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Procurement Rules

Effective July 2018

Colorado School of Mines
Procurement Rules
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1.0 BACKGROUND AND PURPOSE

Pursuant to Section 24-101-105 of the *C.R.S.*, on December 2008, the Board of Trustees adopted a resolution exempting the Colorado School of Mines ("Mines" or "University") from the State of Colorado Procurement Code and Rules to be effective December 2008.

These rules are designed to support and facilitate the educational, research, and public service missions of the University through the acquisition of *goods* and *services* by applying the 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* procuress of quality, integrity, broad-based competition, fair and equal treatment of the *business* community, increased economy in the *procurement* process and uniform *procurement* procedures.

For all federal grand funded procurement transactions prior to July 1, 2018, Colorado School of Mines followed federal guidance 2 CFR part 215, including without limitation paragraphs (a)(1), (2) and (3) of §215.44. Effective July 1, 2018, Colorado School of Mines 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.

2.0 AUTHORITY AND DELEGATION

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

Consistent with the provisions of these rules, the Risk Manager and Director, Business Operations may adopt operational procedures governing the internal purchasing functions of the University. Operational procedures governing purchases at the department level using the University's *procurement card*, direct pay requests, voucher requests and *field purchase orders* are handled by the Controller's Office.

Under these rules, the Purchasing Department is the final authority at the University for selection of vendors and the sole authority for the commitment of University funds with respect to the *procurement* of *goods* and *services*.

The Risk Manager and Director, Business Operations may, from time to time, amend these rules with the approval of the President of the University.

3.0 APPLICABILITY

A. General Applicability

These rules apply to all *goods* and *services* procured by and through the University regardless of funding source. For the avoidance of doubt, these rules do not apply to transactions where University funds are not expended nor to contracts that are solely *revenue producing*.

B. Exclusions

The following situations are excluded from the competitive *procurement* requirements included in these rules. Other than as mentioned in item 7 below, purchases using Sponsored Program Funds and Research Funds are not subject to this Exclusions section:

1. The *procurement* is for a *construction contract* as delegated from State Buildings to the Office of Planning and Construction.
2. The *procurement* is between the University and a *public entity* including any agency of a federal, state, county or municipal government, a school district or other special district.
3. The *procurement* is for *services* provided by architects, engineers, landscape architects, industrial hygienists or land surveyors. (See *C.R.S.* § § 24-30-1401 through 24-30-1407).
4. The *procurement* is for specialized professional *services* for speaking engagements or teaching or research *services*.
5. The *procurement* is for contracts and expenditures for litigation or other legal expenses, including experts, mediators, court reporters, process servers, witness fees, and attorney *services*.
6. The *procurement* is for a vendor's item procured for *resale*.
7. The *procurement* of *goods* or *services* from a specific vendor has been approved in advance by the contracts or grants officer and is necessary to comply with the specific terms and conditions of a sponsored project grant or *contract*.
8. The *procurement* is for the lease, sale, purchase, transfer, disposal or any other transaction involving an interest in real property.
9. The *procurement* is for an employment *contract*.
10. The *procurement* is for insurance policies for the University and its employees.
11. The procurement is for a defined contribution plan administrator and/or record keeper.
12. The *procurement* is for travel related expense (e.g., airfare, accommodations, conference events, charter transportation).
13. The *procurement* is for a publicly regulated utility (e.g., water, electricity, natural gas).
14. The *procurement* is for fuel.
15. The *procurement* is for display, performance, or use of work of art, works of entertainment, literary works, magazine subscriptions, museum collections, music, film, or other copyrighted materials specific to the purpose of the procuring department.
16. The *procurement* is for library collections in all formats, including books, periodicals, serials, electronic resources, multimedia/streaming video, etc.

17. The *procurement* is for advertising such as in a newspaper, magazine, television commercial, radio advertisement, outdoor advertising, indoor display, social media, or other media outlet where the University brand or programs are being advertised to a specific consumer segment.
18. The *procurement* is for **used or pre-owned** equipment or vehicles, provided that the *purchasing agent* has determined that competition is not practical or would not be advantageous to the University. Such purchases require cost or price analysis, certificate of working order and warranty unless waived by the Risk Manager and Director, Business Operations.
19. The *procurement* is for component parts that are specific to existing equipment, software that is specific to existing equipment, or maintenance that can only be provided by the manufacture of the existing equipment.
20. The *procurement* is for dues and/or memberships.
21. The *procurement* is for tuition, registration, or fees charged for trainings, classes, conferences and seminars.
22. The *procurement* is for software license renewals, software maintenance, and upgrades to existing software used by the University.

Notwithstanding the foregoing exceptions from formal competition, the *purchasing agent* 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.

C. Waiver Process

The Risk Manager and Director, Business Operations, in his or her sole discretion, may grant the request of a waiver, allowing procurement rule(s) to be waived in special circumstances. The waiver request shall include evidence that due diligence was exercised in receiving the best deal for the University and provides a benefit to the University at least equal to the cost and risk of not conducting a solicitation. The Risk Manager and Director, Business Operations must ensure there is no evidence that waiving the rule(s) will allow for any unethical conduct or undue preference to a specific vendor(s).

4.0 ETHICS

A. Conflict of Interest

The Colorado School of Mines Faculty Handbook defines the processes to be followed in articulating and resolving conflicts of interest at the University. When the Office of Business Operations has reason to believe that a conflict of interest may exist in the *procurement* of *goods* and *services*, it will direct the affected department to comply with the procedures described in the Faculty Handbook regarding conflict of interest. All possible conflicts of interest must be discussed with the Office of Compliance prior to a *procurement* transaction.

B. Code of Ethics

All parties involved in the negotiation, performance or administration of University *contracts* are bound to act in good faith. Any person employed by the University who purchases *goods* and *services*, or is involved in the *procurement* process for the University, shall be held to the highest degree of trust and shall be bound to the Colorado School of Mines Procurement Code of Ethics included with these rules as Appendix A.

C. Vendor Shows

A vendor show is a product demonstration or exhibit held on campus, to which a vendor invites more than one University department for the purposes of marketing *goods* or *services*. Vendor shows include open houses, product exhibits or product demonstrations. All vendor shows must be approved in advance by the Risk Manager and Director, Business Operations in order to:

- Protect the integrity of the University's *procurement* process;
- Protect the viability of the University-wide price agreements; and
- Ensure fairness to all vendors.

The sponsoring University department shall notify the Risk Manager and Director, Business Operations as far in advance as possible but at least ten (10) business days prior to the vendor show. A product or equipment demonstration to a single University department is not a vendor show. The Risk Manager and Director, Business Operations has the final authority to determine what constitutes a vendor show.

5.0 PROCUREMENT METHODS

A. General Solicitation Rules

This section applies to the purchase of *goods* and *services*, with some exceptions. The exclusions listed in section **3.0 B Exclusions** are exempted from this section of the Procurement Rules.

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**

   i. <u>Goods or services $4,999 or less</u>
   Campus departments have purchasing authority.

   ii. <u>Goods or services $5,000 through $50,000</u>
   Purchases are processed at the discretion of the *purchasing agent.* Three (3) quotes are required for purchases between $10,000 and $50,000 and for all purchases made through POs using federal funds.

   iii. <u>Goods or services $50,001 through $150,000</u>
   Competition is sought via the *document quote* process.

   iv. <u>Goods or services $150,001 or greater</u>
   Competition is sought via either the *invitation for bid* or *request for proposal* process.

3. **Solicitation Notification**

   An electronic *solicitation* notification system is the required method for advertising competitive *solicitations* for *goods* and *services* made through *documented quotes* ("*DQ*"), *invitation for bids* ("*IFB*") and *request for proposals* ("*RFP*"). Other methods of notification may also be used at the discretion of the *purchasing agent*.

4. **Specifications**

   Purchasing agents shall issue *goods* or *service specifications*, which are not unduly restrictive. *Brand name specifications*, *brand name* or *equal specifications*, or *qualified products lists* may be used in competitive *solicitations*. Furthermore, *brand name specifications* shall only be used in accordance with Section 5.E.1. regarding *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. Vendors may be required to certify that these standardized *specifications* have been met.

5. **Solicitation Conferences**

   Solicitation conferences may be conducted to explain *procurement* requirements. They shall be announced in the *solicitation*. The conference should be held long enough after the *solicitation* has been issued to allow vendors to become familiar with the *solicitation* but with adequate time before the *solicitation* due date to allow vendors time to consider the conference results in preparing their *quotes/bids/proposals*. Nothing stated at the conference shall change the *solicitation* unless a change is made by written amendment posted on the electronic *solicitation* notification system.

6. Amendments to Solicitations

Amendments to *solicitations* shall be identified as such and may require that the vendors acknowledge receipt of all amendments issued. Amendments shall be posted on the electronic *solicitation* notification system with sufficient time to allow vendors to consider them in preparing their *quotes/bids/proposals*. If the due date set will not permit such preparation, then the Office of Business Operations shall extend it.

7. Solicitation Receipt, Opening & Recording

a. Receipt
Each response shall show the date and time of receipt. Responses to competitive *sealed solicitations* shall be stored in a secure place until the due date and time, and shall not be opened upon receipt, except that unidentified responses may be opened for identification purposes. Upon verification of a *solicitation* response, the response will immediately be resealed and the reason for opening the response will be noted.

b. Opening and Recording
The competitive *sealed solicitation* opening shall be open to the public. Responses shall be opened, in the presence of one or more witnesses, as soon as possible after the date and time and at the place designated in the competitive *solicitation*.

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

(i) The *purchasing agent* shall determine the validity of any written requests for confidentiality and shall provide a written *determination* of the findings to the vendor.

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

d. Withdrawals of Responses & Mistakes in Responses

(i) Withdrawal of Responses Prior to the Due Date and Time: Any response may be withdrawn prior to the specified due date and time upon written request from the offeror.

(ii) Withdrawal of Responses after Due Date and Time but Prior to Award:
The Risk Manager and Director, Business Operations may allow a response to be withdrawn after the specified due date and time but prior to the *award* provided:
(a) The vendor provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or
(b) The mistake is clearly evident on the response; or
(c) It is found by the Risk Manager and Director, Business Operations unconscionable not to allow the response to be withdrawn.

(iii) Mistakes:
(a) Confirmation of Response
When it appears from a review of the response that a mistake has been made, the vendor will be asked to confirm the response. Situations in which confirmation should be requested include apparent errors or price unreasonably lower than other submitted prices. Upon acknowledgment that an error was made, the vendor may have its response considered as is or may withdraw its response if the conditions set forth in this section are met.
(b) Minor Informalities
Minor informalities are matters of form rather than substance, are evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors; that is, the effect on price, quantity, quality, delivery or contractual conditions is negligible. The *purchasing agent* may waive such informalities or allow the vendor to correct them depending on which *option* is in the best interest of the University.
(c) Determinations
Any decision to permit or deny correction or withdrawal of a response under this section shall be supported by a written *determination* prepared by the *purchasing agent*.

e. <u>Evaluation and Award</u>
All responses shall be evaluated as outlined in the *solicitation*. Where appropriate, *procurement*s may take into account the costs for the full life cycle of any resulting *contract* to determine total expected cost. The *purchasing agent* shall ensure that the *award* decision treats all vendors equitably.
(i) The p*urchasing agent* shall make purchases from and *award contracts* to, response vendors only.
(ii) Tie *quotes*/*bids*
Tie *quotes*/*bids* are *responsive quotes*/*bids* from *responsible* vendors that are identical in price, terms and

conditions and which meet all the requirements and criteria set forth in the *solicitation*:

(a) The *award* shall be made to the vendor that is a small *business* as defined by the Small Business Administration, if identical favorable *quotes*/*bids* are received.

(b) If more than one tie *quote*/*bid* is from a small *business* or if none are, the *award* shall be made to the *local business* if identical favorable *quotes*/*bids* are received from local and non-*local business*.

(c) If more than one tie *quote*/*bid* is from *businesses* that meet or do not meet (a) or (b) above then the *award* shall be made to the *minority* (*MBE*) owned, *women* (*WBE*) *owned* or *hub zone* (*HZ*) *business* if identical favorable *quotes*/*bids* are received from *MBE*/*WBE*/*HZ business* and a non-*MBE*/*WBE*/*HZ business*.

(d) If more than one tie *quote*/*bid* is from a *business* that meet or do not meet (a), (b) or (c) above then the *award* shall be made to the *in-state business* if identical favorable *quotes*/*bids* are received from in-state and out-of-state *businesses*.

(e) If none of the above applies, the *purchasing agent* shall flip a coin in the presence of another person to determine the *awarded* vendor.

8. Cancellation of Solicitations

a. <u>Reasons for Cancellations</u>

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 Risk Manager and Director, Business Operations. Approval to cancel will be obtained from the Risk Manager and Director, Business Operations prior to cancellation. The reason(s) for doing so shall be made part of the file and may include, but are not limited to, the following:

(i) The University no longer requires the *goods* or *services*;

(ii) The University no longer can reasonably expect to fund the *procurement*;

(iii) Proposed amendments to the *solicitation* would be of such magnitude that a new *solicitation* is desirable;

(iv) Ambiguous or otherwise inadequate *specifications* were part of the *solicitation*;

(v) The *solicitation* did not provide for consideration of all factors of significance to the University;

(vi) Prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;

(vii) All otherwise *acceptable bids* or *proposals* received are at clearly unreasonable prices;

(viii) The University has reason to believe that the *bids* or *proposals* may not have been independently arrived at in open competition, may have been collusive or may have been submitted in bad faith. In this case, a notice of rejection shall be sent to all vendors that submitted *bids* or *proposals*; or

(ix) The number of responses is not sufficient to ensure *adequate competition*.

b. Notice

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

c. Disposition of Bids or Proposals

When *bids* or *proposals* are rejected or a *solicitation* is cancelled after *bid* or *proposals* are received, the *bids* or *proposals*, which have been opened, shall be retained in the *procurement* file. *Bids* and *proposals*, which have not been opened, shall either be returned to the vendors (upon request) or shall be disposed.

B. Procurement Procedures for Purchases Totaling $150,000 or Less

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

1. Small-dollar purchases - purchases totaling $4,999 or less

The University has developed the following mechanisms for the purchase of most *goods* and some *services* totaling $4,999 or less. Split purchases are prohibited.

a. The University Procurement Card – This is the preferred method for all purchases of goods $4,999 or less.

i. Faculty and staff may obtain a *procurement card* based on the discretion of their Department Head, Vice President or Director. Graduate students may also obtain a *procurement card* with a stipulated *contract* start and end date. Other persons of interest may be given a *procurement card* on a case-by-case basis. The *procurement card* is to be used only by the person to whom the card was issued.

ii. All use of the Colorado School of Mines *procurement card* must comply with the University's financial policies, *procurement* rules and direct charging policies (applicable to sponsored grants and *contracts*). Specific purchases that are prohibited on the *procurement card* include (but are not limited to):

1. Personal purchases
2. Transactions split to work around the $4,999 Single Purchase Limit
3. Alcohol
4. Travel (Unless using the OneCard, the Event Card, or a waiver has been issued)
5. Chemicals
6. Purchases made from a *contract* without an authorized signature

7. Telecommunications
8. Cash or cash-type transactions such as gift cards
9. Purchases that violate mandatory price agreements
10. Purchases involving the University's Trademark or Logo.

iii. *Procurement card* holders are *responsible* for obtaining appropriate supporting documentation. For every transaction the cardholder must obtain an itemized receipt that includes the:
1. Purchase Date
2. Vendor name
3. Transaction ID
4. Description of items purchased
5. Quantity and price of items purchased
6. Any applicable fees and shipping

The type of *procurement card* being used will determine where and how the supporting documentation must be maintained. The Controller's Office website provides more detailed information.

iv. The department is responsible for all charges made on *procurement card*s issued to cardholders within their supervision. **If it is determined that a charge is made on the *procurement card* that is against any University Policies, the cardholder may be personally liable for the unauthorized charge.**

v. Misuse of the *procurement card* according to the financial and *procurement* policies will result in the cardholder being issued a Violation Notification. Violations are given out on a weighted system (from 15-150 points per violation) based on the type of violation. If a cardholder receives 150 points worth of violations within two years, the card will be suspended for a minimum of six (6) months pending the completion of *procurement card* re-training. Continued misuse of the *procurement card* beyond a two-year period may result in the permanent suspension of the card at the discretion of the Controller. **Card abuse resulting in fraud will result in a permanent suspension and must be immediately reported to the Controller and the Internal Audit Department.**

The Controller must approve any exceptions to these rules regarding the use of the *procurement card*.

b. Direct pay request – University departments may work directly with the Accounts Payable unit within the Controller's Office for purchases $4,999 and under were the *procurement card* is not an option.

i. A direct pay request and related invoice(s) may be submitted to Accounts Payable with documented authorization to pay and the appropriate index and account code to be charged.

ii. The Accounts Payable unit will determine whether documentation is adequate to make a payment or if additional information is required before payment is made.

c. *Field purchase orders* – In cases where the *procurement card* or a direct pay request is not an option, University departments may issue *field purchase orders* from pre-printed stock for purchases up to $1,000. *Field purchase orders* and related supporting documentation should be submitted directly to the Accounts Payable unit for payment processing.

2. Purchases of goods or services totaling $5,000 through $50,000

[Includes purchases less than $5,000 where neither the *procurement card*, a direct pay request, nor a *field purchase order* will suffice.] Purchases of these types are processed at the discretion of the *purchasing agent*. Requestors are encouraged to include a recommended vendor at the time of the request. Requestors are required to include 3 quotes supporting the requestor's recommendation for all purchase requests between $10,000 and $50,000. The *purchasing agent* may evaluate the supporting documentation and place the order with any vendor that the *purchasing agent* determines serves the best interest of the University considering cost and other factors.

3. Purchases of goods or services above $50,000 but less than $150,000

a. The above shall be purchased using the *documented quote* process unless there is a written *determination* by the *purchasing agent*, approved by the Risk Manager and Director, Business Operations, that a *Request for proposal*, *Invitation for Bid*, or *sole source procurement* better meets the needs of the University.

b. For *goods* and *services procurements*, neither the *solicitation* nor the vendor'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 response, not solely the price. The ensuing purchase order or change order shall constitute an offer. The vendor may accept by performance, unless the purchase order or change order expressly requires acceptance by written acknowledgment.

c. 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 a consideration. The basis for selection must be documented and will be final.

d. *Documented quotes* must be advertised in accordance with Section 5.A.3. *Solicitations* must remain posted for a minimum of three (3) working days unless the Risk Manager and Director, Business Operations provides a written *determination* that a lesser time is required in order to meet an immediate University need.

e. The *purchasing agent* may negotiate with any vendor 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 vendor's *quote* shall not be revealed to a competing vendor and all *quotes* will be kept confidential until a purchase order or change order is issued.

f. *Quotes* may be submitted electronically when the terms of the *solicitation* permit electronic submission.

g. *Competitive reverse auctions*. *Contracts* for *goods* and *services* may be *awarded* by *competitive reverse auction* if the *purchasing agent* determines that *adequate competition* can be achieved.

C. Procurement Procedures for Purchases totaling over $150,000

1. Invitation for Bids (IFB)

a. Use of Invitation for Bids

Invitation for bids is a method of *procurement* that results in a *contract* being *awarded* to the lowest *responsive bid* from a *responsible* bidder based on the *specifications* set forth in the *solicitation*. Typical reasons why an *IFB* may be used include:

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

(ii) It is not necessary to conduct negotiations with the responding bidders about their *bids*.

b. Solicitation Time

The minimum time for the *IFB* opening date shall be not less than fourteen (14) calendar days after posting the *solicitation* on the electronic *solicitation* notification system. When special requirements or conditions exist, the Risk Manager and Director, Business Operations may shorten the *IFB* time, but in no case shall the time be shortened in order to reduce competition. *Solicitation* periods of less than fourteen (14) calendar days shall be documented as to why a reduced *IFB* period was required.

c. Advertisement

IFBs must be advertised in accordance with Section 5.A.3.

d. Late Responses

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

e. IFB Opening

The name of each bidder, the *bid* price(s) (unless otherwise provided in the *invitation for bids*), and other information deemed appropriate by the *purchasing agent* shall be read aloud at the time of the *IFB* opening. Reading of all *bid* item prices may not be reasonable or desired (e.g., in the case of lengthy or complex *IFBs*). The decision not to read all *bid* prices shall be made by the *purchasing agent*. The name of each bidder, amount of the *bid*, delivery date, 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 the *bid*'s *responsiveness*, may be withheld from inspection until questions concerning such information are resolved. After *award*, all *IFB*/*bid* documents and a complete *bid* analysis shall be open to public inspection except to the extent the University has approved a bidder's request that information be held confidential as set forth in Section 5.A.7.c.

f. 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 life-cycle cost formulas stated in the *IFB*.

g. Multi-Step Sealed IFBs

A multi-step *sealed IFB* is a two-phase process. The first phase (technical phase) is composed of one or more steps in which bidders submit un-priced 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, those price *bids* will be opened and considered. The process is designed to obtain the benefits of competitive *sealed bidding* by *award* of a *contract* to the lowest *responsive*, *responsible* bidder and at the same time obtain the benefits of the *request for proposal* procedure through the *solicitation* of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

h. Best Value IFBs

(i) Use of the *best value IFB*:
A *best value IFB* is used where the *IFB* specifically allows for *enhancements*, *options* and/or *alternatives*. A *best value IFB* must include a base *bid* statement.

(ii) Written *Determination*:
The *purchasing agent* shall provide a written *determination* for approval to the Risk Manager and Director, Business Operations 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 *enhancements*, *options* or *alternatives*. Based on the evaluation of the cost of the base *bid*, the dollar value of *enhancements*, *options* or *alternatives* and the *determination* of which best meet the needs of the University, an *award* shall be made to the bidder providing the *best value* to the University.

i. Competitive Reverse Auction Contracts

Contracts for *goods* and *services* may be *awarded* by *competitive reverse auction* if the *purchasing agent* determines that *adequate competition* can be achieved.

2. Request for Proposals

a. Use of Request for Proposals (RFP)

RFPs will be used for the *solicitation* of competitive *sealed proposals* over $150,000 that are evaluated on the basis of factors that include but are not limited to price. Evaluations shall be based on the factors set forth in the *RFP* in order to determine which *proposal*(s) best meet(s) the needs of the University.

(i) Written *Determination* – The *purchasing agent* must provide a written *determination* for approval to the Risk Manager and Director, Business Operations prior to the use of an *RFP*. The written *determination* must explain why the *RFP* is the proper method of *solicitation*.

(ii) Evaluation Committee – A committee of no less than three (3) individuals shall evaluate all *responsive proposals*.

b. <u>Solicitation Time</u>

RFPs will be open for a minimum of thirty (30) calendar days unless the Risk Manager and Director, Business Operations approves a shortened timeframe in writing.

c. <u>Advertisement</u>

RFPs will be advertised in accordance with Section 5.A.3.

d. <u>Late Responses</u>

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

e. <u>RFP Opening</u>

There shall be a public opening at a 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 posting of the notice of intent to *award*.

D. Competitive Negotiation

Contracts or recurring small dollar *procurements* may be *awarded* by *competitive negotiation* as defined on page 34.

1. Allowable Use

a. A *contract* may be *awarded* by *competitive negotiation* after an unsuccessful *invitation for bids* or *request for proposals* process if the Risk Manager and Director, Business Operations determines that time does not permit re-*solicitation*.

b. Small dollar *procurement* agreements (small dollar *procurements* that are recurring and are not expected to exceed 50,000 per department per year) may be *awarded* by *competitive negotiation* with donor, small, local, minority, women or *hub zone businesses* when it is in the best interest of the University to do so and in accordance with Section 8 of these rules.

2. Unsuccessful IFB/RFP processes

An *Invitation for bid* or *request for proposal* process is unsuccessful if:

a. All offers received are unreasonable or uncompetitive;

b. The low *bid* exceeds available funds as certified in writing by the appropriate fiscal officer;

c. The *solicitation* has been properly cancelled in accordance with the provisions of Section 5.A.8.; or

d. The number of *responsive* offers is not sufficient to ensure *adequate competition*.

3. Participants

The *competitive negotiation* process shall include all vendors who responded to the *solicitation* or any re-*bid* and may include other vendors capable of filling the University's needs. The University may also actively encourage small, local, women, minority, in-state or *hub zone businesses* to participate in the competitive negation process or partner with vendors who originally responded to the *IFB* or *RFP*.

4. Times and Locations

Procurement services may set reasonable times and locations for participation in the *competitive negotiation*, reflecting the fact that time constraints are the basis for the *competitive negotiation* process.

5. Separate Negotiations

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 intent to *award* notice has been issued. Any change in requirements shall be communicated to all vendors.

6. Elimination from Process

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

7. Award

The *award* shall be made to the vendor whose offer is most *advantageous* to the University. The Risk Manager and Director, Business Operations 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.

E. Exceptions to Competitive Solicitation Processes

1. Sole Source Procurements

Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions, which preclude the use of a competitive process. A *sole source procurement* is justified when there is only one *good* or *service* that can reasonably meet the need and there is only one vendor who can provide the *good* or *service*. A requirement for a particular proprietary item (i.e., a *brand name specification*) does not justify a *sole source procurement* if there is more than one potential 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

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 procure the same *goods* and/or *services* without competition.

b. Sole Source Procurement Procedures

(i) The requesting department shall submit a sole source justification detailing why the *procurement* is a sole source along with any other pertinent information regarding the *sole source procurement*; e.g. vendor *quote*, requisition, literature, etc.

(ii) *Procurement services* is the final authority of the approval of *sole source procurements.*

(iii) The *purchasing agent* shall publish all *sole source procurements* for at least three (3) days on the electronic *solicitation* system to allow vendors an opportunity to comment on the validity of the sole source.

(iv) The *purchasing agent* has a duty to negotiate the most favorable price, terms and conditions notwithstanding the sole source nature of the *procurement*. The *purchasing agent* is required to make a written *determination* that the price is fair and reasonable.

2. Emergency Procurements

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

a. Determination of Need

An emergency condition justifies the use of an emergency *procurement* when that conditions threatens one (1) or more of the following:

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

Emergency *procurements* do not include: *procurements* that need to be rushed because of a failure to plan ahead; end of fiscal year *procurements*; or, end of grant/*contract procurements*.

b. Authority to Make Emergency Procurements

The University may make emergency *procurements* when an emergency condition arises and the need cannot be met through normal *procurement* methods, provided that whenever *practicable*, approval by the Risk Manager and Director, Business Operations shall be obtained prior to the *procurement*. In the event an emergency arises after normal working hours, the University department shall notify the Risk Manager and Director, Business Operations on the next working day. If the Risk Manager and Director, Business Operations determines that all criteria for an emergency *procurement* were not met, then the *procurement* will be processed as an "*after-the-fact*" *procurement* as set forth in Section 7.

c. 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.

d. Documentation

As soon as *practicable*, the University department shall prepare a written justification, to be approved by the Risk Manager and Director, Business Operations, that sets forth the justification for the emergency *procurement*. The justification shall include the following:

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

(ii) A listing of the *goods* and/or *services* procured;

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

(iv) The basis for the selection of the vendor.

e. Procedures

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

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

3. University Wide Price Agreements

a. The Risk Manager and Director, Business Operations may issue University-wide price agreements for *goods* and *services* for use by all University departments. Such price agreements may include, but are not limited to University initiated agreements or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the University's buying power.

b. University price agreement 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 University price agreements where applicable.

c. *Procurement services* is *responsible* for publicizing all University-wide price agreements and for monitoring compliance.

4. Cooperative Purchasing Agreements

a. The Risk Manager and Director, Business Operations may approve the purchase of *goods* or *services* from a cooperative purchasing agreement if he/she finds that such purchase is in the best interest 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:
(i) The federal government or an agency or other instrumentality of the federal government;
(ii) The State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;
(iii) A bi-state or multi-state agency;
(iv) A county, municipal corporation or other political subdivision of the State of Colorado or any other state, or an agency or other instrumentality of the political subdivision;
(v) Other institutions of higher education; or
(vi) A cooperative or organization established for the purpose of establishing *contracts* to aggregate the common requirements of similar institutions for maximizing economies of scale when soliciting *bids* or *proposals*. Examples include the Educational and Institutional Cooperative and the Western States Contracts Alliance.

c. The Risk Manager and Director, Business Operations may approve a single purchase or approve ongoing participation in a cooperative or consortium purchasing agreement as a University-wide price agreement. The Risk Manager and Director, Business Operations has the final authority to approve the University's participation in cooperative or consortium purchasing agreements.

F. Price Cost Analysis

Price cost analysis is required when there is no competition (such as a *sole source procurement* or when only one response is received to a *solicitation*). The *purchasing agent* must ensure that the price the University is paying is fair and reasonable by completing a price cost analysis. *Procurements*, where appropriate, should take into account the costs for the full life cycle of any resulting *contract* to determine total expected cost. Additionally, federal laws mandate that the University perform price cost analysis under certain conditions.

If, after analysis, the p*urchasing agent* does not feel the price to be paid is fair and reasonable, he/she will either seek competition or negotiate with the vendor to lower the price.

G. Demonstration or Sample Agreements

Equipment requested by University department from vendors, or offered by vendors to University departments, on a trial, loan, demonstration or evaluation basis does not constitute a commitment to purchase said equipment. The University department shall be *responsible* for advising the vendor that, for purchases totaling over $5,000 a purchase order or change order will be issued at the discretion of the *purchasing agent*, and that competitive purchasing procedures shall be used as required by University policies and procedures. If the vendor who loaned the equipment is the successful vendor, new equipment must be supplied unless otherwise specified.

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

Any agreement, which is required by the vendor, shall be executed by the appropriate *purchasing agent*, regardless of dollar value of the equipment.

6.0 CONTRACTS

A. Types of Contracts

Subject to the limitations of this section, any type of *contract* that will promote the best interests of the University may be used; except that the use of a cost plus a percentage of the suppliers cost *contract* is prohibited. A cost reimbursement *contract* may be used only when a written *determination* is made that such *contract* is likely to be less costly to the University than any other type of *contract* or that it is im*practicable* to obtain the *goods* or *services* required unless the cost reimbursement *contract* is used. The minimum requirements for *contract* formation and content are contained in Chapter 3 of the Colorado School of Mines Financial Policies.

B. Multi-Year Contracts

Procurement services may enter into multi-year *contracts* for *goods* and/or *services* subject to funding availability. *Contracts* for periods in excess of five (5) years require the written approval of the Risk Manager and Director, Business Operations.

7.0 AFTER-THE-FACT ("ATF") PURCHASES

Per University regulations, all *after-the-fact* purchases must be processed in accordance with the Colorado School of Mines Financial Policies, Section 2.2.5. The University considers after the fact purchases to be unauthorized transactions. It is possible that the individual who authorized such a transaction could be held personally *responsible* for the cost associated with the transaction and or to have disciplinary measures result from the transaction.

8.0 DISPUTES & REMEDIES

A. Types of Disputes

The Risk Manager and Director, Business Operations is authorized to settle and resolve any questions regarding:

1. Any protest concerning the *solicitation* or *award* of a *contract*;
2. Any controversy arising between the University and a *contractor* by virtue of a *contract* between them, including, without limitation, controversies based on breach of *contract*, mistake, misrepresentation or any other cause for *contract* modification or rescission; and,
3. As per delegation from the State of Colorado Purchasing Office, any dispute arising from *solicitations* and *contracts* through the State Buildings process which is initiated and managed by the Office of Design and Construction.

B. Costs of Filing

All costs associated with filing and prosecuting a protest or *contract* dispute shall be borne by the *protestor/contractor*.

C. Protests other than Contract Disputes

1. Filing of Protests

a. <u>Subject of Protest</u>
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 such aggrieved person knows or should have known of the facts giving rise thereto.

b. <u>Form</u>
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. <u>To Whom Addressed</u>
The protest shall be addressed to the Risk Manager and Director, Business Operations and sent to the Office of Business Operations.

2. Requested Information

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the Risk Manager and Director, Business Operations, the protest may be resolved without such information.

3. Decision

The Risk Manager and Director, Business Operations shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall be based on and limited to a review of the issues raised by the *protestor* and shall set forth each factor taken into account in reaching the decision. The Assistant Vice Risk Manager and Director, Business Operations shall furnish a copy of the decision to the *protestor* in writing.

4. Stay of Procurement

In the case of protested *RFPs* only; there shall be a stay of *procurement* until the decision of the Risk Manager and Director, Business Operations is rendered, unless the Risk Manager and Director, Business Operations determines that execution of a *contract* without delay is necessary to protect substantial University interests.

5. Actions in Court

If a *protestor* has filed a complaint in court which complaint is also the subject of a protest filed with the Risk Manager and Director, Business Operations, the Risk Manager and Director, Business Operations will not review the protest.

6. Entitlement to Costs

When the Risk Manager and Director, Business Operations substantiates a protest and the *protestor* should have been *awarded* the *contract* under the *solicitation* but, due to a defect in the University's *solicitation* or process, was not, the *protestor* shall be entitled to the reasonable costs incurred in connection with responding to the *solicitation*. No other costs shall be permitted and reasonable costs shall not include attorney fees.

D. Contract Disputes

1. Statement of Policy

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

2. Situation Prior to Issuing Decisions

When a controversy cannot be resolved by mutual agreement, the Risk Manager and Director, Business Operations shall review the matter within twenty (20) working days after receiving a written request by the *contractor* for a final decision and shall issue a written decision.

3. Final Decision

The Risk Manager and Director, Business Operations shall furnish a written copy of the decision to the *contractor*. The decision shall include:

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

4. Actions in Court

If a *contractor* has filed a complaint in court which complaint is also the subject of a protest filed with the Risk Manager and Director, Business Operations, the Risk Manager and Director, Business Operations will not review the protest.

9.0 SUSPENSION & DEBARMENT

A. Suspension

After meeting with the affected University department(s) and, where *practicable*, the vendor who is to be suspended, the Risk Manager and Director, Business Operations 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 indictment has been issued for an offense, which would be cause for debarment. In such cases, the suspension may remain in effect until after the trial of the suspended vendor.

1. 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 any person(s) representing the suspended vendor during the suspension period may conduct no *business* with the University and that any *solicitation* responses received from the suspended vendor during the suspension period shall not be considered.
2. The suspension period will be effective upon issuance of the notice of suspension.

B. Debarment

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

2. Following completion of the investigation to determine whether a vendor has engaged in activities that are cause for debarment, the Risk Manager and Director, Business Operations may debar the vendor. A vendor may be debarred for a period of time commensurate with the seriousness of the offense.

3. A written notice of debarment shall be sent to the debarred vendor. The notice shall:
   a. State the debarment period; and
   b. Inform the debarred vendor that any person(s) representing the debarred vendor during the debarment period may conduct no *business* with the University and that any *solicitation* responses received from the debarred vendor during the debarment period shall not be considered.

4. The debarment period will be effective fourteen (14) days after the notice of debarment is sent to the debarred vendor.
5. After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires unless a court of competent jurisdiction or the Risk Manager and Director, Business Operations deems otherwise.

C. Master List

The Office of Business Operations shall maintain a master list of all suspensions and debarments. The master list containing information concerning suspensions and debarments will be a public record.

10.0 LOCAL, SMALL BUSINESS & DONOR BUSINESS PROGRAM

Successful small *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 Local, Small and Donor Business Program whose mission is to maximize the opportunities for *local business* concerns, donor *business* concerns and small *business* concerns, including small, disadvantaged *businesses*, woman-owned *businesses*, *hub zone businesses*, historically black colleges/universities and minority institutions, and veteran-owned and service-disabled veteran-owned *businesses* to participate in the University's *business* of procuring *goods* and *services* at all dollar levels.

The following is a summary of provisions included in these rules that address local, small or disadvantaged *businesses*.

1. Tie *quotes*/*bids* situations as described in Section 5.A.7.e.(ii)(a) (b) (c) and (d).
2. *Competitive negotiation* situations as described in Section 5.D.1.b.

No provision is made in these rules for set asides or preferences for small or disadvantaged *business*. However, the University endeavors to provide opportunities for all *businesses* in compliance with the Federal Acquisition Regulations Sections 19 and 52. Further, the University believes it receives direct benefit from its relationships with a diverse vendor base.

11.0 PROCUREMENT RECORD INFORMATION & RETENTION

Procurement records may be subject to disclosure pursuant to the provisions of the Colorado Open Records Act *C.R.S.* § § 24-72-1010 et seq.

Procurement records shall be retained and disposed of in accordance with applicable records retention policies. At this time the Record Retention is three (3) years unless research/grant related.

12.0 DEFINITIONS

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

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

Adequate competition exists if a *documented quote*, competitive *sealed bid* or competitive *sealed proposal* has been conducted and at least two *responsible* and *responsive* offerors have independently competed to provide the University's needed *goods* or *services*. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the *purchasing agent* determines, in writing, that such competition is not adequate.

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

An ***After-the-Fact*** ("***ATF***") purchase occurs when a department makes a purchase for more than $5,000 before the Office of Business Operations issues a purchase order or change order. For example, authorizing a vendor to begin work before the Office of Business Operations issues a purchase order or change order, even though the department has submitted a purchase requisition, is an *ATF*. Similarly, obtaining *goods* or *services* on credit and subsequently submitting the invoice with a payment voucher is an *ATF* unless it is a purchase specifically allowed to be paid by payment voucher as set forth on the voucher document.

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 or change 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 vendor to an invitation for a bid (*IFB*).

Brand name specification means a *specification* limited to one or more *goods* or *services* by manufacturer's names or catalogue numbers.

Brand name or ***equal specification*** means a *specification* that uses one or more Manufacturer's names or catalogue numbers to describe the standard of quality, performance, and/or other characteristics needed to meet University requirements, and which provides for the submission of equivalent *goods* or *services*.

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

Change order means a document that sets out changes to a previously issued *purchase order*. A c*hange order* provides authorization to a vendor to add to or change the original order for *goods* or *services*, as well as, documents any change in the cost of *goods* or *services*.

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-established group of vendors may post *bids* for a defined period of time and may change their *bids* as desired during the bidding period.

Contract means any type of University agreement, regardless of what it may be called, for the *procurement* or disposal of *goods* or *services*, and includes purchase orders or change orders.

Contractor means any entity that has a contractual relationship with the University for the
provision of *goods* or *services* as allowed for under these rules.

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

Cost-reimbursement contract means a *contract* under which a *contractor* is reimbursed for costs that are allowable and allocable in accordance with the *contract* terms.

C.R.S. means Colorado Revised Statutes.

Determination means a written *procurement* decision made by the Risk Manager and Director, Business Operations, or his or her delegee, which is based on sufficient facts, circumstances and reasoning to substantiate the decision. Each *determination* shall be filed in the appropriate Procurement Department file.

***Documented quote* (“*DQ*”)** means a process of soliciting informally for fulfilling the University's need for specific *goods* or *services* and receiving and evaluating vendor responses. The dollar limits for use of *documented quotations* shall be as stated in the section on small purchases and shall be conducted only by a *purchasing agent*.

Enhancement 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.

***Field purchase orders* ("FPO")** Pre-printed purchase orders not to exceed $1,000.00 that may be obtained from Shipping and Receiving.

Good 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.

Hub zone ("HZ") means any *business* in a historically underutilized zone as defined by the United States Government Small Business Administration.

In-state business means:

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

B. A *business* that is authorized to transact *business* in Colorado, that maintains a place of *business* in Colorado, and that has filed Colorado unemployment compensation reports in at least seventy-five percent of the eight (8) quarters immediately before bidding on a *solicitation*.

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

Local business means any *business* located within ten (10) miles of the Colorado School of Mines campus or that is a member of the Golden Chamber of Commerce or that has an office within the City of Golden.

***Minority business* ("*MBE*")** means any *business* that is at least 51% minority owned or otherwise meets the U.S. Small Business Administration definition of a *minority business* and self certifies, is certified by the National Minority Business Council, or is certified by any Minority Chamber of Commerce or any entity of the federal government.

Option means choices of additional components, *services*, or *goods* that would serve to provide increased value to the University beyond the base *bid*.

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

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any *goods* or *services*. *Procurement* includes all functions that pertain to the obtaining of any *goods* or *services*; including description of requirements, selection and *solicitation* of sources, preparation and *award* of *contract*, and all phases of *contract* administration.

Procurement Card means a form of company credit card that allows *goods* and some *services* to be purchased and paid for without the need for an encumbrance (i.e., Purchase Order) being created and is designed to help the University maintain control of small purchases while reducing the administrative costs. Such cards are traditionally used by companies to replace paper invoices. The University has four different company credit cards, the P-Card, the OneCard, the Event Card, and the Ghost Card (used by the University travel agent to pay for airfare).

Procurement Services means staff that has formal delegated authority to execute contracts on behalf of the University. *Procurement Services* provides rapid analyses of the University’s spend and implements changes, negotiate with suppliers, and uses University’s best practices.

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

Protestor means any actual or prospective bidder or proposer who is aggrieved in connection with the *solicitation* or the *award* of a *contract* and who files a protest.

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

Purchase order means a document authorizing a vendor to deliver *goods* or *services* to the University, with payment to be made at a later date. A *purchase order* is an offer from the University to buy certain *goods* or *services*. The offer is accepted by the vendor when the requested *goods* or *services* are delivered.

Purchasing agent means one of the University’s employees in the Office of Business Operations with delegated purchasing authority from the Risk Manager and Director, Business Operations.

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 vendor to a *DQ*.

***Request for proposal* (“*RFP*”)** means all documents, including those attached or incorporated by reference, utilized by the University for soliciting *proposals*. *RFPs* are the commonly used name for competitive *sealed proposals*.

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

Responsible means a *business* that has the capability in all respects to perform fully the *contract* requirements, and the integrity and reliability that will assure good faith performance.

Responsive means an offer, with regard to a *bid* or *proposal*, that conforms in all material respects to the requirements contained in the *solicitation*.

Revenue-producing means a situation where a *business* pays money to the University as a result of any activity carried on by the *business* with the permission or agreement of the University. Situations that may be *revenue producing* will be evaluated by the Risk Manager and Director, Business Operations on a case-by-case basis, and, if approved as *revenue producing*, will be documented in a written *determination*.

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

A. Ensures that the contents of the *bid* or *proposal* cannot be opened or viewed before the formal opening without leaving evidence that the document has been opened or viewed;

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

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

D. Records, manually or electronically, the date and time the University receives the *bid* or *proposal* and that cannot be altered without leaving evidence of the alteration.

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

Sole source procurement means a *procurement* made without competition, when competition is otherwise required.

Solicitation means a request to the *business* community to respond to a *documented quote*, *invitation for bid*, or *request for proposal*.

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

Split purchase means a *procurement* made of a single good or service or group of goods or services where the *procurement* exceeds the cardholder's single transaction limit or the *procurement card* purchase limit and the cardholder instructed the vendor to divide up the payments into smaller amounts, or the payment was divided among several different *procurement cards,* or the *procurement* was requisitioned into smaller individual orders in one day or over several days, for the sole purpose of circumventing the cardholder's single purchase limit or *procurement card* purchase limit.

Women owned business ("WBE") means any *business* that is 51% women owned or otherwise meets the U.S. Small Business Administration definition of a *women owned business* and self certifies in accordance with the rules of the State of Colorado or is certified by the Women's Business Enterprise National Council or by any agency of the federal government.

APPENDIX A PROCUREMENT CODE OF ETHICS

Colorado School of Mines Procurement Code of Ethics

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

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;

2. Demonstrate loyalty to the Colorado School of Mines by diligently following all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;

3. Conduct all purchasing activities in accordance with the laws, while remaining alert to and advising the Colorado School of Mines regarding the legal ramifications of the purchasing decisions;

4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the Colorado School of Mines;

5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;

6. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or *services* from present or potential suppliers which might influence or appear to influence purchasing decisions;

7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;

8. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;

9. Provide an environment where all *business* concerns, large or small, majority- or minority-owned, are afforded an equal opportunity to compete for Colorado School of Mines business; and,

10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.