

 COLORADO SCHOOL OF <b>MINES</b>	<b>Procurement Policy</b>	
	<b>Responsible Administrative Unit:</b> Procurement and Contracting	<b>Policy Contact:</b> Ryan McGuirk, Director of Procurement and Contracting <a href="mailto:McGuirk@mines.edu">McGuirk@mines.edu</a>

## 1.0 BACKGROUND AND PURPOSE

The Constitution and statutes of the State of Colorado vest the supervision of the Colorado School of Mines (“Mines”) in the Board of Trustees, which includes the authority for Procurement. The Board of Trustees has delegated this authority to the President, who has further delegated the authority to the Director of Procurement and Contracting. Pursuant to Section 24-101-105 of the C.R.S., the Board of Trustees adopted a resolution exempting Mines from the State of Colorado Procurement Code and Rules, effective June 1, 2009.

Mines is committed to support and facilitate its educational, research, and public service missions by applying the best methods and business practices that provide for public confidence in Mines. As part of this commitment, Mines has established this policy to ensure quality, integrity, broad-based Competition, fair and equal treatment of the business community, and increased economy in the Procurement of Goods, Services and Construction.

## 2.0 POLICY STATEMENT(S)

Mines must purchase Goods, Services and Construction, in a manner that is consistent with this policy and the procedures in Exhibit 1, Mines Procurement Procedures, regardless of funding source.

Mines will comply with the procurement standards defined in 2 CFR 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards”, [Subpart D, Sections 200.317-200.326](#), for all federal grant funded Procurements.

Mines must purchase Goods, Services and Construction in a manner that affords vendors a fair and equal opportunity to compete.

Procurement and Contracting is the final authority at Mines for selection of vendors and the sole authority for the commitment of Mines funds with respect to the Procurement of Goods, Services and Construction, as set forth in this policy.

Procurement records may be subject to disclosure pursuant to the provisions of the Colorado Open Records Act [C.R.S. §§ 24-72-200.1](#) et seq.

### 3.0 RESPONSIBILITIES

The Director of Procurement and Contracting shall implement, maintain and ensure compliance with this policy, including the Mines Procurement Procedures in Exhibit 1.

Mines employees shall adhere to the ethical requirements described in the State Classified Employee Handbook or the Mines Faculty Handbook. Employees involved in the Procurement process for Goods, Services or Construction, shall:

- act in good faith;
- be held to the highest degree of trust;
- disclose, in advance, possible conflicts of interest related to Procurement transactions; and
- be bound to the Colorado School of Mines Procurement Code of Ethics, attached hereto as [Appendix A](#).

When there is reason to believe that a conflict of interest may exist in the Procurement process, the affected department should comply with the conflict of interest procedures described in the Faculty Handbook.

Procurement and Contracting shall work with campus to follow the Procurement Procedures in order to ensure the:

- integrity of the Procurement process;
- viability of the cooperative agreements and price agreements;
- process is fair to all potential vendors;
- price paid by Mines is fair and reasonable for all Goods, Services and Construction; and
- best interests of Mines are represented in each transaction.

Procurement and Contracting shall retain and dispose of Procurement records in accordance with applicable records retention policies. At this time the record retention period is three (3) years unless the transaction is related to research or a grant.

### 4.0 COMPLIANCE/ENFORCEMENT

If it is determined that any purchase is made committing Mines funds where the Procurement Policy and Procedures were not followed the unauthorized purchase is deemed an After-the-Fact purchase and is not processed through Procurement and Contracting. The transaction will result in non-issuance of payment, unless the transaction is ratified by the Mines Controller pursuant to Financial Policies [Section 2.2.5](#).

An attempt to circumvent Procurement Policy and Procedures by splitting a purchase on one or multiple One Cards is a violation of the Purchase Order requirement.

If it is determined that the person making such unauthorized purchase did not carry out their fiduciary duties for the benefit of the people of the State of Colorado, they will be subject to ethics sections of the State Classified Employee Handbook and Mines Faculty Handbook, [Section 6.2.3\(A\)](#).

## 5.0 EXCLUSIONS/DISCLAIMERS

This policy does not apply to transactions where Mines funds are not expended nor to contracts that are solely revenue producing.

## 6.0 DEFINITIONS

The terms defined in this section shall have the following meanings whenever they appear in this policy and procedures, 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.

An **After-the-Fact** (“ATF”) purchase occurs when a department makes a purchase of \$5,000 or more before the Office of Procurement and Contracting issues a Purchase Order or Change Order. For example, authorizing a vendor to begin work before the Office of Procurement and Contracting issues a Purchase Order or Change 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 voucher document.

**Award** means the formal acceptance of a Bid or Proposal by issuance of a Purchase Order or Change Order and may include the execution of a written agreement to cover performance by the vendor.

**Bid** means a response from a vendor to an invitation for a Bid (IFB).

**Brand Name Specification** means a Specification limited to one or more Goods, Services or Construction by manufacturer's names or catalogue numbers. A Brand Name Specification requires a written justification for a specific Good or Service or Construction.

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

**Change Order** means a document that sets out changes to a previously issued Purchase Order. A Change Order provides authorization to a vendor to add to or change the original order for Goods, Services or Construction, as

well as, documents any change in the cost of Goods, Services or Construction.

**Competition** or **Competitive** means seeking more than one vendor through an informal process or a Solicitation.

**Contract** means any type of Mines agreement, regardless of what it may be called, for the Procurement or disposal of Goods, Services or Construction, and includes Purchase Orders or Change Orders.

**Contractor** means any entity that has a contractual relationship with Mines for the provision of Goods, Services or Construction as allowed for under this policy and procedures.

**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, and the acquisition of any Goods or Services required to complete that process. For the purposes of this policy and procedures, "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.

**DQ Response** means a response or quotes formally submitted to a Documented Quote ("DQ") Solicitation.

**Enhancement** means components, Services, or products that exceed the minimum functional requirements and would improve the quality of the Goods, Services or Construction being procured by Mines.

**Good** means all property, whether tangible or intangible, provided by a vendor. The term does not include land, the purchase of an interest in land, water or mineral rights, workers' compensation insurance, or benefit insurance for Mines employees.

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

**In-State Business** means:

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

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

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

**One Card** means a form of company credit card that allows Goods and some Services to be purchased and paid for without the need for an encumbrance (i.e., Purchase Order). Mines has four different company credit cards, the One Card, the Fuel/Event Card, Payment Plus and the Ghost Card (used by Mines travel agent to pay for airfare).

**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.

**Procurement and Contracting** means staff that has formal delegated authority to execute Contracts on behalf of Mines. Procurement and Contracting provides rapid analyses of Mines’ spend and implements changes, negotiates with suppliers, and uses Mines best practices.

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

**Protestor** means any actual or prospective bidder or proposer who is aggrieved in connection with the Solicitation or the Award of a Contract and who files a protest.

**Purchase Order** means a document authorizing a vendor to deliver Goods, Services or Construction to Mines, with payment to be made after delivery of Goods, Services or Construction.

**Qualified Products List** means an approved list of Goods, Services or Construction described by model or catalogue numbers, which prior to competitive Solicitation, Mines has determined will meet the applicable Specification requirements.

**Request for Information (“RFI”)** means a request from Mines to the vendor community to provide information about the general availability, Specifications, or costs of Goods, Services or Construction. An RFI is not a

vendor selection method and cannot be the basis for the Award of a Contract.

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

**Responsive** means an offer, with regard to a Bid or Proposal, that conforms in all material respects to the requirements contained in the Solicitation.

**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 Mines, without leaving evidence that the document has been changed;
- C. Carries a physical or electronic signature evidencing intent by the bidder or proposer to be bound; and,
- D. Records, manually or electronically, the date and time Mines receives the Bid or Proposal and that cannot be altered without leaving evidence of the alteration.

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

**Sole Source Procurement** means a Procurement made without Competition, when Competition is otherwise required, because the Good, Service or Construction is so unique in character that there is no other available source to acquire similar Goods, Services or Construction.

**Solicitation** means a request to the business community for a Competitive response to a Documented Quote, Invitation for Bid, or Request for Proposal.

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

## 7.0 RESOURCES or ATTACHMENTS

- [Financial Policies](#)
- [State Classified Employee Handbook](#)
- Mines [Faculty Handbook](#)
- [One Card Handbook](#)
- Code of Ethics - [Appendix A](#)

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- Federal Uniform Guidance - [2 CFR 200, Subpart D, Sections 200.317-200.326](#)
- Colorado Open Records Act (“CORA”) – C.R.S. § § [24-72-200.1 et seq.](#)
- C.R.S. § § [24-30-1401 through 24-30-1407](#)

### **KEY WORDS**

*procurement, purchase, goods, services, construction, solicitation, quotes, bids, proposals, documented quote, DQ, request for proposal, RFP, invitation for bid, IFB, One Card, financial policies*

## **8.0 HISTORY AND REVIEW CYCLE**

The policy will be reviewed at least every 2 years, or as needed by the Responsible Administrative Unit.

Issued: June 1, 2009.

Updated/Amended:

October 19, 2015 (added language to reflect specific federal guidance followed)

October 13, 2016 (updated exclusions, solicitation thresholds and competition requirements)

January 11, 2018 (updated for organization structure changes)

July 1, 2018 (updated to reflect changes in federal guidance)

May 13, 2020 (renamed Procurement Policy previously named Procurement Rules, revised layout, incorporated Construction transactions, updated for organization structure changes, increase Documented Quote threshold)

## EXHIBIT 1 - Procurement Procedures

### 1.0 PROCEDURES PURPOSE

These procedures set forth the guidance for the Procurement of Goods, Services and Construction as required by the Procurement Policy. These procedures include general guidance regarding information gathering, method of Procurement, Competition requirements, cost price analysis, disputes and remedies, and vendor debarment.

The Director of Procurement and Contracting, in their sole discretion, may approve a request to waive the Procurement Procedures in special circumstances. A waiver request must provide evidence that:

- due diligence was/will be exercised in receiving the best deal for Mines; and
- the benefit to Mines is at least equal to the cost and risk of not following the procedures.

The Director of Procurement and Contracting must ensure that waiving the procedures will not allow for any unethical conduct or undue advantage to a specific vendor(s).

### 2.0 INFORMATION GATHERING

Mines may use one of the information gathering methods in this section when there is not adequate information to develop a scope of work/Specifications for a Procurement or to identify potential vendors that may be qualified to provide the Goods, Services or Construction needed. Information gathering may be utilized at any time to determine appropriate Goods, Services Construction, or vendors that meet a particular need of Mines. All potential vendors should be given an equal opportunity to provide the requested information.

**2.1 Request for Information (RFI).** An RFI may be used to obtain preliminary information about the type of Goods, Services or Construction that are available in the market. The information gathered from an RFI may be used to develop an adequate scope of work/Specifications for a Procurement or to determine the budget required based on pricing information provided. An RFI must be publicly advertised in the same manner as a Solicitation, for a period of time that allows adequate information gathering at the discretion of Procurement and Contracting. The RFI shall clearly state that no Award will result from any response.

**2.2 Request for Qualifications (RFQ).** An RFQ is a qualifications-based selection process to ensure potential vendors can meet the requirements of a pending Procurement. An RFQ alone will not result in an Award. An RFQ may be used as a first step in any Solicitation process. The qualifications information (e.g., past completion of similar work, references, etc.) gathered from an RFQ may be used to determine if a



vendor should be allowed to respond to a future Solicitation. An RFQ must be publicly advertised in the same manner as a Solicitation, for a period of time that allows adequate information gathering at the discretion of Procurement and Contracting. The RFQ shall clearly state that no Award will result from any response, though some vendors may be selected to participate in a Solicitation.

**2.3 Vendor Shows.** A vendor show is a product demonstration or exhibit held on campus, to which a vendor markets Goods, Services or Construction to at least one Mines department and is open for attendance to the Mines community. Vendor shows include open houses, product exhibits, or product demonstrations. All vendor shows must be approved in advance by the Director of Procurement and Contracting.

The sponsoring Mines department shall notify the Director of Procurement and Contracting as far in advance as possible but at least ten (10) business days prior to the vendor show. A product or equipment demonstration that is not open to the Mines community is not a vendor show and is not allowed. The Director of Procurement and Contracting has the final authority to determine what constitutes a vendor show.

**2.4 Demonstrations or Samples.** Equipment requested by Mines departments from vendors, or offered by vendors to Mines departments, on a trial, loan, demonstration or evaluation basis does not constitute a commitment to purchase said equipment. Mines departments must advise the vendor that, any Procurement resulting from a demonstration or sample must adhere to the Mines Procurement Policy and Procedures. If a Procurement results from the vendor who loaned the equipment, new equipment must be supplied unless otherwise specified.

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

Any agreement, which is required by the vendor, shall be executed by Procurement and Contracting, regardless of dollar value of the equipment.

### **3.0 STANDARD PROCUREMENT METHODS**

All Procurements are subject to the requirement that prices paid be fair and reasonable and a price cost analysis is required in all Procurements, even when Competition is not possible or not required. A fair and reasonable price is considered "Acceptable." Competition requirements are in place at various thresholds to help ensure fair and reasonable prices. Competition is not required for all thresholds.

If, after analysis, Procurement and Contracting does not feel the price to be paid is fair and reasonable, Competition must be sought or an attempt to negotiate a lower price with the vendor must be made.

Procurements, where appropriate, should take into account the costs for the full life cycle of any resulting Contract to determine total expected cost and appropriate Procurement procedures. The following standard Procurement thresholds, processes and methods apply:

Procurement Threshold	Solicitation/Competition Process Required	Procurement Method
Micro Purchase - \$4,999.99 or less	Discretionary - No Competition	One Card/Direct Pay
Micro Purchase - \$5,000 - \$10,000	Discretionary – No Competition	Purchase Order
Small Purchase - \$10,000.01 - \$50,000	<ul style="list-style-type: none"> <li>• <a href="#">3 Quotes</a> Required for Goods and Services</li> <li>• Discretionary for Construction – No Competition</li> </ul>	Purchase Order
Small Purchase - \$50,000.01 - \$249,999.99	Solicitation – <a href="#">Documented Quote</a>	Purchase Order/Contract
Sealed Bid - \$250,000 or more	Solicitation – <a href="#">Invitation For Bid</a>	Contract
Competitive Sealed Proposals - \$250,000 or more	Solicitation – <a href="#">Request For Proposal</a>	Contract
Alternative Procurement - Any Amount	<a href="#">Cooperative Purchasing Agreement</a> ; <a href="#">Mines-wide Purchasing Agreement</a> ; <a href="#">Competitive Reverse Auctions</a> ; <a href="#">Competitive Negotiations</a> ; <a href="#">Sole Source Procurements</a> ; <a href="#">Emergency Procurements</a>	Purchase Order/Contract

The following guidance applies to non-competitive Procurements:

- Micro Purchase up to \$4,999.99 - Campus departments have purchasing authority using a Mines One Card or by submitting a direct pay request. See the [One Card Handbook](#) or [Direct Pay request](#).
- Micro Purchases between \$5,000 and \$10,000.01 – Procurement and Contracting has purchasing authority and Purchase Order must be issued pursuant to [Section 4.0](#).

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- Small Purchases for Construction between \$10,000.01 and \$50,000 – Procurement and Contracting has purchasing authority and a Purchase Order must be issued pursuant to [Section 4.0](#).
- Any Procurement over \$10,000 for Goods and Services, or over \$50,000 for Construction will require Competition processed through Procurement and Contracting and a Purchase Order or Contract will issue pursuant to [Section 4.0](#).

The Procurement procedures listed above must be followed unless there is a determination by Procurement and Contracting that a different procedure better meets the needs of Mines or has been approved by the Director of Procurement and Contracting. Exclusion from the Competition requirements are identified in [Section 3.1](#).

**3.1 Exclusions from Competition Requirements.** Procurements using Sponsored Program Funds and Research Funds are excluded from the Competition requirements if the Goods or Services are from a specific vendor named in: (1) a sponsored project grant, (2) the awarding document from the granting agency (not just in a proposal or budget), or (3) the contract with the granting agency.

Procurements using funds other than Sponsored Program Funds and Research Funds are excluded from the Competition requirements, if the Procurement is for:

- A. transactions between Mines and a public entity including any agency of a federal, state, county or municipal government, a school district or other special district.
- B. services provided by architects, engineers, landscape architects, industrial hygienists or land surveyors. (See C.R.S. § [24-30-1401 through 24-30-1407](#)).
- C. specialized professional Services for teaching, speaking engagements or research services.
- D. Contracts and expenditures for litigation or other legal expenses, including experts, mediators, court reporters, process servers, witness fees, and attorney Services approved in advance by Mines' Office of General Counsel.
- E. a vendor's item procured for resale.
- F. the lease, sale, purchase, transfer, disposal or any other transaction involving an interest in real property.
- G. an employment contract.
- H. insurance policies for Mines and its employees.
- I. a defined contribution plan administrator and/or record keeper.
- J. travel related expense (e.g., airfare, accommodations, charter transportation).
- K. Mines hosted conference services (e.g. conference catering, meeting rooms, audio visual equipment, and guest accommodations).
- L. a publicly regulated utility (e.g., water, electricity, natural gas).

- M. fuel.
- N. a 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.
- O. library collections in all formats, including books, periodicals, serials, electronic resources, multimedia/streaming video, etc.
- P. advertising such as in a newspaper, magazine, television commercial, radio advertisement, outdoor advertising, indoor display, social media, or other media outlet where Mines brand or programs are being advertised to a specific consumer segment.
- Q. used or pre-owned equipment or vehicles, provided that Procurement and Contracting has determined that Competition is not practical or would not be advantageous to Mines. Such purchases require cost or price analysis, certificate of working order and warranty unless waived by the Director of Procurement and Contracting.
- R. items that can only be provided by the manufacturer of existing equipment (e.g., component parts, software, warranty extensions, maintenance, or training).
- S. dues and/or memberships.
- T. tuition, registration, or fees charged for trainings, classes, conferences and seminars.
- U. software license renewals, additional licenses/seats, software maintenance, and upgrades to existing software used by Mines.

Notwithstanding the foregoing exceptions, Procurement and Contracting may require a reasonable method of Competition, price or value comparison, or negotiation in order to assure that the Procurement Policy and Procedures are followed.

**3.2 Solicitation and Competition Requirements.** Competition is required for all purchases of Goods and Services over the \$10,000 and all Construction costing more than \$50,000.

**3.2.1 Three Quote Requirement**

Campus requestors must provide three (3) quotes to support their selection for a recommended vendor to Procurement and Contracting. The quotes may be provided in any form deemed acceptable by Procurement and Contracting. If three (3) quotes cannot be obtained, a written explanation detailing efforts made to obtain three (3) quotes and justification for not obtaining them is required. Procurement and Contracting, using their professional discretion, may evaluate the supporting documentation and place the order with any vendor that is deemed to serve the best interests of Mines, considering cost and other factors.

### 3.2.2 Documented Quote (DQs)

- A. DQs must adhere to all requirements set forth in [Section 3.2.5](#) below.
- B. DQs must be advertised for a minimum of three (3) working days unless the Director of Procurement and Contracting provides a written determination that a lesser time is required in order to meet an immediate Mines need.
- C. DQ Responses may be submitted electronically when the terms of the Solicitation permit electronic submission.
- D. Procurement and Contracting may negotiate with any vendor to clarify its DQ Response or to effect modifications that will make the DQ Response acceptable or make the DQ Response more advantageous to Mines. However, in the negotiation process the terms of one vendor's DQ Response shall not be revealed to a competing vendor and all DQ Responses will be kept confidential until a Purchase Order or Change Order is issued.
- E. "Offer" and "Acceptance"
  - For Goods and Services Procurements, neither the Solicitation nor the vendor's response constitutes an "offer"; therefore, responsiveness at the time of receipt is not an absolute criterion. Procurement and Contracting will determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely the price. The ensuing Purchase Order or Change Order shall constitute an "offer." The vendor may accept by performance, unless the Purchase Order or Change Order expressly requires acceptance by written acknowledgment.
  - For Construction Procurements, the Contractor's response constitutes an "offer" and is binding upon acceptance by Mines. For Construction, an Award may be made for products that are for inclusion in Construction that are specifically identified by Mines or State of Colorado as environmentally preferable products.
- F. The choice of vendor for Goods, Services and Construction must be based on which acceptable response is most advantageous to Mines with price/cost being a consideration. The basis for selection must be documented and will be final.

### 3.2.3 Invitation for Bid (IFB)

- A. IFBs must adhere to all requirements set forth in [Section 3.2.5](#) below.
- B. IFBs are used when an Award will be made primarily on the response that is most advantageous to Mines with price/cost being a consideration, and it is not necessary to conduct negotiations or request additional information from the bidders about their bids.
- C. An RFQ as a first-step in an IFB shall follow the procedures set forth in [Section 2.2](#).
- D. IFBs must be advertised for a minimum of fourteen (14) calendar days and the opening date shall be not less than fourteen (14) calendar days after posting of the Solicitation. When special requirements or conditions exist, the Director of Procurement and Contracting may

shorten the IFB time, but in no case shall the time be shortened in order to reduce Competition. Documentation as to why a shortened IFB time was necessary is required.

- E. Prospective bidders on Construction projects of \$250,000 or more are required to be qualified with the State of Colorado, State Buildings Section, Department of Personnel. Such qualification must be set at least two business days prior to the IFB opening.
- F. Responses received after the due date and time will not be opened and will be rejected as late.
- G. Each response must be marked with the date and time of receipt. Responses to IFBs must be stored in a secure place until the due date and time, and must not be opened upon receipt, except that unidentified responses may be opened for identification purposes. Upon verification of a Solicitation response, the response will immediately be resealed and the reason for opening the response will be noted.
- H. IFB Opening
  - Responses must be opened at a designated location with public access, in the presence of one or more witnesses, as soon as possible after the closing date and time in the IFB.
  - The name of each bidder, the Bid price(s) (unless otherwise provided in the IFB), and other information deemed appropriate by Procurement and Contracting must be read aloud at the time of the IFB opening. Reading of all Bid item prices may not be reasonable or desired (e.g., in the case of lengthy or complex IFBs). The decision not to read all Bid prices will be made by Procurement and Contracting.
  - The name of each bidder, amount of the Bid, delivery date, name(s) of witness(es) and other relevant information must be entered into the record and the record shall be available for public inspection.
  - Prior to Award, copies of pricing information not read aloud at the IFB opening shall be made reasonably available for inspection, if requested. Other information related to a Bid, or the Bid's responsiveness, may be withheld from inspection until questions concerning such information are resolved.
- I. All Goods, Services and Construction must be evaluated for acceptability against the Specifications and/or best value used as a reference and other evaluation criteria as set forth in the IFB. Following determination of acceptability, Responsive Bids shall be evaluated to determine which Responsible bidder offers the lowest costs to Mines in accordance with the Specifications, taking into account any life-cycle cost formulas stated in the IFB. A Contract will be Awarded to the lowest Responsive, Responsible bidder.
- J. Multi-Step IFBs

A multi-step Sealed IFB is a two-phase process designed to obtain the benefits of Competitive Sealed bidding by Award of a Contract to the lowest Responsive, Responsible bidder with an acceptable technical offer.

- The first phase (technical phase) is composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by appropriate means as acceptable to Mines.
  - The second phase requires only those bidders whose technical offers were determined to be acceptable during the first phase to submit price Bids to be opened and considered by Mines.
- K. Best Value IFBs
- 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.
  - Written determination. Procurement and Contracting shall provide a written determination for approval to the Director of Procurement and Contracting prior to the use of a Best Value IFB. The written determination must explain why the Best Value IFB is appropriate for the Good, Service or Construction being solicited.
  - Evaluation. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with enhancements, options or alternatives. Based on the evaluation of the cost of the Base Bid, the dollar value of enhancements, options or alternatives and the determination of which best meet the needs of Mines, an Award shall be made to the bidder providing the Best Value to Mines.

#### 3.2.4 Request for Proposal (RFP)

- A. RFPs must adhere to all requirements set forth in [Section 3.2.5](#) below.
- B. An RFQ as a first-step in an RFP shall follow the procedures set forth in [Section 2.2](#).
- C. RFPs must be advertised for a minimum of thirty (30) calendar days unless the Director of Procurement and Contracting provides a written determination that a shortened timeframe is approved. Documentation as to why a shortened RFP time was necessary is required.
- D. Vendors must submit responses in the manner directed in the RFP. Procurement and Contracting may determine whether responses are required to be submitted in an electronic or physical format. Responses received after the due date and time will not be opened and will be rejected as late.
- E. Each response must be marked with the date and time of receipt. Responses to RFPs must be stored in a secure place until the due date and time, and must not be opened upon receipt, except that unidentified responses may be opened for identification purposes. Upon verification of a Solicitation response, the response will immediately be resealed and the reason for opening the response will be noted.
- F. RFP Opening
  - There shall be a public opening at a date and time specified in the RFP.

- Public openings may occur in person or electronically as determined appropriate by Procurement and Contracting.
  - Responses must be opened, in the presence of one or more witnesses, as soon as possible after the date and time and at the place designated in the RFP.
  - The name of all proposers submitting responses shall be read aloud at the time of the opening.
  - All information other than the proposers' names remains confidential until posting of the notice of intent to Award.
- G. RFPs are evaluated on the basis of factors that include but are not limited to price. Evaluations shall be based on the factors set forth in the RFP in order to determine which Proposal(s) best meet(s) the needs of Mines. A committee of no less than three (3) individuals shall evaluate all Responsive Proposals. The evaluation committee may:
- submit scoring or ranking of the vendors; or
  - prepare a memorandum for Procurement and Contracting recommending the selection of the vendor that is most advantageous to Mines.

### 3.2.5 General Solicitation Procedures (for DQ/IFB/RFP)

These procedures apply to all Mines Solicitations:

- A. Solicitations should only be issued when there is a valid Procurement need.
- B. Solicitation Notification  
Solicitations for Goods, Services and Construction must be advertised using an electronic Solicitation notification system. Procurement and Contracting may use other methods to notify potential vendors about Solicitations, in addition to the electronic Solicitation notification system.
- C. Specifications
- Procurement and Contracting shall ensure that Specifications for Goods, Services or Construction are not unduly restrictive.
  - Brand Name Specifications may only be used when a specific brand is required for the Procurement and a written justification has been provided to and approved by Procurement and Contracting.
  - Brand Name or Equal Specifications or Qualified Products Lists may be used in competitive Solicitations at any time.
  - When appropriate, Specifications issued and/or used by the federal government, other public entities or professional organizations may be referenced by Mines.
  - Vendors may be required to certify that these standardized Specifications have been met.
- D. Procurement Alternative Responses
- A Solicitation may prohibit multiple or alternate DQ Responses, Bids or Proposals. When prohibited, the multiple or alternate DQ Responses, Bids or Proposals shall be rejected, although a clearly



identified DQ Response, Base Bid, or Proposal will be considered for Award as though it were the only DQ Response, Bid or Proposal submitted by the bidder or offeror.

- A Solicitation must specify if multiple or alternate DQ Responses, Bids or Proposals will be allowed and how they will be treated.

E. Solicitation Conferences

Solicitation conferences may be conducted to explain Procurement requirements. They must be announced in the Solicitation. The conference should be held long enough after the Solicitation has been issued to allow vendors to become familiar with the Solicitation but with adequate time before the Solicitation due date to allow vendors time to consider the conference results in preparing their DQ Responses/Bids/Proposals. Nothing stated at the conference will change the Solicitation unless a change is made by written amendment posted on the electronic Solicitation notification system.

F. Amendments to Solicitations

Amendments to Solicitations must be identified as such and posted on the electronic Solicitation notification system with sufficient time to allow vendors to consider them in preparing their DQ Responses/Bids/Proposals. If the due date set will not permit such preparation, then the Office of Procurement and Contracting will extend the due date. Procurement and Contracting may require that the vendors acknowledge receipt of all amendments issued.

G. Responses

Vendor responses must address all requests, questions and Specifications set forth in the Solicitation to the best of their ability. Failure to adequately respond to all requests, questions and Specifications within a Solicitation may be deemed non-Responsive.

H. Confidential Data

- Vendors may submit a written request to protect confidential information to Procurement and Contracting pursuant to the Solicitation terms and conditions. Neither a response in its entirety nor price information will be considered confidential information.
- Confidential information includes, but is not limited to, trade secrets, privileged information and confidential commercial and financial information furnished by the vendor and which may be withheld from inspection by Mines pursuant to the Colorado Open Records Act, C.R.S. § 24-72-2043 (3) (A)(IV).
- Procurement and Contracting will determine the validity of any written requests for confidentiality and shall provide a written determination of the findings to the vendor. If Procurement and Contracting and the vendor do not agree upon the nondisclosure of confidential information, the vendor may withdraw its response. After Award, all responses shall be open to public inspection with the exception of confidential information.
- After Award, all IFB/Bid documents and a complete Bid analysis shall be open to public inspection except to the extent Mines has

- approved a bidder's request that information be held confidential
- I. Withdrawals of Responses & Mistakes in Responses
- Any response may be withdrawn prior to the specified due date and time upon written request from the vendor. The Director of Procurement and Contracting may allow a response to be withdrawn after the specified due date and time but prior to the Award provided:
    - The vendor provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided;
    - A mistake is clearly evident in the response; or
    - It would be unconscionable not to allow the response to be withdrawn.
  - When it appears from a review of the response that a mistake has been made, the vendor will be asked to confirm the response (e.g., apparent errors or price unreasonably lower than other submitted prices). Upon acknowledgment that an error was made, the vendor may have its response considered as is or may withdraw its response if the conditions set forth in this Section 3.2.5 are met.
  - Procurement and Contracting may waive minor informalities or allow the vendor to correct them depending on which option is in the best interest of Mines. Minor informalities are matters of form rather than substance, are evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors; that is, the effect on price, quantity, quality, delivery or contractual conditions is negligible.
  - Any decision to permit or deny correction or withdrawal of a response under this section must be supported by a written determination prepared by the Director of Procurement and Contracting.
- J. Extension to Accept Low Bid
- After opening DQ Responses, Bids or Proposals, Procurement and Contracting may request low bidders to extend the time during which Mines may accept their response, provided that no other change is permitted. The reasons for requesting such extension shall be documented in the Solicitation record.
- K. Evaluation and Award
- All responses will be evaluated as outlined in the Solicitation.
- L. Tie DQ Responses/Bids
- If identical favorable Responsive DQ Responses/Bids (e.g., matching price, terms and conditions), which meet all the requirements and criteria set forth in the Solicitation, are received from Responsible vendors, the Award must be made based on the following order of precedence:
- small business as defined by the Small Business Administration
  - Local Business
  - Minority (MBE) owned, Women (WBE) owned or Hub Zone (HZ)

Business

- In-State Business

If a tie still exists after following the above preferences, Procurement and Contracting shall flip a coin in the presence of a witness to determine the Awarded vendor.

M. Solicitation Responses Exceed Funds for Procurements

In the event that all DQ Responses, Bids or Proposals for a Procurement exceed available funds, as certified by the appropriate Mines fiscal personnel, Procurement and Contracting is authorized, in situations where time or economic considerations preclude re-Solicitation of work off a reduced scope, to negotiate an adjustment of the price with the low Responsible bidder in order to bring the price within the amount of available funds; except that the functional Specifications integral to completion of the Mines project or Mines need may not be reduced in scope, taking into account the project plan, design, and Specifications and quality of materials. Otherwise, the DQ Response, Bid or Proposal must be rejected and:

- new DQ Responses, Bids or Proposals may be solicited;
- the proposed Procurement may be cancelled; or
- if Procurement and Contracting determines in writing that the need for the scope of work of the Procurement continues, but that the price 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 under another Alternative Competitive Procurement Procedure ([Section 3.2.6](#)), as appropriate.

N. Inappropriate Responses

- Any DQ Response, Bid or Proposal which is conditioned upon receiving an Award under both the particular Solicitation for which the DQ Response, Bid or Proposal is made and another Solicitation will be deemed non Responsive and unacceptable.
- Affiliates are prohibited from submitting DQ Responses, Bids or Proposals for the same Contract. An “affiliate” is any person or entity directly or indirectly controlling, controlled by, or under common control with another party submitting a DQ Response, Bid or Proposal.

O. Successful/Unsuccessful Solicitation

Procurement and Contracting may determine that one DQ Response, Bid or Proposal meets the requirements of adequate Competition when (1) the DQ Response, Bid or Proposal is less than the budgeted amount for the Goods, Services or Construction; and (2) reasonable efforts have been made and documented to find other vendors after the closing of the IFB/RFP. If other vendors are found and can provide the Goods, Services or Construction the DQ/IFB/RFP is unsuccessful and must be reissued or Competitive Negotiation ([Section 3.2.6\(D\)](#)) must occur.

A Solicitation is unsuccessful if:

- All responses received are unreasonable or uncompetitive;
- The low DQ Response, Bid or Proposal exceeds available funds as certified in writing by the appropriate fiscal officer;
- The Solicitation has been properly cancelled in accordance with the provisions of [Section 3.2.5\(N\)](#); or
- There is not adequate Competition.

Procurement and Contracting 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 Goods, Services or Construction.

P. Cancellation of Solicitations

Any Solicitation may be cancelled in whole or in part at any point in the process when it is in the best interest of Mines as determined by the Director of Procurement and Contracting. Approval to cancel will be obtained from the Director of Procurement and Contracting prior to cancellation. The reason(s) for doing so must be documented and made part of the file and may include, but are not limited to, the following:

- Mines no longer requires the Goods, Services or Construction;
- Mines can no longer reasonably expect to fund the Procurement;
- Proposed amendments to the Solicitation would be of such magnitude that a new Solicitation is desirable;
- Ambiguous or otherwise inadequate Specifications were part of the Solicitation;
- The Solicitation did not provide for consideration of all factors of significance to Mines;
- Pursuant to [Section 3.2.5\(L\)](#) of these Procedures.
- Mines has reason to believe that the DQ Responses, Bids or Proposals may not have been independently arrived at in open Competition, may have been collusive or may have been submitted in bad faith. In this case, a notice of rejection shall be sent to all vendors that submitted Bids or Proposals; or
- The number of responses is not sufficient to ensure adequate Competition.

When a Solicitation is cancelled, notice of cancellation must be posted on the electronic Solicitation notifications system. Unopened DQ Responses, Bids or Proposals must either be returned to the vendors (upon request) or must be disposed of. Opened DQ Responses, Bids or Proposals shall be destroyed after all protest periods in Section 5.3 have passed.

Q. Construction Specific Requirements

- 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.
- Security bonds shall be required for all Construction DQs and IFBs

and may be required for Construction RFP Contracts when the cost exceeds fifty thousand dollars. Security bonds shall be provided by a surety company authorized to do business in this state, the equivalent in cash, or otherwise supplied in a form satisfactory to Mines. Nothing in this section prevents the requirement of such bonds on Construction Contracts under fifty thousand dollars.

- Security bonds shall be in an amount equal to at least five percent of the amount of the DQ Response or Bid (or Proposal when required).
- After the DQ Responses, Bids or Proposals are opened, they shall be irrevocable for the period specified in the DQ, IFB, or RFP, except as provided in [Section 3.2.5\(H\)](#) of these Procedures. If a bidder is permitted to withdraw the DQ Response, Bid or Proposal before Award, no action shall be had against the bidder or the security bond.
- Contract Performance and Payment Bonds  
In accordance with [C.R.S. § 38-26-106](#), the following bonds or security shall be delivered to Mines in the form and amount as specified in the statutes, and shall become binding on the parties upon the execution of the Contract:
  - A performance bond satisfactory to Mines, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to Mines; and
  - A payment bond satisfactory to Mines, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to Mines, 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.
  - Nothing in this section shall be construed to limit the authority of Mines to require a performance bond or other security in addition to those bonds or in circumstances other than those specified.
- Suits on bonds shall be brought in accordance with C.R.S. § 38-26-107.
- Retainage/Partial Payments shall be in accordance with C.R.S. §§ [24-91-103](#) and [38-26-107](#) as applicable.

### 3.2.6 Alternative Competitive Procurement Procedures

Alternative Procurement Procedures are for Procurement methods that are appropriate to ensure adequate vendor Competition has occurred and that Mines is acting in good faith to obtain the best price; or, when actual Competition does not exist or an emergency situation has occurred.

#### A. Cooperative Purchasing Agreements

Cooperative purchasing agreements may be used for the Procurement of Goods, Services or Construction if such purchase is in the best interest of Mines after considering that the cooperative purchasing

agreement meets or met the minimum Mines Solicitation requirements herein. Mines may participate in, conduct, sponsor or administer a cooperative purchasing agreement.

B. Mines-Wide Price Agreements

- Mines-wide price agreements may be used for the Procurement of Goods, Services and Construction for use by all Mines departments. Such price agreements may include, but are not limited to Mines initiated agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging Mines' buying power. A Mines-wide price agreement must initially be sought through the Competitive Procurement process, then no other Competition need be sought while the Mines-wide price agreement is in place.
- Mines-wide price agreement pricing is based on Mines' overall anticipated volume of purchases during the agreement period. In order to assure Mines of the least total cost of Goods, Services or Construction, all Mines departments are required to order needed Goods, Services or Construction from Mines price agreements where applicable.

C. Competitive Reverse Auction

Contracts for Goods, Services and Construction may be Awarded by Competitive reverse auction if Procurement and Contracting determines that adequate Competition can be achieved. A Competitive reverse auction is a type of auction where there are multiple sellers (of Goods, Services or Construction) and one Buyer (Mines). Sellers compete to sell their Goods, Services or Construction by offering increasing lower prices. If Procurement and Contracting determines a Competitive reverse auction is appropriate, they will advertise the needed Mines scope, time, date, and online location for the Competitive reverse auction at least 15 days in advance of the auction or longer as appropriate. A Competitive reverse auction may utilized in lieu of any other Solicitation method.

D. Competitive Negotiation

- Contracts or recurring small dollar Procurements may be Awarded by a Competitive negotiation only in the following situations:
  - An unsuccessful DQ, IFB or RFP process if the Director of Procurement and Contracting determines that time does not permit re-Solicitation.
  - Or
  - Small dollar Procurement agreements (small dollar Procurements that are recurring and are not expected to exceed \$50,000 per department over 5 years) may be Awarded by Competitive negotiation with donor, small, Local, Minority, Women or Hub Zone Businesses when it is in the best interest of Mines to do so and in accordance with [Section 7.0](#) of these procedures.
- The Competitive negotiation process must include all vendors who

responded to the Solicitation or any re-Bid and may include other vendors capable of meeting Mines' needs. Mines may also actively encourage small, Local, Women, Minority, In-State or Hub Zone Businesses to participate in the competitive negotiation process or partner with vendors who originally responded to the IFB or RFP.

- Procurement and Contracting may set reasonable times and locations for participation in the Competitive negotiation, reflecting the fact that time constraints are the basis for the Competitive negotiation process.
- Each vendor with whom Procurement and Contracting negotiates will be given a fair and equal chance to compete. Negotiations will be conducted separately and independently with each vendor and in no case will the terms of any vendor's offer be communicated to any other vendor until intent to Award notice has been issued. Any change in requirements shall be communicated to all vendors.
- A vendor may be eliminated from the process upon a determination that its offer is not reasonably suspected of being selected for Award.
- The Award shall be made to the vendor whose offer is most advantageous to Mines. The Director of Procurement and Contracting 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 Mines.

### 3.2.7 Sole Source Procurement

- A. A Procurement that otherwise requires Competition is authorized to proceed without Competition under limited conditions and subject to written justification documenting the preclusion of a Competitive process. Justification exists when there is only one Good, Service or Construction that can reasonably meet Mines 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.
- B. Price is not a consideration to justify a Sole Source Procurement. In cases of reasonable doubt, Competition will be solicited.
- C. Procurement and Contracting shall take reasonable steps to avoid using Sole Source Procurement except in circumstances where it is both necessary and in the best interests of Mines. Procurement and Contracting shall take action, whenever possible, to avoid the need to continue to procure the same Goods, Services or Construction without Competition.
- D. Sole Source Procurement Procedures are as follows:
  - The requesting department shall submit a Sole Source Procurement justification detailing why the Procurement is a Sole Source Procurement along with any other pertinent information regarding the Sole Source Procurement; e.g., quote, requisition, literature, etc.

- Sole Source Procurement on Goods, Services and Construction cannot be approved when the Goods, Services or Construction required can be provided independently by multiple Contractors/vendors.
- The Director of Procurement and Contracting is the final authority of the approval of Sole Source Procurements for Goods, Services and Construction.
- Procurement and Contracting has a duty to negotiate the most favorable price, terms and conditions notwithstanding the Sole Source Procurement nature of the Procurement. Procurement and Contracting is required to make a written determination that the price is fair and reasonable.
- Procurement and Contracting must publish all Sole Source Procurements for at least three (3) days on the electronic Solicitation system to allow vendors an opportunity to comment on the validity of the Sole Source Procurement.

### 3.2.8 Emergency

- A. When an emergency condition exists that prevents the use of a competitive Procurement method, Mines may conduct a Procurement on an emergency basis. Emergency Procurements may be negotiated on a Sole Source Procurement or limited Competition basis as dictated by the circumstances surrounding the emergency. Emergency Procurements do not include: **(1)** Procurements that need to be rushed because of a failure to plan ahead; **(2)** end of fiscal year Procurements; or, **(3)** end of grant/Contract Procurements.
- B. An emergency condition justifies the use of an emergency Procurement when that conditions threatens one (1) or more of the following:
- The functioning of Mines, or its programs;
  - The preservation or protection of property; and/or
  - The health or safety of any person(s) or animal(s).
- C. Mines may make emergency Procurements when an emergency condition arises and the need cannot be met through normal Procurement methods as determined by the Director of Procurement and Contracting. Whenever practicable, approval by the Director of Procurement and Contracting shall be obtained prior to the Procurement. In the event an emergency arises after normal working hours, Mines department shall notify the Director of Procurement and Contracting on the next working day. If the Director of Procurement and Contracting 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 the Procurement Policy [Section 3.0](#) and the [Financial Policies Section 2.2.5](#).
- D. 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. The procedure used will be selected to assure that the required Goods, Services and/or Construction are procured in time to meet the emergency. Given this constraint such Competition as is practicable shall be obtained. Any acceptable form of quotes and commitments by any means (e.g., written, faxed, electronically transmitted, phoned, etc.) may be used in an emergency Procurement.
- F. As soon as practicable, Mines department shall prepare a written justification, to be approved by the Director of Procurement and Contracting that sets forth the justification for the emergency Procurement. The justification shall include the following:
  - The basis for the emergency Procurement including the date the emergency first became known;
  - A listing of the Goods, Services and/or Construction procured;
  - A description of the efforts made to ensure that Proposals or offers were received from as many potential vendors as possible under the circumstances; and
  - The basis for the selection of the vendor.

#### 4.0 PURCHASE ORDERS & CONTRACTS

- 4.1 **Purchase Orders.** A Purchase Order may be issued to a vendor by Procurement and Contracting as a commitment voucher pursuant to Financial Policies [Section 2.2.3.2](#). Purchase Orders may only be modified by a Change Order issued by Procurement and Contracting. All Purchase Orders control the terms of a transaction, despite the quote terms and conditions.
- 4.2 **Types of Contracts.** Subject to the limitations of this section, any type of Contract that will promote the best interests of Mines may be used; except that the use of a cost plus a percentage of the suppliers cost Contract is prohibited. A Cost-Reimbursement Contract may be used only when a written determination is made that such Contract is likely to be less costly to Mines 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 [Chapter 3 of the Financial Policies](#).
- 4.3 **Multi-year Contracts.** Procurement and Contracting may enter into multi-year Contracts for Goods and/or Services subject to funding availability. Contracts for periods in excess of five (5) years require the written approval of the Director of Procurement and Contracting.
- 4.4 **Construction Contracts.** State of Colorado form approved Construction Contracts shall be utilized by Mines whenever appropriate.

## 5.0 DISPUTES & REMEDIES

- 5.1 Types of Disputes.** The Director of Procurement and Contracting is authorized to settle and resolve any questions regarding:
- Any protest concerning the Solicitation or Award of a Contract, including State of Colorado form Contracts provided by the Office of the State Architect; and,
  - Any controversy arising between Mines and a Contractor by virtue of a Contract between them, including, without limitation, controversies based on breach of Contract, mistake, misrepresentation or any other cause for Contract modification or rescission.
- 5.2 Costs of Filing.** All costs associated with filing and prosecuting a protest or Contract dispute shall be borne by the Protestor/Contractor.

### 5.3 Protests other than Contract Disputes.

#### 5.3.1 Filing a Protest

- A. Protestors may file a protest on any phase of a Solicitation or Award including, but not limited to, Specifications, Award, or disclosure of information marked as confidential in a Solicitation response. Protests shall be submitted in writing within seven (7) working days after such aggrieved person knows or should have known of the facts giving rise thereto.
- B. The written protest must include, at a minimum:
- The name and address of the Protestor;
  - Appropriate identification of the Procurement by Solicitation number;
  - A statement of the reasons for the protest; and
  - Any available exhibits, evidence or documents substantiating the protest
- C. The protest will be addressed to the Director of Procurement and Contracting and sent to the Office of Procurement and Contracting.

#### 5.3.2 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 Director of Procurement and Contracting, the protest may be resolved without such information.

#### 5.3.3 Decision

The Director of Procurement and Contracting shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall be based on and limited to a review of the issues raised by the Protestor and shall set forth each factor taken

into account in reaching the decision. The Director of Procurement and Contracting shall furnish a copy of the decision to the Protestor in writing.

#### 5.3.4 Stay of Procurement

There shall be a stay of Procurement until the decision of the Director of Procurement and Contracting is rendered, unless the Director of Procurement and Contracting determines that execution of a Contract without delay is necessary to protect substantial Mines interests.

#### 5.3.5 Actions in Court

If a Protestor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Procurement and Contracting, the Director of Procurement and Contracting will not review the protest.

#### 5.3.6 Entitlement to Costs

When the Director of Procurement and Contracting substantiates a protest and the Protestor should have been Awarded the Contract under the Solicitation but, due to a defect in Mines' Solicitation or process, was not, the Protestor shall be entitled to the reasonable costs incurred in connection with responding to the Solicitation. No other costs shall be permitted and reasonable costs shall not include attorney fees.

### **5.4 Contract Disputes.**

5.4.1 The terms and conditions of Mines Contracts establish procedures and remedies to resolve Contract and breach of Contract controversies between Mines and a Contractor. It is Mines' policy to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these Procedures, 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.

5.4.2 If a Contractor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Procurement and Contracting, the Director of Procurement and Contracting will not review the protest.

5.4.3 When a controversy cannot be resolved by mutual agreement, the Director of Procurement and Contracting 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.

5.4.4 The Director of Procurement and Contracting 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.

## 6.0 SUSPENSION & DEBARMENT

**6.1 Suspension.** After meeting with the affected Mines department(s) and, where practicable, the vendor who is to be suspended, the Director of Procurement and Contracting may issue a written determination to suspend a vendor from doing business with Mines 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.

6.1.1 A written notice of the suspension, including a copy of the determination, shall be sent to the suspended vendor. The notice must:

- A. State that the suspension will be for the period necessary to complete an investigation into possible debarment; and
- B. Inform the suspended vendor that any person(s) representing the suspended vendor during the suspension period may conduct no business with Mines and that any Solicitation responses received from the suspended vendor during the suspension period shall not be considered.

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

**6.2 Debarment.** A vendor may be debarred for any of the following reasons:

- Conviction of a criminal offense in relation to obtaining or attempting to obtain a Mines Contract or in the performance of such Contract;
- Conviction under State of Colorado or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
- Conviction under State of Colorado or federal antitrust statutes arising out of the submission of Bids or Proposals;
- 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;
- 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
- Violation of the provisions of Section 7-108-401 C.R.S., "General Standards of Conduct for Directors and Officers."

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

A written notice of debarment must be sent to the debarred vendor. The notice must:

- State the debarment period; and
- Inform the debarred vendor that any person(s) representing the debarred vendor during the debarment period may conduct no business with Mines and that any Solicitation responses received from the debarred vendor during the debarment period shall not be considered.

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

After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires unless a court of competent jurisdiction or the Director of Procurement and Contracting deems otherwise.

**6.3 Master List.** The Office of Procurement and Contracting shall maintain a master list of all suspensions and debarments. The master list containing information concerning suspensions and debarments will be a public record.

## **7.0 LOCAL, SMALL BUSINESS & DONOR BUSINESS PROGRAM**

Successful small businesses have a positive impact on Mines community and it is important that Mines promote a strong diverse business community. Therefore, Mines has established a Local, Small and Donor Business Program whose mission is to maximize the opportunities for Local Business concerns, donor business concerns and small business concerns, including small, disadvantaged businesses, Woman-Owned Businesses, Hub Zone Businesses, historically black colleges/universities and Minority institutions, and veteran-owned and service-disabled veteran-owned businesses to participate in Mines' business of procuring Goods, Services and Construction at all dollar levels.

The following is a summary of provisions included in these procedures that address Local, small or disadvantaged businesses:

- Tie DQ Responses/Bids situations as described in [Section 3.2.5.\(K\)](#).
- Competitive negotiation situations as described in [Section 3.2.6\(D\)](#).

No provision is made in these procedures for set asides or preferences for small

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or disadvantaged businesses. However, Mines would like to maximize opportunities to provide opportunities for all businesses in compliance with the Federal Acquisition Regulations Sections [19](#) and [52](#). Further, Mines believes it receives direct benefit from its relationships with a diverse vendor base.

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

### Colorado School of Mines Procurement Code of Ethics

Any person employed by the Colorado School of Mines (“Mines”) who purchases Goods, Services or Construction, or is involved in the purchasing process for Mines, 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 Mines by diligently following all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;
3. Conduct all purchasing activities in accordance with the laws, while remaining alert to and advising Mines regarding the legal ramifications of the purchasing decisions;
4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of Mines;
5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;
6. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or Services from present or potential suppliers which might influence or appear to influence purchasing decisions;
7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
8. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;
9. Provide an environment where all business concerns, large or small, majority- or Minority-owned, are afforded an equal opportunity to compete for Mines business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.