

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](#).

## Procurement Policy

- 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.