement** on an emergency basis. Emergency **Procurements** may be negotiated on a **Sole Source** or limited competition basis as dictated by the circumstances surrounding the emergency.

b. Determining Need for an Emergency **Procurement**

An emergency condition justifies the use of an emergency **Procurement** when that condition threatens one (1) or more of the following: (i) the functioning of the University,

or its programs; (ii) the preservation or protection of property; and/or (iii) the health or safety of any person(s) or animal(s). This includes, but is not limited to, immediate remediation of property damage, immediate restoration efforts to return real property to occupancy/usage standards.

Emergency **Procurements** do not include:

(i) **Procurements** that need to be rushed because of a failure to plan ahead;

(ii) end of the fiscal year **Procurements**; or

(iii) end of a grant/contract **Procurement**.

c. Authority to Make Emergency **Procurements**

The University may make emergency **Procurements** when an emergency condition arises and the need cannot be met through normal **Procurement** methods, provided that whenever **Practicable** and the purchase exceeds $250,000, approval by the Associate Vice President/Chief Procurement Officer shall be obtained prior to the **Procurement**. In the event that time is of the essence, the University department shall notify the Associate Vice President/Chief Procurement Officer on the next working day, or as soon as **Practicable**, if the purchase exceeds $250,000. If the Associate Vice President/Chief Procurement Officer determines that all criteria for an emergency **Procurement** were not met, then the **Procurement** will be processed as an **"After-the- Fact" Procurement** as set forth in Section VIII.

d. Limits of an Emergency **Procurement**

The emergency **Procurement** shall be limited to the **Procurement** of only the types of items and quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

e. Documentation

As soon as **Practicable**, the University department shall prepare a written justification, to be approved by the Associate Vice President/Chief Procurement Officer, that sets forth the justification for the emergency **Procurement**. The justification shall include the following:

(i) the basis for the emergency **Procurement** including the date the emergency first became known;

(ii) a listing of the **Goods, Services**, and/or **Construction** procured;

(iii) a description of the efforts made to ensure that **Proposals** or offers were received from as many potential suppliers as possible under the circumstances; and

(iv) the basis for the selection of the selected supplier.

f. Procedures

(i) The procedure used shall be selected to assure that the required **Goods**, **Services**, and/or **Construction** are procured in time to meet the emergency. Given this constraint, such competition as is **Practicable** shall be obtained.

(ii) Any acceptable form of **Solicitation** (e.g., written, electronically transmitted, phoned, etc.) may be used to obtain **Proposals** for an emergency **Procurement**.

3. University-wide Price Agreement(s) (UPA)

a. The Associate Vice President/Chief Procurement Officer may issue University-wide price agreements or for **Goods, Services**, or **Construction** for use by all University departments. Such UPAs may include, but are not limited to, University-initiated agreements, **Job Order Contracting**, **Standard Order Contracting**, or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the University's buying power.

b. UPA pricing is based on the University's overall anticipated volume of purchases during the agreement period. In order to assure the University of the least total cost of **Goods**, **Services**, or **Construction** all University departments are required to order needed **Goods**, **Services**, or **Construction** from UPAs where applicable.

c. The Procurement Department or **Campus Facilities Department** is responsible for publicizing all University-wide price agreements and for monitoring compliance.

4. Cooperative Purchasing Agreement(s)

a. The **Purchasing Agent** may approve a single purchase of **Goods, Services,** and **Construction** from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the University after confirming:

(i) the competitiveness of pricing under the contract; and

(ii) efficiencies and cost savings of using the contract in comparison to other **Procurement** methods; and

(iii) no conflict of interests exist with CU's existing suppliers, or with the Cooperative agreement itself; and

(iv) the active contract term covers the University's delivery of **Goods, Services**, and **Construction**; and

(v) the contract terms and payment methods are acceptable to the University.

b. The University may participate in, conduct, sponsor or administer a cooperative purchasing agreement. This includes, but is not limited to, agreements with any of the following:

(i) the Federal government or an agency or other instrumentality of the Federal government (for GSA schedule contracts, **Purchasing Agents** must confirm competition)

(ii) the State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;

(iii) a bi-state or multistate agency;

(iv) a county, municipal corporation, or other political subdivision of the State of Colorado or of another state, or an agency or other instrumentality of the political subdivision;

(v) other institutions of higher education or hospital affiliate; or

(vi) a cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximizing economies of scale when soliciting **Bids** or **Proposals**. An example of this is the Educational and Institutional Cooperative.

c. Use of cooperative agreements must include public procurement considerations and these Procurement Rules. This includes competitive procurement procedures, 5-year intervals on suppliers sourced under the cooperative agreement, source selection documentation and price reasonableness. The Associate Vice President/Chief Procurement Officer has final authority on the use of cooperative agreements and any suppliers sourced under the cooperative. Use of cooperative agreements for the day-to-day operation of the University shall follow the existing delegation of authority process found in Administrative Policy Statement (APS) 2005.

5. Agreements with Incumbent Suppliers

If it is determined to promote the best interests of the University, the University reserves the

right to negotiate the extension of existing agreement(s) with incumbent suppliers subject to approval from the Associate Vice President/Chief Procurement Officer.

F. Price Reasonableness and Cost Analysis

1. When there is no competition (such as a **Sole Source Procurement** or when only one response is received to a **Solicitation**) the **Purchasing Agent** must ensure that the price the University is paying is fair and reasonable. Additionally, Federal laws mandate that the University perform price cost analysis under certain conditions.
2. If, after analysis, the **Purchasing Agent** does not feel the price to be paid is fair and reasonable, he/she will do one of two things:
   a. seek competition; or
   b. negotiate with the supplier to lower the price.

G. Demonstration or Sample Agreements

Equipment requested by University departments from suppliers, or offered by suppliers to University departments, on a trial, loan, demonstration, or evaluation basis does not constitute a commitment to purchase said equipment. The University department shall be responsible for advising the supplier that, for purchases totaling over $10,000, a purchase order will be issued at the discretion of the **Purchasing Agent**, and that competitive **Procurement** procedures shall be used as required by University policies and procedures. If the supplier who loaned the equipment is the successful supplier, new equipment must be supplied unless otherwise specified.

All moving, handling, transportation, and applicable installation costs associated with the equipment of this nature are the sole responsibility of the supplier unless otherwise specified. The University will not incur any costs associated with equipment that is on trial, loaned, demonstrated, tested, or evaluated unless otherwise specified.

Any agreement which is required by the supplier shall be signed by the appropriate **Purchasing Agent**, regardless of the dollar value of the equipment.

H. Federal Funded Procurements

The University of Colorado will comply with OMB Circular A-110 Procurement Standards as defined in Subpart C-Post-Award Requirements, Sections .40 - .48 for all federal grant funded procurements, until July 1, 2016. Effective July 1, 2016, the University will comply with Procurement Standards as defined in 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards", Subpart D, Sections 200.318 - 200.326, for all federal grant funded procurements.

I. Waiver

Upon the recommendation of the Senior Director of Procurement & Sourcing, the Associate Vice President/Chief Procurement Officer may waive the requirements of this Section VI where the latter determines that such waiver is in the best interests of the University and comports with prudent and commercially reasonable business practices. Any such waiver shall be in writing and state the reason(s) it would be in the best interests of the University, consistent with prudent and commercially reasonable business practices, for the waiver to be granted. Such written notification shall be maintained in the Procurement file.

SECTION VII CONTRACTS

A. Categories

Procurement Contracts include expenditure contracts for **Goods**, **Services**, and/or **Construction** other than for Personal Services or Real Property leases/licenses and purchases. Subject to the limitations of this section, any type of **Contract** which will promote the best interests of the University may be used; except that the use of a cost-plus-a-percentage-of-cost **Contract** is prohibited. A **Cost-Reimbursement Contract** may be used only when a written **Determination** is made that such **Contract** is likely to be less costly to the University than any other type of **Contract** or that it is impracticable to obtain the **Goods**, **Services**, and/or **Construction** required unless the **Cost Reimbursement Contract** is used.

B. Content of Procurement Contracts

All Procurement Contracts shall meet the following content requirements:

1. General Provisions:

   a. Identification of parties;
   b. Statement of Work;
   c. Payment terms, including maximum dollar amount;
   d. Performance period;
   e. General terms and conditions;
   f. Signature page; and,
   g. Statement that the contract shall not be valid until all required approvals have been documented.

2. Specific Provisions:

   a. Indemnification by the University Prohibited. Unless specifically authorized by statute, the University shall not indemnify and/or hold harmless another Party against any liability incurred as a result of the acts or omissions of the University or its officers, employees or agents.

   b. Limitation of Supplier's Liability – Bodily Injury and Property Damage. The University shall not limit the supplier's liability for claims or damages arising out of bodily injury (including death) and damage to tangible property, if tangible risk is inherent in the nature of the contract.

   c. Limitation of Supplier's Liability – Other Types of Damages. The University may accept commercially reasonable limitations of liability and/or remedies provisions, i.e., the exclusion of consequential damages.

   d. Governing Law. The University shall not agree to be governed by the laws of any state other than Colorado. Any deviation from this requirement requires written approval from the Associate Vice Chancellor /Campus Controller or their designee.

   e. Arbitration Prohibited. The University shall not agree to any binding arbitration by any extra-judicial body or person. Any deviation from this requirement requires written approval from the Associate Vice Chancellor /Campus Controller or their designee.

   f. Governmental Immunity – Unless specifically authorized by statute, the University shall not waive governmental immunity.

C. Multi-Year Contracts

The Procurement Department may enter into multi-year **Contracts** for **Goods, Services,** or **Construction** subject to funding availability or the contract is terminable by the University at any time. **Contracts** for periods in excess of five years require the written approval of the Associate Vice President/Chief Procurement Officer or their designee.

D. Approved Procurement Contract Forms

All Procurement Contracts shall be in a form approved by the Associate Vice President/Chief Procurement Officer, who may approve additional forms at his or her sole discretion.

1. Model Contracts – The Associate Vice President/Chief Procurement Officer, in consultation with the Office of University Counsel, may adopt model contracts, as appropriate.
2. All **Construction** bidding and contracting procedures will utilize standard state forms, and contract documents, per the requirements of **OSA.**
3. Contract Amendments – Modifications to Procurement Contracts are generally made by a formal written amendment signed by the parties to the contract. In the situation where a contract has been established with an initial term followed by renewal terms, the renewal extension as well as changes in annual dollar amounts, rates and routine changes, such as changes in scope, may be made by issuance of a Purchase Order if allowed in the contract. Except in the case of contracts with renewals as described in the previous sentence, a contract cannot be amended or extended (revived) after the contract term has expired.

E. Procurement Contract Approvals

The President has final authority for all **Procurement Contracts**. No person may enter into a **Procurement Contract** on behalf of the University without delegation from the President or Chancellor as described in Administrative Procedure 2005 and any **Procurement Contract** executed without proper designation shall be deemed null and void unless it is ratified. The University shall obtain all required approvals and signatures and retain documentation thereof in its files for any period specified in the applicable University document retention policy.

No **Procurement Contract** is valid unless it has been approved as required by this rule. Any person who causes a contract to be executed in contravention to this may be personally liable for any obligation incurred thereby. **C.R.S. §**24-30-202(3).

Additional approvals are required as follows:

1. Contingency-Based **Contracts** require the approval of the Associate Vice President/University Controller and any other approvals deemed necessary by the Associate Vice President / University Controller. See **C.R.S**. §24-17-204
2. Debt Collection Services **Contracts** require the approval of the University Controller. See **C.R.S.** §24-30-202.4
3. Legal Services **Contracts** require the approval of the Vice President and University Counsel, on behalf of the State Attorney General or delegate.
4. Utility Cost-Savings **Contracts** require approval of the State Personnel director or delegate. See **C.R.S**. §24-30-2003(1)(b)

5. **Construction Contracts** require the signature of **OSA** or the **OSA Delegate**. See **C.R.S.** §24-30-1303(5)(a).

Associate Vice President/University Controller review and approval is required for all **Procurement Contracts** greater than $300,000 per year. The Associate Vice President/University Controller will review other **Contracts** as requested. The Associate Vice President/University Controller may delegate in writing authority to approve **Procurement Contracts** as required. Any such delegation is personal to the delegee and may not be further delegated.

The Associate Vice President/University Controller or delegee shall review **Procurement Contracts** greater than $300,000 per year to insure the expenditure:

- Is authorized by the fund to which it will be charged;
- Does not exceed the unencumbered balance of the fund;
- Complies with all applicable University policies;
- Is encumbered; and
- Form and Content of the contract are sufficient and appropriate for the parties and subject matter under applicable state and federal laws, and University policies.

SECTION VIII AFTER-THE-FACT (ATF) PURCHASES

All **After-the-Fact** purchases must be processed in accordance with the University of Colorado Fiscal Procedures 2-2.5. After-The-Fact Purchases.

SECTION IX DISPUTES & REMEDIES

A. Types of Disputes

The Associate Vice President/Chief Procurement Officer is authorized to settle and resolve any questions regarding:

1. Any protest concerning the **Solicitation** or **Award** of a **Contract**; and
2. Any controversy arising between the University and a **Contractor** by virtue of a **Contract** between them, including, without limitation, controversies based upon breach of **Contract**, mistake, misrepresentation, or any other cause for **Contract** modification or rescission.

B. Costs of Filing

All costs associated with filing and prosecuting a protest or **Contract** dispute shall be borne by the **Protestor/Contractor**.

C. Protests other than Contract Disputes

1. Filing of Protest

   a. Subject of Protest.

   Protestors may file a protest on any phase of a **Solicitation** or **Award** including, but not limited to **Specifications**, **Award**, or disclosure of information marked confidential in a **Solicitation** offer. Protests shall be submitted in writing within seven (7) working days after such aggrieved person knows or should have known of the facts giving rise thereto.

   b. Form

   The written protest shall include, at a minimum:

   (i) the name and address of the **Protestor**;

   (ii) appropriate identification of the **Procurement** by **Solicitation** number;

   (iii) a statement of the reasons for the protest; and

   (iv) any available exhibits, evidence, or documents substantiating the protest.

   c. To whom addressed

   The protest shall be addressed to the **Purchasing Agent**, Procurement Manager, Senior Director of Procurement and Sourcing or Associate Vice President/Chief Procurement Officer and sent to the Procurement Department in the Procurement Service Center.

2. Requested Information

   Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the **Purchasing Agent**, Procurement Manager, Senior Director of Procurement and Sourcing, or Associate Vice President/Chief Procurement Officer, the protest may be resolved without such information.

3. Decision

   The Associate Vice President/Chief Procurement Officer shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall be based on and limited to a review of the issues raised by the **Protestor** and shall set forth each factor taken into account in reaching the decision. The Associate Vice President/Chief Procurement Officer shall furnish a copy of the decision to the **Protestor** in writing.

4. Stay of **Procurement**

   In the case of protested **RFPs or ITNs** only, there shall be a stay of **Procurement** until the decision of the Associate Vice President/Chief Procurement Officer is rendered, unless the Associate Vice President/Chief Procurement Officer determines that execution of a **Contract** without delay is necessary to protect substantial University interests.

5. Actions in Court

   If a **Protestor** has filed a complaint in court which complaint is also the subject of a protest filed with the Associate Vice President/Chief Procurement Officer, the Associate Vice President/Chief Procurement Officer will not review the protest.

6. Entitlement to Costs

   When a protest is sustained by the Associate Vice President/Chief Procurement Officer and the **Protestor** should have been **Awarded** the **Contract** under the **Solicitation** but, due to a defect in the **Solicitation**, was not, the **Protestor** shall be entitled to the reasonable costs incurred in connection with responding to the **Solicitation**. No other costs shall be permitted, and reasonable costs shall not include attorney fees.

D. Solicitation Response Remedy

Should the University experience a business disruption such as a system outage while a solicitation is open, the University reserves the right, but is not obligated, to extend the solicitation. If the University experiences a system outage that occurs on the day a solicitation is set to close, the University reserves the right, but is not obligated to extend the solicitation one (1) business day. All system outages will be verified with the software developer.

If a supplier is experiencing technical difficulties responding to a solicitation they must contact the **Purchasing Agent** responsible for issuing the solicitation a minimum of two (2) hours prior to the solicitation closing time. At that time, the **Purchasing Agent** will evaluate a possible extension and will advise the respondent of how to proceed if they have an objection to the decision.

E. Procurement Contract Disputes

1. Statement of Policy

   The terms and conditions of University Procurement **Contracts** establish procedures and remedies to resolve **Contract** and breach of **Contract** controversies between the University and a **Contractor**. It is the University's policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these Rules, the word "controversy" is meant to be broad and all encompassing, including the full spectrum of disagreements from pricing of routine **Contract** changes to claims of breach of **Contract**.

2. Requesting a Procurement Decision

   If a controversy cannot be resolved between the supplier and the campus representative after reasonable attempts at resolution, either party may request that the matter be reviewed by the Associate Vice President/Chief Procurement Officer.

   Such a request must be submitted in writing within ninety (90) calendar days of the date the requesting party knew or reasonably should have known of the controversy. The written request should include a description of the issue, relevant **Contract** references, and the relief sought.

3. Situation prior to Issuing Decisions

   When a controversy cannot be resolved by mutual agreement, the Associate Vice President/Chief Procurement Officer shall review the matter within twenty (20) working days after receiving a written request by the **Contractor** for a final decision and

shall issue a written decision.

The Associate Vice President/Chief Procurement Officer may extend this time frame by notifying both parties in writing and providing an estimated date for the final decision.

The Associate Vice President/Chief Procurement Officer may, at their discretion, engage a neutral third-party to review the controversy and provide a written recommendation to assist in rendering the final decision. Engagement of a neutral third-party does not diminish or transfer the authority of the Associate Vice President/Chief Procurement Officer to issue the final decision.

4. Final Decision

The Associate Vice President/Chief Procurement Officer shall furnish a written copy of the decision to the **Contractor**. The decision shall include:

a. description of the controversy;
b. a reference to the pertinent **Contract** provision(s);
c. a statement of the factual areas of agreement and disagreement; and
d. the supporting rationale for the decision.

If a neutral third-party was engaged, the decision may reference the third-party's recommendation; however, the final determination remains solely with the Associate Vice President/Chief Procurement Officer.

5. Actions in Court

If a **Contractor** has filed a complaint in court which complaint involving the same controversy that is the subject of a protest filed with the Associate Vice President/Chief Procurement Officer, the Associate Vice President / Chief Procurement Officer will not review the protest.

SECTION X COST PRINCIPLES

A. Applicability of Cost Principles

1. Application

This section of the Rules contains cost principles and procedures to be used as guidance in:

a. establishment of **Contract** cost estimates and prices under **Contracts** made by a **Solicitation** where the **Award** may not be based on **Adequate Competition**, **Sole Source Procurement**, or **Contracts** for certain **Services**;

b. establishment of price adjustments for **Contract** changes;

c. pricing of termination for convenience settlements; and

d. any other situation in which cost analysis is required.

2. Limitation

Cost principles in this section of the Rules are not applicable to:

a. the establishment of prices under **Contracts** made pursuant to **Adequate Competition** rather than the analysis of individual, specific cost elements, except that this section of the Rules does apply to the establishment of adjustments of price for changes made to such **Contracts**;

b. prices which are fixed by law or regulation;

c. prices which are based on established catalogue prices, or established market price; and

d. stipulated unit prices.

B. Permitted Costs

1. General

Any **Contract** cost proposed for estimating purposes or invoiced for cost reimbursement purposes are permitted as provided in the **Contract**. The **Contract** shall provide that the total permitted cost of a **Contract** is the sum of the permitted direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the **Contract** in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

2. Accounting Consistency

All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the **Contractor's** usual accounting practices in charging costs to other activities. In pricing a proposal, a **Contractor** shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

3. When Permitted

The **Contract** shall provide that costs are permitted to the extent they are:

a. reasonable, as defined in Section X.C (Reasonable Costs);

b. allocable, as defined in Section X.D (Allocable Costs);

c. not made unlawful under any applicable law;

d. not permitted under Section X.E (Treatment of Specific Costs) or Section X.F (Costs Requiring Prior Approval to be Allowable); and

e. actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

C. Reasonable Costs

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

1. whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the **Contractor's Business** or the performance of the **Contract**;
2. the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and state laws and regulations, and **Contract** terms and **Specifications**;
3. the action that a prudent businessperson would take under the circumstances, considering responsibilities to the owners of the **Business**, employees, customers, the University, and the general public;
4. significant deviations from the **Contractor's** established practices which may unjustifiably increase the **Contract** costs; and
5. any other relevant circumstances.

D. Allocable Costs

1. General

   A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

   a. is incurred specifically for the **Contract**;
   b. benefits both the **Contract** and other work, and can be distributed to both in reasonable proportion to the benefits received; or
   c. is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

2. Allocation Consistency

   Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as set forth herein. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

3. Direct Cost

   A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the **Contract**.

4. Indirect Costs

   a. An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been

determined and charged directly to the **Contract** or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

b. Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same result could be achieved through less precise methods.

c. The **Contractor's** method of distribution may require examination when:

   (i) any substantial difference exists between the cost patterns of the work performed under the **Contract** and the **Contractor's** other work;

   (ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the **Contractor's** products, or other relevant circumstances; or

   (iii) indirect cost groups developed for a **Contractor's** primary location are applied to off-site locations may be necessary to distribute the **Contractor's** costs on the basis of the benefits accruing to the appropriate cost objectives.

d. The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the **Contractor's** fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

E. Treatment of Specific Costs

1. Advertising

   The only permitted advertising costs are those for:

   a. the recruitment of personnel;

   b. the **Procurement** of scarce items;

   c. the disposal of scrap or surplus materials;

   d. the listing of a **Business's** name and location in a classified directory; and

   e. other forms of advertising as approved by the University when in the best interest of the University.

2. Bad Debts

   Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are prohibited.

3. Contingencies

   a. Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Section X.E.3.b.

b. For the purpose of establishing a **Contract** cost estimate or price in advance of performance of the **Contract**, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where **Contract** clauses are present which serve to remove risks from the **Contractor**, there shall not be included in the **Contract** price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

c. **Construction** contingency and allowance costs are permitted.

4. Depreciation and Use Allowances

a. Depreciation and use allowances are permitted to compensate **Contractors** for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular **Contractor's** operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate **Contractors** for the use of any one type of property.

b. The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

c. Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the University will accept any method which is accepted by the Internal Revenue Service.

d. In order to compensate the **Contractor** for use of depreciated, **Contractor**-owned property which has been fully depreciated on the **Contractor's** books and records and is being used in the performance of a **Contract**, use allowances are permitted, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing through-allowance are the original cost, remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.

5. Entertainment

a. Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodging, transportation and gratuities. Entertainment costs are unallowable.

b. Nothing herein shall prohibit a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section X.G (Applicable Credits). This section shall not prohibit costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

6. Fines and Penalties

Fines and penalties include all costs incurred as the result of violations of or failure to comply with Federal, state and local laws and regulations. Fines and penalties are prohibited

costs unless incurred as a direct result of compliance with specific provisions of the **Contract** or written instructions of the University's authorized representative. To the extent that workers' compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

7. Gifts, Contributions and Donations

   A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are permitted.
   Contributions and donations are property transferred to a nonprofit institution which are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions and donations are prohibited.

8. Interest Costs
   a. Interest is a cost of borrowing. Interest is not permitted except as provided in Section X.E.8.b.
   b. Interest costs on **Contractor** claims for payments due under University **Contracts** are permitted.

9. Losses Incurred Under Other Contracts

   A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

10. Material Costs
    a. Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the **Contractor**), which are acquired in order to perform the **Contract**. Material costs are permitted, subject to Section X.E.10.b and Section X.E.10.c. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.
    b. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the **Contractor** reasonably should take under the circumstances, and for credits for proceeds the **Contractor** received or reasonably should receive from salvage and material returned to suppliers.
    c. Allowance for all materials transferred from any division (including the division performing the **Contract**), subsidiary, or affiliate under the common control of the **Contractor** shall be made on the basis of costs incurred by the transferrer (determined in accordance with these cost principle regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the University's **Purchasing Agent** and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:
       (i) the price is established either by the established catalogue price; or

(ii) by the lowest price offer obtained as a result of the **Sealed** bidding or competitive **Sealed** proposals conducted with other **Businesses** that normally produce the item in similar quantities.

11. Taxes

a. Except as limited in Section X.E.11.b, all taxes which the **Contractor** is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are permitted.

b. The following costs are not permitted:

(i) Federal income taxes and Federal excess profit taxes;

(ii) all taxes from which the **Contractor** could have obtained an exemption, but failed to so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the University's authorized representative; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the **Contractor's** books of account and financial statements.

c. Any refund of taxes which were permitted as a direct cost under the **Contract** shall be credited to the **Contract**. Any refund of taxes which were permitted as an indirect cost under the **Contract** shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.

d. Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are permitted costs.

F. Costs Requiring Prior Approval to be Allowable

1. General

The costs described in Sections X.F.2, 3, 4, and 5 are permitted as direct costs to cost reimbursement type **Contracts** to the extent that they have been approved in advance by the University's **Purchasing Agent**. In other situations those costs are negotiable in accordance with general standards set out herein.

2. Pre-**Contract** Costs

Pre-**Contract** costs are those incurred prior to the effective date of the **Contract** directly pursuant to, and in anticipation of, the **Award** of the **Contract**. Such costs are permitted to the extent that they would have been permitted if incurred after the beginning date of the **Contract**; provided that, in the case of a cost-reimbursement type **Contract**, a special provision must be inserted in the **Contract** setting forth the period of time and maximum amount of cost which will be covered as permitted pre **Contract** costs.

3. Bid and Proposal Costs

Bid and proposal costs are the costs incurred in preparing, submitting and supporting bids and proposals. Reasonable ordinary bid and proposal costs are permitted as direct costs only to the extent that they are specifically permitted by a provision of the **Contract** or **Solicitation** document. Where bid and proposal costs are permitted as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

4. Insurance
   a. Insurance costs are the costs of obtaining insurance in connection with performance of the **Contract** or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are permitted in accordance with these cost principles. Self-insurance contributions are permitted only to the extent of the cost to the **Contractor** to obtain similar insurance.
   b. Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the **Contract**.
   c. Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are prohibited unless the parties expressly agree otherwise in the terms of the **Contract**.
5. Litigation Costs

   Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative agency. Costs incurred in litigation against the University are not permitted.

G. Applicable Credits

1. Definitions and Examples

   Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to **Contracts** as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.
2. Reducing Costs

   Credits shall be applied to reduce related direct or indirect costs.
3. Refund

   The University shall be entitled to a cash refund if the related expenditures have been paid to the **Contractor** under a cost-reimbursement type **Contract**.

H. Unusual Costs

Both the University and the **Contractor** should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the **Contract** the treatment to be accorded special or unusual costs.

I. Use of Federal Cost Principles

1. Cost Negotiations

   In dealing with **Contractors** operating according to Federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Acquisition Regulations (FAR), Part 1-15, the University's **Purchasing Agent**, after notifying the **Contractor**, may use the Federal cost principles as guidance in **Contract** negotiations, subject to Section X.I.2.
2. Incorporation of Federal Cost Principles: Conflicts between Federal Principles and these Rules

a. In **Contracts** not **Awarded** under a program which is funded by Federal assistance funds, the University may explicitly incorporate Federal cost principles into a **Solicitation** and thus into any **Contract Awarded** pursuant to that **Solicitation**. The University **Purchasing Agent** and the **Contractor** may by mutual agreement incorporate Federal cost principles into a **Contract** during negotiation or after **Award**. In either instance, the language incorporating the Federal cost principles shall clearly state that to the extent Federal cost principles conflict with these Rules, these Rules shall control.

b. In **Contracts Awarded** under a program which is financed in whole or in part by Federal assistance funds, all requirements set forth in the assistance document including specified Federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles in these Rules, the cost principles specified in the grant shall control.

J. Authority to Deviate from Cost Principles

If the University's **Purchasing Agent** desires to deviate from the cost principles set forth in these Rules, a **Determination** shall be made specifying the reasons for the deviation.

SECTION XI SUSPENSION & DEBARMENT

A. Suspension

After meeting with the affected University department(s) and, where **Practicable**, the supplier who is to be suspended, the Associate Vice President/Chief Procurement Officer may issue a written **Determination** to suspend a supplier from doing business with the University pending an investigation to determine whether cause exists for debarment. The suspension shall not exceed three (3) months unless a criminal indictment has been issued for an offense which would be cause for debarment. In such cases, the suspension may remain in effect until after the trial of the suspended supplier.

1. A written notice of the suspension, including a copy of the **Determination**, shall be sent to the suspended supplier. The notice shall:
   a. state that the suspension will be for the period necessary to complete an investigation into possible debarment;
   b. inform the suspended supplier that no business may be conducted with the University by any person(s) representing the suspended supplier during the suspension period and that any **Solicitation** responses received from the suspended supplier during the suspension period shall not be considered; and
   c. offer the supplier a reasonable opportunity to be heard and to submit evidence to be considered in making the debarment decision.
2. The suspension period will be effective upon issuance of the notice of suspension.

B. Debarment

1. A supplier may be debarred for any of the following reasons:
   a. conviction of a criminal offense in relation to obtaining or attempting to obtain a University **Contract** or in the performance of such **Contract**;
   b. conviction under State of Colorado or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
   c. conviction under State of Colorado or Federal antitrust statutes arising out of the submission of bids or proposals;
   d. willful material failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of one or more contracts;
   e. the supplier is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a Federal, state or local governmental entity;
   f. violation of the provisions of Section 7-108-401 **C.R.S.**, "General Standards of Conduct for Directors and Officers"; and/or
   g. Fiscal misconduct which includes any act of fraud, embezzlement, theft, misappropriation of funds, falsification of invoices or records, or other deceptive financial practices in connection with a University transaction or **Contract**.
2. Following completion of the investigation to determine whether a supplier has engaged in activities which are cause for debarment, the Associate Vice President/Chief Procurement Officer may debar the supplier. A supplier may be debarred for a period of time commensurate with the seriousness of the offense.
3. A written notice of debarment shall be sent to the debarred supplier. The notice shall:

a. state the debarment period; and

b. inform the debarred supplier that no business may be conducted with the University by any person(s) representing the debarred supplier during the debarment period and that any **Solicitation** responses received from the debarred supplier during the debarment period shall not be considered.

4. The debarment period will be effective fourteen (14) days after the notice of debarment is sent to the debarred supplier.

5. After the debarment period begins, the supplier shall remain debarred until the debarment period specified expires unless a court or the Associate Vice President/Chief Procurement Officer orders otherwise.

C. Master List

The Procurement Department shall maintain a master list of all suspensions and debarments. The master list will contain information concerning suspensions and debarments as public records.

SECTION XII FOCUSED SPENDING PROGRAMS

A. Small Business.

Successful b**usinesses** have a positive impact on the University community, and it is important that the University promote a strong and diverse **business** community. Therefore, the University has established a Small Business Program whose mission is to maximize the opportunities for small **business** concerns as defined by FAR 19.201, to participate in the University's business of procuring **Goods, Services** and **Construction** at all dollar levels.

B. Sustainable Spending.

The University is committed to advancing sustainability on campus, in the community, and globally. To the extent possible, the University community is encouraged to reuse or borrow existing goods that may be in place on campus. If a new purchase is required to be made, the University community is encouraged to choose products in alignment with the University's Sustainable Purchasing Guidelines or other sustainable purchasing best practices such as those found at aashe.org.

C. Local Spending.

As a public procurement entity, the University recognizes the broad impact spending has on the local community. The University believes a strong local economy is key to long term diversity and health across Colorado communities. Therefore, the University supports local businesses through the promotion of local spending strategies. The University Procurement and campuses are encouraged to include local businesses in their outreach and supplier identification programs and to assist local businesses in conducting business with the University. While no provision is made in these Rules for preferences or set asides for local businesses, it remains University intent to maximize local spending to the extent practicable.

SECTION XIII PROCUREMENT RECORDS -- INFORMATION & RETENTION

Procurement records are subject to disclosure pursuant to the provisions of the Colorado Open Records Act, **C.R.S.** §§ 24-72-101 *et seq*.

Procurement records shall be retained and disposed of in accordance with applicable records retention policies.

SECTION XIV DEFINITIONS

The terms defined in this section shall have the following meanings whenever they appear in these Rules, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section or portion thereof.

Acceptable, with regard to a **Bid** or **Proposal**, means an offer submitted by any person in response to a **Solicitation** issued by the University that is in compliance with the **Solicitation** terms and conditions and within the requirements of the **Specifications** described and required therein.

Adequate Competition exists if a **Solicitation** has been conducted and at least two **Responsible** and **Responsive** offerors have independently competed to provide the University's needed **Goods**, **Services**, or **Construction**. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the **Purchasing Agent** determines, in writing, that such competition is not adequate.

Addendum: Additions or supplements to Solicitation documents issued prior to the opening date. Additions or modifications to **Contract** documents.

Advantageous means an assessment of what is in the University's best interests.

An **After-the-Fact (ATF)** purchase occurs when a department makes a purchase for more than $10,000 before the Procurement Department issues a purchase order. For example, authorizing a supplier to begin work before the Procurement Department issues a purchase order, even though the department has submitted a purchase requisition, is an **ATF**. Similarly, obtaining **Goods**, **Services**, or **Construction** on credit and subsequently submitting the invoice with a payment voucher is an **ATF** unless it is a purchase specifically allowed to be paid by payment voucher as set forth on the Procurement Service Center website.

Alternate or **Alternative** means a choice of a different **Good**, **Service**, or **Construction** that meets or exceeds the functional requirements of the **Base Bid**. For **Construction**, the alternate can be an enhancement or reduction of the base or a stand-alone component.

Award means the acceptance of a **Bid** or **Proposal** by issuance of a purchase order and may include the execution of a written agreement to cover performance by the supplier.

Base Bid means the minimum functional requirements of the **Good**, **Service**, or **Construction**.

Best Value means the lowest overall cost to the University after taking into consideration costs, benefits, and savings.

Bid means a response from a supplier to an **IFB**.

Brand Name Specification means a **Specification** limited to one or more **Goods, Services,** or **Construction** by manufacturer's names or catalogue numbers.

Brand Name or Equal Specification means a **Specification** which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet University requirements, and which provides for the submission of equivalent **Goods, Services,** or **Construction**.

Business means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

Campus Facilities Department means the work unit or department that is responsible for the solicitation, contracting, and management of design and construction of the campus physical assets, space, and utilities. This department shall include the campus State Buildings Program and **Office of the State Architect (OSA)** Delegate in a leadership position.

Competitive Negotiation means the process of discussion and issue resolution between a **Purchasing Agent** and a prospective supplier in order to arrange for the providing of a **Good, Service**, or **Construction** needed by the University. If more than one supplier is available for such negotiation, the needs of the University must be clearly defined in advance of any negotiations, via a **Specification** that details fully the University's intended **Procurement**.

Competitive Reverse Auction means a computer aided bidding process through which a preestablished group of suppliers may post **Bids** for a defined period of time and may change their **Bids** as desired during the bidding period.

Contract means any Procurement Contract as defined in Section VII.

Contractor means any entity that has a contractual relationship with the University for the provision of **Goods, Services**, or **Construction** as allowed for under these Rules.

Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building or any other public improvements of any kind to any public real property. For the purposes of this code, "construction" includes capital construction and controlled maintenance, as defined in **C.R.S.** § 24-30-1301.

Cost-Reimbursement Contract means a **Contract** under which a **Contractor** is reimbursed for costs which are allowable and allocable in accordance with the **Contract** terms.

C.R.S. means Colorado Revised Statutes.

Determination means a written **Procurement** decision made by the Associate Vice President/Chief Procurement Officer or delegate which is based on sufficient facts, circumstances and reasoning to substantiate the decision. Each **Determination** shall be filed in the appropriate Procurement Department file.

Documented Quote (DQ) means a process of soliciting informally for fulfilling the University's need for specific **Goods, Services**, or **Construction** and receiving and evaluating supplier responses. The dollar limits for use of **Documented Quotations** shall be as stated in the section on General Solicitation Rules and shall be conducted only by a **Purchasing Agent**.

Enhancements means components, **Services**, or products that exceed the minimum functional requirements and would improve the quality of the **Goods** or **Services** being procured by the University.

Facilities Purchasing Coordinator means one of the University's employees working under

the oversight and approval of the **OSA Delegate** with specific project related Procurement authority. The Facilities Purchasing Coordinator is typically a Campus Planner, or Project Manager, Program Manager, or similar role within the campus Facilities organization. The **Facilities Purchasing Coordinator** may also be the **OSA Delegate**. The **Facilities Purchasing Coordinator** is a none warranted position.

Goods means all property, whether tangible or intangible, materials, equipment, and insurance provided by a **Contractor**. The term does not include land, the purchase of an interest in land, water or mineral rights, workers' compensation insurance, or benefit insurance for University employees.

In-state Business means:

A. a **Business** that is authorized to transact business in Colorado and that maintains its principle place of business in Colorado; or

B. a **Business** that is authorized to transact business in Colorado, that maintains a place of business in Colorado, and that has filed Colorado unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before bidding on a **Solicitation**.

Invitation for Bids (IFB) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting **Bids**.

Invitation to Negotiate (**ITN**) means all documents, including those attached or incorporated by reference, used to solicit responses from suppliers to determine the best method for achieving a specific goal or solving a particular problem to identify one or more responsible suppliers with which the University may negotiate to determine the response that is most advantageous to the University.

Job Order Contracting (JOC) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting and administering a job order contractor program. The program selects a supplier to provide management and oversight of a job order contracting program. The supplier, along with the University, will pre-qualify suppliers in needed trade categories. The suppliers will utilize a cost book that is established to set unit costs for scope elements. The program also defines and competes the mark-up percentages for the management and execution of the scope of work and pre-qualifies suppliers in specific trade categories.

Office of the State Architect (OSA) means the office within the State of Colorado's Department of Personnel and Administration responsible for the purchase of real estate and the negotiation of real property leases, easements and rights-of-way; the management of capital construction, controlled maintenance, energy consumption analysis; and the selection and maintenance of lists of qualified suppliers for the State. **OSA** includes the State Buildings Program and Real Estate Program units. **OSA** is a central approver for **Contracts** within its purview.

OSA Delegate means a campus employee that has obtained delegation from the **OSA** State Buildings Program to manage code and procurement requirements for University planning, design, and construction. The delegation is specific to each campus.

Options means choices of additional components, **Services**, **Goods**, or **Construction** that would serve to provide increased value to the University beyond the **Base Bid**.

Practicable means what may be accomplished or put into practical application; reasonably possible.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any **Goods, Services**, or **Construction**. **Procurement** includes all functions that pertain to the obtaining of any **Goods, Services**, or **Construction** including description of requirements, selection and **Solicitation** of sources, preparation and **Award** of **Contract**, and all phases of **Contract** administration.

Procurement Contract or **Contract** as noted in this document, means any type of University agreement, regardless of what it may be called, for the **Procurement** or disposal of **Goods, Services**, or **Construction** and includes purchase orders.

Proposal means a response from a supplier to an **RFP**, **ITN**, **JOC**, or **SOC**.

Protestor means any actual or prospective bidder or proposer who is aggrieved in connection with the **Solicitation** or the **Award** of a **Contract** and who files a protest.

Public Entity means a state agency or institution of higher education or political subdivision of the State of Colorado, or of another state, the Federal government or any combination thereof.

Public Project – Per C.R.S. § 24-103-908 (1), means any **Construction**, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of public health, welfare, or safety and any maintenance programs for the upkeep of such projects and to projects for which appropriation or expenditure of funds equal or exceeds $500,000.

Purchasing Agent means one of the University's employees at the Procurement Service Center Procurement Department with delegated **Procurement** authority from the Associate Vice President/Chief Procurement Officer and, for the purposes of **Construction Procurement**, **Purchasing Agent** means **OSA Delegate** and **Facilities Purchasing Coordinator** with delegated **Procurement** authority from the Associate Vice President/Chief Procurement Officer.

Qualified Products List means an approved list of **Goods** or **Services** described by model or catalogue numbers, which prior to competitive **Solicitation**, the University has determined will meet the applicable **Specification** requirements.

Quote means a response from a supplier to a **DQ**.

Request for Proposals (RFP) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting **Proposals** and is the commonly used name for competitive **Sealed Proposals**. **Procurements** should take into account the costs for the full life cycle of any resulting **Contract** to determine total expected cost.

Requests for Qualifications (RFQ) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting qualifications for services. Prices are not solicitated as part of the **RFQ** process.

Resale means **Goods** that will be purchased by a department and resold as-is. In the case of food, items that are bought and re-sold without being altered are **Resale** items; items that are cut up, cooked, or otherwise processed before being re-sold are not **Resale** items.

Responsible means a **Business** that has the capability in all respects to perform fully the **Contract**

requirements, and the integrity and reliability which will assure good faith performance and protect the University from reputational risk. A responsible **Business** demonstrates ethical conduct, financial and operational stability, and business practices that do not conflict with the University's mission, values, or public trust. In determining responsibility, the University may consider any factors that could pose reputational, financial, legal, or operational risk, including but not limited to past performance, legal or regulatory history, public conduct, and alignment with applicable University standards.

Responsive means an offer, with regard to a **Quote**, **Bid** or **Proposal**, that conforms in all material respects to the requirements contained in the **Solicitation**

Revenue-Producing means a situation where a **Business** pays money to the University as a result of any activity carried on by the **Business** with the permission or agreement of the University. Situations that may be **Revenue-Producing** will be evaluated by the Associate Vice President/Chief Procurement Officer on a case by case basis, and, if approved as **Revenue Producing**, will be documented in a written **Determination**.

Sealed means that the **Bid** or **Proposal** must be submitted in a manner that:

A. ensures that the contents of the **Bid** or **Proposal** cannot be opened or viewed before the formal opening without leaving evidence that the document has been opened or viewed;

B. ensures that the document cannot be changed, once received by the University, without leaving evidence that the document has been changed;

C. bears a physical or electronic signature evincing intent by the bidder or proposer to be bound. An electronic signature must comply with the definitions and requirements set forth in the government electronic transactions act, **C.R.S.** § 24-71.1-101 et seq. and its implementing rules; and

D. records, manually or electronically, the date and time the **Bid** or **Proposal** is received by the University and that cannot be altered without leaving evidence of the alteration.

Services means the furnishing of labor, time, or effort by a **Contractor** not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

Sole Source Procurement means a **Procurement** made without competition, when competition is otherwise required.

Solicitation means a request to the **Business** community to respond to a **Documented Quote**, **Invitation for Bids Request for Proposals**, **Invitation to Negotiate**, **Request for Qualifications**, **Job Order Contract**, or **Standing Order Contracting.**

Specification means any description of the nature of a **Good**, **Service**, or **Construction** or of the physical or functional characteristics of a **Good**, **Service**, or **Construction**. It may include a description of any requirement for inspecting, testing, or preparing a **Good**, **Service**, or **Construction** for delivery.

Standing Order Contracting (SOC) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting and administering a standing order contractor program. The program pre-qualifies suppliers in specific trade categories. Once pre-qualified, the suppliers will be solicited to bid on indefinite in quantity work as prime vendor or sub-contractors to program general contractors based on University projects and needs.

APPENDIX A UNIVERSITY OF COLORADO PROCUREMENT CODE OF ETHICS

Any person employed by the University of Colorado who purchases goods and services or is involved in the procurement process for the University, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Demonstrate loyalty to the University of Colorado by diligently following all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;
3. Conduct all procurement activities in accordance with the laws, while remaining alert to and advising the University of Colorado regarding the legal ramifications of the procurement decisions;
4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the University of Colorado;
5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;
6. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or services from present or potential suppliers which might influence or appear to influence procurement decisions;
7. Promote positive supplier relationships through impartiality in all phases of the procurement cycle;
8. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;
9. Provide an environment where all business concerns, large or small, majority- or minority- owned, are afforded an equal opportunity to compete for University of Colorado business; and,
10. Enhance the proficiency and stature of the procurement profession by adhering to the highest standards of ethical behavior.

APPENDIX B UNIVERSITY OF COLORADO SUPPLIER CODE OF CONDUCT

The University of Colorado is committed to advancing environmental and social responsibility through its procurement practices. Suppliers are expected to support this commitment in the following ways:

1. **Environmental Impact**
    - Reduce greenhouse gas emissions, resource consumption, and waste across product life cycles.
    - Use minimal, recyclable, or reusable packaging whenever possible.
    - Offer products with credible environmental certifications (e.g., ENERGY STAR, EPEAT, FSC, Green Seal, ECOLOGO).
    - Utilize internal criteria on waste, emissions, biodiversity impacts, water use, and energy use that are above and beyond existing local or national regulations.
2. **Treatment of workers**
    - Comply with all applicable labor laws and international standards, including the prohibition of forced, child, or trafficked labor.
    - Ensure safe, healthy, and lawful working conditions throughout operations and supply chains.
    - The University of Colorado's expects that, human rights, anti-discrimination practices, health and safety standards, labor rights, and minimum wages that are above and beyond existing local or national regulations.
3. **Governance and ethical business practices**
    - The University of Colorado's expects that, anti-corruption measures, fair business practices, and sustainability reporting standards that are above and beyond existing local or national regulations.
4. **Advancement of Sustainability in the Supply Chain**
    - The University of Colorado's expects that suppliers extend the sustainability provisions within this code to their partners and upstream suppliers.
5. **Monitoring and Review, Commit to Continuous Improvement**
    - The University reserves the right to monitor and review the supplier's conduct, business practices, and requested data or documentation to support claims. Where possible and relevant, any environmental, sustainability, or social impact claims should be third-party certified where such certifications exist and/or follow industry standards for reporting. These judgments will reflect the University's values and provide additional context and clarification for future applications of this Code of Conduct.
    - In response to a complaint submitted to the University of Colorado, the University reserves the right to perform audits, investigations, or reviews of any supplier's corporate social responsibility practices and programs, using any metric or criteria for evaluation that, in its sole discretion, deems appropriate.

- The University of Colorado's also reserves the right to retain a third party to conduct such audits, investigations, or reviews. The supplier may be required to pay for any such review conducted by, or provide evidence of a similar third-party audit, investigation, or review to assure that it is in compliance with the Supplier Code of Conduct, which may be evaluated for adequacy in the University of Colorado's sole discretion.

The University may include sustainability-related criteria in solicitations and reserves the right to request supporting documentation or conduct evaluations. Suppliers are encouraged to engage in good faith to support these objectives while balancing practicality and cost-effectiveness.