



Metropolitan State University of Denver

PROCUREMENT RULES

Effective October 1, 2011

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METROPOLITAN STATE UNIVERSITY OF DENVER

PROCUREMENT RULES

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PROCUREMENT RULES

SECTION I INTRODUCTION

Pursuant to Section 24-101-105 C.R.S. and Section 23-5-129(4) C.R.S., on September 8, 2011, the Board of Trustees adopted a resolution exempting the Metropolitan State University of Denver from the State of Colorado Procurement Code and Rules to be effective October 1, 2011.

SECTION II AUTHORITY & DELEGATION

The Constitution and statutes of the State of Colorado vest the supervision of the University in the Board of Trustees. Upon the effective date of these Procurement Rules (Rules), all procurement authority of the University shall be delegated to the Auraria Higher Education Center (AHEC) Purchasing Director. The Purchasing Director may further delegate his/her authority to persons in University departments for the efficient operation of the University, which has been outlined in the University Fiscal Rules. The Purchasing Director is the only person authorized to purchase goods and services for the University, unless such specific delegation of authority is made to another employee. Since no rules can cover all eventualities, exceptional cases will be resolved as circumstances and prudent business practices warrant. No employee of the University is empowered to incur any obligation or make any commitment on behalf of the University for the procurement of goods or services, except as provided under these Rules.

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

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

The Metropolitan State University of Denver Chief Financial Officer may, from time to time, amend these Rules.

SECTION III PURPOSE

These Rules are designed to support and facilitate the educational, research, and public service missions of the University through the acquisitions of goods and services by applying best methods and business practices that provide for public confidence in the University.

Within the context of the University environment, these Rules ensure a procurement process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the procurement process, and uniform procurement procedures.

SECTION IV APPLICABILITY

A. General Applicability

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

B. Exclusions

These Rules do not apply to the following situations:

1. No University funds are expended or the contract is revenue-producing. The University shall maximize the return to the University when revenue-producing contracts are involved. However, in the case of revenue-producing contracts for which the University is considering more than one vendor, the Purchasing Department will use a competitive process.
2. The procurement is for construction. Procurement for construction is governed by statute and rules promulgated by the Office of the State Architect.
3. The procurement is between the University and a public entity.
4. The procurement is for services provided by architects, engineers, landscape architects, industrial hygienists and land surveyors. (See C.R.S. §§ 24-30-1401 through 24-30-1407.)
5. A vendor's item is to be procured for resale.
6. 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.
7. The procurement is for an employment contract.
8. The procurement is for land, an interest in land or other real property, water or mineral rights, or utilities.
9. 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.
10. The procurement is for travel-related expenses, including hotel reservations and/or services or transportation.
11. Books and published materials, including electronic materials purchased for any University library collection.

C. Waiver Process

The Purchasing Director, in his or her sole discretion, in collaboration with the University Controller, may grant the request of a waiver, allowing procurement rule(s) to be waived in special circumstances. The waiver request shall include evidence that due diligence was exercised in receiving the best deal for the University and provides a benefit to the Institution at least equal to the cost and risk of not conducting a solicitation. The Purchasing 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 Metropolitan State University of Denver Board adopted policy “Conflict of Interest” in the Handbook for Professional Personnel defines the processes to be followed in articulating and resolving conflicts of interest at the University. When the Purchasing Department has reason to believe that a conflict of interest may exist in the procurement of goods or services, it will direct the affected department to comply with the procedures described in this policy.

B. Code of Ethics

All parties involved in the negotiation, performance, or administration of University contracts are bound to act in good faith. Any person employed by the University who purchases goods and services, or is involved in the procurement process for the University, shall be held to the highest degree of trust and shall be bound to the Metropolitan State University of Denver 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 Purchasing Director in order to:

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

The sponsoring University department shall notify the Purchasing 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 University department is invited by a vendor for the purposes of marketing goods or services. A product or equipment demonstration to a single University department is not a vendor show. The Purchasing 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 University to purchase goods and services in a manner that affords vendors a fair and equal opportunity to compete. Solicitations should only be issued when there is a valid procurement need. Solicitations will not be issued to obtain estimates or to “test the water.” If the University wishes to obtain information about products or services but does not have a current procurement need, a Request for Information (RFI) may be issued.

2. Solicitation Thresholds

- a. \$5,000 or less – delegated campus departments have purchasing authority;

- b. \$5,001 through \$10,000 – purchases of goods are processed at the discretion of the Purchasing Agent;
 - c. \$5,001 through \$25,000 – purchases of services are processed at the discretion of the Purchasing Agent;
 - d. \$10,001 through \$150,000 – competition for goods is sought via the Documented Quote process. The Purchasing Director, in his or her sole discretion and in collaboration with the University Controller, may allow Documented Quotes to be conducted up to \$500,000 in special circumstances where a Competitive Sealed Bid or Competitive Sealed Proposals would not be in the University’s best interest;
 - e. \$25,001 through \$150,000 – competition for services is sought via the Documented Quote process. The Purchasing Director, in his or her sole discretion and in collaboration with the University Controller, may allow Documented Quotes to be conducted up to \$500,000 in special circumstances where a Competitive Sealed Bid or Competitive Sealed Proposals would not be in the University’s best interest;
 - f. \$150,001 and greater – competition for goods and services is sought via either the Invitation for Bids or Request for Proposals process. Vendors must respond with a Competitive Sealed Bid or a Competitive Sealed Proposal.
3. Solicitation Notification
- An electronic solicitation notification system is the required method for advertising competitive Solicitations for goods and services made through Documented Quotes (DQ), Invitation for Bids (IFB), and Request for Proposals (RFP). Other methods of notification may also be used at the discretion of the Purchasing Agent.
4. Specifications
- Purchasing Agents shall issue goods or services 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 University. Vendors may be required to certify that these standardized specifications have been met.
5. Solicitation Conferences
- Solicitation conferences may be conducted to explain procurement requirements. They shall be announced in the solicitation. The conference should be held long enough after the solicitation has been issued to allow vendors to become familiar with 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, posted on the electronic solicitation notification system.

6. Amendments to Solicitations
Amendments to solicitations shall be identified as such and may require that the vendors acknowledge receipt of all amendments issued. Amendments shall be posted on the electronic solicitation notification system with sufficient time to allow vendors to consider them in preparing their quotes/bids/proposals. If the due date set will not permit such preparation, the due date shall be extended at the discretion of the Purchasing Agent.
7. 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, but is not limited to, trade secrets, privileged information, and confidential commercial and financial information furnished by the vendor that must be withheld from inspection by the University 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. 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 Purchasing 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 Purchasing 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 University.
 - (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.

 - (b) the award shall be made to the in-state business if tie quotes/bids are received from in-state and out-of-state businesses.
 - (c) 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.

8. Cancellation of Solicitations

a. Reasons for Cancellations

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

- (i) the University no longer requires the goods or services;
- (ii) the University 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 University;
- (vi) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;
- (vii) all otherwise acceptable bids or proposals received are at clearly unreasonable prices;
- (viii) the University has reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all vendors that submitted bids or proposals;
- (ix) the number of responses is not sufficient to ensure adequate competition; or
- (x) The University determines that cancellation is the appropriate remedy through the protest/appeal process.

b. Notice

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

c. Disposition of Bids or Proposals

When bids or proposals are rejected, or a solicitation is cancelled after bids or proposals are received, the bids or proposals 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 \$150,000 or Less

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

1. Small-Dollar Purchases – Purchases totaling \$5,000 or less
The University has developed mechanisms for the purchase of most goods and services totaling \$5,000 or less.
 - a. Procurement Card
The University procurement card is the preferred mechanism for individual purchases totaling \$5,000 or less. The procurement card is solely a method of payment, not a procurement method, and shall not remove the necessity for a procurement method when required by these Rules. Purchases totaling more than \$5000 per year from a vendor must follow the following procurement methods and have a PO or contract issued prior to the purchase; however, a procurement card may be used for individual payments that total less than \$5000.
 - b. Special Purchase Order
Delegated University departments may issue special purchase orders for purchases totaling \$5,000 or less where the procurement card is not an option.
2. Purchases of Goods totaling between \$5,000 and \$10,000
Purchases of goods totaling between \$5,000 and \$10,000 are considered discretionary, meaning the Department may select a vendor without using a competitive bidding process. Notwithstanding the foregoing, if the University has a price agreement with one or more vendors for a given good or service, the Department must use the awarded vendor(s). The purchase must be processed through the Purchasing Department and a purchase order or contract issued prior to purchase.
3. Purchases of Services totaling between \$5,000 and \$25,000
Purchases of services totaling between \$5,000 and \$25,000 are considered discretionary, meaning the Department may select a vendor without using a competitive bidding process. Notwithstanding the foregoing, if the University has a price agreement with one or more vendors for a given good or service, the Department must use the awarded vendor(s). The purchase must be processed through the Purchasing Department and a purchase order or contract issued prior to purchase.
4. Purchases of goods totaling between \$10,000 and \$150,000 and purchases of services totaling between \$25,000 and \$150,000.
 - a. Documented Quote
Goods totaling between \$10,000 and \$150,000 and services totaling between \$25,000 and \$150,000 are 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 University’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 University, with price/cost being a consideration. The basis for the selection must be documented and will be final.
- d. Documented quotes must be advertised in accordance with Section VI.A.3. Solicitations must remain posted for at least three (3) working days unless the Purchasing Director makes a determination that a lesser time is required in order to meet an immediate University need.
- e. The Purchasing Agent may negotiate with any vendor to clarify its quote or to effect modifications that will make the quote acceptable or make the quote more advantageous to the University. However, in the negotiation process, the terms of one vendor's quote shall not be revealed to a competing vendor, and all quotes will be kept confidential until a Notice of Intent to Award or a commitment voucher is issued.
- f. Quotes may be submitted electronically when the terms of the solicitation expressly permit electronic submission.

C. Procurement Procedures for Purchases totaling more than \$150,000

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 University, and to be responsive, it must be capable of being accepted, without modification, to form a binding contract.

b. Advertisement

IFB's 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 Purchasing 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 IFB's). 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 University has approved a bidder's request that information be held confidential as set forth in Section VI.A.7.c.

f. Award

All goods and services shall be evaluated for 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 University in accordance with the specifications, taking into account any life-cycle cost formulas stated in the IFB.

g. Multi-Step Sealed IFB's

A multi-step sealed IFB is a two-phase process. The technical first phase is composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the University. The second phase considers only those bidders whose technical offers were determined to be 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.

(ii) Written Determination

The Purchasing Agent shall provide a written determination for approval to the Purchasing Director prior to the use of a Best Value IFB. The written determination must explain why the Best Value IFB is appropriate for the good or service being solicited.

(iii) Evaluation

The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives. Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the

determination of which best meet the needs of the University, an award shall be made to the bidder providing the best value to the University.

2. Request for Proposals/Competitive Sealed Proposals

a. Use of Request for Proposals

Requests for Proposals (RFP) will be used for the solicitation of competitive sealed proposals over \$150,000 when factors in addition to price are important in deciding which proposal is most advantageous to the University.

(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 fewer than three individuals shall evaluate all responsive proposals. Evaluations shall be based on the factors and process set forth in the RFP. A numeric or non-numeric evaluation process may be used in order to determine which proposal(s) is most advantageous to the University.

(iii) Upon receipt of the Evaluation Committee's recommendation, the Purchasing Director shall make a determination stating which proposal is most advantageous to the University, and a Notice of Intent to Award will be issued to that offeror.

b. Advertisement

RFP's will be advertised in accordance with Section VI.A.3.

c. Solicitation Time

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

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 Purchasing 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 University's needs.
 4. The Purchasing Department may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.
 5. Each vendor with whom the Purchasing Department negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each 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 University. The Purchasing Director shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the University.

E. Competitive Reverse Auctions

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.

A contract for goods and services may be awarded by competitive reverse auction if the Purchasing Director determines that adequate competition can be achieved and that the process is likely to result in better pricing.

F. Other Procurement Methods

1. Sole Source Procurements

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

justify a sole source procurement. In cases of reasonable doubt, competition will be solicited.

a. Continuing Need for Sole Source

The Purchasing Department shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the University. The Purchasing Department shall take action, whenever possible, to avoid the need to continue to procure the same goods and/or services without competition.

b. Sole Source Procurement Procedures

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

2. Emergency Procurements

a. Defined

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

b. Determining Need for an Emergency Procurement

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

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

Emergency procurements do not include:

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

c. Authority to Make Emergency Procurements

The University may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practicable, approval by the Purchasing Director shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the University department shall notify the Purchasing Director on the next working day. If the Purchasing 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 immediate threat and shall not be used to meet long-term requirements.
 - e. Documentation
As soon as practicable, the University department shall prepare a written justification, to be approved by the Purchasing Director, that sets forth the justification for the emergency procurement. The justification shall include the following:
 - (i) the basis for the emergency procurement, including the date the emergency first became known;
 - (ii) a listing of the goods and/or services procured;
 - (iii) a description of the efforts made to ensure that proposals or offers were received from as many potential vendors as possible under the circumstances; and
 - (iv) the basis for the selection of the selected vendor.
 - f. Procedures
 - (i) The procedure used shall be selected to assure that the required goods or services are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
 - (ii) Any acceptable form of solicitation (e.g., written, faxed, electronically transmitted, phoned, etc.) may be used to obtain proposals for an emergency procurement.
3. University-Wide Price Agreement(s) (UPA)
- a. The Purchasing Director has sole authority, in collaboration with the University’s Controller, to approve University-wide price agreements for goods or services for use by all University departments. Such UPA’s may include, but are not limited to, University-initiated agreements or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the University’s buying power.
 - b. UPA pricing is based on the University’s overall anticipated volume of purchases during the agreement period. In order to assure the University of the least total cost of goods or services, all University departments are required to order needed goods or services from UPA’s where applicable.
 - c. The Purchasing Department is responsible for publicizing all UPA’s and for coordinating with the University to monitor compliance.
 - d. The Purchasing Director may designate a State Price Agreement as a UPA and may permit or require the use of the agreement.

4. Cooperative Purchasing Agreement(s)
 - a. The Purchasing Director may approve the purchase of goods or services from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the University after considering:
 - (i) the competitiveness of pricing under the contract; and
 - (ii) the efficiencies and cost savings of using the contract.
 - b. The University may participate in, conduct, sponsor or administer a cooperative purchasing agreement. This includes, but is not limited to, agreements with any of the following:
 - (i) the Federal government or an agency or other instrumentality of the Federal government;
 - (ii) the State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;
 - (iii) a bi-state or multi-state agency;
 - (iv) a county, municipal corporation, or other political subdivision of the State of Colorado or of another state, or an agency or other instrumentality of the political subdivision;
 - (v) other institutions of higher education; or
 - (vi) a cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximizing economies of scale when soliciting bids or proposals. An example of this is the Western States Contracting Alliance (WSCA).
 - c. The Purchasing Director may approve a single purchase from a cooperative purchasing agreement or may approve ongoing participation in a cooperative purchasing agreement as a UPA. The Purchasing Director has the final authority to approve the University'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 University is paying is fair and reasonable by completing a price cost analysis. Additionally, federal laws mandate that the University perform price cost analysis under certain conditions.
2. If, after analysis, the Purchasing Agent does not feel the price to be paid is fair and reasonable, he/she will do one of 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 University departments from vendors, or offered by vendors to

University departments, on a trial, loan, demonstration, or evaluation basis does not constitute a commitment to purchase said equipment. The University department shall be responsible for advising the vendor that, for purchases totaling over \$5,000, a purchase order will be issued at the discretion of the Purchasing Agent, and that competitive purchasing procedures shall be used as required by University policies and procedures. If the vendor who 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 University 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 must be routed through the University's Contracts Manager for review prior to approval of the agreement.

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 University may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a written determination is made that such contract is likely to be less costly to the University than any other type of contract or that it is impracticable to obtain the goods or services required unless the cost reimbursement contract is used. The minimum requirements for contract formation and content are contained in the Metropolitan State University of Denver Fiscal Rules.

B. Multi-Year Contracts

The University may enter into multi-year contracts for goods or services subject to funding availability and Controller approval. Contracts for periods in excess of five years require the written approval of the Controller.

SECTION VIII AFTER-THE-FACT (ATF) PURCHASES

Per University Fiscal Rules, all after-the-fact purchases must be processed in accordance with the Controller Policy entitled *Managing Contracts that Violate Fiscal Rules*.

SECTION IX DISPUTES & REMEDIES

A. Types of Disputes

The Purchasing 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 Purchasing 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 Purchasing Director and sent to the Purchasing 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 Purchasing Director, the protest may be resolved without such information.

3. Decision

The Purchasing 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 Purchasing Director shall furnish a copy of the decision to the protestor in writing.

4. Appeal

The protestor may appeal the Purchasing Director's decision to the University's Controller. 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 RFP's only, there shall be a stay of procurement until the decision of the Purchasing Director is rendered, unless the Purchasing Director determines that execution of a contract without delay is necessary to protect substantial University 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 University 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 University 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 University counsel.

D. Contract Disputes

1. Statement of Policy

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

2. Situation Prior to Issuing Decisions

When a controversy cannot be resolved by mutual agreement, the Controller 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 Controller 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 Controller will not issue a decision and will refer the matter to University counsel.

SECTION X SUSPENSION & DEBARMENT

A. Suspension

After meeting with the affected University department(s) and, where practicable, the vendor who is to be suspended, the Purchasing Director may issue a written determination to suspend a vendor from doing business with the University pending an investigation to determine whether cause exists for debarment. The suspension shall not exceed three (3) months unless a criminal 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 University by any person(s) representing the suspended vendor during the suspension period and that any solicitation responses received from the suspended vendor during the suspension period shall not be considered; 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 of the following reasons:
 - a. conviction of a criminal offense in relation to obtaining or attempting to obtain a University contract or in the performance of such contract;
 - b. conviction under State of Colorado or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;
 - c. conviction under State of Colorado or federal antitrust statutes arising out of the submission of bids or proposals;
 - d. willful material failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of one or more contracts;
 - e. the vendor is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state or local governmental entity; and/or

- f. violation of the provisions of Section 7-108-401 C.R.S., “General Standards of Conduct for Directors and Officers”.
2. Following completion of the investigation to determine whether a vendor has engaged in activities that are cause for debarment, the Purchasing 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 University 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 Purchasing Director orders otherwise.

C. Master List

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

SECTION XI 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 XII 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 University’s needed goods or services. If the foregoing

conditions are met, price competition shall be presumed to be "adequate" unless the Purchasing Agent determines, in writing, that such competition is not adequate.

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

An **After-the-Fact Purchase** occurs when a department makes a purchase for more than \$5,000 before the Purchasing Department issues a purchase order. For example, authorizing a vendor to begin work before the Purchasing Department issues a purchase order, even though the department has submitted a purchase requisition, is an after-the-fact purchase. Similarly, obtaining goods or services on credit and subsequently submitting the invoice with a payment voucher is an after-the-fact purchase, 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 or service that meets or exceeds the functional requirements of the base bid.

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

Base Bid means the minimum functional requirements for responsiveness of the good or service.

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

Bid means a competitive sealed response from a vendor to an IFB.

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

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

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

Competitive Negotiation means the process of discussion and issue resolution between a Purchasing Agent and a prospective vendor in order to arrange for the providing of a good or service needed by the University. 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 University must be clearly defined in advance of any negotiations, via a specification that details fully the University's intended procurement.

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

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

Contractor means any entity that has a contractual relationship with the University for the provision of goods or services.

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

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

C.R.S. means Colorado Revised Statutes.

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

Documented Quote (DQ) means a process of soliciting informally for fulfilling the University's need for specific goods or services and receiving and evaluating vendor responses. The dollar limits for use of DQ's shall be as stated in the section on small purchases. The process shall be conducted only by a Purchasing Agent.

Enhancements means components, services, or products that exceed the minimum functional requirements and would improve the quality of the goods or services being procured by the University.

Goods means all property, whether tangible or intangible, 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 principle place of business in Colorado; or
- B. a business that is authorized to transact business in Colorado, that maintains a place of business in Colorado, and that has filed Colorado unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before bidding on a solicitation

Invitation for Bids (IFB) means all documents, including those attached or incorporated by reference, utilized by the University for soliciting competitive sealed bids.

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

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

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

Proposal means a competitive sealed response from a vendor to an RFP.

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

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

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

Qualified Products List means an approved list of goods or services described by model or catalogue numbers, which prior to competitive solicitation, the University has determined will meet the applicable specification requirements.

Quote means a response from a vendor to a DQ.

Request for Information (RFI) means a request from the University 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 University for soliciting proposals and is the commonly used name for competitive sealed proposals. Procurements should take into account the costs for the full life cycle of any resulting contract to determine total expected cost.

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

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

Responsive/Responsiveness means an offer, with regard to a bid or proposal, that 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 University as a result of any activity carried on by the business with the permission or agreement of the University. Situations that may be revenue-producing will be evaluated by the Controller on a case by case basis, and, if approved as revenue-producing, will be documented in a written determination.

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

- A. ensures that the contents of the bid or proposal cannot be opened or viewed before the formal opening without leaving evidence that the document has been opened or viewed;
- B. ensures that the document cannot be changed, once received by the University, without leaving evidence that the document has been changed;
- C. bears a physical or electronic signature evincing intent by the bidder or proposer to be bound. An electronic signature must comply with the definitions and requirements set forth in the government electronic transactions act, C.R.S. § 24-71.1-101 et seq. and its implementing rules; and
- D. records, manually or electronically, the date and time the bid or proposal is received by the University and that cannot be altered without leaving evidence of the alteration.

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

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

Solicitation means a request to the business community to respond to a DQ, IFB, or RFP.

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

APPENDIX A
METROPOLITAN STATE UNIVERSITY OF DENVER
PROCUREMENT CODE OF ETHICS

Any person employed by the Metropolitan State University of Denver who purchases goods and services, or is involved in the purchasing process for the University, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Demonstrate loyalty to the Metropolitan State University of Denver 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 Metropolitan State University of Denver 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 Metropolitan State University of Denver;
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 Metropolitan State University of Denver business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.

APPENDIX B: 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 IFB's and RFP's 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 Appendix B.C (Reasonable Costs);
- b. allocable, as defined in Appendix B.D (Allocable Costs);
- c. not made unlawful under any applicable law;

- d. not permitted under Appendix B.E (Treatment of Specific Costs) or Appendix B.F (Costs Requiring Prior Approval to be Allowable); and
- e. actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

C. Reasonable Costs

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

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

D. Allocable Costs

1. General

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

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

2. Allocation Consistency

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

3. Direct Cost

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

4. Indirect Costs

- a. An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amounts may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.
- b. Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same result could be achieved through less precise methods.
- c. The contractor's method of distribution may require examination when:
 - (i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;
 - (ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or
 - (iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.
- d. The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

E. Treatment of Specific Costs

1. Advertising

The only permitted advertising costs are those for:

- a. the recruitment of personnel;
- b. the procurement of scarce items;
- c. the disposal of scrap or surplus materials;
- d. the listing of a business's name and location in a classified directory; and

- e. other forms of advertising as approved by the University when in the best interest of the University.
2. **Bad Debts**
Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are prohibited.
3. **Contingencies**
- a. Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Appendix B.E.3.b.
 - b. For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.
4. **Depreciation and Use Allowances**
- a. Depreciation and use allowances are permitted to compensate contractors for the use of buildings, capital improvements and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.
 - b. The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.
 - c. Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the University will accept any method which is accepted by the Internal Revenue Service.
 - d. In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances are permitted, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing through-allowance are the

original cost, remaining estimated useful life, the reasonable fair market value, the effect of any increased maintenance or decreased efficiency.

5. Entertainment

- a. Entertainment costs include costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodging, transportation and gratuities. Entertainment costs are unallowable.
- b. Nothing herein shall prohibit a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Appendix B.G (Applicable Credits). This section shall not prohibit costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

6. Fines and Penalties

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

7. Gifts, Contributions and Donations

A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are permitted. Contributions and donations are property transferred to a nonprofit institution that are transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions and donations are prohibited.

8. Interest Costs

- a. Interest is a cost of borrowing. Interest is not permitted except as provided in Appendix B.E.8.b.
- b. Interest costs on contractor claims for payments due under University contracts are permitted.

9. Losses Incurred Under Other Contracts

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

10. Material Costs

- a. Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of

the contractor), which are acquired in order to perform the contract. Material costs are permitted, subject to Appendix B.E.10.b and Appendix B.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 transferor (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 Appendix B.E.11.b, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are permitted.
- b. The following costs are not permitted:
 - (i) Federal income taxes and federal excess profit taxes;
 - (ii) all taxes from which the contractor could have obtained an exemption, but failed to so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;
 - (iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the University's authorized representative; and
 - (iv) income tax accruals designed to account for the tax effects of differences between taxable income and pre-tax income as reflected by the contractor's books of account and financial statements.
- c. Any refund of taxes which were permitted as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were permitted as an indirect cost under the contract shall be credited to the indirect cost group applicable to contracts being priced or costs being reimbursed during the period in which the refund is made.

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

F. Costs Requiring Prior Approval to be Allowable

1. General

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

2. Pre-Contract Costs

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

3. Bid and Proposal Costs

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

4. Insurance

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

5. Litigation Costs

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

G. Applicable Credits

1. Definitions and Examples

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

2. Reducing Costs

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

3. Refund

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

H. Unusual Costs

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

I. Use of Federal Cost Principles

1. Cost Negotiations

In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Acquisition Regulations (FAR), Part 1-15, the University, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Appendix B.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 University may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The University and the contractor may by mutual agreement incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with these Rules, these Rules shall control.
- b. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles in these Rules, the cost principles specified in the grant shall control.

J. Authority to Deviate from Cost Principles

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