

COLORADO STATE UNIVERSITY

PROCUREMENT RULES

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PROCUREMENT RULES

SECTION I INTRODUCTION AND DEFINITIONS

A. Introduction and Purpose.

Pursuant to C.R.S. §24-101-105, on December 5, 2007, the Board of Governors of the Colorado State University System adopted a resolution exempting Colorado State University, Fort Collins (“CSU” or “University”) from the State of Colorado Procurement Code and Rules. Pursuant to such action, Colorado State University, Fort Collins is not subject to articles 101-112 of Title 24, C.R.S., except for those sections that explicitly state that they apply to governing boards of higher education (i.e., those sections enacted in SB07-228, as now and hereafter amended, that specifically define the term “governmental body” as also including governing boards of higher education institutions). The exemption or opt-out does not include construction bidding and contracting as provided in articles 91-93 of Title 24, C.R.S., and CSU remains subject to those statutes. These Rules are intended to supersede and control over any and all statutes and rules that would have been applicable if not for the resolution, and shall be binding on Bidders in the University’s procurement process as a matter of law and as a contract between the University and the Bidder.

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.

B. 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.

ACARD: See P-Card.

Acceptable, with regard to a bid, quote 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 means that a documented quote, competitive sealed bid or competitive sealed proposal, or other method of competition prescribed by the Purchasing Agent, has been conducted and at least two responsible and responsive Bidders 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 that competition is not adequate.

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 vendor.

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 Bidder to an Invitation for Bid (IFB).

Bidder is the person or entity that submits a bid, quote or proposal in response to a solicitation.

Brand Name Only Specification means a specification limited to one or more goods or services by manufacturer's names or catalog numbers. A brand name only specification requires a written justification for the specific good or service.

Brand Name or Equal Specification means a specification which uses one or more manufacturer's names or catalog numbers as a reference to describe the standard of quality, performance, and other characteristics needed to meet University requirements, and which provides for the submission of equal or 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 vendor in order to arrange for the providing of a good or service needed by the University. If more than one vendor is available for such negotiation, the needs of the University must be clearly defined in advance of any negotiations, via a specification that details fully the University's intended procurement.

Competitive Reverse Auction means a computer-aided bidding process through which a pre-qualified group of vendors may post bids for a defined period of time and may change their bids as desired during the bidding period.

Confidential Information may include, but is not limited to, trade secrets, privileged information, and confidential or proprietary commercial and financial information that is furnished by the Bidder and that may be withheld from inspection by the University pursuant to the Colorado Open Records Act, C.R.S., §24-72-204(3)(A)(IV). Neither a response to a solicitation in its entirety nor price information will be considered Confidential Information, except that pricing shall be kept secret until an award is made. Contracts that result from a solicitation shall not be considered Confidential Information, except to the extent that the contractor identifies specific business, financial or secret information contained in the contract that is confidential. The Colorado Open Records Act, C.R.S. sec 24-72-201 et seq., applies to all records, information and materials submitted in response to a solicitation. It shall be the sole responsibility of the Bidder to specifically identify the statutory basis for non-disclosure of any records or information as to which it claims confidentiality. If the University denies disclosure of Confidential Information and such denial is challenged in a court action or threatened court action, the Bidder shall be solely responsible for initiating or defending legal action to prevent or limit disclosure. Confidential Information shall not include: (i) final pricing and terms of the contract that results from the Bidder's submission; or (ii) any information which, at the time of the request for disclosure, is in the public domain or has been previously released by the Bidder to others without an obligation of confidentiality.

Contract means a formal agreement between the University and another party, regardless of what it may be called, for the procurement or disposal of goods or services. As used in these Rules, the term contract includes Purchase orders except where a specific rule for Purchase orders is stated.

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 that provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

C.R.S. means the Colorado Revised Statutes, as now and hereafter amended.

CSU e-Procurement System means the web-based electronic purchasing system maintained by the CSU PCS Department for requisitioning and placing orders directly with pre-approved vendors.

Determination means a written procurement decision made by the Director or authorized delegate which is based on sufficient facts, circumstances and reasoning to substantiate the decision. Each determination shall be filed in the appropriate PCS Department file.

Director means the Director of Procurement and Contracting Services for Colorado State University. Any authority given the Director in these Rules may also be exercised by the University Senior Vice President for Administrative Services or the University President and such exercise of authority shall not disqualify the acting official from acting as a decision maker in any protest or appeal.

Disbursement Voucher (formerly known as Authorization of Expenditure or AFE) is a payment request document used by an ordering department to initiate payment for goods and services totaling \$5,000 or less. The disbursement voucher is an internal document and cannot be used in place of a contract or purchase order when one is required.

Documented Quote (DQ) is an informal solicitation process in which the Purchasing Agent and ordering department evaluate vendor responses for best overall value, one factor being price.

Electronic Solicitation Notification System (ESNS) means any system used by the PCS Department to notify Bidders or potential Bidders and others of solicitations, awards, and other pertinent matters. The PCS Department may, but is not required to, utilize other notification methods in addition to the electronic solicitation notification system.

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.

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.

P-Card: A University-liable commercial procurement credit card used by authorized cardholders to make purchases for goods and services totaling \$3,000 or less per transaction (unless a higher amount, up to \$5,000, has been approved for the cardholder by the Director or designated Card Program Administrator). The University P-Card is a point-of-sale payment method. (Prior to July 1, 2009, the "P-Card" was known as the University ACARD).

PCS or PCS Department means the Department of Procurement and Contracting Services for Colorado State University.

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 a contract or other commitment voucher, and all phases of contract administration.

Proposal means a response from a Bidder to a Request for Proposal (RFP).

Protestor means any actual or prospective Bidder or proposer who is aggrieved in connection with the solicitation or the award of a contract or other commitment voucher 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 PCS Department with delegated purchasing authority from the Director.

A **Purchase Order (PO)** is a commitment voucher containing required University terms and conditions, prepared and approved by an authorized employee of the University for the purpose of encumbering funds and securing goods or services from a vendor. Once accepted by the vendor, a purchase order becomes a binding contract between the University and the vendor.

A **Purchase Requisition (PR)** is an informal request from a campus department to the PCS Department to write a purchase order for goods or service and to authorize a specific fund account to be charged. A purchase requisition is an internal source document only; not a commitment voucher.

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 Bidder to a documented quotation (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, including sales to other departments of the University. In the case of food, items that are bought and re-sold without being altered or combined with other foods are resale items.

Resident Bidder means: (a) a person, partnership, corporation, or joint venture which is authorized to transact business in Colorado and which maintains its principal place of business in Colorado; or (b) A person, partnership, corporation, or joint venture which: (i) Is authorized to transact business in Colorado; (ii) Maintains a place of business in Colorado; (iii) Has paid Colorado unemployment compensation taxes in at least seventy-five percent of the eight quarters immediately prior to bidding on a contract.

Responsible Bidder means a Bidder that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. Responsibility may be determined by reference to the Bidder's financial statements, history of prior transactions with the University or any other agency or institution, or any other evidence known to the Purchasing Agent at the time that the bid is received.

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 any transaction whereby 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 Director on a case by case basis.

Sealed means that the bid or proposal must be submitted in a manner that:

A. ensures that the contents of the bid or proposal have been delivered by reasonably secure and verifiable means, with evidence that the document originated with the named Bidder, and through a medium such as hand-delivery, overnight courier, U.S. Mail, or any other means of delivery specified in the solicitation;

B. is reasonably designed so 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 evidencing the Bidder's 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. All sealed bids or proposals shall be delivered in hard copy form to the Department of Procurement and Contracting Services at CSU unless otherwise specified in the solicitation.

Services means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product (other than a report).

Sole Source Procurement means a procurement made without competition, when competition is otherwise required, based on a determination that there is only one vendor who can meet the University's requirements.

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 the required results of performance of a service. It may include a description of any requirement for inspecting, testing, or preparing a good or service for delivery.

SECTION II AUTHORITY & DELEGATION

The Constitution and statutes of the State of Colorado vest the supervision of the University in The Board of Governors of the Colorado State University System, which includes the authority for procurement. The Board of Governors of the Colorado State University System has delegated to the President the administration of the University pursuant to its policies, including the authority for procurement, and to further sub-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 Director of Procurement and Contracting Services. The Director may further delegate his/her authority to persons in University departments for the efficient operation of the University. 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 Director 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 disbursement voucher.

Under these rules, the PCS Department is the final authority at the University for the selection of vendors and the sole authority for the commitment of University funds with respect to the procurement of goods and services. The Director may, from time to time, amend these rules subject to the approval of the Senior Vice President for Administrative Services and the Office of the General Counsel.

SECTION III ETHICS

A. Statement of Ethical Responsibility

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 Colorado State University Procurement Code of Ethics. Implied duties of good faith and fair dealing shall be deemed to be contained in every contract and agreement of the University and shall apply to both parties.

B. Conflict of Interest

The Colorado State University “Conflict of Interest (COI) Policy” defines the processes to be followed in articulating and resolving conflicts of interest at the University. When the Purchasing Agent has reason to believe that a conflict of interest may exist in the procurement of goods or services, he or she will request the department head to comply with the procedures described in this policy. The COI Policy is administered under the direction of the Vice President for Research and the Senior Vice President/Provost and is subject to change from time to time.

C. Vendor Shows

Vendor shows or fairs, which include open houses, product exhibits, or product demonstrations, must be approved in advance by the Purchasing Agent 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 vendors. The sponsoring University department shall notify the PCS Department as far in advance as possible but at least thirty (30) business days prior to the vendor show.

D. Code of Ethics

Any person employed by Colorado State University who purchases goods and/or services, or is involved in the purchasing process for the University, shall be bound by these Rules and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Demonstrate loyalty to Colorado State University 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 applicable laws and these Rules;

4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of Colorado State University, unless such conflict is first fully disclosed and a plan is approved for the conflict to be managed in accordance with all applicable laws, regulations and University policies pertaining to conflicts of interest;
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, appear to influence, or appear to be the result of influence upon any purchasing decision;
7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
8. Display the highest ideals of honor and integrity 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 Colorado State University business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.

SECTION IV APPLICABILITY

A. General Applicability

These Rules apply to all purchases of goods and services regardless of funding source.

B. Exclusions

The procurement Methods set forth in section V of these Rules do not apply to the following situations:

1. No University funds are expended or the contract is revenue-producing. The University shall seek to 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 vendor, the PCS Department may conduct a competitive solicitation appropriate to the circumstances.
2. The procurement is for construction.
3. The procurement is between the University and an educational institution, governmental body, research institute, or non-profit entity.
4. The procurement is for professional services provided by architects, engineers, landscape architects, industrial hygienists and land surveyors (see C.R.S., §§24-30-1401 through 24-30-1407), or for other specialized, professional services such as legal counsel, medical or other healthcare services, accounting and auditing services, or for teaching or research services.
5. A vendor's item is to be procured for resale. Items for resale do not include goods that are incorporated into other goods or products by the University. The Purchasing Agent will determine whether or not goods are being ordered for resale.
6. The procurement of goods or services from a specific vendor 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 or employee benefits for the University and its employees.

10. The procurement is for used equipment, and the Purchasing Agent has determined that a competitive procurement for similar used equipment is not feasible, or would not be advantageous to the University.

11. The procurement is for services that are to be delivered outside of the United States, unless the Purchasing Agent determines that a practical method of competition is available and would be likely to result in a significant savings or benefit to the University.

12. Sole Source Procurements as provided in Section V.C.1.

13. The procurement is for the display, performance, or use of works of entertainment, literary works, music, film, or other copyrighted materials specific to the purpose of the procuring department.

14. The procurement is for research or sponsored projects activities, and is not subject to any federal or other sponsor's requirement that the University obtain services or materials through competitive procurement methods (for example, a subaward or cooperative agreement).

Notwithstanding the foregoing exceptions from formal competition, the Purchasing Agent or Director may require a reasonable method of competition, price or value comparison, or negotiation in order to assure that (i) the goods or services to be obtained will reasonably meet the University's bona fide requirements; (ii) the award of University business to a vendor or contractor is fair to all concerned; and (iii) known conflicts of interest are avoided or mitigated in accordance with applicable laws.

SECTION V PROCUREMENT METHODS AND PROCEDURES

A. General Solicitation Rules and Procedures

1. Solicitation Policy

It shall be the policy of the University to purchase goods and services in a manner that affords vendors a fair and equal opportunity to compete. Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to “test the water.”

2. Solicitation Thresholds

- a. \$5,000 or less – campus departments have purchasing authority (but not necessarily authority to execute a contract);
- b. Greater than \$5,000 through \$10,000 – for purchases of goods, vendor selection is at the discretion of the Purchasing Agent, except that purchases of up to \$10,000 may also be made without Purchasing Agent assistance from a contracted supplier within the CSU e-Procurement System;
- c. Greater than \$5,000 through \$25,000 – for purchases of services, vendor selection is at the discretion of the Purchasing Agent;
- d. Greater than \$10,000 through \$150,000 – competition for goods is sought via the documented quote process;
- e. Greater than \$25,000 through \$150,000 – competition for services is sought via the documented quote process;
- f. Greater than \$150,000 – 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 (ESNS) is the required method for advertising competitive solicitations for goods and services made through documented quotes (DQ), invitation for bids (IFB) and requests 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 only specifications, brand name or equal specifications, or qualified products lists

may be used in competitive solicitations. Brand name only specifications shall only be used in accordance with section V.C.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. Bidders 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 or an addendum. The conference should be held a reasonable time after the solicitation has been issued, in order to allow bidders to become familiar with it, and there should be adequate time after the conference to allow Bidders consideration of the conference results in preparing their quotes, bids or proposals. Nothing stated at the conference shall change the solicitation unless a change is made by written addendum, posted on the electronic solicitation notification system.

6. Addenda to Solicitations

Addenda to solicitations shall be identified as such, and may require that the Bidders acknowledge receipt of all addenda issued. Addenda shall be posted on the electronic solicitation notification system with sufficient time to allow Bidders to consider them in preparing their quotes, bids or 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 be marked by PCS to show the date and time of receipt. Responses to competitive solicitations that require sealed bids or proposals shall be stored in a secure place until due date and time and shall not be opened upon receipt, except that unidentified responses may be opened for identification purposes. In such instances, upon verification of a solicitation response, the response will immediately be resealed and the reason for opening will be noted.

b. Opening and Recording

Competitive sealed solicitation openings shall be open to the public. Responses shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the competitive solicitation.

c. Confidential Information

Unless otherwise specified in the solicitation or response, all documents, information and materials submitted by a Bidder shall become the property of the University and shall be a public record subject to disclosure as provided in this Rule. The Bidder may submit written requests for confidentiality to the Purchasing Agent pursuant to the solicitation terms and conditions. Any restrictions on the disclosure or use of Confidential Information contained within a bid or proposal must be clearly stated in the bid or proposal itself, and the materials to be considered as Confidential Information must be clearly and conspicuously marked as such and enclosed in a separate, sealed envelope delivered together with the bid or proposal. Designations of Confidential Information received after the initial disclosure to the University shall be invalid.

The Purchasing Agent may request that any Confidential Information submitted by the Bidder be provided in a redacted format for use in the event of a post-award request for disclosure, or that the Bidder withdraw its claim of confidentiality as to any and all of the information on the grounds that it does not appear to be properly designated as Confidential Information under these Rules. If the Purchasing Agent and the Bidder do not agree on the confidentiality or handling of the claimed Confidential Information, the Bidder may withdraw its response and all of the disputed information shall be returned to the Bidder or destroyed. Such bid or response will be disqualified from the award.

After award, all responses to the solicitation shall be open to public inspection, with the exception of Confidential Information as defined in this Rule.

d. Mistakes and Withdrawal of Response

(i). Confirmation or Withdrawal

When it appears from a review of the response that a mistake has been made, the Bidder 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 Bidder may have its response considered as-is or may withdraw its response if the conditions set forth in this section are met.

(ii). 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 Bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Purchasing Agent may waive such informalities or allow the Bidder to correct them depending on which is in the best interest of the University.

(iii). Withdrawals of Responses Prior to Due Date and Time

Any response may be withdrawn prior to the specified due date and time upon written request from the Bidder. Once withdrawn, a response may not be resubmitted after the Due Date and Time.

(iv). Withdrawal of Responses after Due Date and Time but Prior to award

The Director may allow a response to be withdrawn after the specified due date and time but prior to award, provided that:

- the Bidder provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or
- the mistake is clearly evident on the response; or
- it is found by the Director unconscionable not to allow the response to be withdrawn.

e. 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 and approved by the Director or such assistant as he or she may designate.

8. Evaluation and Award

All responses shall be evaluated as outlined in the solicitation. The Purchasing Agent shall ensure that the award decision treats all Bidders equitably.

The Purchasing Agent shall make purchases from and award contracts to, responsible and responsive Bidders only.

a. Tie Quotes/Bids

Tie quotes or bids are responsive quotes or bids from responsible Bidders that are substantially identical in price, terms, and conditions and which meet all the requirements and criteria set forth in the solicitation. In the event of tie quotes or bids:

The award shall be made to the bidder as to whom a statutory preference applies under Colorado law or these Rules.

If no preference applies, the Purchasing Agent may engage in competitive negotiation with the tied Bidders and make the award under section VI (D).

If competitive negotiation does not result in a lower bid, the Director shall make the award in his or her discretion.

b. Only One Bid Received

When a published solicitation receives only one bid from a responsible and responsive Bidder, the Purchasing Agent shall evaluate the bid and determine whether the price, terms, specifications and quality are all acceptable to the University. If the bid is not acceptable, the solicitation shall be canceled and the University may, in its sole discretion, revise and/or reissue the solicitation. A notice shall be published in the same manner as all other notices under these Rules stating the action taken. If the bid is acceptable, the University may, in its sole discretion, make an award to the Bidder.

9. 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 Director. 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 addenda 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 quotes, bids or proposals received are at clearly unreasonable prices;
- (viii). the University has reason to believe that the quotes, 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 Bidders that submitted quotes, 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.

10. Disposition of Quotes, Bids or Proposals

When quotes, bids or proposals are rejected, or a solicitation is cancelled after bids or proposals are received, the quotes, bids or proposals which have been opened shall be retained in the procurement file. Bids and proposals which have not been opened, such as late submissions or vendors who do not proceed to the next phase of a multi-phase bid shall either be returned to the Bidders (upon request), or shall be disposed of (shredded or deleted).

B. Methods of Procurement:

1. Small-Dollar Purchases – Purchases totaling \$5,000 or less:

The University has developed mechanisms for the purchase of most goods and services totaling \$5,000 or less and not requiring a contract. When acquiring personal services (labor, time or effort), it is the ordering department's responsibility to request and obtain an insurance certificate from the Bidder showing general liability, worker's compensation, employer's liability, and auto liability coverages. The available methods for small dollar purchases are:

a. Disbursement Voucher (DV)

University departments are delegated the use of the disbursement voucher via the CSU financial system for payment of invoices totaling \$5,000 or less. The DV is a check request document only and should not be used in lieu of a contract or purchase order when one is required.

b. Automatic Purchase Order

University departments are delegated the use of the Automatic Purchase Order (APO) via the CSU financial system for small dollar purchases totaling \$5,000 or less.

c. P-Card

The University Procurement Card (P-Card) may be used for purchases totaling \$3,000 or less when the use of a disbursement voucher or APO e-Procurement system is not viable (unless a higher amount, up to \$5,000, has been approved for the cardholder by the Director).

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

Purchases of goods totaling more than \$5,000 through \$10,000 are subject to vendor selection at the discretion of the Purchasing Agent upon receipt of an approved purchase requisition, or by the authorized departmental representative for purchases up to \$10,000 made from a contracted supplier within the CSU e-Procurement system.

3. Purchases of Services totaling more than \$5,000 through \$25,000

Purchases of services totaling more than \$5,000 through \$25,000 are subject to vendor selection at the discretion of the Purchasing Agent upon receipt of an approved purchase requisition.

4. Purchases of Goods totaling more than \$10,000 through \$150,000 and Purchases of Services totaling more than \$25,000 through \$150,000

a. Documented Quotes

Goods totaling more than \$10,000 through \$150,000 and services totaling more than \$25,000 through \$150,000, may be purchased using the documented quote process. A documented quote can only be issued by the Purchasing Agent after an approved purchase requisition is received in the PCS Department.

For goods and services Procurements via a documented quote, neither the solicitation nor the Bidder'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. An ensuing purchase order shall constitute an offer. The Bidder may accept by performance, unless the purchase order expressly requires acceptance by written acknowledgment.

The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the University, with price/cost being one consideration. The basis for the selection must be documented and will be final.

Documented quotes must be advertised in accordance with Section V.A.3. and solicitations must remain posted for at least three working days unless the Director provides a determination that a lesser time is required in order to meet an immediate University need. The Purchasing Agent shall have discretion to extend the period whenever necessary to promote competition.

The Purchasing Agent may negotiate with any Bidder 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 Bidder's quote shall not be revealed to a competing Bidder, and all quotes will be kept confidential until a contract or purchase order is issued.

Documented quotes may be submitted electronically only when the terms of the solicitation expressly permit electronic submission.

5. Procurement Procedures for Purchases totaling over \$150,000

a. Invitation for Bids (IFB)

(i). Use

An invitation for bids is a method of procurement which results in a contract or purchase order being awarded to the lowest responsive bid from a responsible Bidder based on the specifications and terms set forth in the solicitation. An invitation for bids is the preferred solicitation method for purchases of goods over \$150,000. An IFB can only be issued after an approved purchase requisition is received in the PCS Department. Typical reasons why an IFB may be used include:

- the award will be made on the basis of price alone, specifications and other terms being met; or
- it is not necessary to conduct negotiations with the responding Bidders about their bids.

(ii). Solicitation Time

The minimum time for the IFB opening date shall be not less than fourteen (14) calendar days after posting a solicitation on the ESNS. When special requirements or conditions exist, the Director may shorten the IFB time but in no case shall the time be shortened for the purpose of reducing competition. Solicitation periods of less than fourteen (14) calendar days shall be documented as to why a reduced IFB period was required.

(iii). Advertisement

IFBs must be advertised in accordance with section V.A.3.

(iv). Late Responses

Responses received after the due date and time shall not be opened and shall be rejected as late.

(v). IFB Opening

The name of each Bidder, the bid price(s) (unless otherwise provided in the IFB), and other information deemed appropriate by the Purchasing Agent shall be read aloud at the time of the IFB opening. Reading of all bid item prices may not be reasonable or desired (e.g., in the case of lengthy or complex IFBs). The decision not to read all bid prices shall be made by the Purchasing Agent. The name of each Bidder, amount of bid, delivery, name(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection. Prior to award, copies of pricing information not read aloud at the IFB opening shall be made reasonably available for inspection, if requested. Other information related to a bid, or a Bidder's responsiveness, may be withheld from inspection until questions concerning such information are resolved. After award, all bid documents, and a complete bid analysis, shall be open to public inspection except to the extent the University has approved a Bidder's request that information be held confidential as set forth in Section VI.A.7.c.

(vi). Award

All goods and services shall be evaluated for acceptability against the specifications and/or brand name 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.

b. 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 or purchase order to the lowest responsive bid from a 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.

c. Best Value Invitation for Bids (Best Value IFB)

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

(ii) Written Determination

The Purchasing Agent shall provide a written determination for approval to the Director 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.

d. 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. The Purchasing Agent may cancel a scheduled auction and request the submission of sealed bids whenever, in the Purchasing Agent's discretion, the purposes of the auction would not be achieved by continuing with the auction event.

e. Request for Proposals

(i). Use of Request for Proposals

Request for Proposals (RFP) is a method of procurement which results in a contract or purchase order being awarded to the lowest responsive bid from a responsible Bidder based on the specifications and terms set forth in the competitive sealed proposals. Proposals are evaluated on the basis of factors that include but are not limited to price. A request for proposals is the preferred solicitation method for services over \$150,000. A request for proposals can only be issued after an approved purchase requisition is received by the PCS Department. 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.

(ii). Written Determination

The Purchasing Agent must provide a written determination for approval to the Director prior to the use of an RFP. The written determination must explain why the RFP is the proper method of Solicitation.

(iii). Evaluation Committee

A committee of no less than three individuals shall evaluate all responsive proposals.

(iv). 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 Director.

(v). Advertisement

RFPs will be advertised in accordance with section V.A.3.

(vi). Late Responses

Responses received after the due date and time shall not be opened and shall be rejected as late.

(vii). RFP Opening

There shall be a public opening at the date and time specified in the RFP. The Purchasing Agent shall read the name of all proposers submitting responses. A witness shall be present. All information other than the proposers' names remains confidential until a contract has been executed between the University and the successful Bidder.

f. Competitive Negotiation

(i) When Used

A contract or purchase order may be awarded by competitive negotiation after an unsuccessful IFB or RFP process if the Director determines that time does not permit resolicitation, or that, considering all of the facts and circumstances, resolicitation would be impracticable or is not reasonably likely to result in more favorable terms for the University.

An IFB or RFP process is unsuccessful if:

- all offers received are unreasonable or non-competitive;
- the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer, and competitive negotiation may result in a bid that is within the available funds amount;
- the Solicitation has been properly cancelled in accordance with the provisions of section V.A.9.;
- the number of responsive offers is not sufficient to ensure adequate competition; or
- the Director determines that competitive negotiation is the most advantageous method of resolving low tie bids.

(ii). The competitive negotiation process shall include all vendors who responded to the Solicitation or any rebid and may include other vendors capable of fulfilling the University's needs.

(iii). The PCS 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.

(iv). Each vendor with whom the PCS Department negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors.

(v). A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.

(vi). The award shall be made to the vendor whose offer is most advantageous to the University. The Director shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the University.

C. Exceptions to Competitive Solicitation Process

1. Sole Source Procurement

Procurement from a selected vendor without the benefit of 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 vendor who can reasonably provide the good or service. A requirement for a particular proprietary item (i.e., a brand name only specification) does not justify a sole source procurement if there is more than one potential vendor 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 PCS 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 PCS Department shall take action, whenever possible, to avoid the need to continue to repeatedly procure the same goods and/or services without competition.

b. Sole Source Procurement Procedures

(i). The requesting department shall submit to the PCS Department a sole source justification memorandum along with any other pertinent information regarding the sole source procurement; e.g. vendor quote, literature, etc.

(ii). The Director 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.

(iv). Except in the case of an emergency procurement or for reasons of compatibility when adequately documented by the Purchasing Agent, prior to entering into a sole-source contract, the Purchasing Agent shall attempt to identify competing vendors by placing a notice on the ESNS for not less than three business days. If the Purchasing Agent receives one or more responses to the notice from qualified and responsible vendors who are able to meet the

specifications identified in the notice, and who are not otherwise prohibited from bidding on the contract, the sole-source selection method shall not be used.

2. Emergency Procurements

a. Defined

When an emergency condition (as defined in State Fiscal Rule 2-2, as now or hereafter amended) 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:

- the functioning of the University, or its programs;
- the preservation or protection of property; and/or
- the health or safety of any person(s) or animal(s).

Emergency Procurements do not include:

- Procurements that need to be rushed because of an avoidable failure to plan ahead;
- end of the fiscal year procurements; or
- 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, as determined by the Director or designee. In addition to the Director or designee, the President, the Vice President for Administrative Services, Director of Facilities, Chief of Police, Director of Environmental Health Services, or other responsible University official who is managing the emergency condition may declare an emergency, provided that, whenever practicable, approval by the Director or designee shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the responsible official shall notify the Director on the next working day. If the Director determines that criteria for an emergency procurement were not met, then the procurement will be processed as a statutory violation as set forth in the State Fiscal Rules and/or State Controller's official policies, and these Rules.

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 responsible University department shall prepare a written justification, to be approved by the Director, that sets forth the justification for the emergency procurement. The justification shall include the following:

- the basis for the emergency procurement including the date the emergency first became known;
- a listing of the goods and/or services procured;
- a description of the efforts made to ensure that proposals or offers were received from as many potential vendors as possible under the circumstances; and
- the basis for the selection of the selected vendor.

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 quotes for an emergency procurement.

3. University Price Agreement(s) (UPAs)

a. The Director may issue University Price Agreements for goods or services for use by all University departments. The purpose of a UPA 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 PCS Department is responsible for publicizing UPAs . University departments are responsible for checking the PCS Department's web site or the CSU e-Procurement system to

determine if a UPA has been established before initiating a purchasing transaction of any type or amount, including P-Card and disbursement voucher or Automatic Purchase Order transactions.

4. Cooperative Purchasing Agreement(s)

a. The Director may approve the purchase of goods or services from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the University after considering:

- the competitiveness of pricing under the contract; and
- the efficiencies and cost savings of using the contract.

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

- the Federal government or an agency or other instrumentality of the Federal government;
- the State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;
- multistate agency;
- 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;
- other institutions of higher education; or
- 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 (E&I).

c. The Director may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a University Price Agreement. The Director has the final authority to approve the University's participation in cooperative purchasing agreements.

5. Qualified Products List(s)

A qualified products list may be developed with the approval of the Director when testing or examination of goods prior to issuance of the Solicitation is desirable or necessary in order to best satisfy the University's requirements. When developing a qualified products list, a representative group of potential suppliers may be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any

potential supplier, even though not solicited, may offer its products for consideration on subsequent Solicitations.

6. Request for Information (RFI)

A Request for Information (RFI) is similar to an RFP, but is NOT a source selection method. An RFI is used to obtain preliminary information about a market, type of available service or a product when there is not enough information readily available to write an adequate specification or work statement. An RFI may ask for vendor input to assist the University in preparing a specification or work statement for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily. The RFI shall clearly state that no award will result.

D. Price Cost Analysis

1. When there is not adequate 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 believe it has yet been established that the price to be paid is fair and reasonable, he/she will:

- a. engage in further efforts to seek competition;
- b. negotiate with the vendor to lower the price; and/or
- c. do further research to establish whether or not the pricing is fair and reasonable.

E. Demonstration or Sample Agreements

Equipment requested by University departments from vendors, or offered by vendors to the University on a trial, loan, demonstration, or evaluation basis does not constitute a commitment to purchase said equipment. The University department receiving such equipment shall be responsible for advising the vendor that, if a procurement results from the trial or sample, these Rules shall apply. If the vendor who loaned the equipment is the awardee, new equipment must be supplied unless otherwise agreed in writing by an authorized University official. All moving, handling, transportation, and applicable installation costs associated with the equipment of this nature are the sole responsibility of the vendor unless otherwise agreed by authorized University officials in accordance with these Rules. Any agreement which is required by the vendor shall be signed by the appropriate University officials as for any other expenditure of funds.

F. Intra-University Provision of Goods or Services

When a requisition is received for goods or services that are able to be provided by a department of the University, then the Purchasing Agent shall direct the ordering department to contact the department that supplies those goods or services in accordance with the applicable University policies and directives. Examples of such goods and services include printing and copying, conference organization and registration, and continuing education services. The University department that provides such goods or services may waive the requirement, in its discretion.

H. Preferences

1. Environmentally Preferable Products. The provisions of sections 24-103-207 and 24-103-207.5, C.R.S., are hereby incorporated into these Rules. As used in those sections, “executive director” shall refer to the Director. Section 24-103-207.5(6) is specifically excluded.

2. Colorado Businesses. The provisions of C.R.S. §§8-18-101 and 8-18-103, which require a preference for resident Bidders and resident agricultural products under certain circumstances, apply to the award of contracts under these Rules.

SECTION VII CONTRACTS

A. Types of Contracts

Subject to the limitations of this section and the State Fiscal Rules, any type of contract which will promote the best interests of the University may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a written determination is made by the Purchasing Agent 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. Such a determination may also be made by the Director of Sponsored Programs if required pursuant to a grant, subgrant, or award.

B. Multi-Year Contracts

The Director may approve a multi-year contract for goods or services, subject to funding availability as established by the University Controller. Contracts for periods in excess of five years require the written approval of the Director and execution by the University Controller.

SECTION VIII STATUTORY VIOLATIONS

Per State of Colorado regulations, all purchases that violate state statutes must be processed in accordance with the State Fiscal Rules. A statutory violation occurs when a state agency or institution of higher education makes a purchase for more than \$5,000 before the issuance of an approved commitment voucher (PO, state contract, or other form as defined in the State Fiscal Rules). For example, authorizing a vendor to begin work before the PCS Department issues a purchase order, even though the department has submitted a purchase requisition, is a statutory violation. Similarly, obtaining goods or services on credit and subsequently submitting the invoice with a payment voucher is a statutory violation unless it is a purchase specifically allowed to be paid by disbursement voucher or P-Card. **Note: Pursuant to state statute, individual employees who participate in the making of an unauthorized purchase in violation of state statutes may be personally liable for the amount of the obligation incurred.**

Repeated violations by an individual or department may result in sanctions as reasonably required to discourage and prevent future violations, satisfy the requirements of auditors and officials, and/or protect the University from protests and other risks. These may include, but are not limited to, withdrawal of purchasing authority, requirement of pre-approval of purchases at lower dollar amounts, requirement of additional departmental or college-level oversight, or any other measures deemed necessary and appropriate by the Director. Any such sanctions shall be submitted to the University Controller and the Senior Vice President for Administrative for review before being imposed. Nothing in these Rules is intended to supersede, conflict with or modify any other rule or policy of the University, including those governing disciplinary actions against employees.

SECTION IX DISPUTES & REMEDIES

A. Types of Disputes

The Director is authorized to settle and resolve any questions regarding:

1. Any protest concerning the solicitation or award of a contract or purchase order; and
2. Any controversy or dispute arising between the University and a contractor/vendor (or prospective contractor/vendor), including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or any other cause for modification or rescission of a contract or PO.

B. Costs of Filing

All costs associated with filing and prosecuting a protest or dispute shall be borne by the protestor. The University does not impose fees for the filing of a protest, but may have rights pursuant to the contract or PO to recover costs or fees in the event of a breach of contract or other dispute.

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 as confidential in a solicitation offer. Protests shall be submitted in writing within seven (7) working days after the protestor knows, or in the exercise of reasonable diligence, should have known, of the facts giving rise thereto (and, in any event, not later than thirty (30) days after the events giving rise to the protest occurred).

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 in writing, addressed to the Director at 555 S. Howes Street, First Floor North, 6010 Campus Delivery, Fort Collins, CO 80523-6010 and delivered, faxed or sent by mail

to the PCS Department. Proof of time and manner of delivery is the burden of the protestor. Emails are not acceptable for delivery of protests. The protestor shall have the burden of proof of the time, place and method of delivery of the protest in any dispute or action related thereto.

2. Requested Information

Any additional information regarding the protest should be submitted in writing and 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 Director, the protest may be resolved without such information.

3. Decision

a. The Director 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 basis for the decision. The Director shall furnish a copy of the decision to the protestor in writing, which may be by email, fax, or regular mail.

b. If the protestor is dissatisfied with the decision of the Director, the decision may be appealed within seven (7) working days after the protestor's receipt of the decision, by submitting a request for appeal to the University Vice President for Administrative Services. The Vice President shall render a decision within ten (10) working days after receipt of the appeal, and such decision shall be final.

c. The review and appeal procedures described in this section are the exclusive procedures for determining the outcome and remedy of a protest. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to protests of procurement actions under these Rules. (See § 24-4-102(3)(a), C.R.S.). For purposes of the Centralized Contract Management System of C.R.S. §24-102-205 involving personal services contract exceeding \$100,000, vendors may exercise those dispute, protest and appeal rights provided under C.R.S. §§24-109-105 through 107 and 24-109-201 and 202, as now or hereafter amended.

4. Stay of Procurement

In the case of protested RFPs only, there shall be a stay of procurement until the decision of the Director is rendered, unless the Director determines that execution of a contract or purchase order without delay is necessary to protect substantial University interests. In all other solicitations the award may be made without regard to the status of the protest. The Director may, but is not required to cancel or modify the award as a result of a protest to an RFP.

5. Entitlement to Costs

When a protest is sustained and a finding is made that the protestor should have been awarded the contract or purchase order under the solicitation, but due to a defect in the solicitation or award, was not, the protestor shall be entitled to the actual direct and reasonable costs incurred by the protestor in connection with responding to the solicitation. No other costs or damages

shall be permitted or awarded, and reasonable costs shall not include attorney fees or court costs. Overhead shall not be included within the costs claimed, and the basis for all costs shall be clearly specified in writing. These remedies are the sole and exclusive remedies that may be awarded in the event of a protest.

D. Contract Disputes

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

SECTION X COST PRINCIPLES

A. CSU Cost Principles

The University has established rules setting forth cost principles which may be used to determine the allowability of incurred costs for the purpose of reimbursing costs under these Rules or under contract provisions which provide for the reimbursement of costs (including, but not limited to, pricing of termination for convenience settlements). These cost principles may be found on the PCS Department's web site under Manuals, and are hereby incorporated and made a part of these Rules as if set forth herein. The Cost Principles are subject to change without notice.

B. 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.

2. Incorporation of Federal Cost Principles: Conflicts between Federal Principles and these Rules

a. In contracts not awarded under a program which is funded by Federal assistance funds, the University may explicitly incorporate Federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The University Purchasing Agent and the contractor may by mutual agreement incorporate Federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the Federal cost principles shall clearly state that to the extent Federal cost principles conflict with these Rules, these Rules shall control.

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

C. Authority to Deviate from Cost Principles

If the University's Purchasing Agent decides 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 vendor who is to be suspended, the Director may issue a written determination to suspend a vendor 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 action has been initiated for an offense which would be cause for debarment or a debarment request has been received by the Director which request reasonably appears to be well-founded based on the facts and circumstances described in the request, within the causes enumerated in XI.B.1 below, and the Director determines that suspension is necessary to protect the best interests of the University. The suspension may remain in effect until after the trial of the suspended vendor or final determination of the request for debarment.

1. Notice of Suspension.

A written notice of the suspension, including a copy of the determination, shall be sent to the suspended vendor. 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 vendor that no business may be conducted with the University by any person(s) representing the suspended vendor during the suspension period and that any solicitation responses received from the suspended vendor during the suspension period shall not be considered.

2. Effective Date.

The suspension period will be effective upon issuance of the notice of suspension.

B. Debarment

1. Reasons for Debarment.

A vendor 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 vendor 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 C.R.S. §7-108-401, “General Standards of Conduct for Directors and Officers.”

2. Decision on Debarment

Following reasonable inquiry to determine whether a vendor has engaged in activities which are cause for debarment, the Director may debar the vendor. A vendor may be debarred for a period of time commensurate with the seriousness of the offense.

3. Notice of Debarment

A written notice of debarment shall be sent to the suspended vendor. The notice shall:

- a. state the debarment period; and
- b. inform the debarred vendor that no business may be conducted with the University by the debarred vendor, or by any person(s) representing, or acting by or through the debarred vendor during the debarment period and that any solicitation responses received from the debarred vendor or any such person during the debarment period shall not be considered.

4. Debarment Effective Date

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

5. Period of Debarment

After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires unless a court or the Director orders otherwise.

C. Master List

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

D. Automatic Disqualification from Solicitation.

Whether or not any action is taken under this Rule to suspend or debar a vendor or potential vendor, the vendor or potential vendor shall automatically be disqualified from participating in any procurement when the vendor is named in the Excluded Parties List System (EPLS) published by the Federal government (*see* <https://www.epls.gov/epls/search.do> if the

procurement involves the expenditure of any federal funds and the disqualification shall continue until the vendor's name is removed from the EPLS list.

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, HUB Zone 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. Information about the University's Small Business Program may be viewed online at:

<http://www.purchasing.colostate.edu/pages/pdf/CSU%20Small%20Business%20Program.pdf>.

SECTION XIII
PROCUREMENT RECORDS -- INFORMATION & RETENTION

Procurement records are subject to applicable federal, state and University records retention policies.