



# **PROCUREMENT RULES**

**Effective July 1, 2009**

# WESTERN STATE COLLEGE PROCUREMENT RULES

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# **WESTERN STATE COLLEGE PROCUREMENT RULES**

## **SECTION I           INTRODUCTION**

Pursuant to Section 24-101-105 **C.R.S.** on June 12, 2009, the Board of Trustees by formal action elected to exempt Western State College of Colorado (College) from the State of Colorado Procurement Code and Rules to be effective July 1, 2009.

## SECTION II                    AUTHORITY & DELEGATION

The statutes of the State of Colorado (**C.R.S.** 23-56-102) vest the governance of the College in the Western State College of Colorado Board of Trustees (Board of Trustees), which includes the authority for **Procurement**. The Board of Trustees has delegated to the President the administration of the College pursuant to its policies, which includes the authority for **Procurement** and the power to delegate **Procurement** authority to other College officials. Upon the effective date of these Procurement Rules (Rules), all **Procurement** authority of the President of the College shall be delegated to the Director of Procurement and Contracts (Director). The Director may further delegate his/her authority to persons in College departments for the efficient operation of the College. The Director is the only person authorized to purchase **Goods** and **Services** for the College, unless such specific delegation of authority is made to another employee. Exceptional cases will be resolved as circumstances and prudent business practices warrant. No employee of the College is empowered to incur any obligation or make any commitment on behalf of the College for the **Procurement** of **Goods** or **Services**, except as provided under these Rules.

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

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

The Director may amend these Rules as needed.

### **SECTION III           PURPOSE**

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

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

## SECTION IV            APPLICABILITY

### A.     **General Applicability**

Unless the Director determines that the Exclusions in Section IV.B. below apply, these Rules apply to all purchases of **Goods** and **Services** regardless of funding source.

### B.     **Exclusions**

These Rules do not apply to the following situations:

1. No College funds are expended or the **Contract** is **Revenue-Producing**. When the College enters into **Revenue-Producing Contracts** the College shall maximize the return to the College. In the case of **Revenue-Producing Contracts** for which the College is considering more than one vendor, Western State College Procurement and Contracts (WSC Purchasing) will use a competitive process.
2. The **Procurement** is for **Construction**.
3. The **Procurement** is between the College and a **Public Entity**.
4. The **Procurement** is for **Services** provided by architects, engineers, landscape architects, industrial hygienists and land surveyors. (See **C.R.S.** §§ 24-30-1401 through 24-30-1407.)
5. A vendor's item is to be procured for **Resale**.
6. The **Procurement** of **Services** from a specific vendor is necessary to comply with the specific terms and conditions of a sponsored project grant or contract.
7. The **Procurement** is for an employment contract.
8. The **Procurement** is for land, an interest in land or other real property, water or mineral rights, workers compensation insurance, or employee benefit insurance or the administration of employee benefit insurance under a self insured plan.

### C.     **Applicability to Vendors**

By submitting a response to a **Solicitation** issued by the College, the vendor accepts these rules and agrees to comply with them.

## SECTION V            ETHICS

### A.     **Conflict of Interest**

The WSC Purchasing process guide provides guidance for College employees to avoid conflicts of interest while engaged in purchasing activities at the College. When WSC Purchasing has reason to believe that a conflict of interest may exist in the **Procurement** of **Goods** or **Services**, it will direct the affected department to comply with these guidelines.

### B.     **Code of Ethics**

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

## SECTION VI PROCUREMENT METHODS

### A. General Solicitation Rules

#### 1. Solicitation Policy

It shall be the policy of the College to purchase **Goods** and **Services** in a manner that affords vendors a fair and equal opportunity to compete. **Goods** and **Services** will be purchased in accordance with the dollar thresholds for competition and processes set forth below.

**Solicitations** will be issued only when a valid **Procurement** need exists. **Solicitations** will not be issued to obtain estimates or as a survey of interest. A **Request for Information** may be issued to obtain information about products or services before the College has committed to a fully defined **Procurement** need.

#### 2. Solicitation Thresholds

- a. \$5,000 or less – delegated campus departments have purchasing authority;
- b. \$5,001 through \$10,000 – purchases of **Goods** are processed at the discretion of the **Purchasing Agent**;
- c. \$5,001 through \$25,000 – purchases of **Services** are processed at the discretion of the **Purchasing Agent**;
- d. \$10,001 through \$150,000 – competition for **Goods** is sought using the **Documented Quote** process;
- e. \$25,001 through \$150,000 – competition for **Services** is sought using the **Documented Quote** process;
- f. \$150,001 and greater – competition for **Goods** and **Services** is sought using either the **Invitation for Bids** or **Request for Proposals** process. Vendors must respond with a Competitive **Sealed Bid** or a Competitive **Sealed Proposal**.

#### 3. Solicitation Notification

An electronic **Solicitation** notification system is the required method for advertising competitive **Solicitations** for **Goods** and **Services** made through **Documented Quotes (DQ)**, **Invitation for Bids (IFB)**, and **Request for Proposals (RFP)**. Other methods of notification may also be used at the discretion of the **Purchasing Agent**.

#### 4. Specifications

**Purchasing Agents** shall issue **Goods** or **Service Specifications** that are not unduly restrictive. **Brand Name or Equal Specifications** or **Qualified Products Lists** may be used in competitive **Solicitations**. **Brand Name Specifications** shall be used only with written approval of the Director or in accordance with Section VI.F.1. for **Sole Source Procurements**. When appropriate, **Specifications** issued and/or used by the Federal government, other **Public Entities**, or professional organizations may be referenced by the College. Vendors may be required to certify that these standardized **Specifications** have been met.

#### 5. Solicitation Conferences

**Solicitation** conferences may be conducted to explain **Procurement** requirements. They shall be announced in the **Solicitation**. The conference should be held long

enough after the **Solicitation** has been issued to allow vendors to become familiar with it but with adequate time before the **Solicitation** due date to allow vendors to consider the conference information in preparing their **Quotes/Bids/Proposals**. Nothing stated at the conference shall change the **Solicitation** unless a change is made by written amendment, posted on the electronic **Solicitation** notification system.

6. Amendments to **Solicitations**

Amendments to **Solicitations** shall be identified as such and may require that the vendors acknowledge receipt of all amendments issued. Amendments shall be posted on the electronic **Solicitation** notification system with sufficient time to allow vendors to consider them in preparing their **Quotes/Bids/Proposals**. If the due date set will not permit such preparation, the due date shall be extended.

7. **Solicitation** Response - Receipt, Opening, and Recording

a. Receipt

Each response shall show the date and time of receipt. Competitive **Sealed** Bids and Proposals shall be stored in a secure place until the due date and time and shall not be opened upon receipt, except that unidentified responses may be opened for identification purposes. Upon verification of a **Solicitation** response, the response will immediately be resealed and the reason for opening will be noted.

b. Opening and Recording

Competitive **Sealed** Bid and Proposal openings shall be open to the public. Responses shall be opened, in the presence of one or more witnesses, as soon as possible after the time, and at the place, designated in the competitive **Solicitation**. Late responses shall not be considered for award.

c. Confidential Data

Confidential information includes, but is not limited to, trade secrets, privileged information, and confidential commercial and financial information furnished by the vendor that must be withheld from inspection by the College pursuant to the Colorado Open Records Act, **C.R.S. § 24-72-204(3)(a)(IV)**. The vendor may submit written requests for confidentiality to the **Purchasing Agent** pursuant to the **Solicitation** terms and conditions. Neither a response in its entirety nor price information will be considered confidential information.

(i) The **Purchasing Agent** shall determine the validity of any written requests for confidentiality and shall provide a written **Determination** of the findings to the vendor.

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

d. Withdrawals of Responses & Mistakes in Responses

(i) Withdrawal of Responses Prior to Due Date and Time

Any responses may be withdrawn prior to the specified due date and time upon written request from the **Offeror**.

- (ii) **Withdrawal of Responses after Due Date and Time but Prior to Award**  
The Director may allow a response to be withdrawn after the specified due date and time but prior to **Award**, provided:
  - (a) the vendor provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or
  - (b) the mistake is clearly evident on the response; or
  - (c) it is found by the Director unconscionable not to allow the response to be withdrawn.
- (iii) **Mistakes**
  - (a) **Confirmation of Response**  
When it appears from a review of the response that a mistake has been made, the vendor will be asked to confirm the response. Situations in which confirmation should be requested include apparent errors or a price unreasonably lower than other submitted prices. Upon acknowledgment that an error was made, the vendor may have its response considered as-is or may withdraw its response if the conditions set forth in this section are met.
  - (b) **Minor Informalities**  
Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible and **Base Bid** responses are unchanged. The **Purchasing Agent** may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the College.
- (iv) **Determinations Required**  
Any decision to permit or deny correction or withdrawal of a response under this section shall be supported by a written **Determination** prepared by the **Purchasing Agent**.
- e. **Evaluation and Award**  
All responses shall be evaluated and the winner determined in the manner defined in the **Solicitation**. The **Purchasing Agent** shall ensure that the **Award** decision treats all vendors equitably.
  - (i) The **Purchasing Agent** shall make purchases from, and **Award Contracts** to, **Responsible** vendors only.
  - (ii) **Tie Quotes/Bids.**  
Tie **Quotes/Bids** are **Responsive Quotes/Bids** from **Responsible** vendors that are identical in price, terms, and conditions and that meet all the requirements and criteria set forth in the **Solicitation**.
    - (b) the **Award** shall be made to the **In-state Business** if tie **Quotes/Bids** are received from **In-state** and out-of-state **Businesses**.

- (c) if both vendors are **In-State** or neither is **In-State**, the **Purchasing Agent** shall flip a coin in the presence of another person to determine the **Awarded** vendor.

8. Cancellation of **Solicitations**

a. Reasons for Cancellations

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

- (i) the College no longer requires the **Goods** or **Services**;
- (ii) the College can no longer reasonably expect to fund the **Procurement**;
- (iii) proposed amendments to the **Solicitation** would be of such magnitude that a new **Solicitation** is appropriate;
- (iv) ambiguous or otherwise inadequate **Specifications** were part of the **Solicitation**;
- (v) the **Solicitation** did not provide for consideration of all factors of significance to the College;
- (vi) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;
- (vii) all otherwise acceptable bids or **Proposals** received are at clearly unreasonable prices;
- (viii) the College has reason to believe that the **Bids** or **Proposals** may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all vendors that submitted **Bids** or **Proposals**;
- (ix) the number of responses is not sufficient to ensure **Adequate Competition**;  
or
- (x) The College **Determines** that cancellation is the appropriate remedy through the protest/appeal process.

b. Notice

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

c. Disposition of **Bids** or **Proposals**

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

**B. Procurement Procedures for Purchases totaling \$150,000 or Less**

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

1. Small-Dollar Purchases – Purchases totaling \$5,000 or less

The College has developed mechanisms for the purchase of most **Goods** and **Services** totaling \$5,000 or less.

a. Procurement Card

The College procurement card is the preferred mechanism for purchases totaling \$5,000 or less.

b. Purchase Order

College purchase orders shall be issued for purchases totaling \$5,000 or less when a procurement card cannot be used.

2. Purchases of **Goods** totaling more than \$5,000 through \$10,000

Purchases of **Goods** totaling more than \$5,000 through \$10,000 are processed at the discretion of the **Purchasing Agent**.

3. Purchases of **Services** totaling more than \$5,000 through \$25,000

Purchases of **Services** totaling more than \$5,000 through \$25,000 are processed at the discretion of the **Purchasing Agent**.

4. Purchases of **Goods** totaling more than \$10,000 through \$150,000 and Purchases of **Services** totaling more than \$25,000 through \$150,000

a. **Documented Quote**

**Goods** totaling more than \$10,000 through \$150,000 and **Services** totaling more than \$25,000 through \$150,000 are purchased using the **Documented Quote** process.

b. Neither the **Solicitation** nor the vendor's response constitutes an "offer"; therefore, **Responsiveness** at the time of receipt is not an absolute criterion. The **Purchasing Agent** will determine whether or not a response is acceptable and may compare the relative value of competing responses, not solely the price. "Acceptable" means that the **Goods** or **Services** will meet the College's needs and that the price is fair and reasonable. Unless a contract is required, the purchase order shall constitute an offer, which the vendor may accept by performance, unless the purchase order expressly requires acceptance by written acknowledgment.

c. The choice of vendor must be based on which acceptable response is most **Advantageous** to the College, with price/cost being a consideration. The basis for the selection must be documented and will be final.

d. **Documented Quotes** must be advertised in accordance with Section VI.A.3. **Solicitations** must remain posted for at least three (3) working days unless the Director makes a **Determination** that a lesser time is required in order to meet an immediate College need.

- e. The **Purchasing Agent** may negotiate with any vendor to clarify its **Quote** or to effect modifications that will make the **Quote** acceptable or make the **Quote** more **Advantageous** to the College. However, in the negotiation process, the terms of one vendor's **Quote** shall not be revealed to a competing vendor, and all **Quotes** will be kept confidential until a **Notice of Intent to Award** or a commitment voucher is issued.
  - f. **Quotes** may be submitted electronically when the terms of the **Solicitation** expressly permit electronic submission.
- C. Procurement Procedures for Purchases totaling over \$150,000**
- 1. **Invitation for Bids/Competitive Sealed Bids**
    - a. Use of **Invitation for Bids**

**Invitation for Bids** is a method of **Procurement** that results in a **Contract** being **Awarded** to the lowest **Responsive Bid** from a **Responsible** bidder based on the **Specifications** set forth in the **Solicitation**. A **Bid** constitutes an offer to the College, and to be responsive, it must be capable of being accepted, without modification, to form a binding contract.
    - b. Advertisement

**IFB's** must be advertised in accordance with Section VI.A.3.
    - c. **Solicitation** Time

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

Responses not received at the place indicated and by the date and time indicated shall not be opened and shall be rejected as late.
    - e. **Competitive Sealed Bid** Opening

The name of each bidder, the **Bid** price(s) (unless otherwise provided in the **Invitation for Bids**), and other information deemed appropriate by the **Purchasing Agent** shall be read aloud at the time of the **Bid** opening. Reading of all **Bid** item prices may not be reasonable or desired (e.g., in the case of lengthy or complex **IFB's**). The decision not to read all **Bid** prices shall be made by the **Purchasing Agent**. The name of each bidder, amount of **Bid**, delivery, name(s) of witness(es) and other relevant information shall be entered into the record and the record shall be available for public inspection. Prior to **Award**, copies of pricing information not read aloud at the **Bid** opening shall be made reasonably available for inspection, if requested. Other information related to a **Bid**, or a bidder's **Responsiveness**, may be withheld from inspection until questions concerning such information are resolved. After the **Notice of Intent to Award**, all **IFB/Bid** documents, and a complete **Bid** analysis, shall be open to public inspection except to the extent the College has approved a bidder's request that information be held confidential as set forth in Section VI.A.7.c.
    - f. **Award**

All **Goods** and **Services** shall be evaluated for **Responsiveness** against the **Specifications** and/or brand names used as a reference and other evaluation criteria as set forth in the **IFB**. Following determination of **Responsiveness**, **Bids** shall be evaluated to determine which bidder offers the lowest costs to the College in accordance with the **Specifications**, taking into account any life-cycle cost formulas stated in the **IFB**.

g. **Multi-Step Sealed IFB's**

A multi-step **Sealed IFB** is a two-phase process. The technical first phase is composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the College. The second phase considers only those bidders whose technical offers were determined to be **Responsive** during the first phase. At this time, their price **Bids** will be opened and considered. The process is designed to obtain the benefits of competitive **Sealed** bidding by **Award** of a **Contract** to the lowest **Responsive, Responsible** bidder, and at the same time obtain the benefits of the **Request for Proposals** procedure through the **Solicitation** of technical offers and the conduct of discussions to evaluate and determine the **Responsiveness** of technical offers.

h. **Best Value Invitation for Bids**

(i) Use of **Best Value IFB**

A **Best Value IFB** is used where the **IFB** specifically allows for **Enhancements, Options, and/or Alternatives**. A **Best Value IFB** must include a **Base Bid** statement.

(ii) Evaluation

The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the **Enhancements, Options, or Alternatives**. Based on the evaluation of the cost of the **Base Bid**, the dollar value of **Enhancements, Options, or Alternatives**, and the **Determination** of which best meet the needs of the College, an **Award** shall be made to the bidder providing the **Best Value** to the College.

2. **Request for Proposals/Competitive Sealed Proposals**

a. Use of **Request for Proposals**

**Request for Proposals (RFP)** will be used for the **Solicitation** of competitive **Sealed Proposals** over \$150,000 when factors in addition to price are important in deciding which proposal is most advantageous to the College.

(i) Preliminary Evaluation

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

(ii) Evaluation Committee

A committee of no less than three (3) individuals shall evaluate all **Responsive Proposals**. Evaluations shall be based on the factors and process set forth in the **RFP**. A numeric or non-numeric evaluation process may be used in order to determine which **Proposal(s)** is most advantageous to the College.

- (iii) Upon receipt of the Evaluation Committee's recommendation, the Director shall make a **Determination** stating which proposal is most advantageous to the College, and a **Notice of Intent to Award** will be issued to that **Offeror**.
- b. **Solicitation Time**  
**RFPs** will be open for a minimum of thirty (30) calendar days unless a shortened time frame is approved in writing in a **Determination** by the Director.
- c. **Advertisement**  
**RFPs** will be advertised in accordance with Section VI.A.3.
- d. **Late Responses**  
Late responses shall not be accepted. However, a response received by the next business day delivery may be accepted if it is reasonable to believe the response was in the delivery process, by the post office or delivery service or by internal distribution system which was not completed prior to the proposal due date and time. A response in the possession of the **Offeror** on the due date is late if not received in WSC Purchasing by the proposal due date and time.
- e. **RFP Opening**  
There shall be a public opening at the date and time specified in the **RFP**. The **Purchasing Agent** shall read the name of all **Offerors** submitting responses. A witness shall be present. All information other than the **Offerors'** names remains confidential until posting of the **Notice of Intent to Award**.

#### **D. Competitive Negotiation**

**Contracts** may be awarded by **Competitive Negotiation**

1. A **Contract** may be awarded by **Competitive Negotiation** after an unsuccessful **Invitation for Bids** or **Request for Proposals** process if the Director determines that time does not permit resolicitation.
2. An **Invitation for Bids** or **Request for Proposals** process is unsuccessful if:
  - a. all offers received are unreasonable or uncompetitive;
  - b. the low **Bid** exceeds available funds, as certified in writing by the appropriate fiscal officer;
  - c. the **Solicitation** has been properly cancelled in accordance with the provisions of Section VI.A.8; or
  - d. the number of **Responsive** offers is not sufficient to ensure **Adequate Competition**.
3. The **Competitive Negotiation** process shall include all vendors who responded to the **Solicitation** or any rebid and may include other vendors capable of fulfilling the College's needs.
4. WSC Purchasing may set reasonable times and locations for participation in the **Competitive Negotiation**, reflecting the fact that time constraints are the basis for the **Competitive Negotiation** process.
5. Each vendor with whom WSC Purchasing negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently

with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until a **Notice of Intent to Award** has been issued. Any change in requirements shall be communicated to all vendors.

6. A vendor may be eliminated from the process upon a **Determination** that its offer is not reasonably susceptible of being selected for **Award**.
7. The **Award** shall be made to the vendor whose offer is most **Advantageous** to the College. The Director shall make a written **Determination** that identifies the nature of the discussions with each vendor and that states why the selected offer is the most **Advantageous** to the College.

#### E. **Competitive Reverse Auctions**

A **Contract** for goods and services may be awarded by **Competitive Reverse Auction** if the Director determines that adequate competition can be achieved and that the process is likely to result in better pricing.

#### F. **Other Procurement Methods**

##### 1. **Sole Source Procurements**

**Procurement** without competition is authorized under limited conditions and subject to written justification documenting the conditions that preclude the use of a competitive process. A **Sole Source Procurement** is justified when there is only one **Good** or **Service** that can reasonably meet the need and there is only one vendor who can provide the **Good** or **Service**. A requirement for a particular proprietary item (i.e., a **Brand Name Specification**) does not justify a **Sole Source Procurement** if there is more than one potential vendor for that **Good** or **Service**. Price is not a consideration to justify a **Sole Source Procurement**. In cases of reasonable doubt, competition will be solicited.

##### a. Continuing Need for **Sole Source**

WSC Purchasing shall take reasonable steps to avoid using **Sole Source Procurement** except in circumstances where it is both necessary and in the best interests of the College. WSC Purchasing shall take action, whenever possible, to avoid the need to continue to procure the same **Goods** and/or **Services** without competition.

##### b. **Sole Source Procurement** Procedures

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

## 2. Emergency **Procurements**

### a. Emergency Condition

An emergency condition exists when a situation creates a threat to public health, welfare, or safety. When an emergency condition creates an immediate and serious need for supplies or services, the lack of which would seriously threaten

- (i) the functioning of the College, or its programs;
  - (ii) the preservation or protection of property; or
  - (iii) the health or safety of any person(s) or animal(s),
- the College may conduct an emergency **Procurement**.

### b. Authority to Make Emergency **Procurements**

The College may make emergency **Procurements** when an emergency condition arises and the need cannot be met through normal **Procurement** methods, provided that whenever **Practicable**, the Director's approval shall be obtained prior to the **Procurement**. Emergency **Procurements** may be negotiated on a **Sole Source** or limited competition basis as dictated by the circumstances of the emergency. In the event an emergency arises after normal working hours, the College department shall notify the Director on the next working day. If the Director determines that an emergency **Procurement** was made without the existence of an emergency condition, the **Procurement** will be processed as an **After-the-Fact Procurement** as set forth in Section VIII.

### c. Limits of an Emergency **Procurement**

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

### d. Source Selection Procedures

- (i) Vendors shall be selected to assure that the required **Goods** or **Services** are procured in time to meet the emergency. Given this constraint, such competition as is **Practicable** shall be obtained.
- (ii) Any acceptable form of **Solicitation** (e.g., written, faxed, electronically transmitted, phoned, etc.) may be used to obtain proposals for an emergency **Procurement**.

### e. Documentation

As soon as **Practicable**, the College department shall prepare a written justification, to be approved by the Director, that sets forth the justification for the emergency **Procurement**. The justification shall include the following:

- (i) the basis for the emergency **Procurement** including the date the emergency first became known;
- (ii) a listing of the **Goods** and/or **Services** procured;
- (iii) a description of the efforts made to ensure that proposals or offers were received from as many potential vendors as possible under the circumstances; and
- (iv) the basis for the selection of the vendor.

## 3. College-wide Price Agreement(s) (CPA)

- a. The Director may issue College-wide price agreements for **Goods** or **Services** for use by all College departments. Such CPAs may include, but are not limited to, College-initiated agreements or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the College's buying power.
  - b. CPA pricing is based on the College's overall anticipated volume of purchases during the agreement period. In order to assure the College of the least total cost of **Goods** or **Services**, all College departments may be required to order needed **Goods** or **Services** from CPAs.
  - c. WSC Purchasing is responsible for publicizing all College-wide price agreements and for monitoring compliance.
  - d. The Director may designate a State Price Agreement as a CPA and may permit or require the use of the agreement.
4. Cooperative Purchasing Agreement(s)
- a. The Director may approve the purchase of **Goods** or **Services** from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the College after considering:
    - (i) the competitiveness of pricing under the contract; and
    - (ii) the efficiencies and cost savings of using the contract.
  - b. The College may participate in, conduct, sponsor or administer a cooperative purchasing agreement. This includes, but is not limited to, agreements with any of the following:
    - (i) the Federal government or an agency or other instrumentality of the Federal government;
    - (ii) the State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;
    - (iii) a bi-state or multi-state agency;
    - (iv) a county, municipal corporation, or other political subdivision of the State of Colorado or of another state, or an agency or other instrumentality of the political subdivision;
    - (v) other institutions of higher education; or
    - (vi) a cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximizing economies of scale when soliciting bids or proposals, e.g. Educational and Institutional Cooperative Service, Inc. (E&I).
  - c. The Director may approve a single purchase from a cooperative purchasing agreement or may approve ongoing participation in a cooperative purchasing agreement as a CPA. The Director has the final authority to approve the College's participation in or use of cooperative purchasing agreements.

#### **G. Price Cost Analysis**

1. When there is no competition (such as a **Sole Source Procurement** or when only one response is received to a **Solicitation**) the **Purchasing Agent** must ensure that the

price the College is paying is fair and reasonable by completing a price cost analysis. Additionally, Federal laws mandate that the College perform price cost analysis under certain conditions.

2. If, after analysis, the **Purchasing Agent** does not feel the price to be paid is fair and reasonable, he/she will do one of three things:
  - a. seek competition;
  - b. negotiate with the vendor to lower the price; or
  - c. cancel the procurement.

## SECTION VII      CONTRACTS

### A.      **Types of Contracts**

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

### B.      **Multi-Year Contracts**

The College may enter into multi-year **Contracts** for **Goods** or **Services** subject to funding availability. **Contracts** for periods in excess of five (5) years require the written approval of the Director.

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

**After-the-Fact** purchases shall be processed in accordance with WSC Purchasing policy and the State Controller Policy entitled **Processing Commitment Vouchers that Violate State Statute**.

## SECTION IX DISPUTES & REMEDIES

### A. Types of Disputes

The Director is authorized to settle and resolve any questions regarding:

1. Any protest concerning the **Solicitation** or **Award** of a **Contract**; and
2. Any controversy arising between the College and a **Contractor** by virtue of a **Contract** between them, including, without limitation, controversies based upon breach of **Contract**, mistake, misrepresentation, or any other cause for **Contract** modification or rescission.

### B. Costs of Filing

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

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

#### 1. Filing of Protest

##### a. Subject of Protest.

**Protestors** may file a protest on any phase of a **Solicitation** or **Award** including, but not limited to, **Specifications**, **Award**, or the **Determination** of confidentiality per Section VI .A. 7.c. Protests shall be submitted in writing within seven (7) working days after such aggrieved person knows or should have known of the facts giving rise thereto. Protests regarding **Specifications** must be submitted and received by the College prior to the bid/proposal opening date.

##### b. Form

The written protest shall include, at a minimum:

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

##### c. To whom addressed

The protest shall be addressed to the Director and sent to WSC Purchasing.

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

#### 3. Decision

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

#### 4. Appeal

The **Protestor** may appeal the Director's decision to the Vice President for Finance and Administration within seven (7) working days after receiving the Director's protest decision. The Vice President for Finance and Administration shall respond to a **Protestor's** appeal within ten (10) working days after receipt of the appeal. The appeal decision shall be based on the issues raised in the protest. No new issues may be raised in the appeal or in the appeal decision.

#### 5. Stay of Procurement

In the case of protested **RFP's** only, there shall be a stay of **Procurement** until the decision of the Director is rendered, unless the Director determines that execution of a **Contract** without delay is necessary to protect substantial College interests.

#### 6. Remedies and Entitlement to Costs

If prior to executing a **Contract**, the protest or appeal decision determines that the solicitation was not conducted properly, the solicitation or proposed award may be revised or the solicitation may be cancelled.

If the College has already entered into a contract and the protest or appeal decision subsequently finds that the **Protestor** should have been **Awarded** the **Contract** but, due to a defect in the **Solicitation** process, was not, the **Protestor** shall be entitled to the reasonable costs incurred in connection with responding to the **Solicitation**. No other costs shall be permitted, and reasonable costs shall not include attorney fees.

#### 7. Actions in Court

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

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

### D. Contract Disputes

#### 1. Statement of Policy

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

#### 2. Request for Review and Decision

When a controversy cannot be resolved by mutual agreement, the **Contractor** may submit to the Director a written request for a review and final decision. The Director shall review the matter and issue a written decision within twenty (20) working days after receiving the written request.

3. Final Decision

The Director shall furnish a written copy of the decision to the **Contractor**. The decision shall include:

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

4. Actions in Court

If a **Contractor** has filed a complaint in court which complaint is also the subject of a pending contract dispute, the Director will not issue a decision and will refer the matter to College counsel.

## SECTION X COST PRINCIPLES

### A. Applicability of Cost Principles

#### 1. Application

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

- a. establishment of **Contract** cost estimates and prices under **Contracts** made by **IFBs** and **RFPs** where the **Award** may not be based on **Adequate Competition**, **Sole Source Procurement**, or **Contracts** for certain **Services**;
- b. establishment of price adjustments for **Contract** changes;
- c. pricing of termination for convenience settlements; and
- d. any other situation in which cost analysis is required.

#### 2. Limitation

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

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

### B. Allowable Costs

#### 1. General

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

#### 2. Accounting Consistency

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

#### 3. When Permitted

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

- a. reasonable, as defined in Section X.C (Reasonable Costs);

- b. allocable, as defined in Section X.D (Allocable Costs);
- c. not made unlawful under any applicable law;
- d. no permitted under Section X.E (Treatment of Specific Costs) or Section X.F (Costs Requiring Prior Approval to be Allowable); and
- e. actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

**C. Reasonable Costs**

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

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

**D. Allocable Costs**

1. General

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

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

2. Allocation Consistency

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

### 3. Direct Cost

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

### 4. Indirect Costs

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

## E. Treatment of Specific Costs

### 1. Advertising

The only permitted advertising costs are those for:

- a. the recruitment of personnel;
- b. the **Procurement** of scarce items;
- c. the disposal of scrap or surplus materials;

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

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

5. Entertainment

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

6. Fines and Penalties

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

7. Gifts, Contributions and Donations

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

8. Interest Costs

- a. Interest is a cost of borrowing. Interest is not permitted except as provided in Section X.E.8.b.
- b. Interest costs on **Contractor** claims for payments due under College **Contracts** are permitted.

9. Losses Incurred Under Other Contracts

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

10. Material Costs

- a. Material costs are the costs of all supplies, including raw material, parts and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the **Contractor**), which are acquired in order to perform the **Contract**. Material costs are permitted, subject to Section X.E.10.b and Section X.E.10.c. In

determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

- b. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the **Contractor** reasonably should take under the circumstances, and for credits for proceeds the **Contractor** received or reasonably should receive from salvage and material returned to suppliers.
- c. Allowance for all materials transferred from any division (including the division performing the **Contract**), subsidiary, or affiliate under the common control of the **Contractor** shall be made on the basis of costs incurred by the transferrer (determined in accordance with these cost principle regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the College's **Purchasing Agent** and the price is not higher than the transferrer's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:
  - (i) the price is established either by the established catalogue price; or
  - (ii) by the lowest price offer obtained as a result of the **Sealed** bidding or competitive **Sealed** proposals conducted with other **Businesses** that normally produce the item in similar quantities.

#### 11. Taxes

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

## F. Costs Requiring Prior Approval to be Allowable

### 1. General

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

### 2. Pre-Contract Costs

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

### 3. Bid and Proposal Costs

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

### 4. Insurance

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

### 5. Litigation Costs

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

## G. Applicable Credits

### 1. Definitions and Examples

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to **Contracts** as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale

of scraps and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational, incidental, or services and food sales.

2. Reducing Costs

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

3. Refund

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

**H. Unusual Costs**

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

**I. Use of Federal Cost Principles**

1. Cost Negotiations

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

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

a. In **Contracts** not **Awarded** under a program which is funded by Federal assistance funds, the College may explicitly incorporate Federal cost principles into a **Solicitation** and thus into any **Contract Awarded** pursuant to that **Solicitation**. The College **Purchasing Agent** and the **Contractor** may by mutual agreement incorporate Federal cost principles into a **Contract** during negotiation or after **Award**. In either instance, the language incorporating the Federal cost principles shall clearly state that to the extent Federal cost principles conflict with these Rules, these Rules shall control.

b. In **Contracts Awarded** under a program which is financed in whole or in part by Federal assistance funds, all requirements set forth in the assistance document including specified Federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles in these Rules, the cost principles specified in the grant shall control.

**J. Authority to Deviate from Cost Principles**

If the College's **Purchasing Agent** desires to deviate from the cost principles set forth in these Rules, a **Determination** shall be made by such **Purchasing Agent** specifying the reasons for the deviation.

## SECTION XI SUSPENSION & DEBARMENT

### A. Suspension

After meeting with the affected College department(s) and, where **Practicable**, the vendor who is to be suspended, the Director may issue a written **Determination** to suspend a vendor from doing business with the College 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 that would be cause for debarment. In such cases, the suspension may remain in effect until after the trial of the suspended vendor.

1. A written notice of the suspension, including a copy of the **Determination**, shall be sent to the suspended vendor. The notice shall:
  - a. state that the suspension will be for the period necessary to complete an investigation into possible debarment;
  - b. inform the suspended vendor that no business may be conducted with the College by any person(s) representing the suspended vendor during the suspension period and that any **Solicitation** responses received from the suspended vendor during the suspension period shall not be considered; and
  - c. offer the vendor a reasonable opportunity to be heard and to submit evidence to be considered in making the debarment decision.
2. The suspension period will be effective upon issuance of the notice of suspension.

### B. Debarment

1. A suspended vendor may be debarred for any of the following reasons:
  - a. conviction of a criminal offense in relation to obtaining or attempting to obtain a College **Contract** or in the performance of such **Contract**;
  - b. conviction under State of Colorado or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;
  - c. conviction under State of Colorado or Federal antitrust statutes arising out of the submission of bids or proposals;
  - d. willful material failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of one or more contracts;
  - e. the vendor is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a Federal, state or local governmental entity; and/or
  - f. violation of the provisions of Section 7-108-401 **C.R.S.**, "General Standards of Conduct for Directors and Officers".
2. Following completion of the investigation to determine whether a vendor has engaged in activities that are cause for debarment, the Director may issue a **Determination**

debaring the vendor. A vendor may be debarred for a period of time commensurate with the seriousness of the offense, but not to exceed three (3) years.

3. A written notice of debarment shall be sent to the suspended vendor. The notice shall:
  - a. state the debarment period; and
  - b. inform the debarred vendor that no business may be conducted with the College by any person(s) representing the debarred vendor during the debarment period and that any **Solicitation** responses received from the debarred vendor during the debarment period shall not be considered.
4. The debarment period will be effective fourteen (14) days after the notice of debarment is sent to the debarred vendor.
5. After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires unless a court or the Director orders otherwise.

**C. Master List**

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

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

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

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

## SECTION XIII DEFINITIONS

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

**Adequate Competition** exists if a **Documented Quote**, competitive **Sealed Bid** or competitive **Sealed Proposal** has been conducted and at least two **Responsible** and **Responsive Offerors** have independently competed to provide the College's needed **Goods** or **Services**. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the **Purchasing Agent Determines**, in writing, that such competition is not adequate.

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

An **After-the-Fact (ATF)** purchase occurs when a department makes a purchase without an authorized purchase order or contract when such commitment document is required. A requisition or encumbrance document ***is not*** an authorized commitment document.

**Alternative** means a choice of a different **Good** or **Service** that meets or exceeds the functional requirements of the **Base Bid**.

**Award** means the acceptance of a **Bid** or **Proposal** by issuance of a commitment voucher.

**Base Bid** means the minimum functional requirements for **Responsiveness** of the **Good** or **Service**.

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

**Bid** means a Competitive **Sealed** response from a vendor to an **IFB**.

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

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

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

**Competitive Negotiation** means the process of discussion and issue resolution between a **Purchasing Agent** and a prospective vendor to procure a **Good** or **Service** needed by the College. **Competitive Negotiation** is used only after a failed **IFB** or **RFP** process. If more than one vendor is available for such negotiation, the needs of the College must be clearly defined in

advance of any negotiations, using a **Specification** that details fully the College's intended **Procurement**.

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

**Contract** means any type of College agreement, regardless of what it may be called, for the **Procurement** or disposal of **Goods** or **Services**, and includes purchase orders.

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

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

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

**C.R.S.** means Colorado Revised Statutes.

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

**Documented Quote (DQ)** means a process of soliciting informally for fulfilling the College's need for specific **Goods** or **Services** and receiving and evaluating vendor responses. The dollar limits for use of **Documented Quotations** shall be as stated in Section VI **PROCUREMENT METHODS, Solicitation** Thresholds. The process shall be conducted only by a **Purchasing Agent**.

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

**Goods** means all property, except real property, tangible and intangible, all materials, equipment, products, supplies, commodities, and insurance not excluded from these Rules, but not **Services**, provided by a **Contractor**.

**In-state Business** means:

- A. a **Business** that is authorized to transact business in Colorado and that maintains its principle place of business in Colorado; or
- B. a **Business** that is authorized to transact business in Colorado, that maintains a place of business in Colorado, and that has filed Colorado unemployment compensation reports in

at least seventy-five percent of the eight quarters immediately before bidding on a **Solicitation**.

**Invitation for Bids (IFB)** means a process to solicit, receive, and evaluate competitive bids from vendors for specific **Goods** or **Services** that results in a **Contract** being **Awarded** to the lowest **Responsive Bid** from a **Responsible** bidder based on the **Specifications** set forth in the **Solicitation**. The dollar limits for use of **IFBs** shall be as stated in Section VI PROCUREMENT METHODS, **Solicitation** Thresholds. The process shall be conducted only by a **Purchasing Agent**.

**Options** means choices of additional components, **Services**, or **Goods** that would serve to provide increased value to the College beyond the **Base Bid**.

**Notice of Intent to Award** means the announcement of the apparent winner to the apparent winning vendor, the losing vendors, and the public in a competitive solicitation process and when a **DQ** process results in a formal contract. A Notice of Intent to Award occurs prior to the issuance of a commitment voucher; no property interest of any sort accrues to the vendor prior to issuance of a commitment voucher.

**Offeror** means the person or entity who submits a proposal in response to an **RFP**.

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

**Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring any **Goods** or **Services**. **Procurement** includes all functions that pertain to the obtaining of any **Goods** or **Services**, including description of requirements, **Solicitation** and selection of sources, preparation and **Award** of **Contract**, and all phases of **Contract** administration.

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

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

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

**Purchasing Agent** means the Director or a College employee supervised by the Director with delegated purchasing authority from the Director.

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

**Quote** means a response from a vendor to a **DQ**.

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

**Request for Proposals (RFP)** means a process to solicit, receive, and evaluate competitive **Sealed Proposals** from **Offerors** for specific **Goods** or **Services** when factors in addition to price are important in deciding which proposal is most advantageous to the College. The dollar limits for use of **RFPs** shall be as stated in Section VI PROCUREMENT METHODS, **Solicitation** Thresholds. The process shall be conducted only by a **Purchasing Agent**.

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

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

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

**Revenue-Producing** means a for-profit business activity conducted by a **Business** on College premises with the permission or agreement of the College and whereby the **Business** pays money to the College as a result of sharing income from the business activity.

**Sealed** means that the **Bid** or **Proposal** must be submitted in a manner that:

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

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

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

**Solicitation** means a request to the **Business** community to respond to a **Documented Quote, Invitation for Bids** or **Request for Proposals**.

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

# **APPENDIX A**

## **WESTERN STATE COLLEGE PROCUREMENT CODE OF ETHICS**

Any person employed by Western State College who purchases goods and services, or is involved in the purchasing process for the College, 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 Western State College 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 Western State College 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 Western State College;
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 Western State College business; and,
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.