



FORT LEWIS COLLEGE PROCUREMENT RULES

Effective November 1, 2005

TABLE OF CONTENTS

SECTION I Introduction	3
SECTION II Authority & Delegation.....	3
SECTION III Purpose.....	3
SECTION IV Applicability.....	3
SECTION V Ethics	6
SECTION VI Procurement Methods	6
SECTION VII Contracts	17
SECTION VIII After-the-Fact (ATF) Purchases	17
SECTION IX Disputes & Remedies.....	17
SECTION X Suspension & Debarment.....	19
SECTION XI Procurement Records - Information & Retention	21
SECTION XII Disposal of College Property (Surplus).....	21
SECTION XIII Definitions	21
APPENDIX A: Fort Lewis College Procurement Code of Ethics	25

SECTION I: Introduction

Pursuant to Section 24-101-301 of the C.R.S., on September 14, 2005, the Fort Lewis College Board of Trustees adopted a resolution exempting Fort Lewis College from the State of Colorado Procurement Code and the State of Colorado Procurement Rules to be effective November 1, 2005.

SECTION II: Authority & Delegation

The statutes of the State of Colorado vest the supervision of the College in the Board of Trustees for Fort Lewis College, which includes the authority for procurement. The Board of Trustees has delegated to the President, the administration of the College pursuant to its policies, including the authority for procurement, and to delegate that authority to other College officials. Upon the effective date of these Procurement Rules (Rules), all procurement authority of the President of the College shall be delegated to the College Director of Purchasing. The Director of Purchasing may further delegate his/her authority to persons in College departments for the efficient operation of the College. The Director of Purchasing is the only person authorized to purchase goods and services for the College unless such specific delegation of authority is made to another employee. Since no rules can cover all eventualities, exceptional cases will be resolved as circumstances and prudent business practices warrant. No employee of the College is empowered to incur any obligation or make any commitment on behalf of the College for the procurement of goods or services, except as provided under these Rules.

Consistent with the provisions of these Rules, the Director of Purchasing may adopt operational procedures governing the internal purchasing functions of the College, including purchases at the department level using the College's procurement card and purchase orders. Under these Rules, the Purchasing Office is the final authority at the College for the selection of vendors and the sole authority for the commitment of College funds with respect to the procurement of goods and services. The Director of Purchasing may, from time to time, amend these Rules. The Director of Purchasing along with the consent of the Vice President of Finance and Administration may in certain circumstances waive these rules.

SECTION III: Purpose

These Rules are designed to support and facilitate the educational, research, and public service missions of the College through the acquisitions of goods and services by applying best methods and business practices that provide for public confidence in the College. Within the context of the College environment, these rules ensure a procurement process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the procurement process, and uniform procurement procedures.

SECTION IV: Applicability

A. General Applicability

These Rules apply to all purchases of goods and services regardless of funding source.

B. Exclusions

These Rules do not apply to the following situations:

1. No College funds are expended or the contract is revenue-producing. The College shall maximize the return to the College when revenue-producing contracts are involved. However, in the case of revenue-producing contracts for which the College is considering more than one vendor, the Purchasing Office will conduct a competitive solicitation.
2. The procurement is between the College and an educational institution, governmental body, research institute, or non-profit entity.
3. The procurement is for services provided by architects, engineers, landscape architects, industrial hygienists and land surveyors. (See C.R.S. §§ 24-30-1401 through 24-30-1407.)
4. A vendor's item is to be procured for resale.
5. The procurement of services from a specific vendor is necessary to comply with the specific terms and conditions of a sponsored project grant or contract.
6. The procurement is for the lease, sale, purchase, transfer, disposal or any other transaction involving an interest in real property.
7. The procurement is for an employment contract.
8. The procurement is for insurance policies for the College and its employees.
9. Calculated payments required under a program within the College (e.g., formula distributions, or distributions required by regulatory or statutory formulas).
10. Display, fabrication, performance, purchase, or use of works of art, works of entertainment, literary works, museum collections, music, film, or other copyrighted materials specific to the purpose of the procuring department. This exclusion does not apply to construction projects that require Art in Public Places per C.R.S §24-48.5-312(3)(a)(I)(A).
11. Conference registrations.
12. Dues and memberships.
13. Used equipment, provided that the Director of Purchasing & Contracts has determined that competition is not practical or would not be advantageous to the College. Such purchases will require cost or price analysis, certificate of working order and warranty unless waived by the Director or designee.
14. Advertising such as in a newspaper, magazine, television commercial, radio advertisement, outdoor advertising, indoor display, social media, or other media outlet where the College's brand or programs are being advertised to a specific consumer segment.
15. Financial aid or tuition assistance programs.
16. Insurance purchases.
17. Internal services routinely provided by the College (e.g., internal printing or copying

services, or services provided by College Counsel).

18. Intra-College purchases.
19. Moving expenses reimbursed to College employees (Fiscal Rule 4-9).
20. Payroll and related disbursements (withholding, authorized *Benefits*, etc.).
21. Postal and other delivery charges, including messenger fees.
22. College program payments to or on behalf of individuals qualified for the program's Benefits (e.g., scholarships).
23. Subscriptions for journals, informational publications or similar materials (electronic or hard copy).
24. Utility hook ups and line extensions performed by a utility company.
25. Utility services, including by way of example, telephone services (both land lines and cell phones), electrical, water, natural gas, sewer, cable, internet, trash, recycling or similar services, which are routinely purchased by the College.
26. All athletic fees associated with the conference affiliation.
27. Travel expenses.
28. All legal services.
29. Other disbursements approved in writing by the Vice President for Finance and Administration.

SECTION V: Ethics

A. Conflict of Interest

When the Director of Purchasing has reason to believe that a conflict of interest may exist in the procurement of goods or services, he/she will direct the affected department to comply with the procedures described in the applicable handbooks (Faculty, Exempt Staff, Classified Staff) or CRS 24-18.

B. Code of Ethics

All parties involved in the negotiation, performance, or administration of College contracts are bound to act in good faith. Any person employed by the College who purchases goods and services, or is involved in the procurement process for the College, shall be held to the highest degree of trust and shall be bound to the Fort Lewis College Procurement Code of Ethics included with these Rules as Appendix A.

C. Vendor Shows

Vendor shows, which include open houses, product exhibits, or product demonstrations, must be approved in advance by the Director of Purchasing in order to:

- protect the integrity of the College's procurement process;
- protect the viability of College-wide price agreements; and
- ensure fairness to all vendors.

The sponsoring College department shall notify the Director of Purchasing as far in advance as possible but at least ten (10) business days prior to the vendor show. A vendor show is a product demonstration or exhibit to which more than one College department is invited by a vendor for the purposes of marketing goods or services. A product or equipment demonstration to a single College department is not a vendor show. The Director of Purchasing has the final authority to determine what constitutes a vendor show.

SECTION VI: Procurement Methods

A. General Solicitation Rules

1. Solicitation Policy

It shall be the policy of the College to purchase goods and services in a manner that affords fair and equitable treatment of all persons involved in the procurement; maximizes the value of College funds; and provides safeguards for maintaining a procurement system of consistency, quality and integrity. The solicitation process should not be used to obtain estimates or to "test the water."

2. Solicitation Thresholds

- a. \$10,000 or less – College Departments have discretionary purchasing authority;

- b. \$10,001 up to \$50,000 – purchases of **goods and services** are processed at the discretion of the Director of Purchasing, competition is required sought via an informal, documented bid process.
- c. \$50,001 and over – competition for **good and services** is sought via a formal bid process either Invitation for Bids or Requestfor Proposals;

3. Solicitation Notification (Advertisement)

The Director of Purchasing will determine the best method of advertising solicitations for goods and services made through Documented Quotes (DQ), Invitation for Bids (IFB), and Request for Proposals (RFP). This may include an electronic solicitation system such as Rocky Mountain Bid System (www.bidnetdirect.com/colorado) and the Fort Lewis College Purchasing web site (www.fortlewis.edu/purchasing/OpportunitiestoBid).

4. Specifications

Purchasing agents shall issue goods or services specifications which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists may be used in competitive solicitations. When appropriate specifications issued and/or used by the Federal government, other public entities, or professional organizations may be referenced by the College. Vendors may be required to certify that these standardized specifications have been met.

5. Solicitation Conferences

Solicitation conferences may be conducted to explain procurement requirements. They shall be announced in the solicitation. The conference should be held long enough after the solicitation has been issued to allow vendors to become familiar with it but with adequate time before the solicitation due date to allow vendors consideration of the meeting resultsin preparing their Quotes/Bids/Proposals. Nothing stated at the conference shall change the solicitation unless a change is made by written amendment and posted electronically.

6. Amendments to Solicitations

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

7. Solicitation Receipt, Opening, & Recording

a. Receipt

Each response shall show the date and time of receipt. Responses to competitive sealed solicitations shall be submitted via the electronic solicitation notification system (RMEPS); the system shall not allow the viewing of or opening of responses until the due date and time of a sealed solicitation.

b. Opening and Recording:

Competitive sealed solicitation openings shall be conducted using the electronic solicitation system. Responses shall be opened and archived within the electronic solicitation system.

c. Confidential Data:

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

- i. The Director of Purchasing shall determine the validity of any written requests for confidentiality and shall provide a written determination of the findings to the vendor.
- ii. If the Director of Purchasing and the vendor do not agree upon the nondisclosure of confidential information, the vendor may withdraw its response. After award, all responses shall be open to public inspection with the exception of confidential information.

d. Withdrawals of Responses & Mistakes in Responses

- i. Withdrawal of Responses Prior to Due Date and Time
Any responses may be withdrawn prior to the specified due date and time upon written request from the vendor.
- ii. Withdrawal of Responses after Due Date and Time but Prior to Award
The Director of Purchasing may allow a response to be withdrawn after the specified due date and time but prior to award, provided:
 - a) the vendor provides evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided; or
 - b) the mistake is clearly evident on the response; or
 - c) it is found by the Director of Purchasing unconscionable not to allow the response to be withdrawn.
- iii. Mistakes
 - a) Confirmation of Response

When it appears from a review of the response that a mistake has been made,

the vendor will be asked to confirm the response. Situations in which confirmation should be requested include apparent errors or a price unreasonably lower than other submitted prices. Upon acknowledgment that an error was made, the vendor may have its response considered as-is or may withdraw its response if the conditions set forth in this section are met.

b) Minor Informalities

Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Director of Purchasing may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the College.

c) Determinations Required

Any decision to permit or deny correction or withdrawal of a response under this section shall be supported by a written determination prepared by the Director of Purchasing.

e. Evaluation and Award

All responses shall be evaluated as outlined in the solicitation. The Director of Purchasing shall ensure that the award decision treats all vendors equitably.

- i. The Office of Purchasing shall make purchases from, and award contracts to, responsible vendors only.
- ii. Tie Quotes/Bids. Tie Quotes/Bids are Responsive Quotes/Bids from responsible vendors that are identical in price, terms, and conditions and which meet all the requirements and criteria set forth in the solicitation.
 - a) The award shall be made to the regional business if identical favorable Quotes/Bids are received from regional and non-regional businesses.
 - b) The award shall be made to the Disadvantaged Business Enterprise (DBE) as defined by the State of Colorado DBE program.
 - c) The award shall be made to the small business, as defined by the Small Business Administration, if identical favorable quotes/bids are received.
 - d) If the above does not apply, the Director of Purchasing shall flip a coin in the presence of another person to determine the awarded vendor.

8. Cancellation of Solicitations

a. Reasons for Cancellations

Any solicitation may be cancelled in whole or in part at any point in the process when it is in the best interest of the College as determined by the Director of Purchasing. Approval to cancel will be obtained from the Director of Purchasing prior to cancellation. The reason(s)

for doing so shall be made part of the file and may include the following:

- i. the College no longer requires the goods or services;
- ii. the College no longer can reasonably expect to fund the procurement;
- iii. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
- iv. ambiguous or otherwise inadequate specifications were part of the Solicitation;
- v. the Solicitation did not provide for consideration of all factors of significance to the College;
- vi. prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;
- vii. all otherwise acceptable bids or proposals received are at clearly unreasonable prices;
- viii. the College has reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all vendors that submitted bids or proposals; or
- ix. the number of responses is not sufficient to ensure adequate competition.

b. Notice

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

c. Disposition of Bids or Proposals

When bids or proposals are rejected, or a solicitation is cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file. Bids and proposals which have not been opened, shall either be returned to the vendors (upon request), or shall be disposed of.

B. Procurement Procedures for Purchases totaling \$250,000 or less

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

1. Small-Dollar Purchases – Purchases totaling \$10,000 or less

a. Procurement Card

The College procurement card is the required mechanism for purchases totaling \$10,000 or less.

b. Check Request Form

The only time a purchase of goods and/or services totaling less than \$10,000 may be purchased by this method is when the procurement card is not an option.

2. Purchases of goods and **services** totaling more than \$10,001

up to \$50,000 Processed at the discretion of the Director of

Purchasing. Documented quotes with a detailed Scope of

Work or Specifications should be utilized in so far as practical.

C. Procurement Procedures for Purchases totaling over \$50,000

1. Invitation for Bids

a. Invitation for Bids is a method of procurement which results in a contract being awarded to the lowest responsive bid from a responsible bidder based on the specifications set forth in the solicitation. Typical reasons why an IFB may be used include:

- i. the award will be made on the basis of price; or
- ii. it is not necessary to conduct negotiations with the responding bidders about their bids.

b. Solicitation Time

The minimum time for the IFB opening date shall be not less than fourteen (14) calendar days after posting solicitations on the electronic solicitation notification system. When special requirements or conditions exist, the Director of Purchasing may shorten the IFB time but in no case shall the time be shortened in order to reduce competition. Solicitation periods of less than fourteen (14) calendar days shall be documented as to why a reduced IFB period was required.

c. Advertisement

IFBs must be advertised in accordance with Page 8, Section VI.A.3 of these Rules.

d. Late Responses

Responses received after the due date and time shall not be allowed.

e. IFB Opening

All IFBs shall be opened and reviewed via the electronic Solicitation system. The name of each bidder, the amount of bid, delivery and other relevant information shall be entered into the record via the electronic solicitation system and the record shall be available for public inspection. Other information related to a bid, or a bidder's responsiveness, may be withheld from inspection until questions concerning such information are resolved. After award, all IFB/Bid documents, and a complete bid analysis, shall be open to public inspection via the electronic solicitation system except to the extent the College has approved a bidder's request that information be held confidential as set forth in Page 9, Section VI.A.7.c of these rules.

f. Award

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

g. Multi-Step Sealed IFB

A multi-step sealed IFB is a two-phase process. The technical first phase is composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the College. The second phase considers only those bidders whose technical offers were determined to be acceptable during the first phase. At this time, their price bids will be opened and considered. The process is designed to obtain the benefits of competitive sealed bidding by award of a Contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the Request for Proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

h. Best Value Invitation for Bids

i. Use of Best Value IFB

A best value IFB is used where the IFB specifically allows for Enhancements, Options, and/or Alternatives. A best value IFB must include a base bid statement.

ii. Evaluation

The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives. Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which best meet the needs of the College, an award shall be made to the bidder providing the best value to the College.

2. Request for Proposals

a) Use of Request for Proposals

Request for Proposals (RFP) will be used for the solicitation of competitive sealed proposals which are evaluated on the basis of factors that include but are not limited to price. Evaluations shall be based on the factors set forth in the RFP in order to determine which proposal(s) best meet(s) the needs of the College.

(i) Evaluation Committee

A committee of no less than three individuals shall evaluate all responsive proposals.

b) Solicitation Time.

RFPs will be open for a minimum of thirty (30) calendar days unless a shortened time frame is approved by the Director of Purchasing.

c) Advertisement

RFPs will be advertised in accordance with Page 8, Section VI.A.3 of these Rules.

d) Late Responses

Responses received after the due date and time shall not be opened and shall not be allowed.

D. Competitive Negotiation

Contracts may be awarded by competitive negotiation

1. A contract may be awarded by competitive negotiation after an unsuccessful Invitation for Bids or Request for Proposals process if the Director of Purchasing determines that time does not permit re-solicitation.
2. An Invitation for Bids or Request for Proposals process is unsuccessful if:
 - a. all offers received are unreasonable or uncompetitive;
 - b. the low bid exceeds available funds, as certified in writing by the appropriate fiscal officer;
 - c. the Solicitation has been properly cancelled in accordance with the provisions of Page 11, Section VI.A.8 of these rules; or
 - d. the number of responsive offers is not sufficient to ensure adequate competition.
3. The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the College's needs.
4. The Purchasing Office may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.
5. Each vendor with whom the Purchasing Office negotiates shall be given a fair and equal chance to compete. Negotiations shall be conducted separately and independently with each vendor, and in no case shall the terms of any vendor's offer be communicated to any other vendor until an Intent to Award notice has been issued. Any change in requirements shall be communicated to all vendors.
6. A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.
7. The award shall be made to the vendor whose offer is most advantageous to the College. The Director of Purchasing shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the College.

E. Exceptions to Competitive Solicitation Process

1. Sole Source Procurements

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

a. Continuing Need for Sole Source

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

b. Sole Source Procurement Procedures

- i. The requesting College department shall submit the Purchasing Office's Sole Source Justification form along with any other pertinent information regarding the Sole Source Procurement; e.g. vendor quote, literature, etc.
- ii. The Director of Purchasing is the final authority for approval of Sole Source Procurements.

2. Emergency Procurements

a. Defined

When an emergency condition exists that prevents the use of a competitive procurement method, the College may conduct a purchase on an emergency basis. Emergency procurements may be negotiated on a Sole Source or limited competition basis as dictated by the circumstances surrounding the emergency.

b. Determining Need for an Emergency Procurement

An emergency condition justifies the use of an emergency procurement when that condition threatens one (1) or more of the following:

- i. the functioning of the College, or its programs;
- ii. the preservation or protection of property; and/or
- iii. the health or safety of any person(s) or animal(s).

Emergency Procurements do not include:

- i. procurements that need to be rushed because of a failure to plan ahead;
- ii. end of the fiscal year procurements; or
- iii. end of a grant/contract procurement.

c. Authority to Make Emergency Procurements

The College may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, approval by the Director of Purchasing be obtained prior to the procurement.

d. Limits of an Emergency Procurement

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

e. Documentation

As soon as practicable, the College Department shall prepare a written justification, to be approved by the Director of Purchasing, that sets forth the justification for the emergency Procurement. The justification shall include the following:

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

f. Procedures

- i. The procedure used shall be selected to assure that the required goods or services are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- ii. Any acceptable form of solicitation (e.g., written, electronically transmitted, phoned, etc.) may be used to obtain proposals for an emergency procurement.

3. College-wide Price Agreement(s) (PA)

- a. The Director of Purchasing may issue College-wide price agreements for goods or services for use by all College departments. Such PA(s) may include, but are not limited to, College-initiated agreements or cooperative agreements. The purpose of such agreements is to promote efficiency and savings that can result from leveraging the College's buying power.
- b. PA pricing is based on the College's overall anticipated volume of purchases during the agreement period. In order to assure the College the least total cost of goods or services, all College Departments are required to order needed goods or services from PA(s) where applicable.
- c. The Purchasing Office is responsible for publicizing all College-wide price agreements and for monitoring compliance.

4. Cooperative Purchasing Agreement(s)

- a. The Director of Purchasing may approve the purchase of goods or services from a cooperative purchasing agreement if he/she finds that such purchase is in the best interests of the College after considering:
 - i. the competitiveness of pricing under the contract; and
 - ii. the efficiencies and cost savings of using the contract.
- b. The College may participate in, conduct, sponsor or administer a cooperative purchasing agreement. This includes, but is not limited to, agreements with any of the following:
 - i. the Federal government or an agency or other instrumentality of the Federal government;
 - ii. the State of Colorado, another state, or an agency or other instrumentality of the State of Colorado or another state;
 - iii. a bi-state or multi-state agency;
 - iv. a county, municipal corporation, or other political subdivision of the State of Colorado or of another state, or an agency or other instrumentality of the political subdivision;
 - v. other institutions of higher education; or
 - vi. a cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximizing economies of scale when soliciting bids or proposals. An example of this is the Educational and Institutional Cooperative Service, Inc.
- c. The Director of Purchasing may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a College-wide price agreement. The Director of Purchasing has the final authority to approve the College's participation in cooperative purchasing agreements.

F. Demonstration or Sample Agreements

Equipment requested by College departments from vendors, or offered by vendors to College departments, on a trial, loan, demonstration, or evaluation basis does not constitute a commitment to purchase said equipment. The College department shall be responsible for advising the vendor that, for purchases totaling over \$10,000, a purchase order will be issued at the discretion of the Director of Purchasing, and that competitive purchasing procedures shall be used as required by College policies and procedures. If the vendor who loaned the equipment is the successful vendor, new equipment must be supplied unless otherwise specified. All moving, handling, transportation, and applicable installation costs associated with the equipment of this nature are the sole responsibility of the vendor unless otherwise specified. The College will not incur any costs associated with equipment that is on trial, loaned, demonstrated, tested, or evaluated unless otherwise specified. Any agreement which is required by the vendor shall be signed by the Director of Purchasing, regardless of the dollar value of the equipment.

G. Federal Funded Procurements

Fort Lewis College will comply with Procurement Standards as defined in 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards", Subpart D, Sections 200.318 – 200.326, for all federal grant funded procurements.

SECTION VII: Contracts

A. Types of Contracts

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

B. Multi-Year Contracts

The Purchasing Office may enter into multi-year contracts for goods or services subject to funding availability. Contracts for periods in excess of five years require the written approval of the Director of Purchasing.

SECTION VIII: After the Fact (ATF) Purchases

All After the Fact Purchases must be processed in accordance with Section IV, Rule 4.2 of the Fort Lewis College Fiscal Rules.

SECTION IX: Disputes & Remedies

A. Types of Disputes

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

1. Any protest concerning the solicitation or award of a contract; and
2. Any controversy arising between the College and a contractor by virtue of a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

B. Costs of Filing

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

C. Protests other than Contract Disputes

1. Filing of Protest

a. Subject of Protest.

Protestors may file a protest on any phase of a solicitation or award including, but not limited to, specifications, award, or disclosure of information marked confidential in a solicitation offer. Protests shall be submitted in writing within seven (7) working days after such aggrieved person knows or should have known of the facts giving rise thereto.

b. Form

The written protest shall include, at a minimum:

- i. the name and address of the protestor;
- ii. appropriate identification of the procurement by solicitation number;
- iii. a statement of the reasons for the protest; and
- iv. any available exhibits, evidence, or documents substantiating the protest.

c. To whom addressed

The protest shall be addressed to the Director of Purchasing and sent electronically to the Purchasing Office.

2. Requested Information

Any additional information regarding the protest should be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for information by the Director of Purchasing, the protest may be resolved without such information.

3. Decision

The Director of Purchasing shall render a written decision regarding the protest within seven (7) working days after the protest is received. The decision shall be based on and limited to a review of the issues raised by the protestor and shall set forth each factor taken into account in reaching the decision. The Director of Purchasing shall furnish a copy of the decision to the protestor in writing.

4. Stay of Procurement

In the case of protested RFPs only, there shall be a stay of procurement until the decision of the Director of Purchasing is rendered, unless the Director of Purchasing determines that execution of a contract without delay is necessary to protect substantial College interests.

5. Actions in Court

If a protestor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Purchasing, the Director of Purchasing will not review the protest.

6. Entitlement to Costs

When a protest is sustained by the Director of Purchasing and the protestor should have been awarded the contract under the solicitation but, due to a defect in the solicitation, was not, the protestor shall be entitled to the reasonable costs incurred in connection with responding to the solicitation. No other costs shall be permitted, and reasonable costs shall not include attorney fees.

D. Contract Disputes

1. Statement of Policy

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

2. Situation prior to Issuing Decisions

When a controversy cannot be resolved by mutual agreement, the Director of Purchasing shall review the matter within twenty (20) working days after receiving a written request by the contractor for a final decision and shall issue a written decision.

3. Final Decision

The Director of Purchasing shall furnish a written copy of the decision to the contractor. The decision shall include:

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

4. Actions in Court

If a contractor has filed a complaint in court which complaint is also the subject of a protest filed with the Director of Purchasing, the Director of Purchasing will not review the protest.

SECTION X: Suspension & Debarment

A. Suspension

After meeting with the affected College department(s) and, where practicable, the vendor who is to be suspended, the Director of Purchasing may issue a written determination to suspend a vendor from doing business with the College pending an investigation to determine whether cause exists for debarment. The suspension shall not exceed three (3) months unless a criminal indictment has been issued for an offense which would be cause for debarment. In such cases, the suspension may remain in effect until after the trial of the suspended vendor.

1. A written notice of the suspension, including a copy of the determination, shall be sent to the suspended vendor. The notice shall:
 - a. state the reasons for the action taken and give notice to the vendor of its right to administrative review;
 - b. state that the suspension will be for the period necessary to complete an investigation into possible debarment; and

- c. inform the suspended vendor that no business may be conducted with the College by any person(s) representing the suspended vendor during the suspension period and that any Solicitation responses received from the suspended vendor during the suspension period shall not be considered.

2. The suspension period will be effective upon issuance of the notice of suspension.

B. Debarment

1. A vendor may be debarred for any of the following reasons:

- a. conviction of a criminal offense in relation to obtaining or attempting to obtain a College contract or in the performance of such contract;
- b. conviction under State of Colorado or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
- c. conviction under State of Colorado or Federal antitrust statutes arising out of the submission of bids or proposals;
- d. willful material failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of one or more contracts;
- e. the vendor is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a Federal, state or local governmental entity; and/or
- f. violation of the provisions of Section 7-108-401 C.R.S., "General Standards of Conduct for Directors and Officers".

2. Following completion of the investigation to determine whether a vendor has engaged in activities which are cause for debarment, including reasonable notice to the vendor involved and reasonable opportunity for that vendor to be heard, the Director of Purchasing may debar the vendor. A vendor may be debarred for a period of time commensurate with the seriousness of the offense.

3. A written notice of debarment shall be sent to the suspended vendor. The notice shall:

- a. state the reasons for the action taken and give notice to the vendor of its right to administrative review;
- b. state the debarment period; and
- c. inform the debarred vendor that no business may be conducted with the College by any person(s) representing the debarred vendor during the debarment period and that any Solicitation responses received from the debarred vendor during the debarment period shall not be considered.

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

to the debarred vendor.

5. After the debarment period begins, the vendor shall remain debarred until the debarment period specified expires unless a court or the Director of Purchasing orders otherwise.

C. Master List

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

SECTION XI: Procurement Records - Information and Retention

Procurement records are subject to disclosure pursuant to the provisions of the Colorado Open Records Act, C.R.S. §§ 24-72-101 et seq. Procurement records shall be retained and disposed of in accordance with applicable records retention policies.

SECTION XII: Disposal of College Property (Surplus)

Any College owned equipment or goods, including donated items and grant purchased items, no longer in use or needed by the department should be transferred to the Purchasing department. The Purchasing department will attempt to reassign the items to other College departments. If the items cannot be used by other College departments, they will be:

1. Sold via online public auction
2. Offered to other public institutions
3. Offered to 501(c)(3)
4. Recycled

SECTION XIII: Definitions

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

Acceptable, with regard to a bid or proposal, means an offer submitted by any person in response to a solicitation issued by the College that is in compliance with the solicitation terms and conditions and within the requirements of the specifications described and required therein.

Adequate Competition exists if a Documented Quote, competitive Sealed Bid or competitive Sealed Proposal has been conducted and at least two responsible and responsive parties have independently competed to provide the College's needed goods or services. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the Director of Purchasing determines, in writing, that such competition is not adequate.

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

An After-the-Fact (ATF) purchase occurs when a department makes a purchase for more than \$10,000 before the Purchasing Office issues a purchase order. For example, authorizing a vendor to begin work

before the Purchasing Office has issued a purchase order, even though the department has submitted a purchase requisition, is an ATF. Similarly, obtaining Goods or Services on credit and subsequently submitting the invoice to Accounting is an ATF unless it is a purchase specifically allowed to be paid as set forth by the Director of Purchasing.

Alternative means a choice of a different good or service that meets or exceeds the functional requirements of the base bid.

Award means the acceptance of a bid or proposal by issuance of a purchase order and may include the execution of a written agreement to cover performance by the vendor.

Base Bid means the minimum functional requirements of the good or service.

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

Bid means a response from a vendor to an IFB.

Brand Name Specification means a specification limited to one or more goods or services by manufacturer's names or catalogue numbers.

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

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

College Department means any subsection of the college, either academic or administrative, that can be defined either by budget code or organizational chart.

Competitive Negotiation means the process of discussion and issue resolution between the Director of Purchasing and a prospective vendor in order to arrange for the providing of a good or service needed by the College. If more than one vendor is available for such negotiation, the needs of the College must be clearly defined in advance of any negotiations, via a specification that details fully the College's intended procurement.

Contract means any type of College agreement, regardless of what it may be called, for the procurement or disposal of goods or services, and includes purchase orders.

Contractor means any entity that has a contractual relationship with the College for the provision of goods or services as allowed for under these rules.

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

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

C.R.S. means Colorado Revised Statutes.

Determination means a written procurement decision made by the Director of Purchasing or delegate which is based on sufficient facts, circumstances and reasoning to substantiate the decision. Each determination shall be filed in the appropriate Purchasing Office file.

Documented Quote (DQ) means a process of soliciting informally for fulfilling the College's need for specific goods or services and receiving and evaluating vendor responses. The dollar limits for use of Documented Quotations shall be as stated in the section on small purchases and shall be conducted only by a Purchasing Agent.

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

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

Invitation for Bids (IFB) means all documents, including those attached or incorporated by reference, utilized by the College for soliciting bids.

Options means choices of additional components, services, or goods that would serve to provide increased value to the College beyond the base bid.

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

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. Procurement includes all functions that pertain to the obtaining of any goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Proposal means a response from a vendor to an RFP.

Protestor means any actual or prospective bidder or proposer who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

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

Purchasing Agent means one of the College's employees in the Fort Lewis College Purchasing Department with delegated purchasing authority from the Director of Purchasing.

Qualified Products List means an approved list of goods or services described by model or catalogue numbers, which prior to competitive solicitation, the College has determined will meet the applicable specification requirements.

Quote means a response from a vendor to a DQ.

Resident Business means:

A. a business that is authorized to transact business in Colorado and that maintains its principle place of business in Colorado; or

B. a business that is authorized to transact business in Colorado, that maintains a place of business in Colorado, and that has filed Colorado unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before bidding on a solicitation.

Request for Proposals (RFP) means all documents, including those attached or incorporated by reference, utilized by the College for soliciting proposals and is the commonly used name for competitive sealed proposals. Procurements should take into account the costs for the full life cycle of any resulting contract to determine total expected cost.

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

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

Responsive means an offer, with regard to a bid or proposal, that conforms in all material respects to the requirements contained in the solicitation

Revenue-Producing means a situation where a business pays money to the College as a result of any activity carried on by the business with the permission or agreement of the College. Situations that may be revenue-producing will be evaluated by the Director of Purchasing on a case by case basis, and, if approved as revenue-producing, will be documented in a written determination.

Sealed means that the bid or proposal must be submitted in a manner that:

- A. ensures that the contents of the bid or proposal cannot be opened or viewed before the formal opening without leaving evidence that the document has been opened or viewed;
- B. ensures that the document cannot be changed, once received by the College, without leaving evidence that the document has been changed;
- C. bears a physical or electronic signature evincing intent by the bidder or proposer to be bound. An electronic signature must comply with the definitions and requirements set forth in the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101 et seq. and its implementing rules; and
- D. records, manually or electronically, the date and time the bid or proposal is received by the College and that cannot be altered without leaving evidence of the alteration.

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

Sole Source Procurement means a procurement made without competition, when competition is otherwise required.

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

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

APPENDIX A: FORT LEWIS COLLEGE PROCUREMENT CODE OF ETHICS

Any person employed by Fort Lewis College who purchases goods and/or services, or is involved in the

\purchasing process for the College, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Demonstrate loyalty to Fort Lewis College by diligently following all lawful instructions, College rules, policy and procedures while using professional judgment, reasonable care, and exercising only the authority granted;
3. Conduct all purchasing activities in accordance with applicable laws and these Rules, while remaining alert to and advising Fort Lewis College regarding the risk of the purchasing decisions;
4. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of Fort Lewis College;
5. Identify and strive to eliminate participation of any individual in operational situations where an actual or perceived conflict of interest may exist;
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, appear to influence, or appear to be the result of influence upon any purchasing decision;
7. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
8. Display the highest ideals of honor and integrity in order to merit the respect and inspire the confidence of the public being served;
9. Provide an environment where all business concerns, large or small, majority- or minority-owned, are afforded an equal opportunity to compete for Fort Lewis College business; and
10. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior.