University of Colorado

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PROCUREMENT RULES

Effective July 1, 2005
Amended April 1, 2009
Amended July 1, 2014
Amended July 1, 2015

UNIVERSITY OF COLORADO
PROCUREMENT RULES

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APPENDIX A **UNIVERSITY OF COLORADO PROCUREMENT CODE OF ETHICS** 1

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

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 purchasing functions of the University, including purchases at the department level using the University's procurement card and department purchase orders.

Under these Rules, the Purchasing 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**.

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** and **Services** 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** and **Services** 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 Purchasing Department will conduct a competitive **Solicitation**.
2. The **Procurement** is for **Construction**.
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.

SECTION V ETHICS

A. Conflict of Interest

The University of Colorado Administrative Policy Statement "Conflict of Interest and Commitment Policy" defines the processes to be followed in articulating and resolving conflicts of interest at the University. When the Purchasing Department has reason to believe that a conflict of interest may exist in the **Procurement** of **Goods** or **Services**, 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** and **Services**, 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** or **Services**. 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** and **Services** 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. $5,000 or less – campus departments have purchasing authority;

   b. $5,001 through $10,000 – purchases of **Goods** are processed at the discretion of the **Purchasing Agent**; for federally funded purchases, competition is required starting at $5,001;

   c. $5,001 through $50,000 – purchases of **Services** are processed at the discretion of the **Purchasing Agent**; for federally funded purchases, competition is required starting at $5,001;

   d. $10,001 through $500,000 – competition for **Goods** is sought via the **Documented Quote** process;

   e. $50,001 through $500,000 – competition for **Services** is sought via the **Documented Quote** process;

   f. $500,001 and greater – competition for **Goods** and **Services** is sought via either the **Invitation for Bids** or **Request for Proposals** process.

3. **Solicitation** Notification

   An electronic **Solicitation** notification system is the required method for advertising competitive **Solicitations** for **Goods** and **Services** made through **Documented Quotes** (**DQ**), **Invitation for Bids** (**IFB**), and **Request for Proposals** (**RFP**). Other methods of notification may also be used at the discretion of the **Purchasing Agent**.

4. **Specifications**

   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.

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. Amendments to **Solicitations**

   Amendments to **Solicitation**s shall be identified as such and may require that the suppliers acknowledge receipt of all amendments issued. Amendments 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. 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 open to the public. Responses shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the competitive **Solicitation**.

   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.

      (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 upon written request from the offeror.

      (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**.

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**.

(a) The **Award** shall be made to the small **Business**, as defined by the Small Business Administration, if identical favorable **Quotes/Bids** are received.

(b) If more than one tie **Quote/Bid** is from a small **Business** or if none are, the **Award** shall be made to the **In-state Business** if identical favorable **Quotes/Bids** are received from **In-state** and out-of-state **Businesses**.

(c) If neither of the above applies, the **Purchasing Agent** shall flip a coin in the presence of another person to determine the **Awarded** supplier.

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. 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** or **Services**;
   (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.
   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 $500,000 or Less

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 $5,000 or less
   The University has developed mechanisms for the purchase of most **Goods** and **Services** totaling $5,000 or less.

a. Small Dollar Purchase Order
University departments may issue purchase orders for purchases totaling $5,000 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.

2. Purchases of **Goods** totaling more than $5,000 through $10,000

Purchases of **Goods** totaling more than $5,000 through $10,000 are processed at the discretion of the **Purchasing Agent**; for federally funded purchases, competition is required for purchases of **Goods** totaling more than $5,000.

3. Purchases of **Services** totaling more than $5,000 through $50,000

Purchases of **Services** totaling more than $5,000 through $50,000 are processed at the discretion of the **Purchasing Agent**; for federally funded purchases, competition is required for purchases of **Services** totaling more than $5,000.

4. Purchases of **Goods** totaling more than $10,000 through $500,000 and Purchases of **Services** totaling more than $50,000 through $500,000

a. **Documented Quote**

Goods totaling more than $10,000 through $500,000 and **Services** totaling more than $50,000 through $500,000 may be purchased using the **Documented Quote** process. For federally funded purchases, competition using the **Documented Quote** is required for the purchase of **Goods** and **Services** more than $5,000.

b. For **Goods** and **Services 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** and **Services** 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 over $500,000

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.

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.

e. **IFB** Opening
The name of each bidder, the **Bid** price(s) (unless otherwise provided in the **Invitation for Bids**), and other information deemed appropriate by the **Purchasing Agent** shall be read aloud at the time of the **IFB** opening. Reading of all **Bid** item prices may not be reasonable or desired (e.g., in the case of lengthy or complex **IFBs**). The decision not to read all **Bid** prices shall be made by the **Purchasing Agent**. The name of each bidder, amount of **Bid**, delivery, name(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection. Prior to **Award**, copies of pricing information not read aloud at the **IFB** opening shall be made reasonably available for inspection, if requested. 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 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.

f. **Award**
All **Goods** and **Services** 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 life-cycle cost formulas stated in the **IFB**.

g. 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.

h. **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.

(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.

(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.

i. **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** over $500,000 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.

e. **RFP** Opening
There shall be a public opening at the date and time specified in the **RFP**. The **Purchasing Agent** shall read the name of all proposers submitting responses. A All information other than the proposers' names remains confidential until posting of the notice of intent to **Award**.

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 determines that time does not permit resolicitation.

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 Purchasing 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 Purchasing 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** or **Service** that can reasonably meet the need and there is only one supplier who can provide the **Good** or **Service**. 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** or **Service**. 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 Purchasing 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 Purchasing Department shall take action, whenever possible, to avoid the need to continue to procure the same **Goods** and/or **Services** without competition.

   b. **Sole Source Procurement** Procedures
      (i) The requesting department shall submit the Purchasing 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 Purchasing Department is the final authority for approval of **Sole Source Procurements**.

(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).

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**, approval by the Associate Vice President/Chief Procurement Officer shall be obtained prior to the **Procurement**. In the event an emergency arises after normal working hours, the University department shall notify the Associate Vice President/Chief Procurement Officer on the next working day. 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** and/or **Services** 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** or **Services** 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, faxed, 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 for **Goods** or **Services** for use by all University departments. Such UPAs may include, but are not limited to, University-initiated agreements 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** or **Services**, all University departments are required to order needed **Goods** or **Services** from UPAs where applicable.

c. The Purchasing Department is responsible for publicizing all University-wide price agreements and for monitoring compliance.

4. Cooperative Purchasing Agreement(s)

a. The Associate Vice President/Chief Procurement Officer may approve the purchase of **Goods** or **Services** from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the University after considering:

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

(ii) the efficiencies and cost savings of using the contract.

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;

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

(iii) a bistate 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 and the University of Colorado Hospital; 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. The Associate Vice President/Chief Procurement Officer may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a University-wide price agreement. The Associate Vice President/Chief Procurement Officer has the final authority to approve the University's participation in cooperative purchasing agreements.

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 and Chief Procurement Officer.

F. Price 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 by completing a price cost analysis. 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 $5,000, a purchase order will be issued at the discretion of the **Purchasing Agent**, and that competitive purchasing 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, 2017. Effective July 1, 2017, 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.

SECTION VII CONTRACTS

A. Types of Contracts

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** or **Services** required unless the **Cost Reimbursement Contract** is used. The minimum requirements for **Contract** formation and content are contained in Chapters 2 and 3 of the State of Colorado Fiscal Rules.

B. Multi-Year Contracts

The Purchasing Department may enter into multi-year **Contracts** for **Goods** or **Services** subject to funding availability. **Contracts** for periods in excess of five years require the written approval of the Associate Vice President/Chief Procurement Officer.

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 Associate Vice President/Chief Procurement Officer and sent to the Purchasing 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 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** 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. Contract Disputes

1. Statement of Policy

   The terms and conditions of University **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. 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.

3. 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. 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.

4. Actions in Court

If a **Contractor** 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.

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 **IFBs** and **RFPs** 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 businessman 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.

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 transferrer'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 by such **Purchasing Agent** 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; and
   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.
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; and/or
   f. violation of the provisions of Section 7-108-401 **C.R.S.**, "General Standards of Conduct for Directors and Officers".
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 Purchasing 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 SMALL BUSINESS PROGRAM

Successful **Businesses** have a positive impact on the University community and it is important that the University promote a strong diverse **Business** community. Therefore, the University has established a Small Business Program whose mission is to maximize the opportunities for small **Business** concerns, including small disadvantaged **Businesses**, woman-owned **Businesses**, HUBZone **Businesses**, historically black colleges/universities and minority institutions, veteran-owned and service-disabled veteran-owned **Businesses**, to participate in the University's business of procuring **Goods** and **Services** at all dollar levels. Other than in Tie **Quotes**/**Bids** situations as described in Section VI.A.7.e.(ii)(a), no provision is made in these Rules for preferences or set asides for small or disadvantaged businesses.

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 **Documented Quote**, competitive **Sealed Bid** or competitive **Sealed Proposal** has been conducted and at least two **Responsible** and **Responsive** offerors have independently competed to provide the University's needed **Goods** or **Services**. 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.

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 $5,000 before the Purchasing Department issues a purchase order. For example, authorizing a supplier to begin work before the Purchasing Department issues a purchase order, even though the department has submitted a purchase requisition, is an ATF. Similarly, obtaining **Goods** or **Services** 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.

Alternative means a choice of a different **Good** or **Service** that meets or exceeds the functional requirements of the **Base Bid**.

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** or **Service**.

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** or **Services** 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** or **Services**.

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

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** or **Service** 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 pre-established 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 type of University agreement, regardless of what it may be called, for the **Procurement** or disposal of **Goods** or **Services**, and includes purchase orders.

Contractor means any entity that has a contractual relationship with the University for the provision of **Goods** or **Services** 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 Purchasing Department file.

Documented Quote (DQ) means a process of soliciting informally for fulfilling the University's need for specific **Goods** or **Services** and receiving and evaluating supplier responses. The dollar limits for use of **Documented Quotations** shall be as stated in the section on small purchases 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.

Goods means all property, whether tangible or intangible, 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**.

Options means choices of additional components, **Services**, or **Goods** 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** or **Services**. **Procurement** includes all functions that pertain to the obtaining of any **Goods** or **Services**, including description of requirements, selection and **Solicitation** of sources, preparation and **Award** of **Contract**, and all phases of **Contract** administration.

Proposal means a response from a supplier to an **RFP**.

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.

Purchasing Agent means one of the University's employees at the Procurement Service Center Purchasing Department with delegated purchasing 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.

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.

Responsive means an offer, with regard to a **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** or **Request for Proposals.**

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

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 purchasing 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 purchasing activities in accordance with the laws, while remaining alert to and advising the University of Colorado regarding the legal ramifications of the purchasing 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 purchasing decisions;

7. Promote positive supplier relationships through impartiality in all phases of the purchasing 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 purchasing profession by adhering to the highest standards of ethical behavior.