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

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. $10,000 or less – campus departments have purchasing authority;

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

c. $10,001 through $50,000 – purchases of Services are processed at the discretion of the Purchasing Agent; for federally funded purchases, competition is required starting at $10,001;

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 Solicitations 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 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.

(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
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.

b. **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 $10,000 or less**

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

a. **Small Dollar Purchase Order**

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.

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

Purchases of **Goods** totaling more than $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 $10,000.
3. Purchases of **Services** totaling more than $10,000 through $50,000

   Purchases of **Services** totaling more than $10,000 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 $10,000.

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 $10,000.

   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. 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.

e. 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 the electronic Solicitation system 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 lifecycle 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.

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 re-solicitation.

2. An Invitation for Bids or Request for Proposals process is unsuccessful if:
a. all offers received are unreasonable or uncompetitive;
   the low Bid exceeds available funds, as certified in writing by the appropriate fiscal
   officer;

b. the Solicitation has been properly cancelled in accordance with the provisions of
   Section VI.A.8; or

c. 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). 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, 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 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 Purchasing Agent, in consultation with PSC management, may approve a single 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 confirming:

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

(ii) efficiencies and cost savings of using the contract in comparison to other purchasing 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

(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 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 an ongoing participation in a cooperative purchasing agreement for up to 5 years of repeat purchases as a University-wide price agreement required for the day to day operation of the university. The Associate Vice President/Chief Procurement Officer has the final authority to approve the University’s participation in ongoing 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 $10,000, 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, 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.
SECTION VII    CONTRACTS

A. Categories

Procurement Contracts include expenditure contracts for goods and/or services other than for Capital Construction, 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 costplus-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.

B. Content of Procurement Contracts

All Procurement Contracts shall meet the following content requirements:

1. General Provisions:
   - Identification of parties;
   - Statement of Work;
   - Payment terms, including maximum dollar amount;
   - Performance period;
   - General terms and conditions;
   - Special Provisions (See Appendix B);
   - Signature page; and,
   - Statement that the contract shall not be valid until all required approvals have been documented.

2. Specific Provisions:
   - 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.
   - Limitation of Vendor’s Liability – Bodily Injury and Property Damage. The University shall not limit the vendor’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.
   - Limitation of Vendor’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.

C. 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.
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. Model contracts for small-dollar situations, such as performance agreements, shall require abbreviated Special Provisions as approved by the Office of University Counsel or a University Controller signature unless they exceed the commitment voucher level described in Fiscal Procedure 2-2.

2. 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.

3. Special Provisions – All Procurement Contracts in excess of the small-dollar purchase amount shall contain the Special Provisions. Small Dollar purchases shall contain the abbreviated Special Provisions as approved by the Office of University Counsel. No modification shall be made to a Special Provision without the prior written approval of the Associate Vice President/University Controller or as authorized by the Associate Vice President/University Controller in consultation with a Reviewing Attorney, except as otherwise expressly provided herein. The following changes require no additional approval by the Associate Vice President/University Controller or Reviewing Attorney:
   a. Changes in the nature of clarifications such as the term of the University Fiscal Year runs from July 1 to June 30;
   b. Silence as to governing law; or,
   c. Deletion of Special Provisions 10 or 11 when bolded applicability language indicates that the provisions don’t apply based on the nature of the service or good being purchased.

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 Chief Executive Officer 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)

Associate Vice President/University Controller review and approval is required for all Procurement Contracts greater than $150,000 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 $150,000 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, Purchasing Service Manager, Director of Procurement and Contract Services or 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 Purchasing Agent, Purchasing Service Manager, 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 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. 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 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. InContracts not Awardedunder 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 $10,000 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 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 ¶A

**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.

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 or Services, and includes purchase orders.

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.
SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** This contract shall not be valid until it has been approved by the Associate Vice President/University Controller or designee.

2. **FUND AVAILABILITY.** Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the University. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the University and the University shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the University to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the University, and (c) be solely responsible for its acts and those of its employees and agents.

5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and state laws, University policies, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. **BINDING ARBITRATION PROHIBITED.** The University of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the University has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor’s services and Contractor shall not employ any person having such known interests.

9. **VENDOR OFFSET.** [Not Applicable to intergovernmental agreements] If required by CRS §24-30-202.4 (3.5), the University Controller or designate may withhold payment under the State’s vendor offset intercept system for debts owed for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

10. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the University within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the University a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the University may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

11. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract. **Effective July 1, 2010.**