

COLORADO STATE UNIVERSITY

PROCUREMENT RULES

Revised December 1, 2016

TABLE OF CONTENTS

COLORADO STATE UNIVERSITYi

PROCUREMENT RULESi

TABLE OF CONTENTS ii

SECTION I INTRODUCTION AND DEFINITIONS 1

 A. Introduction and Purpose 1

 B. Definitions..... 1

SECTION II AUTHORITY & DELEGATION 6

 A. Legal and Policy Basis; Delegation of Authority 6

 B. Procurement Procedures; Modification of Rules 6

 C. Authority for Construction Procurement and Contracting 7

SECTION III ETHICS..... 8

 A. Statement of Ethical Responsibility 8

 B. Conflict of Interest 8

 C. CSU-Sponsored Vendor Shows/Product Demonstrations 8

 D. Code of Ethics..... 8

SECTION IV APPLICABILITY 10

 A. General Applicability 10

 B. Exclusions 10

SECTION V PROCUREMENT METHODS AND PROCEDURES 12

 A. Solicitation Policy 12

 B. Specifications 12

 C. Solicitation Thresholds 12

 1. Goods: 12

 2. Services: 13

 D. Small-Dollar Purchases – Purchases totaling \$5,000 or less 13

E.	Purchasing Agent Discretion	13
F.	Documented Quotes.....	14
G.	Invitation for Bids (IFB)	14
	1. <i>Solicitation Time</i>	15
	2. <i>Late Responses</i>	15
	3. <i>IFB Opening</i>	15
	4. <i>Award</i>	15
	5. <i>Multi-Step Sealed IFBs</i>	15
	6. <i>Best Value Invitation for Bids (Best Value IFB)</i>	16
	7. <i>Evaluation</i>	16
H.	Competitive Reverse Auctions.....	16
I.	Request for Proposals	16
	1. <i>Advertisement and Open Solicitation Time</i>	16
	2. <i>Written Determination</i>	17
	3. <i>Late Responses</i>	17
	4. <i>RFP Opening</i>	17
	5. <i>Evaluation Committee</i>	17
J.	Competitive Negotiation	17
K.	Solicitation Notification.....	18
L.	Pre-Bid Conferences	18
M.	Addenda/Amendments to Solicitations.....	18
N.	Solicitation Receipt, Opening, & Recording.....	18
	1. <i>Receipt</i>	18
	2. <i>Opening and Recording</i>	19
O.	Confidential Information.....	19
P.	Mistakes and Withdrawal of Response.....	19

1.	<i>Confirmation or Withdrawal</i>	19
2.	<i>Minor Informalities</i>	20
3.	<i>Withdrawals of Responses Prior to Due Date and Time</i>	20
4.	<i>Withdrawal of Responses After Due Date and Time but Prior to Award</i>	20
5.	<i>Determinations Required</i>	20
Q.	Evaluation and Award.....	20
1.	<i>Request for Proposal Award</i>	20
2.	<i>Tie Quotes/Bids</i>	21
3.	<i>Only One Bid Received</i>	21
R.	Cancellation of Solicitations.....	21
1.	<i>Reasons for Cancellations</i>	21
2.	<i>Notice of Cancellation</i>	22
3.	<i>Disposition of Quotes, Bids or Proposals</i>	22
S.	Sole Source Procurement.....	22
1.	<i>Continuing Need for Sole Source</i>	22
2.	<i>Sole Source Procurement Procedures</i>	22
T.	Emergency Procurements.....	23
1.	<i>Determining Need for an Emergency Procurement</i>	23
2.	<i>Authority to Make Emergency Procurements</i>	23
3.	<i>Limits of an Emergency Procurement</i>	24
4.	<i>Documentation</i>	24
5.	<i>Procedures</i>	24
U.	University Price Agreement(s) (UPAs) and Cooperative Purchasing Agreements.....	24
V.	Qualified Products List(s).....	25
W.	Request for Information (RFI).....	25
X.	Price Cost Analysis.....	25

Y. Demonstration or Sample Agreements	25
Z. Intra-University Provision of Goods or Services	26
AA. Preferences	26
1. <i>Environmentally Preferable Products</i>	26
2. <i>Colorado Businesses</i>	26
SECTION VI CONTRACTS.....	27
A. Types of Contracts	27
B. Multi-Year Contracts	27
C. Contract Administration.....	27
SECTION VII UNAUTHORIZED PURCHASES.....	28
SECTION VIII PROTESTS AND APPEALS	29
A. Resolution of Protests and Disputes.....	29
B. Protests	29
1. <i>Costs of Filing</i>	29
2. <i>Filing of Protest</i>	29
3. <i>Requested Information</i>	30
4. <i>Decision</i>	30
5. <i>Appeal</i>	30
6. <i>Stay of Procurement</i>	30
7. <i>Entitlement to Costs</i>	30
8. <i>Protesting Construction Solicitations and Awards</i>	31
9. <i>Receipt of Protest and Appeal Decisions</i>	31
10. <i>Contract Disputes</i>	31
SECTION IX COST PRINCIPLES	32
A. CSU Cost Principles	32
B. Use of Federal Cost Principles.....	32

1. Cost Negotiations.....	32
2. Incorporation of Federal Cost Principles:Conflicts between Federal Principles and these Rules	32
C. Federal Funded Procurements.....	32
SECTION X SUSPENSION & DEBARMENT.....	33
A. Suspension	33
1. Notice of Suspension	33
2. Effective Date.....	33
B. Debarment.....	33
1. Reasons for Debarment.....	33
2. Decision on Debarment	34
3. Notice of Debarment	34
4. Debarment Effective Date and Period	34
C. Master List	34
1. Excluded Parties (System for Award Management)--Automatic Disqualification from Solicitation	34
SECTION XI SMALL BUSINESS PROGRAM	35
SECTION XII PROCUREMENT RECORDS -- INFORMATION & RETENTION	36

SECTION I INTRODUCTION AND DEFINITIONS

A. Introduction and Purpose

These Rules are provided by the Office of Procurement Services at Colorado State University 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.

1. **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.
2. **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.
3. **Alternative** means a choice of a different good or service that meets or exceeds the functional requirements of the base bid.
4. **Award** means the acceptance of a bid, proposal, or quote (verbal, written or electronic) by issuance of a purchase order and may include the execution of a written agreement to cover performance by the vendor.
5. **Base Bid** means the minimum functional requirements of the good or service.
6. **Best Value** means the lowest overall cost to the University after taking into consideration costs, benefits, and savings.
7. **Bid** means a response from a bidder to an invitation for bids (IFB).
8. **Bidder** is the person or entity that submits a bid or quote in response to an invitation for bids (IFB) or documented quote (DQ) issued by the University. (See also Offeror).

9. **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.
10. **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.
11. **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.
12. **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 any person 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).
13. **Contract** means an agreement between the University and another party, regardless of what it may be called, creating obligations that are enforceable under the law. As used in these Rules, the term contract includes purchase orders. Contractor means any entity that has a contractual relationship with the University for the provision of goods or services as allowed for under these Rules.
14. **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 these Rules, "construction" includes capital construction and controlled maintenance, as defined in C.R.S. §24-30-1301.
15. **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.
16. **CSU e-Procurement System** means the web-based electronic catalog system maintained by CSU Procurement Services for placing orders directly with pre-approved vendors.
17. **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 Procurement Services file.
18. **Director** means the Director of Procurement Services for Colorado State University. Any authority given the Director in these Rules may also be exercised by the Vice President for University Operations 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.

19. **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 a check request document only and cannot be used in place of a contract or purchase order when one is required.
20. **Documented Quote (DQ)** is an informal, qualifications-based solicitation process in which the Purchasing Agent and ordering department evaluate vendors' quotations for best overall value, one factor being price.
21. **Electronic Solicitation Notification System (ESNS)** means a system used by Procurement Services to notify bidders or potential bidders and others of solicitations, awards, and other pertinent matters. The University uses the Rocky Mountain E-Purchasing System (www.rockymountainbidsystem.com). Procurement Services may, but is not required to, utilize other notification methods in addition to the electronic solicitation notification system.
22. **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.
23. **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.
24. **Invitation for Bids (IFB)** means all documents, including those attached or incorporated by reference, utilized by the University for soliciting bids.
25. **Offeror** means the person or entity that submits a proposal in response to a request for proposals issued by the University.
26. **Options** means choices of additive or deductive alternative options, components, services, or goods that serve to provide value engineering of the base bid.
27. **PCard:** A University-liable commercial procurement payment 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 PCard Administrator. The University PCard is a point-of-sale payment method. (Prior to July 1, 2009, the "PCard" was known as the University ACARD).
28. **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.
29. **Proposal** means a response from an offeror to a request for proposal (RFP).
30. **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.

31. **Purchasing Agent** means an employee of CSU with delegated purchasing authority from the Director.
32. **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.
33. **Purchase Requisition (REQ)** is an informal request from a campus department to Procurement Services for the procurement of goods, services or construction and to authorize a specific fund account to be charged. A purchase requisition is an internal source document only; not a commitment voucher. It is the document by which a customer department requests that a contract be entered into by the University for a specific service, item of personal property or construction project, and may include (but is not limited to) the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting documentation.
34. **Qualified Products List** means an approved list of goods or services described by manufacturer, model, part or catalog numbers which, prior to competitive solicitation, the University has determined will meet the applicable specification requirements.
35. **Quote** means a response from a bidder to a request for quotes.
36. **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.
37. **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 combined with other foods are considered resale items.
38. **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.
39. **Responsible Bidder** or Offeror means a bidder or offeror 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.

40. **Responsive Offer** means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposal include, but are not limited to, price, quality, quantity or delivery requirements.
41. **Revenue Contract** 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. Revenue contracts will be evaluated by the Director on a case-by-case basis.
42. **Sealed** means that the bid or proposal must be submitted in a manner that: (i) 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; (ii) is reasonably designed so that the document cannot be changed, once received by the University, without leaving evidence that the document has been changed; (iii) 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 (iv) 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 Procurement Services at CSU unless otherwise specified in the solicitation.
43. **Services** mean the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product (other than a report).
44. **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.
45. **Solicitation** means a request to the business community to respond to a documented quote, invitation for bids or request for proposals.
46. **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.
47. **University Price Agreement (UPA)** means a contract entered into by the University for the purpose of promoting efficiency and savings that result from leveraging the University's buying power. A UPA is mandatory for all University purchases of a particular good or service unless the Director or designee provides a waiver.

SECTION II AUTHORITY & DELEGATION

A. Legal and Policy Basis; Delegation of Authority

The Colorado Constitution, Article VIII, Section 5(2), vests the Board with the authority to contract. This is implemented by statute, C.R.S. §23-30-102, which provides in part:

The Board of Governors of the Colorado State University System is a body corporate, capable in law of suing and being sued; of taking, holding, acquiring, exchanging, selling, and determining the uses of personal property and real estate, or any interest therein, the ownership of which is vested in the board of governors of the Colorado state university system or the entities governed by it; of contracting and being contracted with and of causing to be done all things necessary to carry out the provisions of this article.

Through a series of resolutions, the Board of Governors has delegated to the President the authority to approve and execute all contracts, agreements, grants, warrants and other binding legal instruments which are either expressly approved by resolution of the Board, or are usual, necessary and appropriate to the normal operation of the institution and within the budgeted expenditures as approved by the Board. The Board also expressly permitted the institution presidents to authorize other administrators to negotiate and execute such instruments. The President has, in turn, delegated to the Director of Procurement Services the responsibility and oversight for all procurement activities of the University as reasonable and necessary for the conduct of the institution's ordinary business affairs. The Director may further delegate his/her authority to Purchasing Agents or individuals in University departments as reasonably required for the efficient operation of the University.

In 2010, the Colorado legislature further defined and broadened the statutory authority of the University to conduct its own procurement program by enacting SB10-003, which allowed institutions of higher education to "opt out" of the State Procurement Code and a number of administrative rules governing procurement and spending. The Board subsequently took action to exercise that authority and has specifically approved CSU's adoption of these Rules. (See the Contracting Services website for more information on these approvals).

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.

B. Procurement Procedures; Modification of 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 Automatic Purchase Order (APO) and the University's procurement card. The Director will review these rules yearly and may amend these Procurement Rules, subject to the approval of the Vice President for University Operations or designee and the Office of Policy and Compliance.

C. Authority for Construction Procurement and Contracting

SB10-003 did not extend the authority to opt out of all state statutes governing capital construction procurement and contracting. The Colorado Department of Personnel and Administration, State Buildings Programs, retains authority over many aspects of capital construction by institutions of higher education. State Buildings, through the State Architect, has substantially delegated its authority to the University Architect in the Department of Facilities Management. To the extent that the State Purchasing Code and Rules govern construction procurement and contracting, CSU follows those authorities consistent with its delegated authority. Facilities Management is responsible for conducting and managing all construction and professional services vendor selection processes (as that term is defined in C.R.S. 24-30-1402(6)), with the assistance of Procurement Services to assure compliance with the applicable federal, state and university procurement laws and rules.

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. CSU-Sponsored Vendor Shows/Product Demonstrations

To protect the integrity of the University’s procurement process, promote the viability of UPAs, and ensure fairness to all vendors, CSU-sponsored vendor shows and product demonstrations, which include open houses, product exhibits, shows, fairs or loaner equipment and product demonstrations, must be approved in advance by the Director or designee. The sponsoring department shall notify Procurement Services as far in advance as possible but at least thirty (30) business days prior to scheduling the desired vendor engagement date.

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:

- i. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
- ii. Demonstrate loyalty to Colorado State University, diligently following all lawful instructions, University rules, policy and procedures while using professional judgment, reasonable care, and exercising only the authority granted;
- iii. Conduct all purchasing activities in accordance with applicable laws and these Rules;

- iv. 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;
- v. Identify and strive to eliminate participation of any individual in operational situations where an actual or perceived conflict of interest may exist;
- vi. 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;
- vii. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
- viii. Display the highest ideals of honor and integrity in order to merit the respect and inspire the confidence of the public being served;
- ix. 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,
- x. 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 individuals and entities involved, either directly or indirectly, in the procurement of goods and services regardless of funding source. These rules shall be liberally construed and applied to promote the purpose, intent and policies thereof.

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 to be expended or the contract is primarily intended to be revenue-producing to the University. Procurement Services will seek to maximize the return to the University when revenue-producing contracts are involved. In the case of revenue-producing contracts for which the University is considering more than one vendor, Procurement Services may conduct a competitive solicitation appropriate to the circumstances. At the discretion of the Director or designee, formal competition may be required.
2. Construction bidding and contracting governed under Articles 91-92 of Title 24, C.R.S., or professional services, as defined in C.R.S. §24-30-1402(6); see section II of these Rules.
3. Contracts between the University and an educational institution, governmental body, research institute, or non-profit entity.
4. Items to be procured for resale. Items for resale do not include goods and ingredients that are incorporated into other goods or products to be resold by the University. The Purchasing Agent will determine whether or not goods are being ordered for resale.
5. The lease, sale, purchase, transfer, disposal or any other transaction involving an interest in real property.
6. Bona fide University employment contracts (not independent contractor services).
7. Insurance policies or benefits for the University and its employees, investment advisory services, investment management services and other investment-related services entered into pursuant to the University's employee benefits program.
8. Goods or services to be procured and 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.
9. Display, performance, or use of works of art, works of entertainment, literary works, museum collections, music, film, or other copyrighted materials specific to the purpose of the procuring department.

10. Used equipment, provided that the Purchasing Agent has determined that competition is not practical or would not be advantageous to the University. Such purchases will require cost or price analysis, certificate of working order and warranty unless waived by the Director or designee.
11. Advertising such as in a newspaper, magazine, television commercial, radio advertisement, outdoor advertising, indoor display, social media, or other media outlet where the University's brand or programs are being advertised to a specific consumer segment.
12. University Libraries collections in all formats, including books, periodicals, serials, electronic resources, multimedia/streaming video, etc.
13. Publicly regulated utilities.
14. Services related to the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute; including bond counsel and financial consultants; contracts and expenditures for litigation expenses, including experts, mediators, court reporters, process servers and witness fees, and attorney services.
15. Specialized professional services such as legal counsel, medical or other healthcare services, accounting and auditing services, or for teaching or research services.
16. Goods and/or services from a specific manufacturer/vendor that are directed by the Sponsor in order to comply with the terms and conditions of a sponsored project grant or contract.
17. Sponsored research or sponsored projects activities 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, Director or designee 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 or perceived conflicts of interest are avoided or mitigated in accordance with applicable laws.

**SECTION V
PROCUREMENT METHODS AND PROCEDURES**

A. Solicitation Policy

It shall be the policy of the University to procure goods and services in a manner that affords fair and equitable treatment of all persons involved in the procurement; maximizes the value of CSU funds; and provides safeguards for maintaining a procurement system of consistency, quality and integrity. Note, the solicitation process should not be used to obtain estimates or to “test the water.”

B. Specifications

Purchasing Agents shall ensure goods or services specifications 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 the rule 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.

C. Solicitation Thresholds

The following solicitation methods apply to acquisition of goods and services according to the amount of the transaction:

1. Goods:

Amount	Method
\$1-\$5,000	Automatic Purchase Order (APO)—campus departments are delegated authority from the Director to place APOs directly with vendors
>\$5,000-10,000	Purchasing Agent discretion. Purchasing Agent assistance not required for purchases made from contracted supplier within CSU e-procurement system.
>\$10,000-\$150,000	Documented Quotes (DQ)
>\$150,000-	IFB or RFP

2. *Services:*

Amount	Method
\$1-\$5,000	Automatic Purchase Order (APO)—campus departments are delegated authority from the Director to place APOs directly with vendors
>\$5,000-25,000	Purchasing Agent discretion.
>\$25,000-\$500,000	Documented Quotes (DQ)
>\$500,000	IFB or RFP

D. 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. 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:

- i. 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.
- ii. Automatic Purchase Order (APO): The Director has delegated to University departments authority to use APO via the CSU financial system for small dollar purchases totaling \$5,000 or less and from contracted suppliers in the e-procurement system up to \$10,000.
- iii. PCard: The University Procurement Card (PCard) may be used for purchases totaling \$3,000 or less (unless a higher amount, up to \$5,000, has been approved for the cardholder by the Director or PCard Administrator) when the use of a disbursement voucher, APO or e-Procurement system is not viable.

E. Purchasing Agent Discretion:

Purchases of goods totaling more than \$5,000 through \$10,000 and services more than \$5,000-25,000 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.

F. Documented Quotes

Goods totaling more than \$10,000 through \$150,000 and services totaling more than \$25,000 through \$500,000 may be purchased using the documented quote (DQ) process. A DQ can only be issued by the Purchasing Agent after an approved purchase requisition is received in Procurement Services.

For goods and services procurements via a DQ, 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 vendor 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 on the ESNS and solicitations must remain posted for at least three University business days unless the Director or designee 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 are submitted electronically unless the terms of the solicitation expressly prohibit electronic submission.

G. Invitation for Bids (IFB):

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 IFB is the preferred solicitation method for purchases of goods over \$150,000, but may be used as a solicitation method for purchases of services over \$500,000. An IFB can only be issued after an approved purchase requisition is received in Procurement Services. Typical reasons why an IFB may be used include:

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

1. Solicitation Time

IFBs must be advertised via the ESNS. The minimum time for the IFB opening date shall be not less than fourteen (14) calendar days after posting the solicitation. When special requirements or conditions exist, the Director or designee 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.

2. Late Responses

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

3. 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 V.

4. 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.

5. 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.

6. Best Value Invitation for Bids (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.

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

7. 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.

H. Competitive Reverse Auctions

A “competitive reverse auction” is 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. 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.

I. 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 proposal 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 \$500,000, but may be used as a solicitation method for purchases of goods over \$150,000. Request for proposals can only be issued after an approved purchase requisition is received by Procurement Services. 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.

1. Advertisement and Open Solicitation Time

RFPs will be advertised via the ESNS and the solicitation will remain open for a minimum of thirty (30) calendar days unless a shortened time frame is approved in writing by the Director or designee.

2. *Written Determination*

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

3. *Late Responses*

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

4. *RFP Opening*

There shall be a public opening at the date and time specified in the RFP. The Purchasing Agent shall read the names of all offerors submitting responses. A witness shall be present. All information other than the offerors' names remains confidential until a Notification of Recommendation for Award has been issued by the University.

5. *Evaluation Committee*

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

J. Competitive Negotiation

A contract or purchase order may be awarded by competitive negotiation after an unsuccessful IFB or RFP process if the Director or designee 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:

- i. all offers received are unreasonable or non-competitive;
- ii. 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;
- iii. the solicitation has been properly cancelled in accordance with these Rules;
- iv. the number of responsive offers is not sufficient to ensure adequate competition; or
- v. the Director or designee determines that competitive negotiation is the most advantageous method of resolving low tie bids.

The competitive negotiation process shall include all Responsible Bidders or Offerors whose response to the solicitation or any rebid is determined to be responsive, and may include other vendors capable of fulfilling the University's needs.

The Purchasing Agent 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.

Each vendor with whom Procurement Services 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.

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

The award shall be made to the vendor whose offer is most advantageous to the University. The Director or designee 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.

K. 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.

L. Pre-Bid Conferences

Pre-bid conferences may be conducted to explain procurement requirements and solicit input from the vendor community. 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.

M. Addenda/Amendments to Solicitations

Addenda/Amendments to solicitations shall be identified as such, and may require that the bidders or offerors acknowledge receipt of all addenda/amendments issued. Addenda/Amendments 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.

N. Solicitation Receipt, Opening, & Recording

1. Receipt

Each response to a competitive solicitation, excluding documented quotes, shall be marked by Procurement Services 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.

2. Opening and Recording

Competitive sealed bid 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. Note, competitive sealed request for proposal solicitations shall not be open to the public. All material received in response to a formal RFP solicitation shall be considered confidential and shall not be disclosed until after an award has been made.

O. 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.

P. Mistakes and Withdrawal of Response

1. 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.

2. 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.

3. 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.

4. Withdrawal of Responses After Due Date and Time but Prior to Award

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

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

5. 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 designee.

Q. 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.

1. Request for Proposal Award

Contracts solicited under these rules are to be awarded to the Responsible Offeror whose proposal represents the best overall value and is in the University's best interest. The RFP evaluation committee shall prepare a selection recommendation report for the Director of Procurement Services, or designee, recommending the firm considered to be the most highly qualified. The award is contingent upon the approval of the Director or designee.

2. 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 as set forth in Section V.

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

3. 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.

R. Cancellation of Solicitations

1. 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 or designee. 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.

2. *Notice of Cancellation*

When a solicitation is cancelled, notice of cancellation shall be posted on the electronic solicitation notification system.

3. *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).

S. 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 after conducting a good faith review of available sources and consulting the using department the Director, or Director's delegate makes a determination that there is only one source for the required service or good that can reasonably meet the need or 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 provide the good or service. Price is not a consideration to justify sole source procurement. In cases of reasonable doubt, competition is to be solicited.

1. *Continuing Need for Sole Source*

Procurement Services 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. Procurement Services shall take action, whenever possible, to avoid the need to continue to repeatedly procure the same goods and/or services without competition.

2. *Sole Source Procurement Procedures*

The requesting department shall submit to Procurement Services a sole source justification memorandum along with any other pertinent information regarding the sole source procurement; e.g. vendors quote, literature, etc.

The Director or designee may rule on sole source procurements.

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.

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.

T. Emergency Procurements

When an emergency condition 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.

1. Determining Need for an Emergency Procurement

a. An emergency condition justifies the use of an emergency procurement when that condition threatens one 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).

b. Emergency procurements do not include:

- i. Procurements that need to be rushed because of an avoidable failure to plan ahead;
- ii. end of the fiscal year procurements; or
- iii. end of a grant/contract procurement.

2. 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 University Operations, 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 or designee on the next working day. If the Director or designee 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 University Controller's official policies, and these Rules.

3. 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.

4. Documentation

As soon as practicable after an emergency procurement decision, the responsible University department shall prepare a written justification, to be approved by the Director or designee, which 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 vendors as possible under the circumstances; and
- iv. the basis for the selection of the selected vendor.

5. Procedures

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.

Any acceptable form of solicitation (e.g., written, faxed, electronically transmitted, phoned, etc.) may be used to obtain quotes for an emergency procurement.

U. University Price Agreement(s) (UPAs) and Cooperative Purchasing Agreements

The Director or designee may issue university price agreements for goods or services for use by all University departments. Once a UPA is in place, purchases may be made under these agreements without further competition.

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.

Procurement Services is responsible for publicizing UPAs. University departments are responsible for checking the Procurement Services website 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 PCard and disbursement voucher or Automatic Purchase Order transactions.

UPAs include cooperative purchasing agreements, such as those available to the University through association with other institutions of higher education, government agencies, or organizations. The Director or designee may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a university price agreement. The Director or designee has the final authority to approve the University's participation in cooperative purchasing agreements.

V. Qualified Products List(s)

A qualified products list may be developed with the approval of the Director or designee 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.

W. 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.

X. Price Cost Analysis

When there is not adequate competition (such as 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.

If, after analysis, the Purchasing Agent does not believe it has yet been established that the price to be paid is fair and reasonable, the Purchasing Agent will:

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

Y. 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.

Z. 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.

AA. 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 VI CONTRACTS

A. Types of Contracts

Subject to the limitations of this section and CSUS 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 or designee 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 or designee and execution by the University Controller.

C. Contract Administration

End user departments are primarily responsible for contract management, oversight and administration. For contract changes and amendments, disputes and performance issues, contact Procurement Services or Contracting Services.

SECTION VII UNAUTHORIZED PURCHASES

Per State of Colorado laws, purchases made in excess of delegated authority, or in violation of these rules, may violate state statutes against unauthorized expenditures as well as the CSUS Fiscal Rules. A statutory violation occurs when a purchase or other legal commitment to expend funds of more than \$5,000 is made before the issuance of an approved purchasing document (PO, University contract, or other form as defined in CSUS Fiscal Rules). Likewise, authorizing a vendor to begin work before Procurement Services issues a purchase order, even though the department has submitted a purchase requisition, is prohibited. Obtaining goods or services on credit and subsequently submitting the invoice with a payment voucher is a violation of this rule unless it is a purchase specifically allowed to be paid by disbursement voucher or PCard.

Note: Pursuant to state statute C.R.S. §24-30-202(3), individuals 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 Vice President for University Operations for review before being imposed. Such violations may also constitute cause for employee discipline under state law and university policies. 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 VIII PROTESTS AND APPEALS

A. Resolution of Protests and Disputes

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

- i. Any protest concerning the solicitation or award of a contract or purchase order; and
- ii. 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. Protests

A solicitation or award may be protested in accordance with the following provisions:

1. 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.

2. Filing of Protest

Protestors may file a protest of a solicitation or award, including the specifications, award, or disclosure of information marked as confidential. Protests shall be submitted in writing within seven (7) University business 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). All protests shall be in writing.

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.

The protest shall be addressed to the Director at 6010 Campus Delivery, Fort Collins, CO 80523-6010 and hand-delivered, faxed or sent by certified mail to Procurement Services. Emails are not acceptable for delivery of protests. The protestor shall have the burden of proof as to both the merits of the protest and the time, place and method of delivery of the protest letter or appeal. All protests, appeals, and notices to the University are deemed to have been submitted on the date that they are delivered to the person to whom they are required to be submitted under the rules, as shown by a delivery receipt.

3. 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 or designee, the protest may be resolved without such information.

4. Decision

The Director or designee shall render a written decision regarding the protest within seven (7) University business 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 or designee shall furnish a copy of the decision to the protestor in writing, which may be by email, fax, or regular mail (see *Receipt of Protest and Appeal Decisions*, below).

5. Appeal

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

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.).

6. Stay of Procurement

In the case of protested RFPs only, there shall be a stay of procurement until the decision of the Director or designee is rendered, unless the Director or designee 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.

7. 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.

8. Protesting Construction Solicitations and Awards

The University follows C.R.S. §24-92-101, et seq., when awarding contracts for construction projects subject to competitive solicitation. Protests and appeals concerning construction solicitations and awards are handled in accordance with C.R.S. §24-109-102 – 24-109-206 and the applicable State Procurement Rules. Decisions of the Director concerning a protest of a construction solicitation or award may be appealed to the Executive Director of the Colorado Department of Personnel and Administration.

9. Receipt of Protest and Appeal Decisions

For purposes of these rules, “receipt” of a decision or notification sent to a protestor shall be deemed to have occurred:

- i. On the date that the decision is transmitted by fax to the protestor, if a fax number has been provided;
- ii. On the date that the decision is transmitted by email to the protestor, if an email address has been provided;
- iii. Three calendar days after the decision is placed in the U.S. Mail, first class postage prepaid, addressed to the protestor at the address given by the protestor on the protest letter; or
- iv. On the date that the decision is delivered by a courier, delivery service, or similar method (e.g., FedEx, UPS, process server, etc.), according to the receipt or affidavit provided by the delivery service.

The manner of sending the decision is in the discretion of the University official who rendered it and is not appealable. As used herein, a “University business day” is one on which the University is open for business according to its official calendar (<http://calendar.colostate.edu/holidays-closures.aspx>).

10. 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 IX 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 Procurement Services website 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

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.

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.

Authority to Deviate from Cost Principles

If the Purchasing Agent deviates from the cost principles set forth in these Rules, a determination shall be made by such Purchasing Agent specifying the reasons for the deviation.

C. Federal Funded Procurements

CSU will comply with OMB Circular A-110 Procurement Standards as defined in Subpart C-Post-Award Requirements, Sections .40 - .48 for all federal grant funded procurements, until July 1, 2017. **Effective July 1, 2017**, CSU 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 X 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 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:

- i. state that the suspension will be for the period necessary to complete an investigation into possible debarment; and
- ii. 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:

- i. conviction of a criminal offense in relation to obtaining or attempting to obtain a University contract or in the performance of such contract;
- ii. conviction under State of Colorado or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
- iii. conviction under State of Colorado or Federal antitrust statutes arising out of the submission of bids or proposals;

- iv. 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;
- v. 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
- vi. 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:

- i. state the debarment period; and
- ii. 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 and Period*

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

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

1. *Excluded Parties (System for Award Management) -Automatic Disqualification from Solicitation*

Whether or not any action is taken by the University to suspend or debar a vendor or potential vendor, the vendor shall automatically be disqualified from participating in any procurement when the vendor is named as an excluded party by the Federal government on its System for Award Management website (<https://www.sam.gov>) if the procurement involves the expenditure of any federal funds and the disqualification shall continue until the vendor’s name is no longer listed as excluded.

SECTION XI 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.procurement.colostate.edu/procurement/small.aspx>

SECTION XII
PROCUREMENT RECORDS -- INFORMATION & RETENTION

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