

**Auraria Higher Education Center**

**PROCUREMENT  
RULES**

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# AURARIA HIGHER EDUCATION CENTER

## PROCUREMENT RULES

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# **AURARIA HIGHER EDUCATION CENTER**

## **PROCUREMENT RULES**

### **SECTION I INTRODUCTION**

Pursuant to § 24-101-105 C.R.S., on December 12, 2012, the Board of Directors adopted a resolution exempting the Auraria Higher Education Center from the State of Colorado Procurement Code and Rules effective January 1, 2013.

### **SECTION II AUTHORITY & DELEGATION**

The statutes of the State of Colorado vest the supervision of the Center in the Board of Directors. Upon the effective date of these Procurement Rules (Rules), all Procurement authority of the Center shall be delegated to the Center's Procurement Director. The Procurement Director may further delegate his/her authority to persons in Center departments for the efficient operation of the Center. The Procurement Director is the only person authorized to purchase Goods, Services, and Construction for the Center, 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 Center is empowered to incur any obligation or make any commitment on behalf of the Center for the procurement of Goods, Services, or Construction, except as provided under these Rules.

Consistent with the provisions of these Rules, the Procurement Director may adopt operational procedures governing the internal purchasing functions of the Center, including purchases at the department level.

Under these Rules, the Procurement Director is the final authority for the Center for the selection of vendors and the sole authority for the commitment of Center funds with respect to the procurement of Goods, Services, and Construction.

The Chief Executive Officer (CEO), with the concurrence and approval of the Center's Chief Financial Officer (CFO) and legal counsel, may, from time to time, amend these Rules as reasonable and necessary to continue to provide adequate safeguards for the proper expenditure of agency monies and resources. Any such amendments shall be consistent with the best methods and best business practices when adopted.

### **SECTION III PURPOSE**

These Rules are designed to support and facilitate the educational, research, and public service missions of the Center through the acquisitions of Goods, Services, and Construction by applying best methods and business practices that provide for public confidence in the Center. Within the context of the Center 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.

The Center 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 IV APPLICABILITY**

### **A. General Applicability**

Except as provided in this Section IV, these Rules apply to all purchases of Goods, Services and Construction regardless of funding source.

### **B. Exclusions**

These Rules do not apply to the following situations:

1. No Center funds are expended, or the Contract is Revenue-Producing. The Center shall maximize the return to the Center when Revenue-Producing Contracts are involved. However, in the case of Revenue-Producing Contracts for which the Center is considering more than one vendor, the Procurement Department will use a competitive process.
2. The Procurement is between the Center 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, and land surveyors. (See C.R.S. §§ 24-30-1401 through 24-30-1408.)
4. The Procurement is an item procured for Resale.
5. The Procurement of Services from a specific vendor is necessary to comply with the specific terms and conditions of a sponsored project grant or contract.
6. The Procurement is for an employment contract, including temporary employment services.
7. The Procurement is for land, an interest in land or other real property, water or mineral rights, or utilities.
8. The Procurement is for workers compensation insurance, employee benefit insurance, or the administration of employee benefit insurance under a self-insured plan, or for separate or supplemental insurance.
9. The Procurement is for hotel reservations and/or services or transportation.
10. Books and published materials, including electronic materials purchased for any Center library collection.
11. The Procurement is for a publicly regulated utility (e.g., water, electricity, natural gas).
12. The Procurement is for gasoline.
13. The Procurement is for catering and/or conference services.
14. 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.

15. The Procurement is for specialized services for speaking engagements or teaching or research services.
16. 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.
17. The Procurement is for direct advertising such as in a newspaper, magazine, television commercial, radio advertisement, outdoor advertising, indoor display, social media, or other media outlet where the Center brand or programs are being advertised to a specific consumer segment; excluding advertisement placement services.
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 Center. Such purchases require cost or price analysis, certificate of working order and warranty unless waived by the Center's CFO.
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 manufacturer 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 Center.

Notwithstanding the foregoing exceptions from formal competition, a Purchasing Agent may require a reasonable method of competition, price or value comparison, or negotiation in order to assure that (i) the Goods, Services, or Construction to be obtained will reasonably meet the Center's bona fide requirements; (ii) the award of Center 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 Procurement Director, 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 Center and provides a benefit to the Center at least equal to the cost and risk of not conducting a solicitation. The Procurement Director 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).

## **SECTION V ETHICS**

### A. Conflict of Interest

The Auraria Higher Education Center CFO Policy "Conflict of Interest" defines the processes to be followed in articulating and resolving conflicts of interest at the Center. When the Procurement Department has reason to believe that a conflict of interest may

exist in the Procurement of Goods, Services, or Construction it will direct the affected department to comply with the procedures described in this policy.

**B. Code of Ethics**

All parties involved in the negotiation, performance, or administration of Center contracts are bound to act in good faith. Any person employed by the Center who purchases Goods, Services, and Construction, or is involved in the Procurement process for the Center, shall be held to the highest degree of trust and shall be bound to the Auraria Higher Education Center Procurement Code of Ethics included with these Rules as Appendix A.

**C. Vendor Shows**

Vendor shows, which include open houses, product exhibits, or product demonstrations, must be approved in advance by the Procurement Director in order to:

- protect the integrity of the Center’s Procurement process;
- protect the viability of Center-wide price agreements; and
- ensure fairness to all vendors.

The sponsoring Center department shall notify the Procurement Director as far in advance as possible but at least ten (10) business days prior to the vendor show. A vendor show is a product demonstration or exhibit to which more than one Center department is invited by a vendor for the purposes of marketing Goods, Services, or Construction. A product or equipment demonstration to a single Center department is not a vendor show. The Procurement Director has the final authority to determine what constitutes a vendor show.

**SECTION VI PROCUREMENT METHODS**

**A. General Solicitation Rules**

**1. Solicitation Policy**

It shall be the policy of the Center to purchase Goods, Services, and Construction 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 will not be issued to obtain estimates or to “test the water.” If the Center wishes to obtain information about products or services, but does not have a current Procurement need, a Request for Information may be issued.

**2. Solicitation Thresholds**

- a. \$10,000 or less – delegated campus departments have purchasing authority;
- b. \$10,001 through \$50,000 – purchases of Goods, Services and Construction are processed at the discretion of the Purchasing Agent.
- c. \$50,001 through \$250,000 – competition for Goods, Services and Construction is sought via the Documented Quote process. The Procurement Director, in his or her sole discretion, may allow Documented Quotes to be conducted up to \$500,000 in special circumstances where another solicitation method would not be in the Center’s best interest.

- d. \$250,001 and greater – competition for Goods, Services and Construction is sought via the Invitation for Bids, or the Request for Proposals process. For Goods and Services (not including Construction) the Center may also use the Competitive Negotiation or Invitation to Negotiate process. Vendors must respond with a Competitive Sealed Bid or a Competitive Sealed Proposal, except during the Competitive Negotiation process.
  - e. Sole Source Procurements, Emergency Procurements, and Competitive Reverse Auctions, may be used at any dollar threshold, except that Competitive Reverse Auctions cannot be used for Construction.
3. Solicitation Notification
- An electronic solicitation notification system is the required method for advertising competitive Solicitations for Goods, Services and Construction made through all solicitation methods. Other methods of notification may also be used at the discretion of the Purchasing Agent.
4. Specifications
- Purchasing Agents shall issue Goods, Services, or Construction specifications which are not unduly restrictive. Brand Name Specifications, Brand Name or Equal Specifications, or Qualified Products Lists may be used in competitive solicitations. However, brand name specifications shall only be used in accordance with Section VI.F.1 for 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 Center. Vendors may be required to certify that these standardized specifications have been met.
5. Prospective suppliers may be prequalified for particular types of Goods, Services, and Construction.
6. 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 it but with adequate time before the solicitation due date to allow vendors consideration of the conference information in preparing their quotes/bids/proposals. Nothing stated at the conference shall change the solicitation unless a change is made by written amendment.

7. 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, the due date shall be extended.
8. Solicitation Response - Receipt, Opening, and Recording
  - a. Receipt  
Each response shall show the date and time of receipt. Competitive sealed bids and 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. Upon verification of a solicitation response, the response will immediately be resealed and the reason for opening will be noted.
  - b. Opening and Recording  
Competitive Sealed Bid and Proposal 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. Late responses shall not be considered for award.
  - c. Confidential Data  
Confidential information includes trade secrets, privileged information, and confidential commercial and financial information furnished by the vendor that must be withheld from inspection by the Center pursuant to the Colorado Open Records Act, C.R.S. § 24-72-204(3)(a)(IV). The vendor may submit written requests for confidentiality to the Purchasing Agent pursuant to the solicitation terms and conditions identifying with specificity the information the vendor considers to be confidential and why. 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 the Notice of Intent to Award, all responses shall be open to public inspection with the exception of confidential information.
  - d. Withdrawals of Responses & Mistakes in Responses
    - (i) Withdrawal of Responses Prior to Due Date and Time  
Any responses may be withdrawn prior to the specified due date and time upon written request from the offeror.
    - (ii) Withdrawal of Responses after Due Date and Time but Prior to Award  
The Procurement Director may allow a response to be withdrawn after the specified due date and time but prior to 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 Procurement Director 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 a 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 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 and Base Bid responses are unchanged. The Purchasing Agent may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the Center.
    - (iv) Determinations Required
 

Any decision to permit or deny correction or withdrawal of a response under this section shall be supported by a written determination prepared by the Purchasing Agent.
- e. Evaluation and Award
 

All responses shall be evaluated and the winner determined in the manner defined in the solicitation. The Purchasing Agent shall ensure that the Award decision treats all vendors equitably.

  - (i) The Purchasing Agent shall make purchases from, and award contracts to, responsible 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 in-state Business if tie quotes/bids are received from in-state and out-of-state Businesses.
    - (b) If both vendors are in-state or neither is in-state, the Purchasing Agent shall flip a coin in the presence of another person to determine the awarded vendor.

9. Cancellation of Solicitations

a. Reasons for Cancellations

Any solicitation may be cancelled in whole or in part at any point in the process when it is in the best interest of the Center as determined by the Procurement Director. Approval to cancel will be obtained from the Procurement Director prior to cancellation. The reason(s) for doing so shall be made part of the file and may include the following:

- (i) the Center no longer requires the Goods Services, or Construction;
- (ii) the Center can no longer reasonably expect to fund the procurement;
- (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is appropriate;
- (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 Center;
- (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 Center has reason to believe that the Bids or Proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all vendors that submitted bids or proposals;
- (ix) the number of responses is not sufficient to ensure adequate competition; or
- (x) The Center determines that cancellation is the appropriate remedy through the protest/appeal process.

b. When a Solicitation is cancelled, notice of cancellation shall be sent to all vendors that submitted a response.

c. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be confidential for the lesser of six months or until the contract at issue is awarded.

d. When Bids or Proposals are rejected, or a Solicitation is cancelled after Bids or Proposals are received, the Bids or Proposals that have been opened shall be retained in the procurement file. Bids and Proposals that have not been opened, shall either be returned to the vendors (at vendor's request and expense) or shall be disposed of.

- B. Procurement Procedures for Purchases totaling \$250,000 or Less  
Procurements shall not be artificially divided so as to constitute small-dollar purchases as defined under this section. All purchases, including small-dollar purchases, are subject to the requirement that prices paid be fair and reasonable (C.R.S. § 24-30-202(2)).
1. Small-Dollar Purchases – Purchases totaling \$10,000 or less  
The Center has developed mechanisms for the purchase of most Goods, Services, and Construction totaling \$10,000 or less.
    - a. Procurement Card  
The Center procurement card is the preferred mechanism for purchases totaling \$10,000 or less.
  2. Purchases of Goods, Services and Construction totaling more than \$10,000 through \$50,000  
Purchases of Goods totaling between \$10,000 and \$50,000 are processed at the discretion of the Purchasing Agent.
  3. Purchases of Goods, Services and Construction totaling more than \$50,000 through \$250,000.
    - a. Documented Quote  
Goods, Services and Construction totaling between \$50,000 and \$250,000 are generally purchased using the Documented Quote process.
    - b. 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 responses, not solely the price. “Acceptable” means that the Goods or Services will meet the Center’s needs and that the price is fair and reasonable. The ensuing purchase order shall constitute an offer. The vendor may accept by performance, unless the purchase order expressly requires acceptance by written acknowledgment.
    - c. The choice of vendor must be based on which acceptable response is most advantageous to the Center, with price/cost being a consideration. The basis for the selection must be documented and will be final.
    - d. Documented Quotes must be advertised in accordance with Section VI.A.3. Solicitations must remain posted for at least three working days unless the Procurement Director makes a determination that a lesser time is required in order to meet an immediate Center 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 Center (including curing a defective bid bond). 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 Notice of Intent to Award or a commitment voucher is issued.
    - f. For Construction, the contractor’s response constitutes an “offer” and is binding upon acceptance by the Center.

- g. Quotes may be submitted electronically when the terms of the solicitation expressly permit electronic submission.

C. Procurement Procedures for Purchases totaling more than \$250,000

1. Invitation for Bids/Competitive Sealed Bids

a. Use of Invitation for Bids (IFB)

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. A bid constitutes an offer to the Center, and to be responsive, it must be capable of being accepted, without modification, to form a binding contract.

b. Advertisement

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

c. Solicitation Time

The minimum time for the IFB opening date shall be not less than fourteen (14) calendar days after posting solicitations on the electronic solicitation notification system. The Procurement Director may shorten the IFB advertisement time if he/she determines that special requirements or conditions exist. However, in no case shall the time be shortened in order to reduce competition.

d. Late Responses

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

e. Competitive Sealed Bid 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 bid 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 bid 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 the Notice of Intent to Award, all IFB/bid documents, and a complete bid analysis, shall be open to public inspection except to the extent the Center has approved a bidder's request that information be held confidential as set forth in Section VI.A.7.c.

f. Award

All Goods, Services, and Construction shall be evaluated for responsiveness against the specifications and/or brand names used as a reference and other evaluation criteria as set forth in the IFB. Following determination of responsiveness, bids shall be evaluated to determine which bidder offers the

lowest costs to the Center in accordance with the specifications, taking into account any life-cycle cost formulas stated in the IFB.

g. Multi-Step Sealed IFBs

A multi-step sealed IFB is a two-phase process. The technical first phase is composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the Center. The second phase considers only those bidders whose technical offers were determined to be responsive during the first phase. At this time, their price bids will be opened and considered. The process is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the Request for Proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the responsiveness of technical offers.

h. Best Value Invitation for Bids

(i) Use of Best Value IFB

A Best Value IFB is used where the IFB specifically allows for enhancements, options, and/or alternatives. A Best Value IFB must include a base bid statement (the minimum functional requirements) and shall be in accordance with C.R.S. §§ 24-92-103.5 and 24-92-103.7 for Construction.

(ii) 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 Center, an award shall be made to the bidder providing the best value to the Center. For Construction, the criteria shall be those in C.R.S. § 24-92-103.5(3).

2. Request for Proposals/Competitive Sealed Proposals

a. Use of Request for Proposals

Requests for Proposals (RFP) may be used for the solicitation of competitive sealed proposals over \$250,000 when factors in addition to price are important in deciding which proposal is most advantageous to the Center.

(i) Preliminary Evaluation

The Purchasing Agent may make an initial determination that the proposal meets minimum requirements for responsiveness prior to the full evaluation by the Evaluation Committee.

- (ii) Evaluation Committee  
A committee of no less than three individuals shall evaluate all responsive proposals. Evaluations shall be based on the factors and process set forth in the RFP, and must include cost. A numeric or non-numeric evaluation process may be used in order to determine which proposal(s) is most advantageous to the Center.
- (iii) As provided in the RFP and pursuant to these rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (iv) Upon receipt of the Evaluation Committee's recommendation, the Procurement Director shall make a determination stating which proposal is most advantageous to the Center, and a Notice of Intent to Award will be issued to that offeror.

b. Solicitation Time

RFPs will be open for a minimum of thirty (30) calendar days unless a shortened time frame is approved in writing by the Procurement Director.

c. Advertisement

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

d. Late Responses

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

e. RFP Opening

There shall be a public opening at the date and time specified in the RFP. The Purchasing Agent shall read the name of all proposers submitting responses. A 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 may be awarded by Competitive Negotiation

1. A contract may be awarded by Competitive Negotiation after an unsuccessful IFB or RFP process if the Procurement Director determines that time does not permit resolicitation.
2. An IFB or RFP process is unsuccessful if:
  - a. all offers received are unreasonable or uncompetitive;

- b. the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer;
  - c. the solicitation has been properly cancelled in accordance with the provisions of Section VI.A.8; or
  - d. the number of responsive offers is not sufficient to ensure adequate competition.
3. The Competitive Negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the Center's needs.
  4. The Procurement Department may set reasonable times and locations for participation in the Competitive Negotiation, reflecting the fact that time constraints are the basis for the Competitive Negotiation process.
  5. Each vendor with whom the Procurement Department negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until a Notice of Intent to Award has been issued. Any change in requirements shall be communicated to all vendors.
  6. A vendor may be eliminated from the process upon a determination that its offer is not reasonably considerable as being selected for award.
  7. The Award shall be made to the vendor whose offer is most advantageous to the Center. The Purchasing Agent shall make a written determination, approved by the Procurement Director, that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the Center.

#### E. Invitation to Negotiate

A contract may be awarded by an invitation to negotiate. Unless otherwise specified, the general rules under Request for Proposals shall apply to Invitations to Negotiate. The Invitation to Negotiate is intended to solicit responses from potential vendors to determine the best method for achieving a specific goal or solving a particular problem to identify one or more responsive vendors with which the Center may negotiate to determine the response that is most advantageous.

1. The invitation to negotiate must include, at a minimum, a statement of work or specifications that address the specific goals or problems that are the subject of the solicitation, proposed terms of the resulting contract, and evaluation factors. The invitation to negotiate must describe which items can be negotiated and which are non-negotiable. Anything that is identified as non-negotiable is considered mandatory and may not be waived by the Center. Evaluation factors are non-negotiable.
2. The Center shall evaluate responses against all evaluation factors set forth in the Invitation to Negotiate. Numerical rating systems may be used. Prior to determining the competitive range of responses reasonably susceptible of award, the Center, in its

discretion, may hold discussions with any or all responsible vendors who submit responses for the purpose of clarification to assure understanding of the solicitation requirements and the vendor's responses. Vendors shall be accorded fair and equitable treatment. The evaluation, including the results of any discussions, shall result in the determination of a competitive range of responses reasonably susceptible of award.

3. The Center shall commence negotiations with those vendors whose responses are determined to be in the competitive range. The Center may discontinue negotiations with a vendor if the Center determines that the response is no longer reasonably susceptible of award. The purpose of negotiations is to facilitate a contract that will be most advantageous to the Center, taking into consideration cost and the other evaluation factors set forth in the Invitation to Negotiate.
4. The committee(s) established to evaluate the responses and negotiate with vendors whose proposals are in the competitive range shall make a recommendation to the Procurement Director or his or her delegate. If the Procurement Director or his or her delegate approves the recommendation, an award shall be made in accordance with the recommendation.
5. The award shall be made to the responsible vendor whose response is determined in writing to be the most advantageous to the Center, taking into consideration the price and the evaluation factors set forth in the Invitation to Negotiate and the result of negotiations. No other factors or criteria shall be used in the evaluation.
6. The procurement record shall contain the basis on which the award is made along with an explanation of why the award provides the best value to the Center.

F. Other Procurement Methods (may be conducted at any dollar threshold)

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, Service, or Construction service that can reasonably meet the need AND there is only one vendor who can provide the Good, Service, or Construction. 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, Service, or Construction. Price is not a consideration to justify a Sole Source Procurement. In cases of reasonable doubt, competition will be solicited.

a. Continuing Need for Sole Source

The Procurement Department shall take reasonable steps to avoid using Sole Source procurement except in circumstances where it is both necessary and in the best interests of the Center. The Procurement Department shall take action, whenever possible, to avoid the need to continue to procure the same Goods, Services, or Construction without competition.

- b. Sole Source Procurement Procedures
    - (i) The requesting department shall submit the Procurement Department's Sole Source Justification form along with any other pertinent information regarding the Sole Source procurement; e.g. vendor quote, literature, etc.
    - (ii) The Procurement Director is the final authority for approval of Sole Source procurements.
    - (ii) The Purchasing Agent has a duty to negotiate the most favorable price, terms and conditions, notwithstanding the Sole Source nature of the procurement. The Purchasing Agent is required to make a written determination that the price is fair and reasonable.
2. Emergency Procurements
- a. Defined

When an emergency condition exists that prevents the use of a competitive procurement method, the Center may conduct a procurement on an emergency basis. Emergency procurements may be negotiated on a Sole Source or limited competition basis as dictated by the circumstances surrounding the emergency.
  - b. Determining Need for an Emergency Procurement

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

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

Emergency procurements do not include:

    - (i) Procurements that need to be rushed because of a failure to plan ahead;
    - (ii) end of the fiscal year procurements; or
    - (iii) end of a grant/contract procurement.
  - c. Authority to Make Emergency Procurements

The Center 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 Procurement Director shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the Center department shall notify the Procurement Director on the next working day. If the Procurement Director determines that all criteria for an emergency procurement were not met, then the procurement will be processed as an "After-the-Fact" procurement as set forth in Section VIII.
  - d. Limits of an Emergency Procurement

The emergency procurement shall be limited to the procurement of only the types of items and quantities or time period sufficient to meet the threat and shall not be used to meet long-term requirements.

e. Documentation

As soon as practicable, the Center department shall prepare a written justification, to be approved by the Procurement Director, 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, Services, or Construction 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.

f. Procedures

- (i) The procedure used shall be selected to assure that the required Goods, Services, or Construction 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. Competitive Reverse Auctions

A contract for Goods and Services may be awarded by Competitive Reverse Auction if the Procurement Director determines that adequate competition can be achieved and that the process is likely to result in better pricing.

4. Center-Wide Price Agreement(s) (CPA)

- a. The Procurement Director may issue Center-wide price agreements for Goods, Services, or Construction for use by all Center departments. Such CPA's may include, but are not limited to, Center-initiated agreements or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the Center's buying power.
- b. CPA pricing is based on the Center's overall anticipated volume of purchases during the agreement period. In order to assure the Center of the least total cost of Goods, Services, or Construction, all Center departments are required to order needed Goods, Services, or Construction from CPA's where applicable.
- c. The Procurement Department is responsible for publicizing all CPA's and for monitoring compliance.
- d. The Procurement Director may designate a State Price Agreement as a CPA and may permit or require the use of the agreement.

5. Cooperative Purchasing Agreement(s)

- a. The Procurement Director may approve the purchase of Goods, Services, or Construction from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the Center after considering:

- (i) the competitiveness of pricing under the contract; and
  - (ii) the efficiencies and cost savings of using the contract.
- b. The Center 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 of another state, or an agency or other instrumentality of the political subdivision;
  - (v) State 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. An example of this is the Educational and Institutional Cooperative.
- c. The Procurement Director may approve a single purchase from a cooperative purchasing agreement or may approve ongoing participation in a cooperative purchasing agreement as a CPA. The Procurement Director has the final authority to approve the Center's participation in or use of cooperative purchasing agreements.

#### G. Price Cost Analysis

1. When there is no competition (such as a Sole Source procurement or when only one response is received to a solicitation) the Purchasing Agent must ensure that the price the Center is paying is fair and reasonable by completing a price cost analysis. Additionally, Federal laws mandate that the Center perform price cost analysis under certain conditions.
2. If, after analysis, the Purchasing Agent does not feel the price to be paid is fair and reasonable, he/she will do one of three things:
  - a. seek competition;
  - b. negotiate with the vendor to lower the price; or
  - c. cancel the procurement.

#### H. Demonstration or Sample Agreements

Equipment requested by Center departments from vendors, or offered by vendors to Center departments, on a trial, loan, demonstration, or evaluation basis does not constitute a commitment to purchase said equipment. The Center department shall be responsible for advising the vendor that, for purchases totaling over \$10,000, a purchase order will be issued at the discretion of the Purchasing Agent, and that competitive

purchasing procedures shall be used as required by Center policies and procedures. If the vendor who lent the equipment is the successful vendor, new equipment must be supplied, unless otherwise specified.

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

Any agreement required by the vendor shall be signed only by the appropriate Purchasing Agent, regardless of the dollar value of the equipment.

#### I. Rules Specific to Construction Contracts

In addition to Construction rules stated elsewhere, the following rules apply specifically to Construction:

1. After opening quotes, bids, or proposals, the Purchasing Agent may request low bidders to extend the time during which the Center may accept their quotes, bids, or proposals, provided that no other change is permitted. The reasons for requesting such extension shall be documented in the procurement record.
2. In the event that all quotes, bids, or proposals for a construction project exceed available funds, as certified by the appropriate Center fiscal personnel, the Purchasing Agent is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the quote, bid, or proposal price with the low responsible bidder in order to bring the quote, bid, or proposal within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials. Otherwise, the quote, bid, or proposal must be rejected and:
  - a. new quotes, bids, or proposals may be solicited; or
  - b. the proposed procurement may be cancelled; or
  - c. if the Purchasing Agent determines in writing that the need for the construction continues, but that the price of the one quote, bid, or proposal is not fair and reasonable, and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted as a sole source procurement or an emergency procurement, as appropriate.
3. An alternate quote, bid, or proposal means an offer or response submitted in response to a solicitation issued by the Center that is in essential compliance with the solicitation terms and conditions, but offers an alternate that does not significantly deviate from the required specifications contained in the solicitation. The Purchasing Agent would be responsible for determining whether an alternate quote, bid, or proposal is acceptable.
4. A solicitation may prohibit multiple or alternate quotes, bids, or proposals. When prohibited, the multiple or alternate quotes, bids, or proposals shall be rejected, although

a clearly identified quote, base bid, or proposal will be considered for award as though it were the only quote, bid, or proposal submitted by the bidder or offeror. A solicitation shall specify if multiple or alternate quotes, bids, or proposals will be allowed and how they will be treated.

5. Any quote, bid, or proposal which is conditioned upon receiving an award under both the particular solicitation for which the quote, bid, or proposal is made, and another solicitation shall be deemed nonresponsive and unacceptable.
6. Affiliates are prohibited from submitting quotes, bids, or proposals for the same contract. An “affiliate” of a bidder or offeror is any person directly or indirectly:
  - a. controlling;
  - b. controlled by; or
  - c. under common control with the bidder or offeror.
7. The Purchasing Agent may determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for Construction.
8. All Construction bidding and contracting procedures will utilize standard state forms, and contract documents, which are available online from the website of the Office of the State Architect.
9. Bonds
  - a. Security
    - (i) Security shall be required for all DQs and IFBs and may be required for RFPs for Construction contracts when the cost exceeds fifty thousand dollars. Security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or otherwise supplied in a form satisfactory to the Center. Nothing in this section prevents the requirement of such bonds on construction contracts under fifty thousand dollars.
    - (ii) Security shall be in an amount equal to at least five percent of the amount of the quote or bid (or proposal when required).
    - (iii) After the quotes, bids, or proposals are opened, they shall be irrevocable for the period specified in the DQ, IFB, or RFP, except as provided in section VI A. 8. d. If a bidder is permitted to withdraw the quote, bid, or proposal before award, no action shall be had against the bidder or the security.
  - b. Contract Performance and Payment Bonds

In accordance with C.R.S. § 38-26-106, the following bonds or security shall be delivered to the Center in the form and amount as specified in the statutes, and shall become binding on the parties upon the execution of the contract:

    - (i) A performance bond satisfactory to the Center, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the Center; and
    - (ii) A payment bond satisfactory to the Center, executed by a surety company authorized to do business in this state or otherwise secured in a manner

satisfactory to the Center, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

- (iii) Nothing in this section shall be construed to limit the authority of the Center to require a performance bond or other security in addition to those bonds or in circumstances other than those specified.
- (iv) Suits on bonds shall be brought in accordance with C.R.S. § 38-26-107.

10. Retainage/Partial Payments shall be in accordance with C.R.S. §§ 24-91-103 and 38-26-107 as applicable.

## **SECTION VII CONTRACTS**

### **A. Types of Contracts**

Subject to the limitations of this section, any type of contract that will promote the best interests of the Center may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A Cost-Reimbursement contract may be used only when a written determination is made that such contract is likely to be less costly to the Center than any other type of contract or that it is impracticable to obtain the Goods, Services, or Construction required unless the Cost Reimbursement contract is used. The minimum requirements for contract formation and content are contained in the Auraria Higher Education Center Fiscal Rules.

### **B. Multi-Year Contracts**

The Center may enter into multi-year contracts for Goods, Services, or Construction subject to funding availability and CFO approval. Contracts for periods in excess of five years require the written approval of the CFO.

## **SECTION VIII AFTER-THE-FACT (ATF) PURCHASES**

Per Center rules, all After-the-Fact purchases must be processed in accordance with the CFO Policy entitled *Statutory Violations*.

## **SECTION IX DISPUTES & REMEDIES**

### **A. Types of Disputes**

The Procurement Director is authorized to settle and resolve any questions regarding any protest concerning the solicitation or award of a contract.

### **B. Costs of Filing**

All costs associated with filing and prosecuting a protest/appeal or contract dispute shall be borne by the Protestor/Contractor.

## C. Protests Regarding Solicitation or Award of a Contract

### 1. Filing of Protest

#### a. Subject of Protest.

Protestors may file a protest on any phase of a solicitation or award including, but not limited to, specifications, award, or the determination of confidentiality per Section VI.A.7.c. 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. Protests regarding specifications must be submitted and received by the Procurement Department prior to the bid/proposal opening date.

#### b. Form

The written protest shall include, at a minimum:

- (i) the name and address of the Protestor;
- (ii) appropriate identification of the procurement by solicitation number;
- (iii) a statement of the reasons for the protest; and
- (iv) any available exhibits, evidence, or documents substantiating the protest.

#### c. To whom addressed

The protest shall be addressed to the Procurement Director and sent to the Procurement Department.

### 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 Procurement Director, the protest may be resolved without such information.

### 3. Decision

The Procurement Director shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall set forth each factor taken into account in reaching the decision. The Procurement Director shall furnish a copy of the decision to the Protestor in writing.

### 4. Appeal

The Protestor may appeal the Procurement Director's decision to the Center's CFO within seven (7) working days after the decision is sent to the Protestor. The appeal decision shall be based on the issues raised in the protest. No new issues may be raised in the appeal or in the appeal decision.

### 5. Stay of Procurement

In the case of protested RFPs only, there shall be a stay of Procurement until the decision of the Procurement Director is rendered, unless the Procurement Director determines that execution of a contract without delay is necessary to protect substantial Center interests.

6. Remedies and Entitlement to Costs

If the protest or appeal decision determines that the solicitation was not conducted properly, the solicitation or proposed award may be revised or the solicitation may be cancelled.

If the Center has already entered into a contract and the protest or appeal decision subsequently finds that the Protestor should have been awarded the contract but, due to a defect in the solicitation 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

7. Actions in Court

Prior to any action in court, the Protestor must exhaust the protest and appeal process set forth in this section and must participate in a formal mediation process with a neutral third party mediator. The cost of mediation will be borne equally by the Center and the Protestor.

If a Protestor files a complaint in court, the subject of which is also the subject of a protest or appeal, no further action will be taken on the protest or appeal and the matter will be referred to the Center's legal counsel.

D. Contract Disputes

1. Statement of Policy

The terms and conditions of Center contracts establish procedures and remedies to resolve contract and breach of contract controversies between the Center and a Contractor. It is the Center'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 CFO 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 CFO 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 pending contract dispute, the CFO will not issue a decision and will refer the matter to the Center's legal counsel.

## **SECTION X COST PRINCIPLES**

### **A. Applicability of Cost Principles**

1. Application

This section of the Rules contains cost principles and procedures to be used as guidance in:

- a. establishment of contract cost estimates and prices under contracts made by any Procurement Method where the award may not be based on adequate competition, Sole Source procurement, or contracts for certain services;
- b. establishment of price adjustments for contract changes;
- c. pricing of termination for convenience settlements; and
- d. any other situation in which cost analysis is required.

2. Limitation

Cost principles in this section of the Rules are not applicable to:

- a. the establishment of prices under contracts made pursuant to adequate competition, rather than the analysis of individual, specific cost elements, except that this section of the Rules does apply to the establishment of adjustments of price for changes made to such contracts;
- b. prices that are fixed by law or regulation;
- c. prices that are based on established catalogue prices or established market price; and
- d. stipulated unit prices.

### **B. Permitted Costs**

1. General

Any contract costs proposed for estimating purposes or invoiced for cost-reimbursement purposes are permitted as provided in the contract. The contract shall provide that the total permitted cost of a contract is the sum of the permitted direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

2. Accounting Consistency

All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the Contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a Contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

3. When Permitted

The contract shall provide that costs are permitted to the extent they are:

- a. reasonable, as defined in Section X.C (Reasonable Costs);
- b. allocable, as defined in Section X.D (Allocable Costs);
- c. not made unlawful under any applicable law;
- d. not permitted under Section X.E (Treatment of Specific Costs) or Section X.F (Costs Requiring Prior Approval to be Allowable); and
- e. actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

C. Reasonable Costs

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

1. whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the Contractor's business or the performance of the contract;
2. the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;
3. the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the Center, and the general public;
4. significant deviations from the Contractor's established practices which may unjustifiably increase the contract costs; and
5. any other relevant circumstances.

D. Allocable Costs

1. General

A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

- a. is incurred specifically for the contract;
- b. benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
- c. is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

2. Allocation Consistency

Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as set forth herein. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for

all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

3. Direct Cost

A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the Contract.

4. Indirect Costs

a. An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

b. Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same result could be achieved through less precise methods.

c. The Contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the Contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the Contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a Contractor's primary location are applied to off-site locations may be necessary to distribute the Contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

d. The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the Contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

## E. Treatment of Specific Costs

### 1. Advertising

The only permitted advertising costs are those for:

- a. the recruitment of personnel;
- b. the procurement of scarce items;
- c. the disposal of scrap or surplus materials;
- d. the listing of a business's name and location in a classified directory; and
- e. other forms of advertising as approved by the Center when in the best interest of the Center.

### 2. Bad Debts

Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are prohibited.

### 3. Contingencies

- a. Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Section X.E.3.b.
- b. For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the Contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

### 4. Depreciation and Use Allowances

- a. Depreciation and use allowances are permitted to compensate Contractors for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular Contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate Contractors for the use of any one type of property.
- b. The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.
- c. Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the Center will accept any method which is accepted by the Internal Revenue Service.

- d. In order to compensate the Contractor for use of depreciated, Contractor-owned property which has been fully depreciated on the Contractor's books and records and is being used in the performance of a Contract, use allowances are permitted, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing through-allowance are the original cost, remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.
5. Entertainment
    - a. Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodging, transportation and gratuities. Entertainment costs are not allowable.
    - b. Nothing herein shall prohibit a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section X.G (Applicable Credits). This section shall not prohibit costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.
  6. Fines and Penalties

Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state and local laws and regulations. Fines and penalties are prohibited costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the Center's authorized representative. To the extent that workers' compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.
  7. Gifts, Contributions and Donations

A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are permitted. Contributions and donations are property transferred to a nonprofit entity that are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit entity. Gifts, contributions and donations are prohibited.
  8. Interest Costs
    - a. Interest is a cost of borrowing. Interest is not permitted except as provided in Section X.E.8.b.
    - b. Interest costs on Contractor claims for payments due under Center contracts are permitted.
  9. Losses Incurred Under Other Contracts

A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

## 10. Material Costs

- a. Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the Contractor), which are acquired in order to perform the contract. Material costs are permitted, subject to Section X.E.10.b and Section X.E.10.c. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses, and reasonable overages.
- b. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the Contractor reasonably should take under the circumstances, and for credits for proceeds the Contractor received or reasonably should receive from salvage and material returned to suppliers.
- c. Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the Contractor shall be made on the basis of costs incurred by the transferrer (determined in accordance with these cost principle regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the Purchasing Agent and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:
  - (i) the price is established either by the established catalogue price; or
  - (ii) by the lowest price offer obtained as a result of the sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

## 11. Taxes

- a. Except as limited in Section X.E.11.b, all taxes which the Contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are permitted.
- b. The following costs are not permitted:
  - (i) Federal income taxes and federal excess profit taxes;
  - (ii) all taxes from which the Contractor could have obtained an exemption, but failed to so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;
  - (iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the Center's authorized representative; and
  - (iv) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the Contractor's books of account and financial statements.
- c. Any refund of taxes which were permitted as a direct cost under the Contract shall be credited to the contract. Any refund of taxes which were permitted as an

indirect cost under the contract shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.

- d. Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are permitted costs.

#### F. Costs Requiring Prior Approval to be Allowable

##### 1. General

The costs described in Sections X.F.2, 3, 4, and 5 are permitted as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the CFO. In other situations those costs are negotiable in accordance with general standards set out herein.

##### 2. Pre-Contract Costs

Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. Such costs are permitted to the extent that they would have been permitted if incurred after the beginning date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as permitted pre-contract costs.

##### 3. Bid and Proposal Costs

Bid and proposal costs are the costs incurred in preparing, submitting and supporting bids and proposals. Reasonable ordinary bid and proposal costs are permitted as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are permitted as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

##### 4. Insurance

- a. Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are permitted in accordance with these cost principles. Self-insurance contributions are permitted only to the extent of the cost to the Contractor to obtain similar insurance.
- b. Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.
- c. Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are prohibited unless the parties expressly agree otherwise in the terms of the contract.

5. Litigation Costs

Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative agency. Costs incurred in litigation against the Center are not permitted.

G. Applicable Credits

1. Definitions and Examples

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.

2. Reducing Costs

Credits shall be applied to reduce related direct or indirect costs.

3. Refund

The Center shall be entitled to a cash refund if the related expenditures have been paid to the Contractor under a cost-reimbursement type contract.

H. Unusual Costs

Both the Center and the Contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

I. Use of Federal Cost Principles

1. Cost Negotiations

In dealing with Contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Acquisition Regulations (FAR), Part 1-15, the Purchasing Agent, after notifying the Contractor, may use the federal cost principles as guidance in contract negotiations, subject to Section X.I.2.

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

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

b. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the

extent that the cost principles specified in the grant document conflict with the cost principles in these Rules, the cost principles specified in the grant shall control.

J. Authority to Deviate from Cost Principles

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

## **SECTION XI SUSPENSION & DEBARMENT**

### A. Suspension

After meeting with the affected Center department(s) and, where practicable, the vendor who is to be suspended, the Procurement Director may issue a written determination to suspend a vendor from doing business with the Center 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;
  - b. inform the suspended vendor that no business may be conducted with the Center 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; and
  - c. offer the vendor a reasonable opportunity to be heard and to submit evidence to be considered in making the debarment decision.
2. The suspension period will be effective upon issuance of the notice of suspension.

### B. Debarment

1. A suspended vendor may be debarred for any one or more of the following reasons:
  - a. conviction of a criminal offense in relation to obtaining or attempting to obtain a Center 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; or
  - f. violation of the provisions of § 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 Procurement Director may issue a determination debaring the vendor. A vendor may be debarred for a period of time commensurate with the seriousness of the offense, but not to exceed three years.
  3. A written notice of debarment shall be sent to the suspended vendor. The notice shall:
    - a. state the debarment period; and
    - b. inform the debarred vendor that no business may be conducted with the Center by any person(s) representing the debarred vendor during the debarment period 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 or the Procurement Director orders otherwise.

C. Master List

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

**SECTION XII PROCUREMENT RECORDS -- INFORMATION & RETENTION**

Procurement records are subject to disclosure pursuant to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201, et seq.

Procurement records shall be retained and disposed of in accordance with applicable records retention policies.

### **SECTION XIII 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.

**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 Center's needed Goods, Services, or Construction. 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 Center's best interests.

An **After-the-Fact (ATF) Purchase** occurs when a department makes a purchase for more than \$10,000 before the Procurement Department issues a purchase order (when required by Fiscal Rule). For example, authorizing a vendor to begin work before the Procurement Department issues a purchase order, even though the department has submitted a purchase requisition, is an ATF. Similarly, obtaining Goods, Services, or Construction 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 Accounting Services website.

**Alternative** means a choice of a different Good, Service, or Construction, that meets or exceeds the functional requirements of the base bid.

**Award** means the acceptance of a bid or proposal by issuance of a commitment voucher.

**Base Bid** means the minimum functional requirements for responsiveness of the Good, Service, or Construction.

**Best Value** means the lowest overall cost to the Center after taking into consideration costs, benefits, and savings.

**Bid** means a competitive sealed response from a vendor to an IFB; however, use of the term "quote", "quotes", "bid", "bids", "proposal" and "proposals" are interchangeable based on the solicitation method.

**Brand Name Specification** means a Specification limited to one or more Goods or Services by manufacturer's names or catalogue numbers.

**Brand Name or Equal Specification** means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet Center requirements, and which provides for the submission of equivalent Goods or Services.

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

**Competitive Negotiation** means the process of discussion and issue resolution between a Purchasing Agent and a prospective vendor in order to arrange for the providing of a good or service needed by the Center. Competitive Negotiation is only used after a failed IFB or RFP process. If more than one vendor is available for such negotiation, the needs of the Center must be clearly defined in advance of any negotiations, via a specification that details fully the Center'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 Center agreement, regardless of what it may be called, for the procurement or disposal of Goods, Services, or Construction and includes purchase orders.

**Contractor** means any entity that has a contractual relationship with the Center for the provision of Goods, Services, or Construction.

**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 or as defined in C.R.S. § 24-92-102(8).

**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/Determines** means a written procurement decision made by the Procurement Director, or delegate, that 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 Center's need for specific Goods, Services or Construction and receiving and evaluating vendor responses. The dollar limits for use of DQs shall be as stated in the section on small purchases. The process shall be conducted only by a Purchasing Agent.

**Emergency Procurement** means when an emergency condition exists that prevents the use of a competitive procurement method.

**Enhancements** mean components, services, or products that exceed the minimum functional requirements and would improve the quality of the Goods, Services or Construction being procured by the Center.

**Goods** means all property, whether tangible or intangible, materials, equipment, and insurance provided by a Contractor.

**In-state Business** means:

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

**Invitation for Bids (IFB)** means all documents, including those attached or incorporated by reference, utilized by the Center for soliciting Competitive Sealed Bids.

**Invitation to Negotiate (ITN)** means a process to solicit responses from potential vendors to determine the best method for achieving a specific goal or solving a particular problem to identify one or more responsive vendors with which the Center may negotiate to determine the response that is most advantageous.

**Notice of Intent to Award** means the announcement of the apparent winner to the apparent winner, the losing vendors, and the public in an IFB or RFP process. A Notice of Intent to Award occurs prior to the issuance of a commitment voucher; no property interest of any sort accrues to the vendor prior to issuance of a commitment voucher.

**Options** mean choices of additional components, services, or goods that would serve to provide increased value to the Center 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, Services, or Construction. Procurement includes all functions that pertain to the obtaining of any Goods, Services, or Construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**Proposal** means a competitive sealed response from a vendor to an RFP; however, use of the term “quote”, “quotes”, “bid”, “bids”, “proposal” and “proposals” are interchangeable based on the solicitation method.

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

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

**Purchasing Agent** means one of the Auraria Higher Education Center Procurement Department's employees with delegated purchasing authority from the Procurement Director. For purposes of these rules, the Procurement Director is also a Purchasing Agent.

**Qualified Products List** means an approved list of Goods, Services, or Construction described by model or catalog numbers, which prior to competitive solicitation, the Center has determined will meet the applicable specification requirements.

**Quote** means a response from a vendor to a DQ; however, use of the term "quote", "quotes", "bid", "bids", "proposal" and "proposals" are interchangeable based on the solicitation method.

**Request for Information (RFI)** means a request from the Center to the vendor community to provide information about the general availability, specifications, or costs of Goods or Services. An RFI is not a vendor selection method and cannot be the basis for the award of a contract.

**Request for Proposals (RFP)** means all documents, including those attached or incorporated by reference, utilized by the Center for soliciting proposals and is the commonly used name for competitive sealed proposals. Procurements should take into account the costs for the full life cycle of any resulting contract to determine total expected cost.

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

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

**Responsive/Responsiveness** means an offer, with regard to a bid or proposal, which conforms in all material respects to the requirements and specifications contained in the solicitation.

**Revenue-Producing** means a situation where a business pays money to the Center as a result of any activity carried on by the business with the permission or agreement of the Center. Situations that may be revenue-producing will be evaluated by the CFO 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 Center, without leaving evidence that the document has been changed;
- C. bears a physical or electronic signature evincing intent by the bidder or proposer to be bound. An electronic signature must comply with the definitions and requirements set forth in the government electronic transactions act, C.R.S. § 24-71.1-101 et seq. and its implementing rules; and
- D. records, manually or electronically, the date and time the bid or proposal is received by the Center 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. The term does not include professional services as defined in C.R.S. § 24-30-1402.

**Sole Source Procurement** means a procurement made without competition, when competition would otherwise be required. A Sole Source Procurement is justified when there is only one Good, Service, or Construction that can reasonably meet the need AND there is only one vendor who can provide the Good, Service or Construction.

**Solicitation** means all Procurement Method documents and related information, whether attached or incorporated by reference, published by the Center in connection with a procurement prior to the response deadline.

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

## **APPENDIX A      PROCUREMENT CODE OF ETHICS**

### **AURARIA HIGHER EDUCATION CENTER**

Any person employed by the Auraria Higher Education Center who purchases Goods, Services, and Construction, or is involved in the purchasing process for the Center, 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 Auraria Higher Education Center 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 Auraria Higher Education Center 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 Auraria Higher Education Center;
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 Auraria Higher Education Center business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.