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## 1. Definitions

- A. Administrative Authority – As defined in Chief Justice Directive 95-01, the Chief Justice has delegated administrative authority to each chief judge, who serves as the administrative head of all district and county courts within a judicial district. The chief judge of the Court of Appeals is the administrative head of the Court of Appeals. Each chief judge may delegate authority to the court executive, clerk(s) of court, chief probation officer, and other judges, as deemed appropriate. The State Court Administrator is the administrative head of the State Court Administrator’s Office. The State Court Administrator may delegate authority to a division director(s) or others, as deemed appropriate.
- B. Award – The acceptance of a bid or proposal by publishing the award information on the electronic bid system, which outlines the elements of the award established through the solicitation process and which is explicitly subject to terms and conditions agreed upon through contract negotiations and/or purchase order. The scope and/or duration of an original contract, issued following an Award, may be less than the scope of the Award.
- C. Brand Name Specification – 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 Department requirements.
- D. Budget Authority – Department staff delegated by the Administrative Authority to authorize use of public funds for goods and services.
- E. Change Order – A written order or Contract implemented by the Department directing the contractor to change the Original Contract Amount, Scope of Work, or Term.
- F. Confidential Information – Confidential information includes, but is not limited to, trade secrets and other proprietary data, privileged information and confidential commercial and financial information furnished by a vendor, and which may be withheld from inspection pursuant to the Public Access to Information and Records Rules (P.A.I.R.R. 2), or otherwise protected by law or Department policy.
- G. Contract – See the Judicial Contracting Fiscal Rules for definitions of various contract types. More generally, any type of Department agreement approved in writing by the State Court Administrator, or Chief Judge of the District for which the purchase is being made, or their appointed delegates, except for cost-plus-a-percentage-of-cost agreements, regardless of what it may be called, for the procurement or disposal of goods or services. At a minimum all Judicial contracts shall include:
  - 1. Identification of the entity providing the good or service.
  - 2. Description of the goods or services being purchased.
  - 3. The amount to be paid, or the maximum amount to be reimbursed.
  - 4. The term of the contract.
- H. Debarment – Action taken by the Department to prohibit a vendor from participating in Department solicitations and contracts due to allegations of fraud, mismanagement, failure to perform and similar improprieties.
- I. Department Staff – The appropriate individuals who are authorized and knowledgeable to complete the tasks and functions described in these Rules. The Administrative Authority shall identify such individuals in accordance with relevant job classifications.

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- J. Goods – Means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the Department, either in and of itself, or in conjunction with services.
- K. Informal Service Request (ISR) – An informal solicitation that may be solicited by Department Staff for services up to the limits in the Procurement Fiscal Rules Section 4.B.3.
- L. Minor Informalities – Matters of form rather than substance, which 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. The Procurement Manager or Purchasing Supervisor may waive such informalities or allow the vendor to correct them, depending on which option is in the best interest of the Department.
- M. Original Contract Amount – The dollar amount originally included in a legally enforceable contract. For contracts that are the result of a solicitation, the Original Contract Amount will be based on an award by the Procurement Unit and the amount may be less than that in the Award.
- N. Price Agreements – A solicited and negotiated agreement that sets a fixed price for goods or services or sets the criteria on how the contractor shall determine the price during a specified period.
- O. Procurement – Buying, purchasing, renting, leasing, or otherwise acquiring goods or services, except for Professional Services. Procurement includes all functions that pertain to the act of obtaining any goods or services, including the description of requirements, selection and solicitation of sources, and award. See Department’s Contracting Fiscal Rules regarding the preparation of contract documents, and subsequent phases of contract administration.
- P. Procurement File – The record of the transaction that shall contain the original, copies or other information relevant to the procurement and selection of a vendor, the executed form(s), correspondence with the vendor and any applicable approvals or justifications.
- Q. Professional Services – Architectural, engineering, land surveying, industrial hygienist and landscape architect services.
- R. Public Entity – A state agency or institution of higher education, political subdivision or special district of the State of Colorado, or of another state, the Federal government or any combination thereof.
- S. Purchase Order – A type of contract, which sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific vendor. Once accepted by the vendor the Purchase Order becomes a binding contract.
- T. Qualified Products List – An approved list of goods or services described by model or catalogue numbers, which, prior to competitive solicitation, the Department has determined will meet the applicable Specification requirements.
- U. Unauthorized Purchase – When a purchase has occurred, or a purchase commitment has been issued or made to a vendor to obtain goods or services in violation of these Rules.

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- V. Request for Bids (RFB) – A process of formally soliciting for the Department’s need for specific goods and receiving and evaluating vendor responses. RFBs are awarded to the low responsive and responsible bidder. The dollar limits for use of RFBs shall be as stated in the Procurement Fiscal Rules 4.A.4 and shall be conducted only by a Purchasing Agent.
- W. Request for Documented Quote (RDQ) – A process of soliciting informally for the Department’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 the Procurement Fiscal Rules 4.A.3 and shall be conducted only by a Purchasing Agent.
- X. Request for Information (RFI) – All documents, including those attached or incorporated by reference, utilized by the Department for soliciting Information from the marketplace to determine whether a procurement or solicitation is feasible. RFIs do not lead to a procurement but may lead to a solicitation. The process to issue an RFI shall be as detailed in the Procurement Fiscal Rules Section 4.B.1.
- Y. Request for Proposals (RFP) – All documents, including those attached or incorporated by reference, utilized by the Department for soliciting proposals and is the commonly used name for competitive sealed proposals. Procurements will consider costs and qualifications in determining an award of any resulting contract. RFPs may be used at any dollar amount if approved by the Procurement Manager or Purchasing Supervisor. The process to issue an RFP shall be as detailed in the Procurement Fiscal Rules Section 4.B.4.
- Z. Request for Qualifications (RFQ) – All documents, including those attached or incorporated by reference utilized by the Department for soliciting Qualifications. Procurement selection will be based solely on qualifications and price may be negotiated after selection and specified in a written agreement. RFQs may be used at any dollar amount if approved by the Procurement Manager or Purchasing Supervisor. The process to issue an RFQ shall be as detailed in the Procurement Fiscal Rules Section 4.B.4.
- AA. Reverse Auction – An online auction in which sellers bid against each other to win a buyer’s business. Typically used to purchase commodities from multiple prequalified providers. The dollar limits for use of reverse auctions shall be as stated in the Procurement Fiscal Rules 4.A.2. and shall be conducted only by a Purchasing Agent.
- BB. Services – The furnishing of labor, time, or effort by a contractor not involving the delivery of a specific product other than reports which are merely incidental to the required performance. In cases where goods and services are being purchased together, the purchase shall be considered a service where more than 50% of the cost is associated with the service.

## 2. General Policies

- A. These Rules are designed to support the mission of the Department and to foster public confidence by applying the best methods and business practices to the acquisition of goods and services.
- B. The Department seeks to encourage a procurement process of quality and integrity; broad-based competition; fair and equal treatment of the business community; and increased economy.
- C. Solicitations shall only be issued when there is a valid procurement need. Solicitations shall not be issued to obtain estimates. All solicitations above the informal solicitation

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limits must be issued by the Procurement Unit.

- D. Liability of Judicial Employees – Any Department staff and the approving Budget Authority that purchases goods or services in violation of the provisions of these rules, may be personally liable for the costs of such goods or services. Any public funds used for such purchase may be recovered in the name of the state in an appropriate civil action. See the below Section 17. Violation of Rules, which defines violations, remedial measures, and possible penalties, to include the personal liability of approving Budget Authority and/or Department staff in certain circumstances.
- E. Applicability of Rules to Procurements:
1. The following types of procurements are governed by these Rules and the additional rules and procedures outlined below.
    - a. All software, cloud services, and related services must be approved by the Information Technology Services (ITS) Division and processed by the Procurement Unit and the Contracts Management Unit, in accordance with the criteria outlined in these Rules and the Contracting Fiscal Rules. All software approvals are contingent upon findings of risk assessments, which must be conducted by the ITS Division.
    - b. All information technology (IT) hardware must comply with [Judicial ITS Hardware Standards](#), which outline the responsibilities related to funding. Hardware purchases must be reviewed by the Information Technology Services (ITS) Division to ensure consistency, supportability and alignment with Judicial’s technology policies.
  2. The specific types of procurements and Agreements below are not subject to these Rules.
    - a. Intergovernmental and Interagency Agreements – Procurements made between the Department and another public entity.
    - b. Grant Mandated Contractor – Procurements of goods or services from a specific contractor is necessary to comply with the specific terms and conditions of a sponsored project grant or contract.
    - c. Another government jurisdiction’s requirements specify the procurement rules and procedures to be followed.
    - d. Employment Contracts.
    - e. Procurements for insurance policies for the Department and its employees.
    - f. Professional Services – Services for architects, engineering, land surveying, industrial hygienist and landscape architect services. The State Court Administrator may determine that the procurement of professional services should comply with these Rules. If this determination is made, only RFP or RFQ processes shall be utilized.
    - g. Court Appointed Counsel pursuant to Chief Justice Directives 04-04 and 04-05.
    - h. Office of Language Access agreements pursuant to Chief Justice Directive 06-03.
    - i. Capital Construction – As defined by the Department of Personnel and

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Administration, Department of State Buildings in Section 24-30-1301, C.R.S. Solicitations for Capital Construction services and goods may require alternative procedures in general conformance with Department Fiscal Rules and consultation of Office of the State Architect, State Buildings Program policy, consistent with Department's status as an independent branch of state government.

- j. Revenue Generating Contracts – A revenue contract exists when the net result of the agreement is production of revenue for the Department. Where contracts produce more revenue than expenses, the Department shall maximize the benefit to the Department. In the case of revenue producing contracts for which the Department is considering more than one contractor, the Procurement Unit shall conduct a competitive solicitation.
- k. Conferences at hotels hosted by the Department – At least three (3) quotes from different locations must be obtained for all conference locations that will be used for conferences hosted by the Department. A solicitation is not required to be posted on the electronic bid system.
- l. Memorandum of Understanding (MOU) that have no financial obligations of the Judicial Department.
- m. Procurements for specific goods or services from specific providers as mandated by law.

### 3. Procurement Code of Ethics

- A. The purpose of the Procurement Code of Ethics is to ensure the highest standards of conduct and to maintain integrity and transparency in the procurement process.
- B. Department Staff shall comply with Colorado Judicial System Personnel Rules Section 20.C. Code of Conduct.
- C. Any person employed by the Department who purchases goods and services, or is involved in the procurement process, shall be bound by this Code and shall:
  - 1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
  - 2. Demonstrate loyalty to the Department by diligently following the lawful instructions of the State of Colorado while using professional judgment, reasonable care, and exercising only the authority granted.
  - 3. Conduct all procurement activities in accordance with the law, while remaining alert to, and advising the Department regarding the legal ramifications of the procurement decisions.
  - 4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the State of Colorado (Section 18-8-308, C.R.S.).
  - 5. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved.
  - 6. Keep the Department informed, through all appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

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7. Never solicit or accept, under any circumstance, directly or indirectly gifts, gratuities, services or other things of value from present or potential suppliers which might influence, or appear to influence procurement decisions.
  8. Promote positive supplier relationships through impartiality in all phases of procurement.
  9. Display the highest ideals of honor and integrity in all public and personal relationships to merit the respect and inspire the confidence of the Department and the public.
  10. Provide an environment where all business concerns, large or small, majority or minority owned, are afforded an equal opportunity to compete for Department business.
  11. Enhance the proficiency and stature of the procurement profession by adhering to the highest standards of ethical behavior.
- D. In addition to this Code, Department Staff must comply with various sections of Colorado Revised Statutes, including but not limited to Sections 18-8-302 (bribery), 18-8-303 (compensation for past official behavior), 18-8-304 (soliciting unlawful compensation), 18-8-305 (trading in public office), 18-8-307 (designation of supplier prohibited), 18-8-308 (failing to disclose a conflict of interest), and 18-8-402 (misuse of official information).
- E. Conflicts of Interest
1. It is the policy of the Department to provide a fair opportunity to participants in competitive processes for the award of Department contracts by addressing potential conflicts of interest through respondents' non-collusion statements, confidentiality during the evaluation process, and internal conflict of interest documents in all solicitations.
  2. Conflict of interest in a procurement process shall mean:
 

A member of a procurement process, whether formal or informal, having a financial interest in, or an immediate family member that has a financial or personal interest in the results of the procurement process. Any interest that will impact or have the appearance to impact the ability of the person(s) making a vendor selection may be considered a conflict of interest. Knowledge of, or prior work experience with a vendor does not qualify as a conflict of interest.
  3. Contractors shall be deemed to be free of a conflict of interest if:
 

At the time of contracting, the contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of their services. The contractor shall further agree that, in the performance of the contract, they shall not employ any person having any such known interests.
  4. In all solicitations, each evaluator shall complete the evaluator conflict of interest / confidentiality statement and conform to the Procurement Code of Ethics.
  5. The Procurement Manager shall investigate any allegations of conflict of interest or misconduct identified by any Department Staff or individual in the following manner:
    - a. The manager or the party that is aware of the possible conflict or appearance of

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conflict shall report the known facts to the Procurement Manager.

- b. The Procurement Manager shall consult with appropriate staff and provide a report to the State Court Administrator who shall issue a final determination.
- c. When a finding of conflict of interest is made, the individual with the conflict shall be prohibited from participating in the procurement process and shall not be provided any information of the status of the process until the process is complete.

#### F. Vendor Shows

1. A vendor show is a product demonstration or exhibit to which one or more Department Staff is invited by a vendor for the purposes of marketing goods or services related to the work being done by the Department. This does not include an open house, chamber event, product exhibit or product demonstration intended for multiple parties.
2. Vendor shows for the sole benefit of the Department must be approved in advance by the Procurement Manager to:
  - a. Protect the integrity of the procurement process;
  - b. Protect the viability of Department-wide price agreements; and
  - c. Ensure fairness to all vendors.
3. The sponsoring District or Division shall notify the Procurement Manager as far in advance as possible but at least ten (10) business days prior to the vendor show.
4. Solicitation evaluators or advisors shall not attend private or public vendor shows outside of the solicitation process during the solicitation.

#### G. Confidentiality

During any informal or formal solicitation process, Department Staff involved in the procurement process shall keep all information regarding the decision confidential. Information may only be shared with other evaluators within the committee for that process or outside advisors to the committee who have completed a conflict of interest statement. Department Staff involved in the procurement process shall not have any direct contact with vendors without the presence of the Procurement Unit staff until the completion of the process.

### 4. Procurement Limits

#### A. Procurement of goods

1. Discretionary – A purchase amount less than or equal to \$50,000.
2. Reverse Auction – A purchase amount greater than \$50,000 if approved by the Procurement Manager or Purchasing Supervisor.
3. Request for Documented Quote – A purchase amount between \$50,000 and \$250,000.
4. Request for Bid – A purchase amount greater than \$250,000.

#### B. Procurement of services

1. Request for Information – An RFI may be used for any dollar amount as an RFI shall not result in a purchase. There are no mandatory posting time frames for an RFI.

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2. Discretionary – A purchase amount less than or equal to \$50,000.
  3. Informal Service Request – A purchase between \$50,000 and \$250,000.
  4. Request for Proposal or Request for Qualifications – A purchase amount greater than \$250,000.
- C. Calculating the purchase amount
1. The total purchase amount for goods shall determine the procurement method to be used and shall be calculated as follows:
    - a. Price multiplied by quantity for all items ordered.
    - b. If Department Staff is aware of a need for multiple purchases, then price for all needed items must be considered, regardless of whether the purchases are made individually.

*Example: When Department Staff buy a computer one month and is aware of the need to buy the same computer the next month. In this case, the total purchase amount is the cost for both computers because Department Staff was aware of both needs at the time of the original purchase.*
  2. The total purchase amount for services shall be calculated as follows:
    - a. Total costs of the specific services required, including the initial term of the contract and any renewal periods, not to exceed five (5) years.
    - b. If Department Staff is aware of the need for multiple years of the service, then the total cost of all services required for up to five (5) years shall be considered.

*Example: When the total anticipated services needed are \$55,000 a year and the need is for five years, the costs for all years of the contract are the purchase amount for services (i.e., \$55,000/year x 5 years equals a total purchase amount of \$275,000, which would require an RFP or RFQ in accordance with the above Subsection 4. B.).*
  3. The total purchase amount shall be used to determine if a solicitation is required and what type of process shall be used.
  4. An approved cooperative contract may be used as an alternative solicitation method for any of the items listed in the chart in Section 4.D. Exclusive of Procurement objectives and these Rules, prior to using a new or modified cooperative contract, Department Staff shall consult the Contracts Management Unit in accordance with Section 14. D., below, to determine if the cooperative contract contains any terms and conditions that should be modified, evaluated for risk, or to what extent Department's standard contract terms may be used.

D. Procurement Quick Reference Guide

Total Purchase Amount*	Type of Purchase	Preferred Solicitation Method	Minimum Time Posted on Electronic Bid System (EBS)	Alternative Solicitation Method
Up to \$50,000	Goods	Discretionary Purchase	EBS not required	Reverse Auction, Approved Cooperative
\$50,001 - \$250,000	Goods	RDQ	5 Business Days	RFB, Reverse Auction, Approved Cooperative
Greater than \$250,000	Goods	RFB	10 Business Days	RFP, Reverse Auction, Approved Cooperative
Up to \$50,000	Services	Discretionary Purchase	N/A	ISR, RFP, RFQ, Approved Cooperative
\$50,001 - \$250,000	Services	ISR	10 Business days Obtain ISR Responses	RFQ, RFP, RFB, Approved Cooperative
Greater than \$250,000	Services	RFP	30 Calendar Days	RFQ, Approved Cooperative

\*Total Purchase Amount shall be the known need for a five (5) year term.

5. General Solicitation Process

The following steps shall be completed when issuing any solicitation under this Rule.

- A. All procurement records shall be maintained in accordance with the Department's records retention manual ([Retention and Disposition Schedules and Imaging Procedures for Designated Records](#)).
- B. All formal solicitations for goods and services must be advertised through the Department's electronic bid system. Any formal or informal solicitation posted to the electronic bidding system must be approved and/or posted by the Procurement Unit. The Procurement Unit may use additional methods of notification at its discretion as are in the best interests of the Department.
- C. Department Staff will develop specifications for the goods and services that it seeks to purchase, which will be included in the solicitation. The following rules apply to specifications:

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1. Specifications must permit maximum competition and must not restrict responses to the extent that only one respondent is able to reply.
  2. Brand name specifications, “brand name or equal” specifications, or qualified products lists may be used in solicitations. If a brand name specification is used without allowing equals, then an approved sole source for the brand name good or service must be on file prior to issuing the solicitation.
  3. Specifications issued by other entities, whether public or private may be referenced and incorporated into a department solicitation.
- D. For all solicitations other than a reverse auction, responses will remain confidential until the solicitation intent to award is published. Any vendor may submit written requests for confidentiality to the Procurement Unit pursuant to the solicitation terms and conditions. Only confidential information as defined within these Rules may be withheld from public access. Neither a response in its entirety nor price information is considered confidential information.
1. The Procurement Manager shall determine the validity of any written request for confidentiality and shall provide a written determination of the findings to the vendor.
  2. If the Procurement Manager and the vendor do not agree on whether certain information should be disclosed to the public, the vendor may withdraw its response and will no longer be considered for possible award. After award, all responses shall be open to public inspection except for confidential information or withdrawn responses.
- E. Amendments to solicitations must be posted on the Department’s electronic bid system with sufficient time to allow vendors to consider them in preparing a response.
1. Amendments to solicitations shall be identified as such in the electronic bid system and may require that the vendors acknowledge receipt.
  2. In consultation with appropriate Department Staff, the Procurement Unit may extend the due date for any solicitation, prior to the closing of that solicitation.
  3. If amendments are not posted in the Department electronic bid system, the solicitation will be considered unchanged, regardless of any exchanges that may have occurred between the Department and any vendors.
- F. The date that the Department receives a response to a solicitation is determined as follows:
1. Electronic submissions through the electronic bid system – As of the date and time shown by the electronic bid system that the submission was received.
  2. Electronic submissions via email – If the solicitation allows submission via email, then as of the date stamp of the received email.
- G. Withdrawals of Responses and Mistakes in Responses
1. Any response may be withdrawn prior to the specified due date and time upon written request from the Respondent.
  2. The Procurement Manager may allow a response to be withdrawn after the specified due date and time but prior to the award provided:

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- a. The vendor provides evidentiary proof that clearly and convincingly demonstrates that a mistake, instead of a minor informality, was made in the costs or other material matter provided; and
  - b. The mistake is clearly evident on the response; or
  - c. It is found that not allowing the response to be withdrawn would cause irreparable harm to the vendor.
3. If a response is withdrawn after the close of the solicitation, the vendor withdrawing the response shall not be allowed to respond to any future solicitations for a period of up to six (6) months.
  4. Respondents may not withdraw their submission after the receipt of award, except when the Procurement Manager finds that not allowing the response to be withdrawn would cause irreparable harm to the Respondent. In all other cases, the Respondent must hold the offer firm.
    - a. If a withdrawal occurs and is approved, then the Respondent shall not be allowed to respond to any future solicitations for a period of up to twelve (12) months.
    - b. If a Respondent's withdrawal request is denied but the Respondent will not honor its submission offer and enter a contract, then the Respondent shall not be allowed to respond to any future solicitations for a period of up to twenty-four (24) months and any existing contracts may be terminated.
  5. Mistakes in responses where the Department has determined that the error is a minor informality, or a typographical error may be waived by the Procurement Manager and a withdrawal is not required.

## 6. Discretionary Purchase

- A. A purchase for goods or services which is less than or equal to the informal solicitation limit (\$50,000 for goods and \$50,000 for services) is considered discretionary. These types of purchases may be placed at the discretion of Department Staff and do not require a competitive solicitation. However, a solicitation may benefit the Department and should be considered in coordination with the Administrative Authority.
- B. Purchases of goods: Where Department Staff is aware of the need for additional purchases, the purchase shall not be considered discretionary if the sum of the recurring need over a consecutive five (5) year period exceeds the discretionary solicitation limit.
- C. Purchases of services: Where Department Staff is aware of an ongoing need, the purchase shall not be considered discretionary where the sum of the need over a consecutive five (5) year period exceeds the discretionary solicitation limit.
- D. Goods. Discretionary purchases of goods less than or equal to \$50,000.
  1. A price or quote must be reviewed by Department Staff prior to order.
    - a. Alternative: Department Staff may issue a Request for Documented Quote (RDQ).
  2. Procurement Methods (in order of preference):
    - a. Commercial Card (up to the single transaction limit of the card)
    - b. Purchase order

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- c. Contract, if requested by the Department Staff making the purchase after a consideration of all potential risks associated with the transaction or group of transactions and approved by the Contracts Management Unit.
  - d. Invoice
  - e. Reimbursement
- E. Services. Discretionary purchases of services less than or equal to \$50,000.
- 1. At least one written quote must be obtained by Department Staff.
    - a. Alternative: Department Staff may utilize one of the informal solicitation methods.
  - 2. Procurement Methods (In order of preference):
    - a. Purchase Order
    - b. Commercial Card (up to the single transaction limit of the card)
    - c. Contract – See Contracting Fiscal Rules for further information and requirements for selection, preparation, and processing of a Contract.
    - d. Invoice
    - e. Notwithstanding the above, all speakers and training purchases require a Contracts Management Unit approved contract.

## 7. Informal Solicitations

- A. Goods. All purchases of goods greater than \$50,000 and less than or equal to \$250,000 are informal solicitations and shall be solicited by Department Staff or by the Procurement Unit.
- 1. The preferred selection method is a Request for Documented Quote (RDQ) issued by the Procurement Unit and shall:
    - a. Be published on the electronic bid system for at least five (5) business days;
    - b. Include a description of the goods needed;
    - c. Include the quantity of the goods needed;
    - d. Provide a description of any delivery or installation required; and,
    - e. Be awarded to the lowest responsible and responsive bidder, except that a local preference of up to 5% of the otherwise low bid price may be deducted from suppliers that have a physical location within the District. Local preference shall not be applied to any other solicitation type.
  - 2. Alternative: Any of the formal solicitation methods for goods.
  - 3. Procurement Methods (In order of preference):
    - a. Purchase order
    - b. Contract, if required after the Purchasing Agent submits a request for review to the Contracts Management Unit and the request is approved by the Contracts Management Unit. See Contracting Fiscal Rules for further information and requirements for selection, preparation, and processing of a Contract.

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- B. Services. All purchases of services greater than \$50,000 and less than or equal to \$250,000 are informal solicitations and shall be solicited by the Procurement Unit.
1. The preferred selection method is an informal service request (ISR) that shall:
    - a. Include three (3) written responses
    - b. Be available for a vendor response for at least ten (10) business days.
    - c. List in the solicitation how the bidders will be evaluated.
    - d. Be awarded to the bidder that provides the most advantageous response to the Department considering price and other factors.
  2. Alternative: Any of the formal solicitation methods for services may be used.
  3. Procurement Methods (In order of preference):
    - a. Contract, if required after the Purchasing Agent submits a request for review to the Contracts Management Unit and the request is approved by the Contracts Management Unit. See Contracting Fiscal Rules for further information and requirements for selection, preparation, and processing of a Contract.
    - b. Purchase order

## 8. Formal Solicitations

- A. Goods. All purchases of goods greater than \$250,000 are formal solicitations and shall be solicited by the Procurement Unit.
1. Request for Bid (RFB) – The preferred method to be used for the purchase of goods within the formal solicitation limit and shall include the following:
    - a. Written RFBs shall be published on the electronic bid system.
    - b. The RFB shall be posted for at least ten (10) business days.
    - c. The RFB shall be awarded to the lowest responsible and responsive bidder.
  2. Request for Proposal (RFP) – A request for proposal may be used for certain goods within the formal solicitation limit.
    - a. The use of an RFP for goods within the formal solicitation limit may be approved by the Procurement Manager or Purchasing Supervisor when:
      - 1) The goods being ordered are only specified generally and there is a need to evaluate whether one item or another is in the best interest of the Department.
      - 2) The goods are combined with services such as installation, set-up, training, or other services which are integral to the successful use of the items.
    - b. A written RFP must be posted on the electronic bid system by the Procurement Unit.
    - c. The RFP shall be posted for at least thirty (30) days.
    - d. The RFP shall contain written evaluation criteria when it is published.
    - e. The RFP shall be awarded to the responsive and responsible bidder whose proposal is in the best interest of the Department price and other factors considered.

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3. Procurement Methods (excluding RFI processes):
  - a. Contract – See Contracting Fiscal Rules for further information and requirements for selection, preparation, and processing of a Contract.
  - b. Purchase Order
- B. Services. All purchases of services greater than \$250,000 are formal solicitations and shall be solicited by the Procurement Unit.
  1. Request for Proposal (RFP) – A request for proposal is the preferred method to be used for the purchase of services within the formal solicitation limits and shall include the following:
    - a. A written RFP must be posted on the electronic bid system by the Procurement Unit.
    - b. The RFP shall be posted for at least thirty (30) days.
    - c. The RFP shall contain written evaluation criteria when it is published.
    - d. The RFP shall be awarded to the responsive and responsible bidder whose proposal is in the best interest of the Department price and other factors considered.
  2. Request for Qualifications (RFQ) – An RFQ may be used for certain services within the formal solicitation limit.
    - a. Upon the written approval of the Procurement Manager or Purchasing Supervisor, an RFQ may be issued for services when it is in the best interest of the Department.
    - b. An RFQ may not consider price during the evaluation process.
    - c. The use of an RFQ may be approved by the Procurement Manager or Purchasing Supervisor when:
      - 1) The required services include professional services as defined by these Rules, such as legal or engineering services.
      - 2) The quality of the service provided is of paramount import over the cost of the services.
      - 3) A Chief Justice Directive exists mandating the fees that may be paid to a provider; or
      - 4) As otherwise determined in writing by the Procurement Manager or Purchasing Supervisor.
    - d. The RFQ shall be posted to the electronic bid system and include the following:
      - 1) The RFQ shall be posted for at least thirty (30) calendar days.
      - 2) The RFQ shall contain written evaluation criteria when it is published.
      - 3) The RFQ shall be awarded to the most qualified proposer(s), price not included.
      - 4) When only one pre-qualified provider is awarded, the price will be negotiated following the RFQ process.

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5) When more than one provider is awarded, either:

- i. Pricing submissions for each Scope of Work will be obtained from the awarded providers prior to awarding the specific scope; or
- ii. Hourly rates, discounts and unit prices will be negotiated with the awarded providers with a total not to exceed amount; or
- iii. A combination of the two items above.

3. Procurement Methods (excluding RFI processes):

- a. Contract – See Contracting Fiscal Rules for further information and requirements for selection, preparation, and processing of a Contract.
- b. Purchase Order

## 9. Solicitation Requirement Alternatives

- A. Cooperative Purchasing – The cooperative purchasing rules listed in Section 14 of the Procurement Fiscal Rules may be used in lieu of any informal solicitation process if the Procurement Unit determines it is in the best interest of the Department.
- B. Emergency Purchases – When there is a threat to life, health or safety, or to Judicial operations, the State Court Administrator may declare an emergency. Purchases made to address this emergency are exempt from the solicitation requirements listed here and are governed under Section 15 of the Procurement Fiscal Rules.
- C. Sole Source – Where the procurement is a Sole Source and has been approved per Section 16 of the Procurement Fiscal Rules.
- D. Request for Information (RFI) may be used as a method to obtain preliminary information about a market or type of available product or service when there is not enough information readily available to write an adequate specification or statement of work.
  1. An RFI may ask for input from potential vendors to assist the Department in preparing a specification or statement of work for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily.
  2. An RFI will not result in an award but may result in a solicitation. All RFI's must clearly state that no award will result from the request.
  3. All responses to the RFI are confidential until after an award based on a subsequent solicitation has been made or until the Department determines that it will not pursue a solicitation based on the RFI. After such time, the responses to an RFI shall be available in accordance with P.A.I.R.R. 2.
- E. Reverse Auctions – The Procurement Manager or Purchasing Supervisor may utilize a reverse auction for the purchase of goods when it is in the best interest of the Department and the circumstances are appropriate.
  1. A reverse auction (RA) is an optional selection method.
  2. An RA issued by the Procurement Unit must:
    - a. Be approved for use by the Procurement Manager or Purchasing Supervisor.

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- b. Be published on an RA internet bidding site.
- c. List the exact specifications for the item(s) required.
- d. Include only items available from many sources.
- e. Allow all bidders to see the bid price of any other bidder.
- f. Be posted for at least five (5) business days.
- g. Be awarded to the low bidder.

#### **10. Cancellation of Solicitations**

- A. Any solicitation may be cancelled, in whole or in part, at any point in the process when the Procurement Manager determines it is in the best interest of the Department. The reasons for cancellation shall be published on the electronic bid system and made part of the file. Reasons may include the following:
  - 1. The goods or services are no longer required;
  - 2. The Department can no longer reasonably expect to fund the procurement;
  - 3. Proposed amendments to the solicitation would be substantial requiring a new solicitation;
  - 4. Ambiguous or otherwise inadequate specifications were part of the solicitation, and a modification would not properly correct the deficiency;
  - 5. The solicitation did not provide for consideration of all factors of significance to the Department;
  - 6. Prices exceed available funds, and it would not be appropriate to adjust quantities or quality to come within available funds;
  - 7. All otherwise acceptable responses received are at clearly unreasonable prices;
  - 8. The Department 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. In this case, a notice of rejection shall be sent to all vendors that submitted responses; or
  - 9. The number of responses is not sufficient to ensure adequate competition.
- B. When responses are rejected, or a solicitation is cancelled after responses are received, the responses, which have been opened, shall be retained in the procurement file.

#### **11. Evaluation and Award**

- A. All responses shall be evaluated as outlined in the solicitation. Department Staff or the Purchasing Agent shall ensure that the award decision treats all vendors equitably.
- B. The Purchasing Agent shall only make purchases from and award contracts to, responsible vendors.
- C. Tie quotes/bids are responsive quotes/bids from responsible vendors that are identical in price, terms, and conditions and which meet all the requirements and criteria set forth in the solicitation. Tie quotes/bids shall be awarded as follows:
  - 1. The award shall be made to the Certified Small Business, as defined by the Small

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Business Administration.

2. If more than one tie quote/bid is from a small business, or if none are, the award shall be made to the in-state business if tie quotes/bids are received from in-state and out-of-state businesses.
3. If neither of the above applies, the Purchasing Agent shall reach out to the tied vendors, inform each of the tie and ask for a best and final offer which will be submitted in writing not more than one (1) business day after the request is made.
4. If after a best and final offer, the tie remains, the tie will be settled by a coin toss conducted by the Purchasing Agent. The vendor who submitted their bid first shall call the toss.

## 12. Protests of Award

### A. Resolution Prior to Protest by Mutual Agreement

1. Department Staff, in consultation with the Procurement Manager or Purchasing Supervisor, shall attempt to settle and resolve, by mutual agreement through informal discussions, any questions, concerns or controversies regarding the solicitation and the award of contract.
2. If a controversy cannot be resolved by mutual agreement, the vendor may file a protest.

### B. Protest Submission

1. Vendors may file a protest in any phase of a solicitation or award including, but not limited to, specifications, award, or disclosure of information marked confidential in a solicitation offer. Protests shall be submitted in writing within ten (10) business days after such aggrieved person knows or should have known of the facts giving rise thereto. The written protest shall include, at a minimum:
  - a. The name and address of the protestor;
  - b. Appropriate identification of the procurement by solicitation number;
  - c. A statement of the reasons for the protest; and
  - d. Any available exhibits, evidence, or documents substantiating the protest.
2. The protest shall be delivered to the Procurement Manager. If the protest is of an award, then the protestor shall deliver a copy of the protest to the awarded vendor on the same date it is submitted to the Procurement Manager.

C. If any additional information regarding the protest is requested by the Procurement Manager, then it shall be submitted within the period requested to expedite resolution of the protest (not to exceed five (5) business days). If any party fails to comply expeditiously with any request for information by the Procurement Manager, the protest shall be ruled upon without such information.

D. The Procurement Manager shall issue a written decision regarding the protest within ten (10) business days after all requested information supporting the protest is received. The decision shall be based on and limited to a review of the issues raised by the protestor and shall set forth each factor considered in reaching the decision. The Procurement Manager shall furnish a copy of the decision to all affected parties in writing.

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E. The affected party may appeal the decision within ten (10) business days after receipt of the decision of the Procurement Manager.

1. Any appeal made by the original protestor shall be limited to the ruling of the Procurement Manager and the original issues raised in the protest. No new issues may be raised. The appeal shall be sent to the Director of the Financial Services Division at the Office of the State Court Administrator. The Director of Financial Services shall make a ruling within twenty (20) business days on any appeal. When an appeal is regarding an award, the protestor shall send a copy of the appeal to the awarded vendor on the same day it is delivered to the Director of the Financial Services Division. The Director's decision shall be final and conclusive.
2. An affected party (i.e., a party who had received an intent to award but lost the award after a successful protest) will gain full protest rights in accordance with Section 12.A.2.

F. Stay of Procurement

1. In the case of protested RFPs only, there shall be a stay of procurement until the decision of the Procurement Manager is issued and all appeals are complete, unless the Procurement Manager determines that execution of a contract without delay is necessary to protect substantial Department interests.
2. All procurements shall be stayed if an appeal to a protest decision is made unless the State Court Administrator determines that continuance is required to protect substantial Department interests.

G. If a protest is sustained by the Procurement Manager or an appeal is sustained by the Director of the Financial Services Division, and the protestor should have been awarded the contract under the solicitation but, due to a defect in the solicitation or process, was not, and the contract proceeded without a stay, the protestor may 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.

### 13. Grant Funded Expenditures

A. These rules govern all expenditures of grant funds, for contractors (otherwise known as vendors or contractors) as defined in 2 CFR 200.330(b), but do not apply to Subrecipients as defined under 2 CFR 200.330(a). The Financial Services Division Accounting Unit shall make all final determinations of whether an entity is a Contractor or Subrecipient. These Rules do not apply when the Department is the granting agency.

B. General Requirements

1. When an expenditure of grant funds reaches the thresholds that require a solicitation under Sections 4 and 5 of these Rules, the Department shall not start a solicitation process until an award letter has been received from the granting entity.
2. The District or Division applying for grant funds shall build in adequate time in all grant applications to allow the solicitation, negotiation and contract processes to be completed prior to the start an expenditure for which a solicitation is required.

C. Federal Grant Funded Procurements

1. The Department will comply with procurement standards as defined in 2 CFR 200,

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“Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards,” Subpart D. Sections 200.317 through 326, for all federal grant funded procurements.

2. Except where these rules conflict with the CFR referenced above, these Rules shall govern all federal grant procurements.

**D. Non-Federal Grant Funded Procurements**

1. These Rules shall apply to all grant funded procurements except where the specific rules of a grant, as agreed to between the Department and the granting entity, conflict with these Rules.
2. The Department will comply with all rules required by a grant where the Department has agreed in writing to do so.

**E. Named Vendors or Contractors in Grant Applications**

1. The Department shall not name a vendor or contractor in a grant application unless:
  - a. A sole source has been approved in accordance with Section 16 of these Rules prior to the submission of the grant application; or,
  - b. The Department is utilizing the same service and vendor under a previous solicitation, and:
    - i. The Solicitation and Agreement has adequate funds to cover the expenditure; and
    - ii. The term of the Agreement covers the term of the grant need.
2. The Department will use any vendor or contractor required if the use of the specific vendor or contractor is necessary to comply with the specific terms and conditions of a sponsored project grant or contract. This may occur when the granting entity requires the use of said vendor or contractor, without a request from the Department.

**14. Cooperative Purchasing**

- A. The Department may use competitively awarded purchasing agreements of other public entities or other entities whose sole purpose is to support public entities, for the acquisition of supplies, materials, equipment, information technology, or related services. The use of this alternative purchasing method provides the Department with the ability to reduce the cost of acquiring supplies, materials, equipment, information technology and services by pooling the purchasing power of more than one public entity or by avoiding the expenses of conducting its own individual competitive process.
- B. The Department may participate in cooperative purchasing agreements, joint powers agreements, or other agreements with one or more other public entities within the United States for the purchase of supplies, materials, equipment, information technology or services if:
  1. A public competitive selection process was used to secure the underlying contracts for goods, supplies, equipment, information technology or services with the lead public agency;
  2. The Department has identified a need for the supplies, materials, equipment, information technology or services;

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3. A copy of the agreement or other written proof is secured by the Department reflecting that a public competitive process was used;
  4. It is determined to be in the best interest of the Department to use the alternative procurement method described herein; and,
  5. The Procurement Unit has reviewed and approved the use of the agreement.
- C. The Procurement Unit will maintain a list of cooperative agreements on the Procurement Unit website which are approved for use for any purchase amounts up to \$250,000. Prior to adding a cooperative procurement agreement to the pre-approved list, the Procurement Unit must perform an evaluation of whether the Department's competitive solicitation process or the cooperative provides the best value.
- D. The Procurement Unit and Contracts Management Unit shall review and approve the use of cooperative agreements by Administrative Authority or Department Staff prior to use for any purchase amounts greater than \$250,000.

#### 15. Emergency Purchasing

- A. **Emergency Procurement.** The Department may conduct a procurement on an emergency basis to allow quick response when an urgent situation exists that prevents the use of a competitive procurement method. Emergency procurements may be negotiated on a Sole Source or other limited competitive solicitation basis, as dictated by the circumstances.
- B. **Declaration of Emergency Situation.** Notwithstanding any other provisions of the Procurement Fiscal Rules, the State Court Administrator may declare that an emergency exists and make, or authorize Department Staff to make emergency procurements if:
1. There exists a threat to public health, welfare or safety;
  2. There exists a threat to the preservation or protection of property; or
  3. Compliance with the procurement process as described in these Rules would obstruct or threaten the operation of the Department.
- C. An emergency situation does not include:
1. Procurements that need to be rushed because of a failure to plan;
  2. End of the fiscal year procurements; or
  3. End of grant procurements.
- D. The State Court Administrator shall notify the Chief Justice within two (2) business days of the emergency procurement.
- E. In the event an emergency arises after normal working hours and the State Court Administrator is not available, the Department Staff that executed the emergency procurement shall notify the State Court Administrator in writing at the start of the next business day.
- F. Emergency procurements shall be made with as much competition as the State Court Administrator deems appropriate under the circumstances pursuant to their written determination and shall include the following:
1. Selection of a procurement procedure that will ensure all goods and/or services are procured in time to meet the emergency situation. Given this constraint, the highest

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competition as is practicable shall be used to solicit the emergency procurement.

2. The Department shall use existing contracts or cooperative agreements to meet the emergency procurement needs and to reduce additional competitive solicitations.
3. Written determination stating the basis for the emergency and for the award of the procurement shall be maintained in the procurement file and retained in accordance with the Department Retention Manual. The determination shall include the following:
  - a. The basis for the emergency;
  - b. The date the emergency became known;
  - c. A list of goods or services required or procured;
  - d. A description of the efforts made to ensure that proposals or offers were received from as many vendors as possible considering the circumstances; and
  - e. The basis for selection of the selected vendor.
4. Price/Cost Analysis
  - a. During the process, or as soon as practicable, Department Staff shall perform a price-cost analysis to determine that the price is fair and reasonable. Such analysis shall be kept with the procurement file.
  - b. If after analysis, Department Staff does not feel the price paid to be fair and reasonable, they will do one of two things:
    - i. Seek competition; or
    - ii. Negotiate with the vendor to lower the price.
- G. The Department shall follow the Federal Emergency Management Agency (FEMA) requirements in maintaining all records associated with emergency response.
- H. The Department shall transition all emergency procurements to the responsible governmental entity as soon as practical.

#### **16. Sole Source Purchasing**

- A. Procurement without competition through a sole source procurement method is authorized under the limited conditions set forth in this Rule. The Department shall take all reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the Department. The Procurement Unit shall act, whenever possible, to prevent the need for procuring goods and/or services without competition.
  1. A sole source procurement method is authorized when the purchase is above the discretionary solicitation limits as defined in Section 4 and it is determined that one of the following conditions exists:
    - a. There is only one specified good or service that can meet the needs of the Department and only one vendor exists that can provide the goods or services.
    - b. There is a need to match existing goods or services to maintain program continuity, to control maintenance, to allow for integration or other relevant factors and only one vendor exists that can provide the goods or services.

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- c. A specific expertise, experience or process is needed to provide a good or service that can meet the needs of the Department and only one vendor exists that can provide the goods or services.
  - d. A grant award requires the use of a specified good, service, or vendor and the State Court Administrator approved the use of the specific vendor in writing prior to the grant application.
  - e. A brand name specification is required to meet the needs of the Department but a “brand name or equal specification” would not sufficiently accomplish the Department’s goal. A good or service may be a brand name specification, but that specific good or service may be available from multiple sources (e.g., a Dodge Caravan may be available from multiple car dealers), in such situations a sole source must be processed for the brand name, and after approval, a solicitation must be issued pursuant to Sections 4 through 9.
2. For all sole source procurement requests using the justification under Section 16.A.1.b, a competitive solicitation under Sections 4 through 9 of these Rules must be issued at least once every ten (10) years from the date of the original procurement to determine whether it is in the best interest of the Department to continue to match existing inventory.
  3. An approved sole source may be effective for up to five (5) years and may be renewed for one additional period up to five (5) years. The specific term of the sole source must be stated in the sole source approval document.
  4. A sole source procurement method is not required for purchases under the discretionary solicitation limits.
- B. The sole source procurement shall be coordinated by the Procurement Unit.
1. Department Staff must obtain authorization to perform a sole source procurement by submitting a request, along with any other pertinent information to the Procurement Unit. The request shall include:
    - a. A description of the need for the good or service.
    - b. An explanation of how the good or service meets the requirements of Section 16.A.1.a through e, if applicable.
    - c. An explanation of how the source for the good or service meets the requisite in Section 16.A.2, if applicable.
    - d. A description of how the sole source procurement will be avoided on future transactions for the good or service.
    - e. Supporting documentation from the vendor regarding the good or service, such as quotes, literature, etc.
    - f. The request shall:
      - 1) Provide summary information detailing the costs of using an alternative good or service or of not making the purchase.
      - 2) Provide cost analysis explaining why the price offered from the vendor is fair and equitable.

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2. All sole source procurement requests must be submitted to the Procurement Unit for review and analysis prior to being provided to the State Court Administrator.
  - a. Upon receiving the request for a sole source procurement, the Procurement Unit shall:
    - 1) Review the sole source and perform market analysis to determine whether the unit agrees or disagrees with the sole source request.
    - 2) Publish the sole source on the electronic bid system for review by the public for at least fourteen (14) calendar days. If the Procurement Unit receives one (1) or more responses to the notice from qualified and responsible vendors who can meet the specifications identified in the notice, and who are not otherwise prohibited from bidding on the contract, the sole source procurement method shall not be used.
    - 3) Review any information provided by the community which agrees or disagrees with the sole source procurement and share this information with the requesting Department Staff.
    - 4) Review the price cost analysis submitted by the requesting Department Staff. The Procurement Unit has a duty to negotiate the most favorable price, terms and conditions notwithstanding the sole source nature of the procurement.
    - 5) Write a consenting or dissenting opinion regarding the sole source procurement request including making a written determination that the price is fair and reasonable.
    - 6) Forward the sole source procurement request and the Procurement Unit's opinion to the State Court Administrator.
    - 7) The State Court Administrator shall issue an opinion on the sole source procurement request. A copy of the approved or denied sole source procurement request will be returned to the requesting Department Staff and the Procurement Unit.
    - 8) The State Court Administrator shall report all approved sole source procurements to the Chief Justice on a quarterly basis.
    - 9) All approved sole source procurements shall be maintained by the Procurement Unit.
  - b. Exceptions. The requirement to post a sole source procurement on the electronic bid system shall be waived when:
    - 1) The sole source procurement is required as a part of a grant contract.
    - 2) The sole source procurement is mandated by law.
    - 3) The sole source procurement is a part of an emergency procurement, as defined under these Rules.
    - 4) If a sole source procurement has been approved within the last five (5) years of a new request, a new sole source procurement memorandum does not have to be written for a particular vendor when the same circumstances exist for which the original sole source was granted to that vendor.

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## 17. Violation of Rules

- A. A Rule Violation occurs when the Department incurs a liability or expends funds without the requisite authority and approval established under these Rules.
- B. Department Staff shall report any Rule Violation or the appearance of a Rule Violation of these Rules to the Administrative Authority or the Procurement Manager.
- C. The following exceptions are not Rule Violations:
  1. A minor deviation, technical, or immaterial failure to comply with these Rules in which the Department Staff member does not exhibit a careless disregard of these rules, malice, an intent to defraud or conceal, or receive a personal benefit. This may consist of a transaction that fails to follow a minor procedural step but results in the Department receiving a valuable and needed benefit, without significant budgetary impacts.
  2. Transactions for which a Fiscal Rule Waiver was granted in accordance with Chief Justice Directive 04-02.
  3. Late renewal of a contract already in place from a previous period.
  4. Requests for checks or transfers to another State government entity.
  5. Payments of insurance.
- D. Any Department Staff who incurs a Rule Violation may be subject to the following:
  1. Corrective or disciplinary action pursuant to the Department Personnel Rules.
  2. Personal liability for such obligation unless the violation is ratified.
  3. Appropriate civil action to recover any costs incurred or paid by the Department.
  4. The measures identified in D.2 and D.3., above, shall not be considered unless the ratification review authority establishes that the purchaser acted in bad faith, in a fraudulent manner, benefited at the Department's expense, or with an intent to deliberately evade the Procurement Fiscal Rules.
- E. The Department shall not make payments to a vendor when a Rule Violation has occurred unless the purchase has been ratified in accordance with this Section 17.
- F. The Administrative Authority, in their sole discretion, may only ratify the obligations created by a Rule Violation, effected by an individual(s) under the Administrative Authority, by including written determination in the procurement file for violations up to \$50,000 for goods and for services.
- G. All Rule Violations of goods over \$50,000 and services over \$50,000 may be ratified by the Director of Financial Services pursuant to an evaluation and recommendation by the Procurement Manager and the Department Controller.
- H. The ratification process shall include the following:
  1. The Budget Authority and the Department Staff involved in the purchase shall provide written explanation documenting the need for the purchase, the facts and circumstances giving rise to the purchase including an explanation for why these rules were not followed, and the extent to which competition was obtained.

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2. The Administrative Authority or the Director of Financial Services shall ratify the purchase when the following conditions are met:
  - a. The purchase was reasonable and necessary under the circumstances, and;
  - b. The prices or rates are fair and reasonable, and;
  - c. The parties to the Rule Violation did not act in bad faith, benefit personally, act in a fraudulent manner, or with an intent to deliberately evade the Procurement Fiscal Rules, and;
  - d. The Rule Violation is not part of a consistent pattern of violations.
3. Notwithstanding the findings of the ratification process listed above, the purchase may be ratified if it is determined to be in the best interests of the Department.
  - I. A written determination regarding the ratification shall be provided to the Procurement Manager who shall review and forward to the State Court Administrator. The State Court Administrator shall report all ratified violations to the Chief Justice on a quarterly basis.
  - J. The Department may take the following actions if it declines to ratify the purchase:
    1. Return the product, or any portion thereof, or suspend or discontinue the service.
    2. Authorize payment to the vendor for the good or service, or a portion thereof, unless it is determined that the vendor acted fraudulently or in bad faith. Such authorization shall be without prejudice to the Department's right to pursue damages.
    3. Require the Budget Authority to pay for all or a portion of the goods or services, to the extent the Department did not receive a benefit from the purchase. Any recovery action against a Department Staff member should be focused on recouping and retrieving an inappropriate, unearned benefit received by the Department Staff member, any other individual, or external entity, resulting from the unauthorized transaction.
    4. Require the Department Staff to pay for all or a portion of the goods or services, to the extent the Department did not receive a benefit from the purchase. Any recovery action against a Department Staff member should be focused on recouping and retrieving an inappropriate, unearned benefit received by the Department Staff member, any other individual, or external entity, resulting from the unauthorized transaction.
    5. Contact SCAO legal services to initiate the appropriate civil action to recover damages incurred by the Department.
    6. Terminate the contract (if applicable). The Procurement Manager and the Contracts Management Unit shall be notified prior to any termination of a contract.

## 18. Contracts

- A. A contract may be required as described in Sections 6, 7, and 8, and as set forth in the Contracting Fiscal Rules.
- B. Contract requests shall be submitted to the Contracts Management Unit as specified in the Contracting Fiscal Rules, including but not limited to Section 4.B.5. Contract Request Submission.

- C. The Procurement Unit will submit the contract request if the Unit has issued a solicitation for Department Staff.

**19. Contract Amendments, Modifications, and Change Orders (may require additional solicitation procedures)**

- A. A Change Order is required when one or more of the following occur:
  - 1. A potential modification to a contract would result in a material increase above the Original Contract Amount;
  - 2. There is a substantial change to the required scope of work, however, the additional scope must remain consistent with and of a similar nature to the original agreement; or
  - 3. The term of a contract needs to be extended beyond the original contemplated term.
- B. Discretionary service purchases: Change Orders that extend the total term of the contract beyond five years plus 180 days, or that cause the total purchase amount to exceed \$75,000, are not permitted and will require a solicitation under these Rules.
- C. Formal solicitations purchases: Change Orders for procurements originally awarded following the procedures described in Sections 4 and 5, are permitted as follows:
  - 1. No amendment or change to the original contract shall:
    - a. Extend the contract more than 180 days beyond the initial term and all renewal periods, unless the extension is for a vendor with an existing contract who has been awarded a new contract covering substantially the same scope of work. In such cases, an extension of up to 365 days may be permitted to allow for a transition to the new agreement; or
    - b. Increase the total purchase amount of the contract by more than 50% of the Original Contract Amount.

Original Contract Amount	Maximum Change Order Amount	Maximum Additional Term	Alternative Procurement Method
Up to \$50,000	Cannot exceed \$75,000 total	180 Days (beyond 5 years)	Any Solicitation or Sole Source
\$50,001 to \$250,000	50% of the Original Contract Amount	180 Days	Informal Solicitation, Formal Solicitation, or Sole Source
Greater than \$250,000	50% of the Original Contract Amount	180 Days	Formal Solicitation or Sole Source

**20. Contractor Suspension and Debarment**

- A. The Department may suspend or debar a vendor in accordance with the standards and procedure established in this Rule.

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- B. A vendor may be suspended for the following reasons:
1. Pending an investigation for possible suspension and/or debarment, if it is in the best interests of the Department.
  2. Failing to honor the offered terms and conditions in response to a solicitation.
  3. Failing to honor pricing offered in response to a solicitation.
  4. Failing to act in good faith.
  5. Pending an investigation for charges under Section 20.C.2.
- C. A vendor may be debarred for any of the following reasons:
1. Conviction of a criminal offense in relation to obtaining or attempting to obtain a Department contract or in the performance of such contract.
  2. Conviction under State of Colorado or federal statutes regarding embezzlement, theft, forgery, bribery, falsification of records, destruction of records, or receiving stolen property.
  3. Conviction under State of Colorado or federal antitrust statutes arising out of the submission of procurement responses.
  4. 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.
  5. The vendor is currently under debarment by any other public entity which is based upon a settlement agreement, or a final administrative or judicial determination issued by a federal, state or local public entity.
  6. Violation of the provisions of Section 7-108-401, C.R.S., "Standards of conduct for directors and officers."
- D. Suspension Procedure
1. After meeting with appropriate Department Staff and where practicable, the vendor who is to be suspended, the Procurement Manager may issue a written determination to suspend a vendor from doing business with the Department pending an investigation to determine whether cause exists for debarment. The suspension shall not exceed three (3) months unless a criminal indictment has been issued for an offense, which would be cause for debarment. In such circumstances, the suspension may remain in effect until a disposition is reached in the suspended vendor's case.
  2. 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; and
    - b. Inform the suspended vendor that any person(s) representing the suspended vendor during the suspension period shall not conduct business with the Department and that any solicitation responses received from the suspended vendor during the suspension period shall not be considered.
  3. The suspension period will be effective upon issuance of the notice of suspension.

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E. Debarment Procedure

1. Following the completion of the investigation, if it is determined that a vendor has engaged in activities that are cause for debarment, the Procurement Manager may debar the vendor. A vendor may be debarred for a period commensurate with the seriousness of the offense.
  2. A written notice of debarment shall be sent to the debarred vendor. The notice shall:
    - a. State the debarment period; and
    - b. Inform the debarred vendor that any person(s) representing the debarred vendor during the debarment period shall not conduct business with the Department, and that any solicitation responses received from the debarred vendor during the debarment period shall not be considered.
  3. The debarment period will be effective fourteen (14) days after the notice of debarment is sent to the vendor.
  4. After notification of the debarment and prior to the debarment becoming effective the vendor can request a reconsideration of the debarment from the Director of the Financial Services Division.
  5. After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires, unless the Director of the Financial Services Division reconsiders the debarment.
- F. The Procurement Unit shall maintain a master list of all suspensions and debarments. The master list containing information concerning suspensions and debarments will be a public record and shall be maintained on the Procurement Unit's internal website.