

**COLORADO DEPARTMENT
OF MILITARY AND VETERANS AFFAIRS**

**DEPARTMENT
PROCUREMENT MANUAL**



October 2014

STATEMENT OF PURPOSE

The purpose of this manual is to make all employees within the Department of Military and Veterans Affairs aware of the procedures they must follow in spending public funds (state, federal, trust and grant funds) in a responsible, lawful manner and to provide a tool to better understand the Colorado Department of Military and Veterans Affairs purchasing process. The Purchasing and Contracts staff follows and adheres to the Colorado Procurement and Fiscal Rules, and operates under the authority granted by the Executive Director of the Colorado Department of Personnel and Administration. This manual will provide each user the necessary steps to receive the right item or service at the right time and at the best price. Each topic in this manual has been placed in a separate **Section** to facilitate revisions and additions. Guidelines, forms and Internet addresses are listed in **Section 22**, and can be found at the end of the manual.

These are general standard guidelines for the Department. If you are unsure about proper procedure(s), check with the Purchasing and Contracts Office.

It is not feasibly possible to address every situation that might arise. Therefore if your question is not answered, please contact the Purchasing and Contracts Office for additional assistance.

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[DMVA Procurement website](#)

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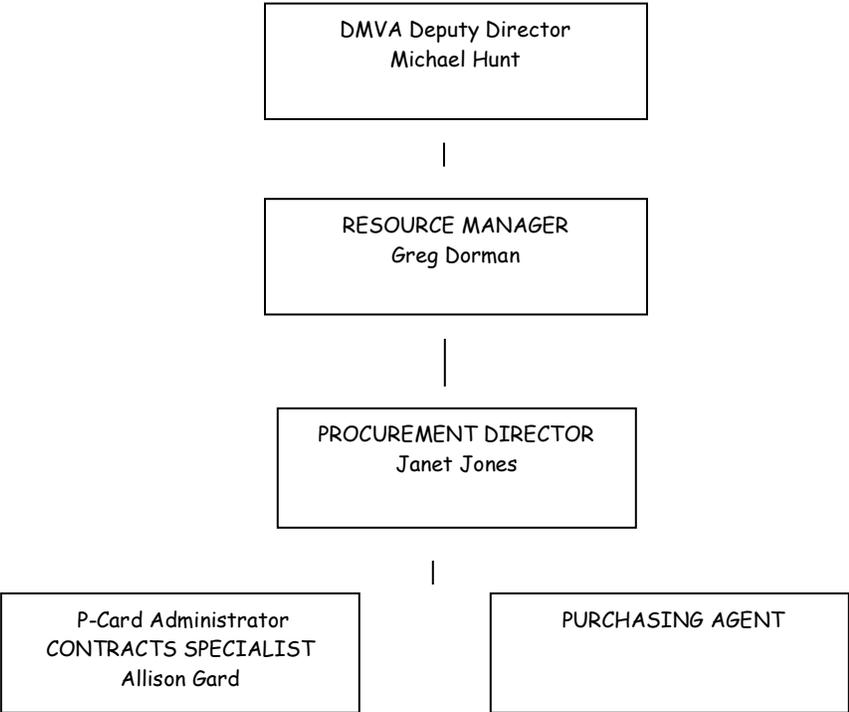
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****The above listed forms and/or links can all be found on the DMVA
[Purchasing and Contracts](#) webpage ****

ORGANIZATIONAL CHART
October 2014



QUICK OVERVIEW

GOODS AND COMMODITIES

\$0 TO \$5,000 - Non-Recurring Purchases - No Purchase Order required. **(Section 11)**

Remember:

- Use your Procurement Card **(Section 14)**
- Use CCI if purchasing furniture **(Section 12)**
- Check the Prior Approval lists **(Section 13)**
- Use State Price Agreements **(Section 18)**

\$5,000.01 and Over - Plus Recurring Purchases exceeding \$5,000 per year per Fiscal Rule 2-2 requires an encumbrance and commitment document (purchase order or contract).

- Emergency procurement procedures - contact the Purchasing and Contracts Office. **(Section 1)**
- Plan accordingly☺.

SERVICES

\$0-\$5,000 – use small purchase procedure **(Section 11)**

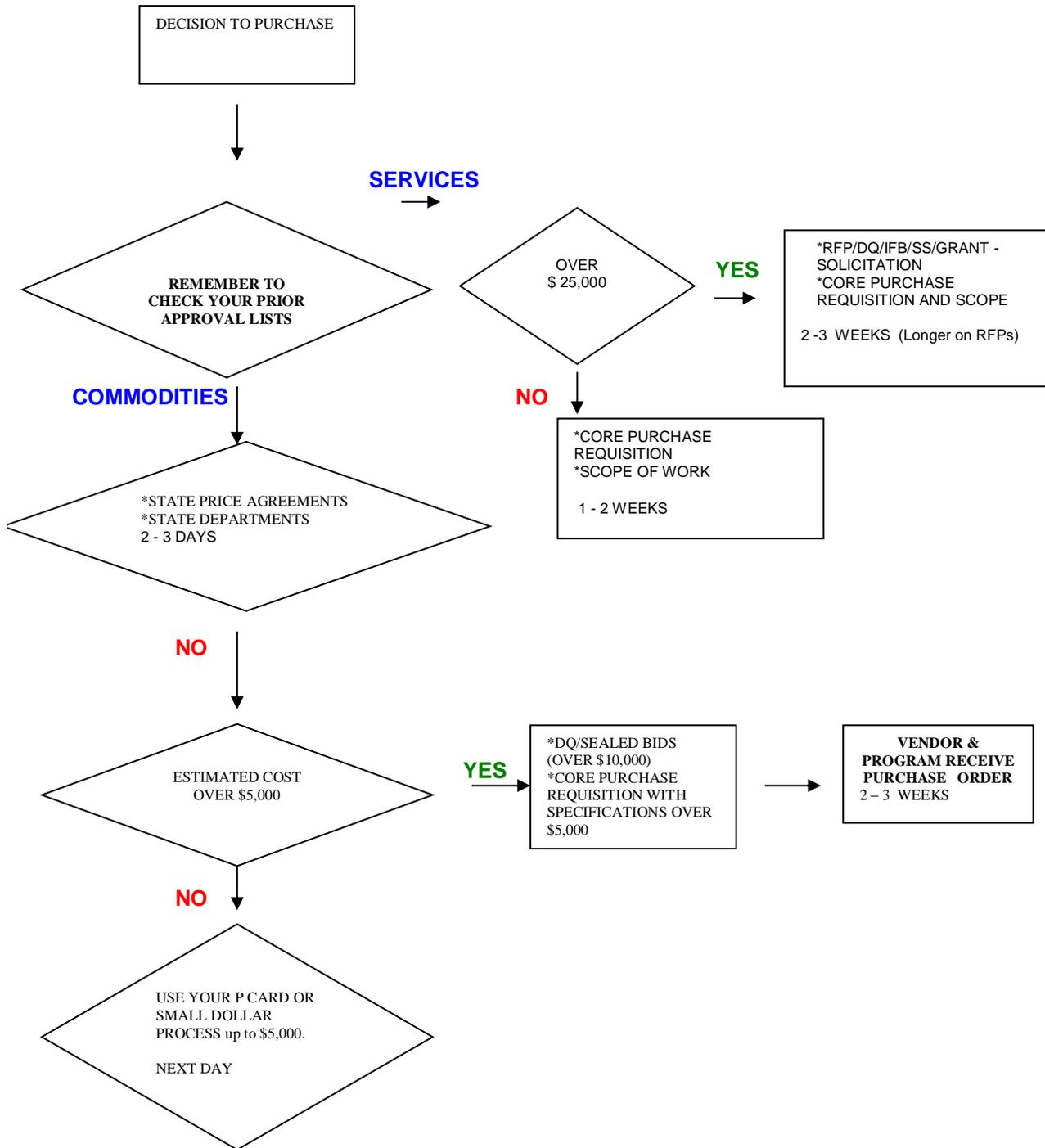
\$5,000.01 and over – enter a purchase order requisition in the CORE system and attach the appropriate documentation. **(Section 10)**

See the flow chart and dollar thresholds on the next pages for approximate processing time and dollar limits.

NOTE: Per Fiscal Rule 2-2, memberships, dues, registrations, postage, subscriptions, publications and utilities do not require an encumbrance document. **PLEASE NOTE:** Trash service IS NOT a utility.

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FLOWCHART



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Dollar Threshold Requirements for Goods and Services

	\$ 0 - \$10,000	\$10,000.01 - \$25,000	\$25,000.01 - \$150,000	\$150,000.01
Discretionary Always check Price Agreements and other State Departments	Procurement Discretionary for both Goods and Services.	Procurement Discretionary for Services only. Goods have to be put out for competitive solicitation.	Never Discretionary. Goods & Services must be put out for competition.	Never Discretionary. Goods & Services must be put out for competition.
Personal Services – Vendor Selection Quote. Description of vendor selection and pricing.	Not required.	Required. Details of pricing being fair and reasonable. Include any comparable pricing (if available)	Required. Details of pricing being fair and reasonable. Include any comparable pricing (if available)	Required. Details of pricing being fair and reasonable. Include any comparable pricing (if available)
Personal Services – Contract Waiver Review	Less than \$5,000 Not required. Over \$5,000.01 (Required)	Required.	Required.	Required.
Competitive Solicitation	Optional. An agency may solicit competition if it so chooses.	Required for Goods. Optional for Services.	Never Discretionary. Required for both Goods & Services.	Never Discretionary. Required for both Goods and Services.
Documented Quote	Not required.	Required for Goods. Optional for Services.	Never Discretionary. Required for both Goods & Services.	Cannot be used.
Competitive Sealed Bid	Not required.	Not required. At a minimum, a Documented Quote must be done for Goods.	Not required. At a minimum, a Documented Quote must be done for both Goods and Services.	Either a Competitive Sealed Bid or an RFP must be used.
Request for Proposal (RFP)	Not required.	Not required. At a minimum, a Documented Quote must be done for Goods.	Not required. At a minimum, a Documented Quote must be done for both Goods and Services.	Either a Competitive Sealed Bid or an RFP must be used.
Formal Written Contract	Optional. May be used if the Purchase Order terms & conditions do not sufficiently protect the State.	Optional. May be used if the Purchase Order terms & conditions do not sufficiently protect the State.	Optional. May be used if the Purchase Order terms & conditions do not sufficiently protect the State.	Optional for the purchase of Goods. Required for the purchase of Services. Over \$100,000

CORE DEFINITIONS

CORE: Colorado Operations Resource Engine
URCATS: Universal Requestor Catalog Search
UR: Universal Requestor
RQS: Requisition
DO: Delivery Order
PO: Purchase Order
CT: Contract
RC: Receiver

URCATS – Used to search for commodities in the Catalog system. The search requires specific parameters in which to search for goods and services, i.e. item name or commodity number. The search will create a “shopping” cart and will ultimately create the UR document.

UR – Used to enter the required information, such as Accounting and shipping location(s), after completing the search through URCATS. This document will ultimately create the RQS or the DO document. This document does not encumber funds.

RQS – Used to create a purchase order requisition from the UR document. This document is also used by the Purchasing Office to create other documents, such as: solicitations, purchase orders, and contracts. This document pre-encumbers funds.

DO – Used to order commodities and services from available Price Agreements within the CORE Catalog. The Vendor receives this document, much like a Purchase Order, for goods and services at any dollar limit. This document does encumber funds.

PO - Used to encumber funds and order commodities and services. Requires the use of commodity codes. Accounting and commodity lines, are separate, but are linked. Requires a CORE RC** document and Vendor Invoice.

CT - Used to encumber funds and order commodities and services. Requires the use of commodity codes. Accounting and commodity lines are separated, but are linked. Requires a CORE RC** and vendor invoice. This document is most used for contracts.

RC** - Required to receive items ordered on PO, DO, and CT documents. Must reference the purchase order number and receive items by commodity line number.

** Commodity codes with 900 series do not require RC's

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PURCHASING DEFINITIONS

Acknowledgment – A form used by a vendor to advise a purchaser that an order has been received; usually implies acceptance.

Acquisition – The process of obtaining supplies, services, or construction through purchase, lease, or grants. The process includes the establishment of needs, description of requirements, selection of method of procurement, selection of sources, solicitation of offers, award of contract, financing, and contract administration.

Addendum – An addition or supplement to a document, for example, items or information added to a procurement document.

Adjustment – The amount of variation permitted by an adjustment clause in the contract generally permitting a change upward or downward in the price or obligations in case certain events transpire.

Agreement – 1. A duly executed and legally binding contract. 2. The act of agreeing. 3. A consensus of two or more minds in respect of anything done or to be done.

All or None – A bid submitted in response to an invitation for bids (IFB), in which the bidder states the bidder will not accept a partial award, but will only accept an award for all the items or services included in the IFB.

Amendment – 1. A revision or change to a document; often used to correct a solicitation. 2. An agreed addition to, deletion from, correction or modification of a document or contract.

Appropriation – 1. Sum of money from public funds set-aside for a specific purpose. 2. Legislative authorization to expend public funds for a specific purpose.

Approval – Official permission, consent, sanction.

Arbitration – 1. A process by which a dispute between two contending parties is presented to one or more disinterested parties (arbitrators) for a decision. 2. The resolution of a disagreement by such a process.

Audit – A methodical examination and review of records and documents, with confirmation by physical inspection or otherwise, of a situation or condition (as within a purchasing office), concluding with a detailed report of findings.

Award – The presentation, after careful consideration, of a purchase agreement or contract to the selected bidder or offeror.

Best Value – An assessment of the return, which can be achieved, based on the total life cycle cost of the item; can include an assessment of the functionality of the item; can use cost/benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.

Bid – An offer submitted by a prospective vendor in response to an invitation for bid (IFB) issued by a purchasing authority; becomes a contract upon acceptance by the buyer.

Bidder – One who submits a response to an invitation for bid (IFB).

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PURCHASING DEFINITION

Bid Documentation – File containing all information relating to the bid, including requirements, purchase request, invitation for bid (IFB), all bids in response to the IFB, bid evaluation, and award information.

Bid File – A file containing the individual bids from all vendors solicited by the invitation for bids (IFB).

Bid Opening – The formal process in which sealed bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the invitation for bids. The amount of each bid is recorded and bids are made available for public inspection.

Bid Protest – A formal complaint made against the methods employed or decisions made by a procurement authority in the process leading to the award of a contract.

Brand Name or Equal Specification – A specification using one or more manufacturers' brand names, with identifying model numbers, to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites bids for equivalent products from any manufacturer.

Budget – A forecast of planned receipts and allocation of expenses for a specific period of time.

Buyer – 1. A purchaser; can refer to the buying agency or government. 2. A worker in a procurement office who is appointed to purchase a specific range of goods or services on a routine basis, usually under the supervision of a section head or purchasing manager.

Clarification – A communication with an offeror for the sole purpose of eliminating minor irregularities or apparent clerical mistakes in a proposal; may be initiated by either offeror or purchaser; does not give offeror an opportunity to revise or modify its proposal, except to the extent the correction of apparent clerical mistakes results in revision.

Commodity – Any moveable, tangible article of trade or commerce.

Commodity Code – A system of words and numbers designed to identify and list commodities or services by classes and sub-classes.

Competition – The effort of two or more vendors to secure the business of a purchaser by the offer of the most favorable terms as to price, quality, promptness of delivery, and/or service.

Competitive Bid Solicitation – Solicitation of two or more qualified sources by invitation or public notice for the same requirement.

Conflict of Interest – An actual or potential situation in which the personal interests of a vendor, employee, or public official are, or appear to be, in conflict with the best interests of the jurisdiction.

Consulting Services – Services of an advisory nature to support policy development, decision-making, administration, or management of the government; normally provided by persons and/or organizations considered to have prerequisite knowledge or special abilities not generally available in the government.

Contract – 1. A legally binding promise, enforceable by law. 2. An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. 3. All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. 4. An agreement between a contracting authority and a person or

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business unit to provide a good, perform a service, construct a work, or to lease real property for appropriate consideration.

Contract Amendment – An agreed addition to, deletion from, correction or modification of a contract.

Contract Award – A final agreement on the terms and conditions of a contract between a buyer and seller.

Emergency Purchase – A purchase made to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the jurisdiction, that does not allow time for normal, competitive purchasing procedures. Also called exigency purchase.

Evaluation Factors – In competitive negotiations, those factors specified in the RFP that will be considered in determining to whom a contract will be awarded.

Evaluation of Bids – The examination of bids after opening to determine the bidder's responsibility, responsiveness to requirements, and other aspects of the bid to determine the successful bidder.

Fair and Reasonable – A subjective evaluation of what each party sees as equitable consideration in such areas as terms and conditions, cost or price, assured quality, timeliness, and any other area subject to negotiation.

Formal Bid – A bid, which must be submitted in a sealed envelope and in conformance with a prescribed format to be opened in public at a specified time.

Goods – 1. Supplies or anything purchased or available for purchase, other than real property or services. 2. Any item of merchandise, raw materials, or finished goods; any inventorial items or assets of any kind, including fixed assets, supplies, and items in process of production.

Informal Bid – A competitive bid or price quotation for supplies or services that is conveyed by letter, telephone, or other means and does not require a sealed bid, public opening, or public reading of bids.

Invitation for Bids (IFB) – A formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

Late Bid or Proposal – A bid, proposal, withdrawal, or modification received, a designated place for receipt, after the established due date and time.

Letter of Intent – A letter issued in advance of a contract in which the signer declares his intention to buy, manufacture, or deliver a product or service.

Minority-Owned Business – A business which is owned or controlled by a member of a recognized minority group, as defined by the jurisdiction.

Modification – Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

Multiple Award – The award of a contract to two or more vendors or contractors to furnish the same or similar supplies, or services, where more than one vendor is needed to meet the contract requirements for quantity, delivery, or service.

Multi-Year Contracts – Procurement contracts extending more than one year.

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Non-Responsive Bid – A bid that does not conform to the mandatory or essential requirements of the invitation for bid.

Notice of Award – A written notification from the jurisdiction to the successful bidder, or offeror stating that there is an award of a contract in accordance with a bid or proposal previously submitted, and that effective with receipt the vendor or contractor shall proceed with performance; allows work to start while contract is printed and readied for distribution.

Offeror – 1. One who submits a proposal in response to an RFP in competitive negotiation. 2. One who makes an offer in response to a solicitation.

Open End Contract – A contract which sets forth the general provision of supplies and services that may be delivered or performed within a given period of time, but in which quantity and/or duration is not specified. The quantity and delivery are specified with the placement of orders.

Option to Renew – An option in a contract that allows a party to reinstate the contract for an additional term, beyond that stated in original contract, in accordance with contract terms.

Piggyback Method – A form of intergovernmental cooperative purchasing in which a large purchaser requests competitive sealed bids, enters into a contract, and arranges, as part of the contract, for other public purchasing units to purchase from the selected vendor under the same terms and conditions as itself. Also called hitchhiking method.

Pre-Bid Conference – Meeting held with prospective bidders prior to solicitation of bids, to clarify any ambiguities, answer bidder questions, and ensure all bidders have a common basis of understanding regarding the supplies or services required.

Price Agreement – A contractual agreement in which a purchaser contracts with a vendor to provide the purchaser's requirements at a predetermined price.

Procurement – 1. Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. 2. The combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, storekeeping, and salvage and disposal operations.

Professional Services – Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance.

Proposal – 1. In competitive negotiations, the document submitted by the offeror in response to the RFP to be used as the basis for negotiations for entering into a contract. 2. A tender, bid or offer which may be either unsolicited or submitted in response to an invitation from a contracting authority. A proposal is usually requested in cases where the selection of a contractor is to be made on the basis of the performance that is offered rather than on that of price alone and may require an outline of details such as the vendor's qualifications and experience and the identification of problems and proposed solutions in addition to details of price.

Protest – A written objection by an interested party to a DQ, IFB or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.

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Public Bid Opening – The process of opening and reading bids at the time and place specified in the IFB and in the presence of anyone who wishes to attend.

Purchase Order – A purchaser's written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation.

Purchase Requisition – A request to obtain material or services and authority to commit funds to cover the purchase.

Purchasing – The act and the function of responsibility for the acquisition of equipment, materials, supplies, and services. In a narrow sense, the term describes the process of buying. In a broader sense, the term describes determining the need, selecting the vendor or contractor, arriving at fair and reasonable price and terms, preparing the contract or purchase order, and following up to ensure timely delivery.

Qualified Bidder – A bidder determined by the purchasing organization to meet the minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list.

Receiving Report – Form listing items or services received from a vendor; used to match purchase order, vendors' invoices, and payment vouchers before payment is made.

Request For Proposal (RFP) – 1. All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals. 2. A bid solicitation method used for requirements exceeding authorized limits when it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirements, or other factors will be considered in the selection of the contractor in addition to price, or only one source is being solicited.

Requisition – 1. An internal document by which a using agency sends details of supplies, services, or materials required to the purchasing department. 2. A request to obtain material or services and authority to commit funds to cover the purchase.

Responsive Bidder – A vendor who has submitted a bid that conforms in all material respects to the requirements stated in the IFB.

Sealed Bid – A bid submitted in response to an invitation to bid. Bid is submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids.

Service-Disabled Veteran Owned Small Business (SDVOSB) - A business of which is owned or controlled by a Service-Disabled Veteran, as verified by the Center for Veteran Enterprise within the U.S. Department of Veterans Affairs.

Small Business – 1. An independently owned firm, corporation or establishment, having a small number of employees, low volume of sales, small amount of assets, and limited impact on the market. Size of business characterized as "small" varies by industry and definition of the jurisdiction. 2. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Sole Source Procurement – 1. Only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility. 2. A situation where a particular supplier or person is

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identified as the only qualified source available to the requisitioning authority. Non-competitive situations arise when there is only one source capable of supplying the product or service (referred to as sole source); and when, although a number of sources exist which are capable of supplying the product or service, it is decided for any reason to direct the purchase to a particular source.

Solicitation – 1. A request for bids to provide supplies, services, or construction items. 2. A request for a priced offer to sell goods or services. It may be by an invitation for bids or a request for proposals.

Specification – A description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

Statement Of Work (SOW) – Detailed description of the work that the purchasing jurisdiction wants the contractor to perform.

Tabulation of Bids – The recording of bids and bidding data listing items offered, prices, delivery schedules, etc., submitted in response to a solicitation for purposes of comparison, analysis, and record keeping.

Terms and Conditions (Ts and Cs) – All language in a contract, including applicable standard clauses and special provisions; the rules under which all bids must be submitted, and the stipulations, applicable to most contracts, often published by purchasing authorities for the information of all potential bidders.

Vendor – 1. One who sells goods or services; a supplier. 2. Supplier who has entered into a contract to sell goods/services to a federal government department or agency.

Woman-Owned Business – A business of which a given percentage is owned or controlled by a woman, as specified by the jurisdiction.

COLORADO PROCUREMENT CODE

Articles 101 and 112 of Title 24, Colorado Revised Statutes and the Procurement Rules promulgated there under, govern most procurements done for the Colorado Department of Military and Veterans Affairs. Procurement Rules can be found on the Internet.

Enter: [State Purchasing Office](#)

Click on link to [Fiscal Rules](#)

Click on link to [Procurement](#)

Any purchase made by the Colorado Department of Military and Veterans Affairs' Procurement Director, or designee, must be in accordance with this code. The Purchasing and Contracts staff is available to answer any questions that may arise. **If in doubt, please contact the Purchasing and Contracts Office for clarification prior to taking any action.**

Please note: Section 24-109-404, C.R.S., entitled LIABILITY OF PUBLIC EMPLOYEES:

"If any governmental body purchases any supplies, services, or construction contrary to the provisions of this code, or the rules promulgated pursuant thereto, the head of such governmental body and the public employee, which for purposes of this Section includes elected officials, actually making such purchase shall be personally liable for the costs thereof. If such supplies, services, or construction are unlawfully purchased and paid for with State moneys, the amount thereof may be recovered in the name of the State in an appropriate civil action."

DELEGATION OF PURCHASING AUTHORITY

The Executive Director of the Department of Personnel and Administration pursuant to Section 24-102-302, C.R.S, has delegated the purchasing authority for the Colorado Department of Military and Veterans Affairs.

CODE OF ETHICS

The following State of Colorado Code of Ethics is applicable to all purchases made by the Colorado Department of Military and Veterans Affairs (DMVA). Please read this Section carefully and be familiar with the meaning and intent. If you have questions and need further clarification, contact the Purchasing and Contracts Office.

CODE OF ETHICS

Any person employed by the State of Colorado who purchases goods and services, or is involved in the purchasing process, for the state, 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 State of Colorado, DMVA, 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 purchasing activities in accordance with the laws, while remaining alert to, and advising the State of Colorado, DMVA, regarding the legal ramifications of the purchasing decisions.
4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the State of Colorado (C.R.S., 18-8-308).
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 State of Colorado and 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 State of Colorado business.
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.



STOP BEFORE YOU BUY

Check for the following before you make a purchase:

State Price Agreements

ALWAYS Check the list of State Price Agreements to see if there is a State Commodity and Service Agreement. **(Section 18)**

Current lists may be obtained from the Internet.

Enter: [State Purchasing Office](#)
Click on link to [Open Solicitations](#)
Click on link to [Current Price Agreements](#)

Furniture

A MANDATORY Price Agreement is in place for Colorado Correctional Industries (CCI, formerly Juniper Valley.) for ALL furniture purchases. Please contact Purchasing and Contracts before placing furniture orders. **(Section 12)**

Internet Address <http://www.coloradoci.com>

Prior Approvals

There are **mandatory** Departmental and State approvals that are needed on many commodities and services. Make sure you check these listings prior to ordering. **(Section 13)**

SECTION 1
EMERGENCY PURCHASES

Emergency purchases may be authorized by the DMVA Procurement Director when a threat to public health or safety under emergency conditions, as defined by rules, exists. An emergency condition, as defined by R-24-103-206-01 of the Colorado Procurement Rules and Fiscal Rule 2-2 (**Section 22**), is a situation that creates an immediate threat to public health, welfare, or safety to the functioning of State government or preservation or protection of state property, such as may arise by reason of floods, epidemics, riots, equipment failure, or such other reasons as may be proclaimed. Such conditions create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.

Any DMVA authorized employee may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods. However, when practical, approval by the DMVA Procurement Director shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, an effort should be made to contact the DMVA Procurement Director. If this is not possible, the Procurement Director or a Purchasing Agent shall be notified immediately on the next working day to ensure appropriate procedures are followed, i.e, issuance of a confirming purchase order if necessary. As soon as practicable, but **not later than the next business day, a written report of the circumstances and the nature and value of the commitments shall be made to the DMVA Purchasing Director.**

Competition should be obtained for emergency purchases when circumstances allow (for example, you may call three local suppliers to get competitive quotes on equipment or services). In addition, a written determination of the basis for the emergency and for the selection of the particular contractor or vendor must be prepared and placed in the file.

Only the quantity of goods or services necessary to alleviate the emergency may be purchased under emergency conditions.

Poor planning does not constitute an emergency.

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SECTION 2
FIXED ASSETS

State Statutes require each department to institute and maintain systems of internal administrative and accounting controls for capital property. Tangible personal property is property that has a useful life of more than one year and an acquisition cost of more than \$5,000, which is not a permanent part of a building and does not lose its identity through incorporation into a more complex unit.

The DMVA Finance and Accounting Office will identify assets that are capital property. The Finance and Accounting Office will issue a property tag to the user for placement on the equipment.

SECTION 3
MAINTENANCE AGREEMENTS

Maintenance agreements are contracts for service and repair of equipment items. Such agreements are purchased for computer equipment that is not leased, office equipment, etc., when it is considered cost beneficial to do so rather than to pay for service on a per-call basis.

Maintenance agreements costing more than \$25,000 must be obtained through a formal bid process issued by the Purchasing and Contracts Office. When the cost is over \$100,000, or when the terms and conditions of a Purchase Order will not adequately protect the interests of the State (for instance, the maintenance of computing equipment), a formal contract rather than a Purchase Order is used.

State statutes require special wording for a contract to be binding. This special wording is not included in vendor forms, and therefore the State's interest may not be protected in a vendor's standard form. Some vendor forms may be amended and then referenced on a Purchase Order or contract.

DO NOT sign the vendor's contract forms. **DO** include them as an attachment to your requisition.

Any person signing or entering into a contract for the State who has not been delegated the authority to do so may be held **personally liable** for any amounts due under such contract. Employees with the Department of Military and Veterans Affairs, in order to protect themselves, **must not sign any contract or agreement form unless specifically authorized**. It is important to understand that authority to approve expenditures from a Cost Center budget does **not** constitute authority to bind the State to contracts or contract changes.

To originate a Maintenance Agreement (under \$25,000), a CORE RQS must be submitted with an attached proposal or quote that includes a full description of the service to be received, the vendor's name, and the price. In cases where monthly payment is required, Purchase Order is issued for the current fiscal year only.

NOTE: This Section does not cover personal service contracts that could be handled by a State employee or group of State employees.

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS PROCUREMENT MANUAL

SECTION 4

OFFICIAL FUNCTIONS and TRAINING

State of Colorado Fiscal Rules, Rule 2-7.

Purchases that require an Official Function form (**Section 22**) are conferences, room rental and food.

The following apply to this procedure:

OFFICIAL FUNCTIONS: To include lodging rooms, conference rooms, food/meals/breaks, and audio/video equipment rental.

SPEAKERS, HONORARIUMS AND TRAINERS: Persons or groups who are to participate at the Official Functions.

TRAINING CLASSES: To include training for state employees only.

Object Code 4180 must be used for Official Functions, standard objects of expenditures are used for Training Functions.

Under \$5,000:

Exempt from the procurement and purchase order process. A signed and approved Official Function Form must be attached to the invoice and/or kept on file for all Official Function transactions in excess of \$100.00.

Over \$5,000.01:

Enter a CORE RQS and attach a signed and approved Official Function Form. A description of the Function with as much detail as possible, number of required lodging rooms and nights, number of meals or estimated number of people, cost for meeting rooms and equipment rental. Competition must be obtained and/or three or more (DOCUMENTED, IN WRITING, ON VENDOR'S LETTERHEAD) bid responses must be attached to the RQS and Official Function form.

The Purchasing and Contracts Office will process and print a CORE purchase order. Adequate time of two weeks must be allowed to process the purchase order and fax a copy to the vendor and requestor.

There will be **NO** purchase orders processed or issued for official functions after they have taken place.

SECTION 5
OPEN END PURCHASE ORDERS

The purpose of the Open End Purchase Order is to provide a flexible and efficient way to buy routine products or services that are necessary for day-to-day operations. Per Fiscal Rule, purchases exceeding \$5,000 for the year must be encumbered. These purchase orders permit authorized personnel to remain in control of their office's purchases by encumbering and setting aside the funds "up front" for a specific term allowing for payment of invoices as goods or services are received. Examples of a commodity or service that would be appropriate this type of purchase order are office supplies or lawn care services, when the fiscal year cost exceeds \$5,000. Advantages are the reduction of paperwork, at the unit level and by the Purchasing and Contracts Office - repetitious paperwork, fund approvals, and processing time are eliminated as there is no need to create several purchase orders throughout the year.

NOTE: Per Fiscal Rule 2-2, memberships, dues, registrations, postage, subscriptions, publications and utilities do not require an encumbrance document. **PLEASE NOTE:** Trash Removal Services IS NOT utilities.

To initiate an Open End Purchase Order, the following procedures should be followed:

- Complete a CORE RQS document describing the items or service needed in the description section of the requisition. If the requisition is for a service, the required documentation must also be attached. **(Section 6)**
- Indicate if this is a new PO or renewal of a previous PO. If it is a renewal, please reference the prior year PO number in the PO Description field.
- Indicate quantity needed the timeline including a start date, and end date for the period covered by the purchase order, including hourly rates, and number of hours. Advantages is the reduction of paperwork, both at the unit level and by the Purchasing and Contracts Office - repetitious paperwork, fund approvals, and processing time are eliminated, there is no need to create several purchase orders throughout the year (for services), or the price by deliverables.

Purchase Orders resulting from multi-year bids may include options to renew for two or more years (typically the life of a bid does not exceed 5 years). Reference the bid number on the CORE RQS. Purchasing and Contracts will provide an end of fiscal year schedule for processing new fiscal year bids and purchase orders. You should plan on having all your final paperwork prepared by mid-May preceding the new fiscal year.

- Advantages are reduction of paperwork, at the unit level and by the Purchasing and Contracts Office - repetitious paperwork, fund approvals, and processing time are eliminated, and there is no need to create several purchase orders throughout the year.
- Open End Purchase Orders are valid only for the amount and time period shown on the face of the order.
- No orders for goods or services may begin until the Purchasing and Contracts Office has issued the Purchase Order to the Vendor.
- Dollar limitations and time periods for these POs must be included on the CORE RQS. Purchases must not exceed the given dollar amount for the specified time (i.e; \$25,000 July 1 through June 30). The dollar limit or the end date on the PO, whichever comes first, will control the expiration of the PO. Requests to increase the dollar amount or extend the date must be submitted to the Purchasing and Contracts Office **prior** to the depletion of funds or end date. See modification process Section 8.
- Unit Staff must prepare a CORE Receiver (RC) document for the receipt of goods.

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- Invoices for goods or services purchased under an Open End Purchase Order must be submitted directly to the agency's Accounting Office for payment. Make sure the PO number is on the invoice. Accounting personnel will process the invoice for payment in accordance with their current procedures.

SECTION 6

Personal/Purchased Services

DEFINITIONS:

Personal Services – Services acquired for the State’s direct benefit in its operations.

Purchased Services – The acquisition of services, which directly benefit specific groups or individuals in the public at large, as defined by law, from public or private entities licensed, certified, or otherwise authorized by statute to provide such services.

REGULATIONS:

All Personal/Purchased Services requests must be received in the Purchasing and Contracts Office **PRIOR** to the start of service.

Personal/Purchased Services **are not** paid for with the Procurement Card. Services for repair or maintenance of equipment can be purchased with the Card.

Range of Services	Specifications
Under \$5,000	<ul style="list-style-type: none">• A Purchase Requisition may be used.
From \$5,000.01 - \$25,000	<ul style="list-style-type: none">• Procurement will make the decision if competition is necessary.• Completion of Personal Services form and Business Case• Cost Analysis
Over \$25,000	<ul style="list-style-type: none">• Utilize Documented Quote, Invitation for Bid, Sole Source, Grant Specified or Request for Proposal (RFP) process.
Over \$100,000	<ul style="list-style-type: none">• Must utilize a contract.
Up to \$250,000	<ul style="list-style-type: none">• Purchase Order may be used for Computer Programming Personnel used from the State Price Agreements, using the process detailed in the price agreement.

Continued on next page.

Personal/Purchased Services

FORMS:

Required documentation for Personal or Purchased Services, and necessary forms, include the following:

CORE Purchase Requisition (RQS) with the following information:

What: Scope of Work

When: Beginning and ending dates for deliverables

Where: Location and by whom services are to be performed

Cost: Total cost, total hours, hourly rate or breakdown of all associated costs

Approvals: HR approval if services are not on the Department waiver, any additional prior approval requirements.

Insurance - Required

Make sure the contractor is informed of the insurance requirements and provides proof of insurance.

State of Colorado **must** be named as an additional insured.

In specific situations, the contractor might also need to provide Professional Liability Insurance.

Certification for Personal Services Agreement

Personal Services over \$5,000:

- Required if the service is over 6 months in duration or is on a re-occurring basis (unless this service is stated in the Department Waiver.)
- Must have DMVA Human Resources approval prior to starting service.
- Must include a Business Case

Exhibit IC – Bi-lateral Purchase Order

Effective August 17, 2010 the State of Colorado requires that an Exhibit IC form be completed and signed by contractors/vendors performing personal services as a sole proprietor (or one-person Inc.), regardless of the dollar amount. Utilization of a state contract for all personal services agreements with sole proprietors is considered best practice. Personal services agreements with sole proprietors tend to expose the State to a variety of independent contractor misclassification potential liabilities and a state contract is preferred as it offers the least amount of exposure.

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**SECTION 7
PETTY CASH**

Check with the Finance and Accounting Office if you have questions about petty cash

STATE OF COLORADO FISCAL RULES

**Rule 6-2
CHANGE FUNDS AND PETTY CASH FUNDS**

AUTHORITY:

24-36-103(2), C.R.S. (Transmit Monies to State Treasury)
24-36-104(2.5) C.R.S. (Monies to be Deposited)
24-30-202 (20.1) C.R.S. (State Controller Authority)

DEFINITIONS:

Change Fund - A fund established at a state agency or institution of higher education that receives cash to allow for making change.

Petty Cash Fund - A fund established at a state agency or institution of higher education to allow cash payment for small, incidental expenses.

RULE:

Change funds and petty cash funds may be established based upon a written request from the chief financial officer of a state agency or institution of higher education and approval of the State Controller, or the Controller's designee. The request for approval shall state the purpose of the fund and contain justification for the amount requested.

Change funds shall only be used for making change when cash receipts are accepted from the public, such as for fees and fines. No expenditures of any kind shall be authorized from a change fund.

Petty cash funds shall only be used for payment of incidental expenses of a nominal amount such as postage, parking or expenses not otherwise appropriately billed by invoice and paid by voucher or warrant. Petty cash expenditures shall be consistent with all applicable statutes, rules, regulations, and executive orders.

All petty cash funds and all change funds shall be recorded on the State Financial System.

Issued by the State Controller's Office
Rule 6-2

Date Issued: 7/1/74
Date Revised: 4/1/04

SECTION 8

PURCHASE ORDER CHANGES and MODIFICATIONS

Occasionally a change is needed on a Purchase Order that has already been sent to the vendor - to increase the quantity, extend the end date, increase funding, modify coding, or to replace a discontinued item, etc. To initiate a change on a purchase order, please modify the last "final" CORE RQS associated with the purchase order. Be sure to include all necessary information, such as necessary attachments what changes need to be made **and why**. Once the purchase order has been modified, the original will be sent to the vendor.

Roll Forward and Rolled Purchase Orders:

Purchase Orders that cross over fiscal years may require State Controller's approval for current fiscal year funds remaining in a purchase order to be allowed to roll forward into the next fiscal year. If the purchase request is new fiscal year funds to cover services for the new fiscal year, then a new purchase order will need to be created.

For example, if the purchase order was issued in FY 14, but services/goods will continue through part of FY 15, then the PO can roll. If however, the services are ongoing and will continue through FY 15 in its entirety, then a new PO must be issued.

SECTION 9

PURCHASE ORDER DEFINED

The Purchase Order is a legal instrument that commits the Department of Military and Veterans Affairs to contract for goods or services. Use of a purchase order is required for goods or services exceeding \$5,000.

A Purchase Order is initiated from the originating office by creating a CORE RQS and attaching required documentation. Upon receipt of the RQS through the CORE workflow, the Purchasing Agent will take all necessary steps to obtain quotations, bids, etc., as stipulated by the Colorado Procurement Code. After vendor award, a Purchase Order is issued to the vendor.

The originating office is responsible for making sure that goods or services are received in accordance with the specifications of the Purchase Order, including bid terms and conditions (if applicable). The originating office should notify the Purchasing and Contracts Office to assist in resolving any Vendor performance problems or delayed shipments.

Upon satisfactory receipt of an order, the originating office must enter a CORE RC for all goods received. If there is a problem concerning payment, the originating office must notify the Accounting Office immediately.

When a problem arises with a vendor, such as late deliveries, incorrect billings, or defective merchandise, the user should make the initial contact. In most cases, the problem can be resolved by a telephone call with little difficulty. However, if a problem is not readily resolved in this manner, or the situation deteriorates, contact the Purchasing and Contracts Office. **WHEN PROBLEMS ARE ENCOUNTERED: Documentation/notes should be made on all contacts with the Vendor. Documentation is important!**

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SECTION 10

PURCHASES \$5,000.01 AND OVER

This procedure applies to every expenditure of public funds. This includes all items purchased through State Funds, Trust Funds, Grants, and Federal Funds.

Note: Per Fiscal Rule 2-2, memberships, dues, registrations, postage, subscriptions, publications and utilities do not need encumbrance documents.

A CORE RQS must be completed with coding, complete description/specifications and any verification documentation, and then routed through the CORE workflow approval process. Note the price agreement number in the additional information field.

The order will not be placed and a Purchase Order will not be issued until all required paperwork (including approvals) is received by the Purchasing and Contracts Office. No Purchase Orders will be processed after the services or goods have been received.

Purchasing and Contracts will issue the Purchase Order to the vendor.

GOODS AND COMMODITIES

\$5,000.01 and Over - Recurring Purchases exceeding \$5,000 per fiscal year. Create a CORE RQS, and attach all required documentation at the header. Note the price agreement number in the additional information field. Submit the RQS into the CORE workflow in order to process for approvals.

SERVICES

\$5,000.01 and over – Create a CORE RQS, and attach all required documentation at the header. Submit the RQS into the CORE workflow in order to process for approvals.

Emergency procurement procedures will be handled on an individual basis when used in place of normal procurement methods. An “emergency” is considered to be a condition immediately threatening the functioning of State government, the preservation or protection of property, or the

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health or safety of any person or persons. Contact the Purchasing and Contracts Office if this type of procurement is necessary. **(Section 1)**

SECTION 11

**PURCHASES UNDER \$5,000
(SMALL DOLLAR PURCHASES)**

This procedure applies to every expenditure of public funds. This includes all items purchased through State Funds, Trust Funds, Grants, and Federal Funds.

To be clear and consistent with State Fiscal Rules, DMVA Commercial Card Program, and State Fiscal and Procurement Procedures, the maximum small dollar purchase limit is \$4,999.

To process small dollar invoices, a delegated approving authority must sign the invoice; and the appropriate coding must be noted.

Assistance is available from the Purchasing and Contracts Office for expenditures under \$5,000. If the end-user wishes Purchasing and Contracts to assist them in purchasing small dollar items, they still may do so. (For example, a Unit needs ten projectors and has one vendor quote of \$4,950. The end-user thinks competition is available to yield a better price or higher quality and asks Purchasing and Contracts to conduct a competitive bid.)

Use the DMVA Commercial Card for **ALL** small dollar purchases that fall under the DMVA Commercial Card Program guidelines.

Please remember to follow all appropriate Colorado Procurement, Fiscal Rules and required approvals for purchases under \$5,000 (State Price Agreements, Colorado Correctional Industries (CCI), etc.) **(Sections 12, 13 and 18)**.

If you have any questions, please call the Purchasing and Contracts Office.

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SECTION 12

**PURCHASES FROM
THE DIVISION OF COLORADO CORRECTIONAL INDUSTRIES
(CCI)**

Formerly Juniper Valley - JVP

Section 17-2-111 C.R.S. and State Procurement Rule 4-207.01 requires that State agencies purchase office furniture and office systems from the Division of Colorado Correctional Industries (CCI).

All such purchasing agencies shall operate under the provisions of Section [17-24-111](#), C.R.S., requiring the purchase of goods and services from the division of correctional industries, and failure of any such purchasing agency to comply with such requirement shall be cause for the executive director to suspend for a period of up to one year at the discretion of the executive director the authority of a purchasing agency created pursuant to this subSection (2) to purchase goods and services. The authority of a purchasing agency to purchase goods and services may also be suspended at the discretion of the executive director. The financial and staff resources dedicated to the purchasing function in the affected agency shall be under the authority of the department of personnel during the period of suspension, and purchases made for the affected agency shall be in accordance with the requirements of Section [17-24-111](#) (1), C.R.S.

The terms office furniture and office systems shall mean:

Those systems and furniture that, at the time the product requirement is communicated, are described in Division of Correctional Industries' catalogs and web site and are intended primarily for use in an office environment (including faculty offices, meeting rooms, and conference rooms).

CCI services and products are on the Internet. www.coloradoci.com

Under \$5000:

If you are not signed up for on-line ordering with the Commercial Card, then services or materials purchased from Correctional Industries should be processed using a Purchase Order Requisition Form. Please contact the Purchasing and Contracts Office prior to making any purchases with CCI.

\$5,000 and over:

The Fiscal Rules state that encumbrance documents and purchase orders are required for amounts in excess of \$5,000.00. Submit a CORE Delivery (DO), and attach a quote from Correctional Industries, to the CORE workflow in order to process approvals. A CORE DO will be issued to CCI.

**PURCHASES FROM
THE DIVISION OF COLORADO CORRECTIONAL INDUSTRIES**
(CCI)

Mandatory awards for services or materials capable of being performed or produced by CCI cannot be ordered from other sources without a written waiver (**Section 22**) and approval from Colorado Correctional Industries, regardless of dollar amount. This documentation must be kept with the purchasing files.

WAIVER PROCESS: (See **Section 22** for this form)

Any request for a waiver to purchase outside of the mandatory CCI award must be submitted in writing on the **Customer Relations Department Waiver Request** form to the Purchasing and Contracts Office, which will review the request and send it to CCI.

The Director of CCI will review the request and indicate in writing, within five (5) working days of receipt, whether CCI can meet comparable quality, price, and reasonable time requirements.

CCI RESTOCKING POLICY:

1. If an agency mistakenly orders an item, a 15% restocking fee will be charged.
2. If an agency orders an item, based upon incorrect information received from CCI, the item can be returned without a restocking charge.
3. If an agency orders an item, and a mutual error or misunderstanding has occurred, the item can be returned without a restocking charge.

CCI has shown a willingness to replace items that are not satisfactory for our needs, but written documentation of problems with materials must be forwarded to the Purchasing and Contracts Office to insure that corrective steps are taken to prevent future problems of the same nature. Also, providing CCI with more detailed specifications can prevent some problems.

SECTION 13

PURCHASES REQUIRING PRIOR APPROVALS

- ALWAYS INCLUDE PROCUREMENT IN YOUR PLANNING PROCESSES -

Some purchases of goods and services require the prior approval of another DMVA office before the Purchasing and Contracts office can finalize the request. These approvals are required even if the [State Commodity and Service Agreement](#) is being used. The approving unit is typically reviewing your request to ensure that you are in compliance with DMVA standards, rules, or simply making sure that you have selected the correct item or service. See the following list of prior approvals that must be obtained. Internet sites are listed where available. Also see the Quick Overview (page 1) and guidelines and forms in **Section 22**.

Computer hardware, software, upgrades, and peripherals (printers, additional memory, etc.) and IT related contractor services: Requests are made through CORE for OIT approval; DCSIM approval required for purchases associated with the Federal Computer System.

Installation of large/new equipment, utility hookups, etc: Directorate of Facilities Management, Larry Brown, Facilities Manager, 720-250-1380

Facility Improvements/Construction: Directorate of Facilities Management, Kris Hedberg, State Delegate, 720-250-1368

Official Functions, Memberships: Janet Jones, Procurement Director, 720-250-1541

Personal Services: Tamy Calahan, Human Resources Director, 720-250-1520 (**Section 22**)

Telephones: Todd Smith, Switch Manager, 720-250-1135

Cellular phones: Gloria Duran, Procurement Agent, 720-250-1542

Other State Agency requirements can be found on the next 2 pages.

If you think that your needs are an exception to these requirements, contact the Purchasing and Contracts Office for clarification.

Continued on next page

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Department of Personnel & Administration
Division of Human Resources

Prior-Approval Contact List

This list is a guide for all human resource and contract administrators, fiscal officers, purchasing agents, and other State employees who are responsible for acquiring services, commodities (goods), and real estate on behalf of the State.

Prior to purchasing **any** service, the appropriate State agency (including your own) needs to be contacted to determine if it can provide the service for your agency. If your needs cannot be met, your agency will be granted permission to outsource the services.

Your agency is responsible for requesting a **current waiver letter** and placing it in your files. It may not be necessary to obtain a waiver letter for commodities or real estate. However, when your agency receives approval to procure commodities and real estate, you will be instructed on other requirements.

NOTE: Some agreements may require multiple prior approvals.

FOR	REGION	TYPE OF SERVICE	APPROVAL REQUIRED FROM
Services	Statewide	Personal Services Contracts All require review	DPA, Division of Human Resources – Contact cindy.kong@state.co.us or 303-866-4231.
Services	Statewide	Collection	DPA, Division of Finance and Procurement – Contact Greg.Mechem@state.co.us or (303) 866-6540
Services	Statewide	Data Entry	DPA, Division of Central Services – Contact cindy.mardini@state.co.us or 719-545-5294
Services	Denver Metro	Graphic Design	DPA, Division of Central Services – Contact IDS Customer Service Rep at (303) 866-4100
Services	Denver Metro	Imaging, Microfilm, & Microfiche	DPA, Division of Central Services – Contact IDS Customer Service Rep at (303) 866-4100
Services	Denver Metro	Mail	DPA, Division of Central Services – Contact IDS Customer Service Rep at (303) 866-4100
Services	Statewide	Training	DPA, Human Resources, submit to Purchasing for online approval or Jerry Wittmer@state.co.us or (303) 866-4265
Services	Denver	Printing & Photocopying	DPA, Division of Central Services – Contact IDS Customer Service Rep at

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	Metro		(303) 866-4100
Services	Statewide	Legal	Department of Law – Contact Alan Gilbert at (303) 866-3052
Goods	Statewide	Flags & Signs	Department of Corrections, Colorado Correctional Industries – Contact 303-321-2200 or www.coloradoci.com
Goods/Services	Statewide	IT Resources – as defined in 24-37.5-102 et seq.CRS	Governor’s Office of Information Technology (OIT) – submitted via CORE RQS
Goods	Statewide	Office Furniture	Department of Corrections, Colorado Correctional Industries – Contact 303-321-2200 or (303) 321- 2200
Goods	Denver Metro	Photocopiers	DPA, Division of Central Services – Contact IDS Customer Service Rep at (303) 866-4100
Goods	Statewide	Vehicles (Passenger & Freight)	DPA, Division of Central Services, Fleet Management – Contact Ron.Clatterbuck@state.co.us or (303) 866-5482
FOR	REGION	TYPE OF REAL ESTATE	APPROVAL REQUIRED FROM
Real Estate	Statewide	Leasing of Real Estate and Purchases/Sales	DPA, State Buildings & Real Estate Programs – Contact 303-866-4759 or www.sco.state.co.us/sbrep
Real Estate	Statewide	Rights-of-Way and Easements	DPA, State Buildings & Real Estate Programs – Contact 303-866-4759 or www.sco.state.co.us/sbrep
Construction	Statewide	Capital Construction & Controlled Maintenance	DPA, State Buildings & Real Estate Programs – Contact 303-866-4759 or www.sco.state.co.us/sbrep

DPA = Department of Personnel & Administration
IDS = Integrated Document Solutions

SECTION 14

**THE COMMERCIAL CARD PROGRAM
AND HOW IT WORKS**

The Commercial Card program provides users with a Visa Credit card to be used in making allowable, small dollar purchases for Department business. All charges are the liability of the Department. This credit card is used as you would use a personal credit card.

- Activate the Card
- Report lost or stolen Cards
- Identify a needed purchase
- Make sure purchases are allowable under the Commercial Card rules and any grant terms that may apply
- Order or purchase the goods using the Commercial Card
- Obtain an itemized receipt showing what was purchased, the date and note the purpose of purchase on the receipt
- Reallocate the charge to the desired coding, if necessary
- Verify the charge on the monthly Cardholder Statement
- Verify the charge on the monthly Bank Statement
- File the receipts and monthly statements, keep these for 3 years plus the current year

Differences between the Commercial Card and a Personal Credit Card:

This credit card is used like a personal credit card. However, as a corporate card, there are differences that you should be aware of:

- The Department is liable for all charges made on a card before that card is reported to CitiBank as lost or stolen - 1-800-248-4553.
- The State is tax exempt; charges by the vendor for tax are not allowable.
- There is no personal liability on the card unless the Cardholder violates the terms of card use.
- Each card is excluded from specific vendor types (inappropriate purchases with state monies) such as travel vendors, vehicle vendors, and access to cash, betting, lottery, etc.
- Each card has limits that are specified by the Approving Official for each Cardholder. These are dollar limits per day and per cycle and transactions allowed per day and per cycle.
- Approving Officials must review and sign off on the Cardholder Statement for each Cardholder who has made purchases during the previous cycle period. **Approving Officials must also record violations and make sure that the Commercial Card Administrator is notified when a cardholder transfers or terminates.**

Continued on next page

THE COMMERCIAL CARD PROGRAM AND HOW IT WORKS

- The transactions made on the Commercial Card are billed directly to the Department even though the name of the Cardholder is on the card. The Department pays the Card Issuer once a month for all charges made by every Cardholder. The vendor is paid by Visa within 48 hours of when the vendor gives/transmits the transaction to Visa. The Cardholder's default account coding, or the account coding to which the transaction has been reallocated, is then debited for the amount of the transaction.
- **Cardholders and Approving Officials - MUST - review the manual periodically to obtain current information. Approving Officials are audited at least ONCE A YEAR and must comply within the rules.**

HOW THE PROCESS WORKS

How you use the Department Commercial Card is very similar to how you use your personal credit card. Below are seven simple steps for using the Commercial Card to make and account for a purchase. Some steps, obviously, have to be done by the Cardholder. The Cardholder, the Approving Official, or a support staff person will do other steps. Regardless of who does what, each of the following must be done. Contact the Purchasing and Contracts Office for further details or visit the [Purchasing and Contracts Webpage](#) for the complete DMVA Commercial Card Manual.

- Step 1 – **Place** the Order
- Step 2 – **Keep Track** of Orders Placed
- Step 3 – **Receive** and **Inspect** Goods
- Step 4 – **Document** each Transaction
- Step 5 – **Reallocate** the Charges, to the correct accounting code if necessary
- Step 6 – **Review** and **Approve** the Cardholder Statement
- Step 7 – **File** the Source Documents (3 years plus current)

SECTION 15

REQUESTS FOR PROPOSALS - COMPETITIVE SEALED PROPOSALS

The Colorado Department of Military and Veterans Affairs Purchasing and Contracts Office will determine whether a Request for Proposal (RFP), competitive sealed bid, or other method shall be used for each procurement. Requests for Proposals (RFP's) are issued:

- For the procurement of personal services, consulting services, etc., (other than contracts for architects, engineers, land surveyors, and landscape architects); or
- When competitive sealed bidding is not practicable because technical and performance capability must be evaluated; or
- When competitive sealed bidding is not advantageous to the State.

If an RFP is appropriate, the user must develop the RFP document, especially with regard to the scope of work and evaluation criteria. Evaluation criteria and recommendation of members to participate in the evaluation committee must be submitted to the Purchasing and Contracts Office prior to the RFP being released. The Procurement Director or a designee must approve all aspects of the RFP; therefore, it is important to contact the Purchasing and Contracts Office prior to initiating any action.

The State's procurement code requires that offerors have a minimum of 30 calendar days to prepare and submit their proposals. The normal time required to complete the RFP process, from issuing request to commencing work with a signed contract, is 90-120 days. In order to save time, and avoid wasted effort, it is very important to contact the Purchasing and Contracts Office prior to initiating any action.

SECTION 16

SOLE SOURCE PURCHASE REQUESTS

State of Colorado procurement rules establishes a policy of fostering effective broad-based competition. It is important for all who use the procurement process to understand that purchasing supplies and services without benefit of competition is not the preferred selection method.

Therefore, sole source vendor selection may be used only if certain circumstances or criteria exist. Those circumstances are set forth in Section 24-103-205, C.R.S., which provides in part: "A contract may be awarded for a supply, service, or construction item without competition when, under rules, the State Purchasing Director, (or) the head of a purchasing agency determines in writing that there is only one source for the required supply, service, or construction item."

In other words, sole source vendor selection is an exception to the practice of selecting vendors as the result of competition. **Only the Director or Designee of the Purchasing and Contracts Office has the authority to grant this exception.**

The State of Colorado Sole Source Justification form and guidelines provide specific directions for such a request. **(Section 22)**

Conditions for use of Sole Source Procurement

Sole source procurement is not permissible unless the required good(s) and/or service(s) is available from only a single supplier. A requirement for a particular proprietary item or service does not justify a sole source procurement if there is more than one potential bidder or offeror for that item or service. The following are examples of circumstances that could necessitate a sole source procurement:

- where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- where a sole supplier's item is needed for trial use or testing;
- where sole supplier's item is to be procured for resale; or
- where public utility services are to be procured.

Continued on next page

SOLE SOURCE PURCHASE REQUESTS

The Purchasing and Contracts Office will place a notice on Vendor Self Service (VSS) for a minimum of 48 hours requesting all capable parties to respond if they can bid on the potential sole source. If no response is received, the Purchasing and Contracts Director will approve the Sole Source request. In cases of reasonable doubt, competition should be solicited.

REMEMBER: Receive approval BEFORE preparing any formal contracting document or making any commitment to the potential vendor.

Any person signing or entering into a contract for the State who has not been delegated the authority to do so may be held **personally liable** for any amounts due under such contract. Employees with the Department of Military and Veterans Affairs, in order to protect themselves, **must not sign any contract or agreement form unless specifically authorized**. It is important to understand that authority to approve expenditures from a Cost Center budget does **not** constitute authority to bind the State to contracts or contract changes.

Architects, Engineers, Land Surveyors, Industrial Hygienists, and Landscape Architects are exempt from the Procurement Code, which means that Sole Source Selection is not possible. However, strong arguments for not using the appropriate selection method, as outlined in C.R.S. 24-30-1403, **MUST** be documented.

Please note: Insufficient time for conducting a competitive procurement is NOT a lawful reason for selecting the Sole Source Procurement option.

SECTION 17
SPECIFICATION WRITING

Submission of product specifications is often required with a CORE RQS. To provide a common basis for bidding, specifications should detail the essential characteristics of the item(s) to be purchased. While the Procurement staff is available to help in developing suitable specifications for competitive bidding, the following guidelines should be followed:

1. Specifications should not describe features of a quality level that are not necessary to an item's intended use.
2. Whenever brand name specifications are used, there must be an accompanying explanation, on the Justification for Brand Name form (**Section 22**) that clearly indicates that the specification is not intended to be restrictive and, where possible, several acceptable brand names should be used.
3. Qualified product lists limit competition to those products on the list, and they can be used effectively. When used, actual samples or highly documented files must be kept on each item that qualifies.
4. Design specifications are usually used for building construction projects and must be carefully written in terms of any features that might limit competition unnecessarily or that might make the project unacceptable for the purpose for which it is to be used.
5. Performance specifications are preferred that describe how the product is to perform, what the desired end use of the product will be, and that encourage ingenuity, innovation, and cost reduction.
6. The Procurement staff will review specifications for restrictiveness, legality, workability, and to assure that minimum levels of quality are specified.
7. **To avoid conflicts of interest, and to assure objective specifications, vendors must not be allowed to prepare specifications.** Submittal of a cut sheet is appropriate. If help is needed on completing specifications, contact the Purchasing and Contracts office.
8. If there is additional peripheral equipment essential to an item's function, although it is not necessarily supplied as part of the item, be sure to specify what is required; i.e., a separate power cord for electrical equipment.

SECTION 18

STATE PRICE AGREEMENTS

The State of Colorado has expended considerable time and money to assure that the items on State Price Agreements are made available at the best competitive price, equally throughout the State. Occasionally, local vendors may have selected items at a slightly lower price; however, the State Price Agreements with the listed vendors insure that, based on projected quantities purchased throughout the State over a certain period of time, the best overall economy will be achieved.

The list is alphabetical by commodity and indicates the vendor(s) who have received the State Price Agreement. The listing is on the Internet:

Click on link to: [State Price Agreements](#)
Add this location to Favorites to quickly access the Price Agreements in the future.

A request for a waiver to purchase outside of a Mandatory State Price Agreement must be coordinated and approved through the Purchasing and Contracts Office. Contact the Purchasing and Contracts Office to obtain a waiver or you may be held personally liable for the cost.

SECTION 19

Environmentally Preferable Purchasing Policy (EPP)

Environmental Preferable Purchasing (EPP), or Green Purchasing, means to purchase a product that has a lesser or reduced negative effect or increased positive effect on human health and the environment when compared with competing products that serve the same purpose. Incorporating EPP in the procurement process considers raw materials acquisition, production, fabrication, manufacturing, packaging, distribution, reuse, operation, maintenance, and disposal of the product. The EPP Policy was created in compliance with Executive Order D0012 07 to reduce consumption, waste, and possible environmental impacts by considering life cycle when making purchasing decisions.

Click the link for the official State EPP: [Environmental Preferable Purchasing Policy](#)

Benefits and Goals of Green Procurement

Green procurement has various benefits that facilitate sustainability and effective accomplishment of the State's mission. Buying "green" also improves our environmental stewardship, and strengthens community relationships. Purchasing decisions can significantly influence the environmental performance of each agency, since the procurement process heavily influences the wastes and emissions that must be managed and paid for. When we buy a hazardous material, at the end of its life cycle it may become a hazardous waste that is costly to manage and dispose. Specific benefits of practicing green procurement include but are not limited to:

- Strengthening recycling programs by increasing the demand for recycled products
- Complying with laws, regulations, and Executive Orders (EOs) that require state agencies to implement green procurement practices
- Saving money (may be in terms of product cost, the overall cost of manufacturing, or utility bills)
- Reducing air emissions, solid waste disposal rates, and associated health risks
- Providing jobs and economic opportunity
- Providing incentives for manufacturers to use technologies that incorporate environmentally preferable attributes and/or materials into products
- Conserving natural resources used to make new products
- Preserving energy resources and protecting the ozone layer

Environmentally Preferable Purchasing Policy (EPP)

- Providing new and expanded markets for sustainable commodities and services
- Reducing U.S. dependence on petroleum and other imports

The initial goal of this policy is to analyze and adopt recognized third-party national standards or certifications, and tools that help evaluate the purchase of environmentally sound products. Life cycle assessments that measure product life costs and benefits in determining purchasing preference(s) are a preferred practice if not already incorporated by recognized standard or certification.

It is an ongoing goal of this policy to discover and implement practices that promote the inclusion of environmentally-focused specification language and definitions to be used in competitive solicitations for commodities and services. This EPP policy is designed in accordance with the State's intent to:

- Conserve natural resources
- Minimize environmental impacts from pollution, both indoors and outdoors,
- Reduce unnecessary or excessive use of water and energy,
- Eliminate or reduce toxic or otherwise harmful substances or emissions that create hazards to workers and communities within the State of Colorado and a wider society,
- Increase opportunities for recycling markets,
- Stimulate markets for environmentally sound, competitive products,
- Promote evaluation of products for potential reuse or recyclability,
- Reduce materials that require landfill disposal, and maximize diversion of materials from the solid waste stream,
- Identify and advocate for consideration of environmentally preferable products, encouraging manufacturers and vendors to reduce environmental and human health impacts in their production, distribution, and business practices that provide services with the State of Colorado,
- Create guidance for the successful purchase of environmentally preferable products by state agencies, institutions, and other Colorado public entities.
- Provide leadership and a model for the development of environmentally preferable purchasing policies by state, higher education, and local agencies.

Section 20

SURPLUS PROPERTY

The Department's surplus property is classified as all State-owned property (does not have to be a fixed asset) that can no longer be used by the Agency that purchased it.

Please refer to Colorado Department of Corrections Policy and forms:

[Colorado Surplus Property Agency \(CSPA\)](#)

A - Use the **STATE OF COLORADO DECLARATION OF SURPLUS PROPERTY Form 276** for any move, deletion, transfer or any other change in the disposition of an item. This form must be sent to the Purchasing and Contracts Office, **PRIOR** to any action being taken. If the identity of the item is not clear, a member of the Procurement staff will inspect the item.

B - The Purchasing and Contracts Office will make the determination of how the item will be handled and will inform those involved. The type and quantity of items will determine whether the Department will move these items at no cost, or whether a vendor will move them and the Program's operating budget will be charged.

The status classes are: reusable as is; re-usable w/ repairs; or non-repairable.

C - Any item placed in storage will be removed from the donating agency's inventory listing and become available for placement elsewhere within DMVA.

D - Any items to be stored and ownership retained by the unit will be done by special arrangement only.

E - Unique conditions for computer disposal are required; please refer to the above policy.

Section 21
VIOLATION PROCESS
OBLIGATION IN VIOLATION OF STATE STATUTE

The following outlines Department procedures to be followed when an obligation for an acquired good or service is incurred in violation of the State Statutes.

The State Controller has issued a policy with regard to incurring an obligation without an approved commitment voucher (state contract or Purchase Order), which violates state statutes. This policy outlines the State Controller's authority to approve obligations made/paid without an approved commitment voucher in violation of C.R.S. 24-30-202(3) - **obligations incurred prior to execution of a commitment voucher**, and/or C.R.S. 24-30-202(1) - **disbursements made prior to execution of a commitment voucher**.

Commitment voucher as referenced in this statute is defined as: "A purchase order, a state contract, an approved travel authorization, an advice of employment, or any other document appropriate to the transaction, prescribed by the State Controller, which creates an obligation to the State that ultimately results in a disbursement of funds by the State."

For Contracts: If a state obligation to a contractor is incurred by an individual in the Department prior to the execution of a contract (execution is the signing by both parties and approval by the state controller or delegate) the obligation cannot be paid without the approval of the State Controller.

For Purchases: If an individual in the Department, without the establishment of a purchase order or other appropriate encumbrance incurs a state obligation for goods or services that exceeds \$5,000, the obligation cannot be paid without the approval of the State Controller.

Any invoice or bill totaling over \$5,000 which has no commitment voucher associated with it and is received by the Accounts Payable Office shall not be paid without proper approval obtained pursuant to this policy.

The Office of the State Controller's Policy on Statutory Violations (answer all questions under #3e.) (**Section 22**) is used to seek the approval of the State Controller to pay the obligation incurred in violation of the law.

The completed form and corresponding invoices must be forwarded to the Department's Purchasing and Contracts Office, which will in turn review and forward the documentation to the Department's Controller. The Department's Controller is not the delegated authority to approve or disapprove such a request, but must submit it with recommendations to the State Controller. Only upon approval by the State Controller may the obligation be paid to the contractor.

The impact of a Statutory Violation is that in some cases the individual who caused the violation may be held personally responsible for it. In addition, such circumstances can cause a hardship to a vendor as payment may be delayed due to the time it takes to process approvals. Finally, an employee's failure to follow state statute and rules when procuring goods or services for the state is unacceptable job performance. Violation of statute and state rules can be grounds for corrective action against the employee committing the violation.

It is the responsibility of all Department personnel to understand and follow the procedures and requirements regarding incurring and/or paying state obligations and if unsure to seek information through the proper sources. The Department's Purchasing and Contracts Office conducts ongoing training for staff and are available to answer questions.

Glossary of Terms

State of Colorado VSS—The Vendor Self Service (VSS) is a website administered by the State Purchasing Office for notifying interested vendors of the State of Colorado's intent to purchase goods or services. The website address is: www.colorado.gov/vss. Purchasing Agents normally publish a notice on the VSS System when the dollar amount of the procurement requires that it be competitively bid through either a Documented Quote (DQ), Invitation for Bid (IFB) or Request for Proposals (RFP). The specific dollar thresholds at which a notice should be posted on VSS may vary from agency to agency, and the nature of the particular procurement can dictate whether or not a notice will be posted on VSS.

Bidder – A vendor/company who submits a bid proposal.

Goods – A supply, product or anything purchased or available for purchase (as opposed to real property or services).

Multiple Year Award (Contract) – Procurement contracts extending more than one year.

Pre-Bid Conference/Walk-Through – This is a meeting held with prospective bidders prior to the bid opening to clarify any ambiguities, to answer bidder questions, and to ensure that all potential bidders have a common basis of understanding regarding the goods or services required. (A bid for construction of an elevator in an existing building would be a good example of a situation when a walk-through would be appropriate.)

Responsive Bidder – A vendor who has submitted a bid that conforms in all material aspects to the requirements stated in the solicitation.

Solicitation – A request seeking competitive bids or proposals from vendors. Documented Quotes (DQ's), Invitations for Bid (IFB's), and Requests for Proposals (RFP's) are all types of solicitations.

State Price Agreement – An agreement through which the State Purchasing Office has contracted with a vendor for a good or service at a predetermined price for a set time period. [State Price Agreements](#)

Tangible service – Any established professional or general service work to be performed (examples: back hoeing, landscaping, repairs, routine training, surveys, basic consulting services, etc.) that does not involve creative or innovative specifications and therefore does not require elaborate evaluation criteria.

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Section 22

APPENDIX

GUIDELINES AND PURCHASING FORMS

Bid Guidelines
Brand Name Form
Colorado Correctional Industries Waiver
Emergency Procedures
Office of the State Controller's Statutory Violation Policy
Official Function form
Personal/Purchased Services forms
 Certification for Personal Services Agreement form
 Business Case Form
 Insurance Guidelines
 Insurance Requirements
 Vendor Selection form
 Independent Contractor – Sole Proprietor Guidance
Sole Source Guidelines and form
W9 form

****The above listed forms and/or links can all be found on the DMVA
[Purchasing and Contracts](#) webpage****

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USER GUIDELINES

For Bids (Invitations for Bid and Documented Quotes)

WHEN TO BID

- I. Generally, goods over \$10,000 or tangible services over \$25,000 require a bid. (Note on tangible services: Multiple year awards may be appropriate.)
- II. Purchases made through State Price Agreements for Goods or Services do NOT usually need to be submitted for bid. Check with the Purchasing and Contracts Office for large quantity or large dollar volume requirements.

GENERAL BID PROCEDURES

I. Required Documentation/Forms to be Submitted to Purchasing

- A completed CORE RQS that identifies the goods/services, funding and initial dollar amount. (This amount may be an estimate or quote you may have already received. Do not insert a vendor number.)
- Detailed requirements with specifications and item(s) to be purchased. (Attached to the RQS and emailed to the Purchasing Agent.)
- Include delivery requirements when appropriate. (Examples: delivery at dock only -vs.- unloading and installation, etc. If necessary, include a list of multiple delivery sites with complete addresses. It is your responsibility to inform staff of delivery dates and times.)
- Dates/Timeline. (Show the date that the item is required or the timeframe in which the services are needed.)
- Copies of all necessary approvals (Examples: Budget/Executive Director, Facilities if building related, or IT.)

II. Processing Time

- Please allow adequate time for the Purchasing and Contracts Office to develop a final bid document ready to post on VSS. (Allow a minimum of 3 days to 1 week for simple bids, but more time can be involved for complex bids.)

III. Types of Bids

- **Documented Quote (DQ) Process.** Documented Quotes may be used for goods and services between \$10,000 and \$150,000 (maximum amount for the life of the quote, i.e; \$150,000 over a 3 year period). A DQ notice may be posted on VSS for a minimum of 3 business days (at the discretion of the Purchasing and Contracts Office). Bidders may submit quotes in response to DQ's by fax, mail, courier (or e-mail, if the bid document allows this method.)
- **Sealed Bid/Invitation for Bid (IFB) Process.** Used for purchases over \$150,000. The IFB notice must be posted on VSS for a minimum of 14 calendar days. Vendors must submit their responses to the Purchasing and Contracts Office as a sealed bid via mail, courier or in-person delivery. Faxed or e-mailed bids cannot be accepted in response to IFB's.

THE PURCHASING AGENT WILL DETERMINE WHICH TYPE OF BID IS APPROPRIATE

IV. Bid Requirements and Specifications (Basically, the description of what you need)

- a. function and capabilities, operating limits, dependability or, reliability. (See #2 if you don't know what specifications are actually available on the market.)
- b. Specifications must be unbiased and without any prejudice towards potential bidders to permit free and open competition, whenever possible. Specifying a brand name or specific product manufacturer should only be used when continuity of or compatibility with existing systems is required. It is important to consider a vendor's potential bias towards the services/goods they sell or manufacture, so specifications that are described by vendors in presentations or promotional materials may be questionable, because they are only based on their own products/services.
- c. However, using a brand name product as an example of a product that has proven to be reliable may be used to measure comparable products. (In this case, you would specify a brand name product and then say you will accept bids for "equal or better" products that meet the specifications.) If there is a comparable product available that may cost less, then value as

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well as quality and reliability could be achieved as a result of a brand name "equal or better bid".

- d. Be careful of 'mandatory' requirements, if you use the words like 'must' or 'shall', the bidder is required to meet those requirements in order to be deemed responsive.
2. A Request for Information (RFI) notice may be posted on VSS if you are seeking information from vendors without actually soliciting for a bid. This is strictly an information gathering process only, and potential bidders are informed that no award will result from an RFI. The Purchasing Agent can help you with this process, which would be applicable in situations where you do not have knowledge regarding the kinds of products that are available in the market and therefore are unable to provide the specifications.
3. The Purchasing Agent can also assist you in writing specifications.

V. Bid Itemization Sheet Or Response Sheet

This section of the bid document demonstrates how you want the potential bidders to format their responses.

- If you want bidders to respond in a certain format, send any formatted paperwork to the Purchasing and Contracts Office along with your requirements/specifications.
- At times, descriptions may need to be broken down into separate components. If this is the case, specify which items need to be bid separately. Normally, the Purchasing Agent will incorporate a total cost area at the bottom of the bid. (In some cases, you may not want an "all-or-nothing" bid, but may want it broken down into various components or categories with separate cost estimates. Depending on the price, the program would have the option of accepting all or some parts of the vendor's bid. Remember, however, that the bid must indicate this from the beginning.)
- You may need a Pre-bid Conference/Walk-through for a service or good. Sufficient time must be allowed for the walk-through and bid submission. If a Pre-bid Conference or Walkthrough will be included in the bid process, approximately 3 weeks should be allowed from the date the VSS notice is published until the date that the bid responses are due, to allow time for this extra step.

VI. Posting the Bid Notice

- After you provide final approval to the Purchasing Agent that the bid document is accurate and that the requirements and specifications described in the document reflect your needs, the Purchasing Agent will post the bid notice on the State of Colorado VSS website.
- The Purchasing agent will provide you with a final copy of the published bid.

VII. Bid Evaluation

*****Remember that the Requirements and the Evaluation must be tied together*****

The bidder's response will be evaluated and awarded by the Purchasing Agent based on lowest responsive bid from a responsible bidder, unless there are other evaluation factors that were specifically stated in the bid document. After the bid opening the Purchasing Agent will contact you to verify that the apparent low bidder met all requirements, or you can be present at the bid opening and evaluate the bids at that time. If a test or formula-type evaluation needs to be completed it must be evaluated by your program. The results of the evaluation must be given to the Purchasing Agent, who will then award the bid based on these results.

Examples of additional evaluation criteria are listed below:

- **Evaluation for performance of a product.** (Example: You want Z-fold forms, but need to evaluate them for their ability to fold and stick together. In the requirements section of the bid you would include a sentence requiring all vendors to submit a specified number of samples for evaluation. In this case, award could be made to the bidder most responsive to your requirements; that is, the bidder whose samples had the lowest failure rate, not just the lowest bid). Remember, the original bid document must have specified the evaluation criteria and also should have stated that the bid amount quoted must be within the program's budgeted amount to be eligible for award.
- **Evaluation for a service.** If there is a need for demonstrated experience relevant to the requirements listed on the bid you may ask for resumes, references, or staffing patterns to assure that the bidder has the necessary experience and ability to perform.

VIII. After Award and Issuance of a Purchase Order to the Vendor

- Keep copies of all Purchase Orders on hand to follow-up with the awarded vendor during/after delivery.
- Inform the Purchasing Agent if there are any changes that need to be made to the Purchase Order, such as change in delivery location.

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- Keep staff at any additional delivery locations informed of all changes and when items are due to be received.
- Check delivered goods for damaged or missing parts as soon as possible. Coordinate with the awarded vendor if any damage is found.
- Specifications must be clearly stated.

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Provide a clear description with quantity, part numbers, model numbers, dimensions, features, components, compatibility, etc. If you want to know what type of equipment is available on the market without requesting a certain model, you can describe the standards of performance, its

JUSTIFICATION FOR BRAND NAME

TO: _____

DATE: _____

FROM: _____

REFERENCE: Purchase Requisition No. _____

DATED: _____

DESIGNATED VENDOR _____

The Purchasing Agent who approves this requisition for purchase is responsible and accountable for justifying brand or sole source purchase. In order to evaluate the requisition, additional information is needed. Please give detailed replies to the questions below. Please return this form promptly, as no action will be taken until the requested information is received. This form will become a part of the permanent record for this purchase.

IF ADDITIONAL SPACE IS NEEDED, USE AN ATTACHED SHEET

1. Have you discussed your need with anyone in Purchasing prior to submitting this requisition?
() Yes () No If yes, whom? _____

2. If a particular brand is required, name it and cite the qualities/features that make purchase of this brand necessary.

Name the other brands investigated and cite the reasons why they are not acceptable.

3. If the above does not apply, explain the reason for selection, naming companies and individuals contacted, prices quoted, and reasons for rejection.

4. Do you have an actual or potential conflict of interest in this purchase request?
() Yes () No If yes, please explain on an attached sheet.

Signature

Date

FOR PURCHASING AGENT'S USE

Agree () Yes () No If no, why? _____

Disposition

- () Purchase as requested
- () Obtain quotations
- () Prepare invitation for Bid
- () Covered by contract or price agreement
- () Inadequate Justification, return to originator for more information.

Purchasing Agent

Date

COLORADO CORRECTIONAL INDUSTRIES (CCI)

Section 17-24-111(1)(a) CRS requires that state agencies purchase office furniture and office systems from the Division of Correctional Industries (previously known as Juniper Valley Products/JVP). In applying this statute and administering this waiver process, the terms office furniture and office systems shall mean:

Those systems and furniture that, at the time the product requirement is communicated, are described in Division of Correctional Industries' catalogs and web site and are intended primarily for use in an office environment (including faculty offices, meeting rooms, and conference rooms).

CCI Waiver Request

To: **Gay Zalman**
Colorado
Correctional Industries
(719) 226-4204
(719) 226-4220 fax

From: **Requestor Name:** _____
Agency Name: _____
Phone: _____ **Fax:** _____
Consulted with: _____
CCI Representative/Contact Person

Purchasing Agent: _____ **PA Phone:** _____

Agency Purchasing Approval to Submit Waiver Request: _____

Date Submitted: _____ **Total Pages:** _____ **cc:** _____

Scope of Waiver Request (provide the following information, attached additional sheets as needed):

- Period of Time (Date Item/s Needed) _____
- Number of Items or Amount of Materials (Quantity) _____
- Complete Description & Specifications (Not Just Brand & Model Number) _____
- Quoted Unit Price _____ \$
- Quoted Total Price FOB Destination, including Assembly _____ \$
- Picture or Sketch of Product (if Available) _____

Please review and respond to this **request for waiver** to purchase outside of the CCI mandatory awards (State Price Agreement #42500YY08M) for office furniture and office systems. In completing and submitting this waiver request as outlined in the procedure from the back of this form, I believe CCI cannot provide its goods or services:

- Check appropriate box:
- At a comparable level of quality, or
 - At a comparable price to that provided by the private sector; or
 - CCI cannot provide its goods or services in a timely manner. (Note: No waiver shall be granted based on timeliness unless CCI was given a reasonable time period to provide the goods or services, which must be at least equal to the time period offered to the private sector.)

If requestor has spoken directly with a CCI account representative in regards to this request and comparable CCI products **AND** completed all of the above noted information, CCI will answer this **request for waiver** within five (5) working days

*** CCI ***

Denied Approved Pending

_____ **Signature** _____ **Date** _____

If Approved, Reason:

- CCI Cannot Provide its Goods or Services At a Comparable Level of Quality, or
- CCI Cannot Provide its Goods or Services At a Comparable Price to that Provided by the Private Sector; or
- CCI Cannot Provide its Goods or Services in a Timely Manner.

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PROCEDURE

Agencies seeking a waiver from the statutory requirement to purchase office furniture and office systems from CCI shall:

1. Contact the agency's CCI sales representative to discuss the agency's needs and CCI's ability to furnish the desired products;
2. Complete the waiver request form (See Attachment 2), attach any supporting materials, and submit it to CCI customer relations. (Current address, e-mail, fax and phone numbers are available on CCI's web site.) The form must be signed by the agency purchasing director or, for Group I agencies, by the individual delegated purchasing responsibility.

Upon receipt of a waiver request, CCI will:

1. Review the request in accordance with the standards set forth herein, and grant or deny the request within five working days or such other period of time as is agreed upon by CCI and the agency.
2. If the request is denied, CCI will state the basis for the denial, including a description of the product it offers that meets the specification, and will be available to answer questions about the product or the decision.

If the request is granted, the agency may proceed to purchase the office furniture or office systems in accordance with the requirements of the Procurement Code and the Procurement Rules.

If the request is denied, the agency may appeal CCI's decision to the Executive Director, Department of Personnel & Administration (or delegate), through the State Purchasing Office. The appeal shall contain the original request, all supporting material, and CCI's denial information. At the time the appeal is filed, the agency shall notify CCI of the appeal, and CCI may submit any additional information it considers relevant to support its decision. On request by the Department of Personnel and Administration, CCI shall provide additional information concerning the pricing of its products relative to any alternative products identified by the agency or institution (including delivery and set-up fees), the quality of its products, materials, and workmanship, differences in terms and conditions (including warranty provisions), means of insuring or mitigating the risk of late delivery (where that is an issue), and other information relevant to the DPA's certification that CCI can provide products of comparable quality and price in a timely manner.

The decision of the Executive Director or his designee is final.

STANDARDS

Based on §17-24-111(1)(a), to grant a waiver, the DOC or DPA must find that either:

1. CCI cannot provide its goods or services
 ■ At a comparable level of quality, or
 ■ At a comparable price to that provided by the private sector; or
2. CCI cannot provide its goods or services in a timely manner.

Therefore, the waiver must be based on one or more of the above factors. Neither DOC nor DPA shall grant a waiver based on timeliness unless CCI was given a reasonable time period to provide the goods or services, which must be at least equal to the time period offered to the private sector.

The scope of the waiver shall clearly define the period of time and the number of items or amount of materials that can be purchased from the private sector, and no waiver shall be deemed to extend to comparable materials or situations beyond the scope of the waiver.

DEFINITIONS

Section 17-24-111(1)(a) states: ... "State agencies may purchase goods and services from sources other than the division; except that office furniture and office systems shall be purchased from the division." Therefore, in applying this statute and administering this waiver process, the terms office furniture and office systems shall mean:

Those systems and furniture that, at the time the product requirement is communicated, are described in Division of Correctional Industries' catalogs and web site and are intended primarily for use in an office environment (including faculty offices, meeting rooms, and conference rooms).

Emergency Procurements from the Fiscal Rules

STATE OF COLORADO FISCAL RULES

8.3.15 Real property leases, where the State is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;

8.3.16 Sponsored projects – See Fiscal Rule 3-1 (State Contracts);

8.3.17 Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;

8.3.18 Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;

8.3.19 Utility hook ups and line extensions performed by a utility company; and

8.3.20 Water rights purchases or temporary leases.

8.4 Exceptions - Prior Delegate Approval. Advance payments of up to \$10,000, for one or more fiscal years, if the State Controller delegate for the Agency or Institution of Higher Education determines, and documents in the contract file, that the advance payment provides a benefit to the State at least equal to the cost and risk of the payment.

9. EMERGENCIES



Disbursements for emergency procurements may be made upon presentation of invoices, receipts, or other statements describing goods or services purchased and the amount to be paid. Goods and services necessary to respond to an emergency may be procured immediately, without issuing a commitment voucher or obtaining a written waiver from the Office of the State Controller, where all of the following conditions are met:

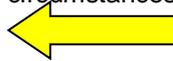
9.1 The nature of the threat requires an immediate response and there is insufficient time to issue a commitment voucher;

9.2 The procurement is authorized by the individual who has final executive authority for an Agency or Institution of Higher Education, or his or her delegate;

9.3 The procurement is made with such competition as is practicable under the circumstances;

9.4 A commitment voucher is executed as soon as possible to define future performance obligations, if any, of the vendor and State, as required by Fiscal Rules; and

9.5 The Agency or Institution of Higher Education notifies the Office of the State Controller in writing, as soon as possible, of the circumstances, goods and services purchased, and the dollar amount of the commitment.



Issued by the Office of the State Controller

Date Issued: 7/1/74 Rule 2-2 Date Revised: 1/1/09

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Emergency Procurements from the Procurement Rules

- R-24-103-206 EMERGENCY PROCUREMENTS.
- R-24-103-206-01 Definition of Emergency Conditions.
An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the using agency and approved by the director, head of a purchasing agency, or designee. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:
- (a) the functioning of state government, or its programs;
 - (b) the preservation or protection of property; or
 - (c) the health or safety of any person or persons.
- R-24-103-206-02 Scope of Emergency Procurements.
Emergency procurements shall be limited only to a quantity of those supplies, services, or construction items necessary to meet the emergency.
- R-24-103-206-03 Authority to Make Emergency Procurements.
Any state agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Director, or head of a purchasing agency, shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the state agency shall notify the Director, or head of a purchasing agency, on the next working day.
- R-24-103-206-04 Source Selection Methods.
- (a) General. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
 - (a) Determination Required. The Procurement Officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the director.

STATE CONTROLLER POLICY

STATUTORY VIOLATIONS

PROCESSING COMMITMENT VOUCHERS THAT VIOLATE STATE STATUTE

1) Definitions

- a. Statutory Violation – Occurs when liabilities are incurred or payments made on the States behalf without prior approval of a purchase order or a State contract when required under Fiscal Rule 2-2.
- b. Ratification – State Controller waiver of a statutory violation and acceptance of the commitment voucher (purchase order or contract).

2) Rule.

- a. Statutory Violations .The State Controller has authority to ratify statutory violations and allow payment for services already performed or goods already delivered. Statutory violations involving contracts require ratification by the State Controller; delegates are not authorized to perform this function. Statutory violations involving purchase orders require ratification by the FAST Team
- b. Expired Contracts – Under contract law, contracts terminate when their term expires and the State Controller does not have authority to revive expired contracts. When a contract expires or terminates, the Agency or Institution of Higher Education (IHE) shall prepare a new contract. Executing an option letter, amendment, or any other modification tool does not revive expired contracts, and is not permitted.

3) Policies

- a. Conditions for Ratification. When a statutory violation occurs, the State Controller has discretion to ratify an expenditure, in whole or in part, provided that all of the following conditions are met:
 - i. The prices or rates are fair and reasonable;
 - ii. The amount of the expenditure is within the unencumbered balance;
 - iii. The State Agency or IHE provides a written explanation in accordance with this policy; and
 - iv. The parties did not act in bad faith or in a fraudulent manner.
- b. Release of Payment. Agencies and IHE5 shall not release vendor payments prior to State Controller ratification.
- c. Personal Obligation. Statutory violations not ratified by the State Controller shall be the personal obligation of the person(s) who ordered the goods or services and/or incurred the obligation. See CRS §24-30-202(3).
- d. Internal Controls. All Agencies and IHE5 are required to maintain an adequate system of internal controls to identify an occurrence, prevent or minimize violations, and implement this policy.
- e. Notification of State Controller. Agency and IHE chief fiscal officers shall notify the State Controller and request ratification of commitments after reviewing information related to statutory violations and once they are satisfied that the corrective action planned or taken is sufficient to prevent or minimize future occurrences. This notification shall be in the form of a memorandum or e-mail

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to the Deputy State Controller, and shall include all of the following:

- i. Description. Describe the commitment including:
 1. A description of the goods or services provided,
 2. The dollar amount
 3. The date when the commitment arose,
 4. Whether disbursements have been made, and
 5. Provide copies of any relevant correspondence, documents, invoices, purchase orders, and contracts that define the terms of the commitment.
- ii. Explanation. An explanation why the commitment arose before it was authorized, including the following information:
 1. The organizational unit and name and title of person or persons responsible,
 2. A description of internal controls and why they did not prevent the situation from occurring. and
 3. A finding with supporting facts stating whether either Party acted in bad faith or fraudulently.
- iii. Evaluation. An assessment of whether the prices or rates are fair and reasonable and the basis for the conclusion. As appropriate, include State procurement procedures that were used and state whether all other required approvals were obtained.
- iv. Expenditure and Unencumbered Balance. Confirm that the expenditure is within the unencumbered balance and that the Agency or IHE has the funds to pay for the commitment.
- v. Preventative Measures. Include measures planned to prevent reoccurrence of the violation. If similar violations have occurred in the past, explain what prior preventative actions were and why they have not been effective.

**David J. McDermott, CPA
State Controller**

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Official Function Form

OFFICIAL FUNCTIONS COMMITMENT REQUEST		RQ# _____ Line # _____
Department, Division, or Agency _____		Partial/Final Payment (Circle One) (Copy of Screen Print with proper approvals must be attached.)
Purpose of Function (Group Luncheon, Reception, etc.) _____		Date of Function _____
Payable to: _____	Vendor Code: _____	
Address: _____		
City: _____	State: Alabama	Zip Code: _____
Explanation of Estimated Direct Costs (Amounts for food, room rental, etc.) _____		
Contact person _____	Phone number _____	Estimated Number of Persons Attending _____
		Estimated Total Costs \$ _____
Location of Function _____		Actual Cost \$ _____
Signature of Person Approving Funds/Expenditures _____		Title _____
		Date _____

The department executive director or designee must approve an official function. Official functions estimated to exceed one hundred dollars (\$100.00) must be authorized prior to its occurrence. An official function estimated to cost one-hundred dollars (\$100.00) or less may be approved after it occurs.

state employees attending the official function	
Section Leader(s) by Name and the Number of Staff	Position Title(s)
_____	_____
visiting guests or dignitaries attending the official function	
Name (Include "And Spouse", if attending)	Affiliation
_____	_____

If additional space is required, please attach an extra sheet.

Reset Form

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OFFICIAL COLORADO STATE DOCUMENT
DO NOT ALTER THIS FORM

CERTIFICATION FOR PERSONAL SERVICES AGREEMENT

Instructions: Additional supporting documentation, such as the scope of work via a copy of the purchase order or contract, must be attached to this completed form. Failure to complete this form in its entirety or attach the scope of work, could delay the review and approval of the personal service agreement. Contact your department's human resource office for assistance.

Your Department/Institution Name:

Contract Management System (CMS)#: Purchase Order #:

Original \$ Amount: Increase/Decrease in \$: New Total \$ Amount:

Contractor: Sole Proprietor? No Yes

Assigned Individual Contractor/Leased Worker(s) Name:

TOTAL TERM OF AGREEMENT (as stipulated in the agreement that includes extensions)

From: To:

1. Please describe the labor and business need for the service being outsourced, including the type of services being acquired, the specialized skills and expertise required to perform the work, and identify the direct beneficiary of the services.

2. Have you consulted with the department human resource office to determine the best way to meet the labor and business need that generated this request?

No Yes

3. Have these services been purchased through an agreement(s) before?

No Yes If **yes**, for how long?

4. Are these services ongoing for an indefinite period of time?

No Yes If **yes**, for how long?

If **yes**, please attach the business case and cost analysis that justifies why the service is best performed either by acquiring FTE or by permanently outsourcing the personal service.

5. Is the individual or contractor a current **state employee** or has previously been a **state employee** either on a temporary or a permanent basis? Has this individual or contractor been used in the past?

No Yes If **yes**, give dates of employment or contract performance dates.

State Temporary Employee

Permanent Employee

Contract Performance Dates

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CERTIFICATION FOR PERSONAL SERVICES AGREEMENT

6. Is this is a contract or purchase order modification?
No Yes If **yes**, the please explain the reason for the modification including the difference in scope of work from the original contract. _____
7. Post April 7, 1993, are there specific statutory citations (not footnotes to the Long Bill) that require outsourcing with a contractor to provide this personal service?
No Yes If **yes**, cite statute and provide a copy. C.R.S. _____
8. Independent contractor information. Please answer **Yes** or **No** for each question. Contact your department's human resource office for assistance to complete this section.
- Is the State the only client the contractor works with? **Y** **N**
 - Is the contractor registered with the Secretary of State's Office and/or the IRS to conduct business as an independent contractor? **Y** **N**
 - Does the contractor hire retired state employees to perform the work? **Y** **N**
 - Does the contractor have their own place of business? **Y** **N**
 - Does the contractor offer services to the general public and have other clients? **Y** **N**
 - Does the contractor need to be trained by the State to be able to provide the service? **Y** **N**
 - Does the contractor determine how and when the services will be performed? **Y** **N**
 - Does the contractor work on state property? **Y** **N**
 - Does the State control the route or location where the work must be performed? **Y** **N**
 - Does the State provide the contractor with equipment, tools or materials to conduct the work? **Y** **N**
 - Does the contractor have unemployment and workers' compensation insurance? **Y** **N**
 - Does the contractor have direct daily control over state employees? **Y** **N**
 - Does the contractor bill by an hourly rate? **Y** **N** Lump sum? **Y** **N**
 - Are the contracted services important to the departmental operations in that they have become a necessary part of the business? **Y** **N**

Note: Completion of this form does not verify independent contractor status. Determination is based on regulations by the IRS, USDOL, PERA, or Colorado state statutes. Your department's human resource office may contact you for further information and clarification. Supporting documentation must be provided.

TO BE COMPLETED BY PROGRAM REPRESENTATIVES

_____ Agency Representative (please print)	_____ Title
_____ Agency Representative Signature	_____ Work Phone Number
_____ Program Requestor (please print)	_____ Title
_____ Program Requestor Signature	_____ Work Phone Number

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THE FOLLOWING TO BE COMPLETED BY HR REPRESENTATIVE ONLY

1. I attest that the acquisition of services from the independent contractor will not directly or indirectly result in the separation or displacement of classified state employees within the state personnel system.

No [] Yes []

2. Have these outsourced services presently or previously been performed within the state personnel system? If the contract is over \$100,000, then please complete the PSA task within CMS.

No [] Yes [] If yes, provide the following within CMS PSA Task.

C.R.S 24-102-205 requires that all departments are to use the centralized Contract Management System (CMS) to track the number of employment positions that are filled and/or eliminated under any personal services contract that was previously performed by classified state employees. The business case and cost analysis must support a cost savings and show at least equal or increased quality of the service being outsourced, and be documented and approved within the CMS PSA Task.

Review/Approval Criteria: The following are statutory criteria by which personal services agreements will be evaluated by the State Personnel Director or designee. Please identify those criteria that apply to approve this request.

- Solicitation provisional approval. To meet statutory criteria, final personal services review and approval is required upon award of the solicitation and before the agreement is executed.
The contract meets the relevant cost savings test. A "Cost Comparison" form must be completed and attached to this form. C.R.S. 24-60-503
The contract is for a new state program (created after 4/7/93), which statutorily authorizes the performance of the program by independent contractors. C.R.S. 24-50-504(2)(b)
The contracted services are not available within the state personnel system, or cannot be performed satisfactorily by state employees, or are of a highly specialized or technical nature. C.R.S. 24-50-504(2)(c)
The services are incidental to a contract for the purchase or lease of real or personal property. C.R.S. 24-60-504(2)(d)
The contract is needed to protect against a conflict of interest, or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. C.R.S. 24-50-504(2)(e)
The contractor will provide equipment, materials, facilities or support services that could not feasibly be provided by the State in the location where the services are to be performed. C.R.S. 24-50-504(2)(f)
The contractor will conduct training courses for which appropriately qualified state personnel system instructors are not available. C.R.S. 24-50-504(2)(g)
The services are of an urgent, temporary, or occasional nature. C.R.S. 24-50-504(2)(h)
The contract is for purchased services. (The acquisition of services that directly benefit specific groups or individuals in the public at large). C.R.S. 24-50-504(3)
The services provided are for a term of six months or less and are not expected to recur on a regular basis. C.R.S. 24-50-513

PERSONAL SERVICES CERTIFICATION - HR Representative ONLY
Independent Contractor Certification: The signature below indicates that the contract or commitment voucher is indeed an independent contractor that does not create an employee-employer relationship and that these documents contain the required independent contractor language as part of the Director's Rules 10-4(E)(4) and supporting documentation.
Department/Institution Certification: I hereby certify that the attached agreement for personal services meets at least one criterion stated above and that all responses on this certification are true and accurate, to the best of my knowledge.
Date: [] by: []
Personal Services (PSP) Central Human Resources Representative Title/Work Phone Number
Revised document: DPA/DIR 7/2010



Department of Military & Veterans Affairs

Personal Services Business Case

All personal services contracts require a Business Case. The purpose of the Business Case is to document the reasons why the Department is contracting out for labor needs. The level of detail depends on the nature of the contract services. Contracting for functions or programs performed by state employees requires a detailed analysis. Not all Business Cases will need all three sections completed. Please consider carefully before skipping any section as Chapter 10 of the Department of Personnel's rules requires these three areas to be addressed.

1. **Accountability**

Accountability addresses whether governmental authority is being improperly delegated. For example, a contractor should not be tasked with policy-making for DMVA or supervising state employees. If a contract is mandated by statute, it should be addressed in this section.

2. **Cost Analysis**

Cost needs to be considered for all contracts. Cost analysis should establish that contracting out these services is a better value for the State, now or through anticipated savings in future years. A cost analysis must be included if hiring a leased worker (temporary worker through an agency). If contracting out is not cheaper, address the advantages, such as efficiency, timeliness, or the contractor's qualifications, in the Quality section. If the contract impacts state employees, then a cost comparison form must be completed and must show cost savings. Include all actions taken to mitigate the effect of the contract on state employees.

3. **Quality**

Quality addresses timeliness, functionality, durability, efficiency, the contractor's qualifications or flexibility of obtaining services from a contractor. For example, the contractor can provide technology that the State cannot, or the contractor provides experience and expertise that is not available within the state personnel system.

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Insurance Guidelines

We consider an analysis of insurance requirements to be a necessary part of any acquisition, whether micro-purchase (less than \$5,000), other discretionary purchases, documented quote, or sole source.

We recommend on noncompetitive acquisitions that you balance against the cost of requiring insurance the following:

ASK Yourself:

- ▶ Whether the unique nature of a supply being furnished may have a reasonable potential for third-party claims or other damage to State property or personnel;
- ▶ The extent to which performance of the agreement may pose a risk of damage to State property or injury to personnel;
- ▶ The length of time that the contractor will be on State property during performance of the work, and the nature of the services being performed there; e.g., handling hazardous equipment or materials;
- ▶ The type of State property where the contractor will perform services; e.g., motor vehicles, hospitals, facilities (correctional, water, gas, sanitation, electrical, power, swimming), with more scrutiny given to locations within the confines of operations (*as defined in CRS 24-10-106 (a) (b) (f)*) because broader risk exposure exists in the Governmental Immunity Act for "operations;"
- ▶ Whether the vendor will be interacting with State clients, students, and/or persons entrusted to the State's care;
- ▶ The likelihood that, regardless of the nature of the performance, the vendor may be publicly perceived as being an agent of the State or otherwise identified with the State program.

We recommend that you consult with your servicing legal counsel in cases where there may be a question about requiring insurance in any particular procurement, modifying the standard insurance language, or accepting "self insurance" as alternatives to standard insurance coverage. For more information, please contact the Purchasing and Contracts Office.

**State of Colorado
Department of Military and Veterans Affairs**

Insurance Requirements

1. Vendor shall obtain, and maintain at his own expense and at all times during the term of a Micro Purchase, Purchase Order, or Contract, and any extension thereof, the following insurance.

A. **Standard Workers' Compensation and Employer Liability** as required by state statute, including occupational disease; covering all employees on or of the work site, acting within the course and scope of their employment.

B. **General Personal Injury, Automobile Liability**, and, when required by the State, **Professional Liability**, including bodily injury, personal injury and property damage, with the following minimum coverage:

1. **Occurrence** based policy: combined single limit of \$1,000,000 or **Claims-Made** policy: combined single limit of \$1,000,000 plus an endorsement that extends coverage two years beyond the policy expiration date

2. **Annual Aggregate** limit policy: Not less than \$2,000,000 plus agreement that vendor will purchase additional insurance to replenish the limit to \$2,000,000 if claims reduce the annual aggregate below \$600,000

C. The State of Colorado **MUST** be named as an additional insured on **ALL** liability policies.

D. The insurance shall include provisions preventing cancellation without 30 calendar days prior written notice to the State by certified mail. In the event of cancellation of such coverage, vendor shall immediately notify the State of cancellation.

E. Vendor shall provide certificates of adequate insurance coverage to the State within 7 working days of receipt of award and PRIOR to beginning work, unless otherwise provided.

F. Vendor shall provide such other insurance as may be required by law, or in a specific solicitation.

Independent Contractor – Sole Proprietor Guidance Department of Personnel & Administration

Background and Purpose of the Bi-Lateral Purchase Order

In FY10-11 a bi-lateral purchase order was created for personal services agreements with a sole proprietor. The bi-lateral purchase order consists of a purchase order and the exhibit for independent contractor provisions (the exhibit is attached to this guidance). DPA created the exhibit to address possible issues with misclassification of workers and specifically, independent contractors claiming and being awarded unemployment compensation after their contract with the State terminated. Misclassification of workers as independent contractors is a serious issue and extends beyond unemployment compensation to payroll taxes, PERA contributions, and benefits. The exhibit is designed to give the State a “rebuttable presumption” that the individual is an independent contractor. This means that if the State uses the exhibit and follows the terms of the exhibit and this guidance, then the individual is “presumed” to be an independent contractor. If the State uses the exhibit, but ignores the terms, then there is no rebuttable presumption. It is important that each agency evaluate its practices and develop policies that independent contracts are treated as such, and the agency follows the terms in the exhibit, this guidance, and IRS guidance.

When to Use the Bi-lateral Purchase Order

As of August 17, 2010, this new bi-lateral purchase order shall be used for all personal services agreements involving a sole proprietor where an official state contract is not utilized. This new exhibit should be used rather than the exhibit sent July 1, 2010. You do not need to replace the exhibit for purchase orders that have been issued. DPA/DHR considers utilization of a state contract for all personal services agreements with sole proprietors a best practice. Personal services agreements with sole proprietors could expose the State to a variety of potential liabilities surrounding worker misclassification and a state contract is preferred as it offers the least amount of exposure.

The Secretary of State defines a sole proprietor as a type of business entity that is owned and run by one individual and where there is no legal distinction between the owner and the business. All profits and all losses accrue to the owner (subject to taxation specific to the business). All assets of the business are owned by the proprietor and all debts of the business are the proprietor's. This means that the owner has no lesser liability than if he/she was acting as an individual instead of a business. A sole proprietor may do business with a trade name other than his or her legal name and the trade name must register with the Secretary of State Office.

Even with a definition it is often difficult to determine who is a sole proprietor. The best place to look is on the W-9 completed by the individual. If the box “Individual/sole proprietor” is checked, then you shall use the bi-lateral purchase order. If the box “Corporation” or “Limited Liability Corporation” is checked and you are aware that this individual is the only individual in the corporation or limited liability Corporation, then you shall use the bi-lateral purchase order. When in doubt, it is best to use the bi-lateral purchase order.

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Provisions of the Exhibit in the Bi-Lateral Purchase Order

The exhibit includes nine provisions (letters A through I). **All** of these provisions must be met for the State to obtain a rebuttable presumption that the individual is an independent contractor.

The provisions in the exhibit of the bi-lateral purchase order are only some of the variables that are considered and analyzed in determining independent contractor status. The provisions establish the parties' intent that the requirements of CRS §8-70-115 for obtaining a rebuttable presumption of an independent contractor relationship are met, and that the vendor is, in law and in fact, an independent contractor. None of the bi-lateral purchase order provisions are intended to be a standalone determination; however, not meeting one or more of the provisions on the bilateral purchase order could indicate possible misclassification of a worker, as an independent contractor. For example, if a sole proprietor is not a registered entity with the Secretary of State

or the Internal Revenue Service, that *could* be a red flag or indicator that the sole proprietor is not an independent contractor, but rather an employee, depending on many other variables (e.g., what services are being rendered, how the State is using the contractor, degree of control). Further explanations for some of the provisions in the bi-lateral purchase order are below.

A. Statute directs that an individual may choose to work exclusively for the State for a finite period of time specified in a written document. There is no cut-off or period of time indicated in statute, however, it is clear that the period of time the individual will work exclusively for the State must be at the individual's choosing, cannot be required by the State, and the period of time must be documented in the purchase order or contract and signed by both parties.

C. An independent contractor is usually paid a flat fee for the job being completed and the State pays the independent contractor either by a fixed or contract rate. Example: An independent contractor electrician submits a job estimate for electrical work at \$16 per hour for 400 hours. The contract stipulates that the contractor is to receive \$1,280 every 2 weeks for the next 10 weeks. This example is not considered payment by the hour under point C of the exhibit. Using this same example, if the contractor works more or less than 400 hours to complete the work, the contractor will still receive \$6,400, no more or less based on actual hours worked.

E. A person who is trained by an experienced state employee, by correspondence, by required attendance at meetings or other methods is not free from control because the training is an indication that the State wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his or her own methods and receives no training from the State as purchaser of services. For example, a worker hired for his or her IT expertise should not need to be trained on programming languages, or how to fix computer problems. The State may, however, tell him or her about the architecture of the State's IT system, and, if necessary, how to access state-specific software or hardware programs.

F. If the State furnishes tools and materials, this evidences control over the worker. If the worker furnishes tools and materials, it indicates lack of control or an independent contractor relationship. For example, a painter hired by the State would supply his or her own paintbrushes, drop clothes, tape, etc. However, the State may furnish the paint. Similarly, an electrician hired by the State would furnish his or her own electrical tools and equipment to

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS PROCUREMENT MANUAL

access the electrical systems. Further, a vendor is allowed on state property, as long as the time period is limited, and it is specifically stipulated within the purchase order or contract.

H. Independent contractors that do business with the state who do not have an established and registered business entity or trade name *may* not be an independent contractor under the law. Making payments directly to an individual person who doesn't solicit his or her services to the public and does not have a registered trade or business name, is one of the indicators that the person *may* not be an independent contractor. An independent contractor is generally registered as a business, maintains a visible business location, is free to seek out other business opportunities and markets and advertises themselves that he or she are available to work in the relevant market. If a purchasing or contract agreement is with an individual person directly, please contact your HR office or DPA/DHR to assist in determining risk and liability of the agreement as it pertains to possible misclassification of workers.

I. It is important to note that even though a bi-lateral purchase order or contract is executed and clearly states that a sole proprietor is an independent contractor, it does not by itself, legally establish an independent contractor relationship. The key is how the employer treats the independent contractor. This includes aspects such as control exercised over the contractor. Each situation must be analyzed on the totality of circumstances, as variables change case-by-case. Establishing independent contractor status cannot be concluded based on only one or two variables.

Certification for Personal Services Agreement

The newly revised certification for personal services agreement form also assists with the determination as to whether a vendor is a true independent contractor. New questions were added to assist in determining the degree of control over the vendor by the State, but none of the single questions are intended to be a standalone determination. Through the process of answering the questions on the form, it may be determined that the nature of the services provided, length of time, current vendor status, etc., indicate the service would be better obtained through a human resource action (filling a temporary or permanent position) instead of a procurement action (leased or contract worker). The need for and classification of a worker must be determined on a case-by-case basis in collaboration with involvement and input from human resources, procurement, and contracting professionals.

The questions on the personal services agreement form differ from the nine provisions in the exhibit. This is because the personal services agreement is broader in scope and is based primarily on IRS criteria. In contrast, the provisions in the exhibit are statutory and primarily address the issue of unemployment compensation.

For further guidance on classification of workers, please reference the [Independent Contractor Guidance](#); or contact Tamy Calahan at tamy.calahan@dmva.state.co.us or (720) 250-1520. Please contact the Purchasing and Contracts Office for additional Procurement Questions.

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EXHIBIT IC-INDEPENDENT CONTRACTOR PROVISIONS-Part of PO or Contract # _____

1. VENDOR ENGAGEMENT IN INDEPENDENT TRADE, OCCUPATION, PROFESSION OR BUSINESS; FREE FROM, DIRECTION AND CONTROL BY THE STATE PURSUANT TO CRS §8-70

The parties intend to create an independent contractor relationship between the State and the Vendor and for the State to obtain a rebuttable presumption of an independent contractor relationship pursuant to §8-70-115 by meeting the nine points below (A through I). Vendor (the term "Vendor" includes Contractors and Grantees) shall perform all of its services and other obligations under the Purchase Order (PO) or Contract (the term "Contract" includes Agreements and Grants) to which this Exhibit is attached, free from the direction and control of the State. Vendor represents that it is customarily engaged in an independent trade, occupation, profession, or business related to the services performed. These are material representations made by Vendor to the State, upon which the State relied in issuing this PO or Contract, and without which, this PO or Contract would not have been issued. In accordance with the foregoing, the State does not and shall not:

- A. Require Vendor to work exclusively for the State; Vendor is free to perform work for other entities, and represents that it does hold itself out to perform work for other entities on a regular, ongoing basis. Vendor may schedule and perform similar work for others any time it wishes, including on the same day it does so for the State;
B. Establish a quality standard for Vendor; except that the State can provide plans and specifications regarding the work but cannot oversee the actual work or instruct Vendor as to how the work will be performed;
C. Pay a salary or hourly rate but rather a fixed or contract rate that has been negotiated by the parties;
D. Terminate the work during the PO or Contract period unless Vendor violates the terms of the PO or fails to produce a result that meets the specifications of the PO or Contract;
E. Provide training, instruction, briefings, and orientations to Vendor regarding performance of the work, except as specifically stipulated within this PO or Contract's scope of work. The State shall notify Vendor when Vendor may begin performing the work and its other obligations;
F. Supply Vendor with State-owned or leased real property, tools, benefits, equipment, supplies, or other property to perform the work, except as specifically stipulated within this PO or Contract's scope of work. Vendor shall perform and maintain its own real property, tools, or rent or lease tools, equipment, supplies, or other personal property, and/or other items needed for the performance of the work under this PO or Contract and its other obligations hereunder and when applicable;
G. Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;
H. Pay Vendor personally but rather makes checks payable to the trade or business name of Vendor; and
I. Combine the State's business operations in any way with Vendor's business, but instead maintain the State's and Vendor's operations as separate and distinct.

2. BENEFITS DISCLOSURE

Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Unemployment insurance benefits shall be available to Vendor and its employees and agents only if such coverage is made available by Vendor or a third party. Vendor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

3. ENTIRE AGREEMENT These Provisions together with the attached Purchase Order or Contract, constitute the entire agreement between the parties, and supersedes all prior proposals, agreements or other communications between the parties.

Vendor
Insert Business Name
By:
Title:
Signature: Date:
*Persons signing for Vendor hereby swear and affirm that they are authorized to act on Vendor's behalf and acknowledge that the State is relying on their representations to that effect.

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Department of Military and Veterans Affairs
H. Michael Edwards, MAJ GEN, COANG
The Adjutant General
By:
Janet Jones, Procurement Director
Date:

Guidelines for Sole Source Procurements

All sole source procurements for products or services must be submitted on the Sole Source Justification form. Purchasing Agents are responsible for reviewing the information submitted, verifying the availability of the product or service, documenting their findings and getting Director approval. The following guidelines are to be used in assisting the Purchasing Agent in making their determination.

- ✓ **Has the requestor provided the administrative information such as date of request and department name and contact?**
- ✓ Has the requestor provided the suggested vendor and contact information?
- ✓ Has the requestor identified whether this is a reoccurring procurement or a one-time procurement?
- ✓ Has the requestor provided sufficient information in the following categories?

1. Needs Statement

- Why does the requestor need this product or service? How does it meet their needs?

2. Features Requirement

Matches Existing Equipment. Is the requested product an integral repair or accessory compatible with existing equipment? If so, is it the only part or accessory that can possibly be used?

Continuity. The requested product or service must be identical to the existing product or service to ensure consistency in results.

- Holding an extra inventory of parts for a different machine would not be cost, space or time effective and can be used as a justification.
- Maintenance from a preferred single vendor cannot normally be used as a justification, unless there is no other source available for this service. For example, if the manufacturer is the only source available to provide maintenance on a product then the Purchasing Agent may be able to justify a sole source. However, if the Purchasing Agent determines that authorized dealers can provide maintenance as well as the manufacturer, then the maintenance service can still be bid.
- Training requirements cannot normally be used as a justification, unless training is of a complex and specialized nature. For example, a new product or service requiring training of personnel may not justify a sole source.

Examples of when a product or service is essential to maintain continuity in a program are:

- The requested product or service has been standardized.
- The use of another product or service would require considerable time and money to evaluate.

"Only one in the world"/Prototype

- What unique design/performance features does this unit have which are essential to your requirements?
- Was a brief, yet technical explanation provided as to why they are essential?

3. Competing Brands Investigated

- What other suppliers did the requestor contact?
- What other products or services with similar capabilities were considered? Why won't these work?

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- Requestor needs to state that to the best of his/her knowledge, these are the only companies that make this type of equipment. At the Purchasing Agent's discretion, they may contact these sources to verify the uniqueness of the product.

4. Sources

- To be used in brand name sole source situations.
- Is the product or service available from more than one source?
- If yes, requestor needs to provide company names of known sources, to include sales representatives and phone numbers.

5. Price is "fair and reasonable"

- Comparison of prices and rates to established catalog prices or market prices. There commonly are similar prices or rates, e.g. those on price agreements that can serve as a guide to fairness or prices or rates proposed. In some cases, prices and rates are set by law or regulation.
- Historical prices or rates for similar items or services procured in the past also serve as a guide to fair and reasonable prices.
- Consumer Price Index (CPI)

6. Conflict of Interest

- Has the requestor contacted you regarding a potential conflict of interest? If so, have you documented your findings?
- Do you know of any potential conflict of interest that needs to be further investigated?

7. Department Approval

- All sole source justification forms must be signed and dated by the individual writing the sole source.

8. Determination

Note: Unless there is a special reason not to, the Purchasing Agent will post a sole source notification on the BIDS system for a minimum of two business days.

- ✓ Sole source approved – purchase as requested.

Requestor MUST meet BOTH criteria to have a sole source procurement:

- a) There is only one supply or service that can reasonably meet your need, and
- b) There is only one vendor who can reasonably provide that supply or service.

A sole source justification **cannot** be based on price alone.

- ✓ Brand name approved – issue bid on a "no substitutes" basis.

Requestor MUST prove that there is only one supply or service that can reasonably meet the need to have a *brand name* sole source procurement.

- ✓ Sole source not approved – issue bid using performance specifications.

Purchasing Agent makes this determination. It is recommended that you discuss with the requestor prior to issuing a bid to ensure specifications are complete.

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State of Colorado – Sole Source Justification

Section 24-103-205, C.R.S., as amended

TYPE or CLEARLY PRINT ALL INFORMATION

(Attach Additional Pages as Needed)

You MUST complete this form before beginning any procurement where the basis for vendor selection is:

- ✓ Only one product or service can reasonably meet your need, AND
- ✓ Only one vendor can reasonably provide that product or service.

(You MUST meet BOTH criteria to have a sole source procurement. Procurement Rule R-24-103-205-01)

Department: _____ Division: _____

Address: _____

Contact Name: _____ RX, PO or Contract #: _____

Phone: _____ FAX: _____

Department Approving Official Name: _____

Department Approving Official Signature: _____

Describe in detail the products and /or services to be procured and how they meet your needs.

Vendor Name: _____ FEIN #: _____

Vendor Address: _____ Phone: _____

Have you procured products and/or services from this vendor in the past 2 years? If Yes explain No Yes

Start Date: _____ End Date: _____

Estimated Total Dollars for this Procurement: \$ _____

Provide estimated cost breakdown of supplies and/or services covered by this procurement:

Supplies \$ _____ Services \$ _____

Attach a detailed explanation of Vendor's Sole Source Status – what is the basis for your identifying this as a sole source?

✓ Do you have an actual or potential conflict of interest in this purchase request? No Yes

✓ If yes, please explain on an attached sheet.

Purchasing Use Only: Comments: *** Approved for one time purchase as described on this request ***

✓ How is pricing deemed fair & reasonable per §24-103-403? _____

Approved: _____ Date _____

State Purchasing Director or Authorized Representative

Date

DPA DFP 1/2004

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Use of Sole Source Form/Summary of Price and Cost Analysis Requirements:

Both sole source and emergency procurements require a written determination by the head of a purchasing agency, or a designee, of the basis for the approval. This form is designed for approval of a "sole source," not an emergency procurement. Consult with your procurement official regarding requirements for emergency procurements.

This form should be completed and approved before formal negotiations leading to execution of an agreement with a vendor where a competitive process (documented quote, sealed bid, or competitive sealed proposal) is not used because a sole source is justified.

Normally, the actual pricing cannot be evaluated until after execution of the contract or issuance of the purchase order. The price or cost analysis (§24-103-403) should be included with the procurement file before execution of a purchase order or when the contract is routed for approval.

The methods of price cost analysis are explained in Chapter 5 of the Colorado Contract Procedures and Management Manual. Normally, price analysis is not done in competitive solicitations where "adequate competition" exists, because the competitive process takes care of the "fairness and reasonableness" of prices.

However, in a sole source situation where no price competition exists, some analysis must be done to insure that the requirements of the controller's statute are met, i.e., that prices or rates are "fair and reasonable."

Common methods of price/cost analysis include:

- a. Comparison of prices and rates to established catalog prices or market prices. In a sole source situation, there commonly are similar prices or rates, e.g., those on price agreements, that can serve as a guide to fairness or prices or rates proposed by a sole source provider. In some cases, e.g., some utilities, prices and rates are set by law or regulation (utility tariff rates).
- b. Historical prices or rates for similar items or services procured in the past also serve as a guide to fair and reasonable prices.
- c. In either case, even though neither historical or market prices involve the identical service, some analysis can often be done which evaluates the differences in the types of services or goods, and concludes that the nature of the differences warrant the differences in pricing. In other cases, judgments must be made that proprietary aspects of the service or commodity warrant expenditure of the prices or rates in excess of what is customary.
- d. In cases where neither historical or catalog prices exist, cost analysis must be used. Vendors can be asked to provide summary level detail of materials and labor costs, as well as markups and other indirect cost rates included in the price. Technical judgments concerning labor hours can be applied to labor hour rates to evaluate the reasonableness of the overall price. Reasonable profit, of course, is another element of price. The Procurement Rules require the submission of cost or pricing data for noncompetitive acquisitions exceeding \$50,000.

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Form W-9 Substitute Form State of Colorado 8-2007	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.										
Print or Type See Specific Instructions on page 3.	Name											
	Business name, if different from above											
	Check appropriate box: <input type="checkbox"/> Individual/ Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other <input type="checkbox"/> Exempt from backup withholding											
	Address (number, street, and apt. or suite no.)	Requester:										
	City, state, and ZIP code.	Phone:										
List Account number(s) here (optional)												
Part I Taxpayer Identification Number (TIN)												
Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.												
		Social Security number <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 5%;"> </td><td style="width: 5%;"> </td> </tr> </table>										
		Employer identification number <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 5%;"> </td><td style="width: 5%;"> </td> </tr> </table>										
Note: If the account is in more than one name, see the chart on page 3 for guidelines on whose number to enter.												
Part II Certification												
Under penalties of perjury, I certify that:												
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. person (including a U.S. resident alien).												
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 3.)												
Sign Here	Signature of U.S. person ▶	Date ▶										
Minority and Women-owned Businesses (M/WBEs) Self Certification (Please check all boxes that apply)												
In an effort to track levels of participation by women and minorities doing business with the State of Colorado, the following information is requested. Please indicate the appropriate category of ownership for your company. "Owned" in this context means a business that is at least 51 percent owned by an individual(s) who also control(s) and operate(s) it. "Control" in this context means exercising the power to make policy decisions. "Operate" means actively involved in the day-to-day management. If your business is jointly owned by both men and women or is a large publicly held corporation, please check the box labeled "Not Applicable."												
Gender Information:												
<input type="checkbox"/> Female-Owned <input type="checkbox"/> Male-Owned <input type="checkbox"/> Not Applicable												
Owner Ethnicity Information												
<input type="checkbox"/> African American <input type="checkbox"/> Asian/Pacific American <input type="checkbox"/> White (non-Hispanic) <input type="checkbox"/> Not Applicable												
<input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Other: _____												
Small Business Information												
Small Business (a business that is organized for profit, is independently owned and operated, and has 25 or fewer full time equivalent employees.)												
<input type="checkbox"/> Yes <input type="checkbox"/> No												

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the

requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.