

Colorado Mesa University Solicitation Instructions/ Terms and Conditions

General

Applicability

Except to the extent modified, supplemented, or replaced in any solicitation by the University, these provisions and terms and conditions apply to a request for documented quotes, invitation for bids, or request for proposals issued by the University for supplies and services. These instructions are intended to summarize the University's procurement process and provide instructions to offerors, but they are not intended to modify procurement statutes and implementing rules.

Definitions

Rocky Mountain ePurchasing, BidNet Direct is the Electronic Solicitation Notification System (ESNS) used by Colorado Mesa University to notify Bidders or potential Bidders and others of University solicitations, awards and other solicitation notifications.

"Contract" includes a contract executed pursuant to University Fiscal Rules, any purchase order by the University and any other informal agreement permitted by University Fiscal Rules, unless the context clearly requires another meaning.

"Solicitation" refers to a request for documented quotes (DQ), invitation for bids (IFB) or request for proposals (RFP) unless the context requires another meaning.

"State" refers to the State of Colorado.

"Unless otherwise specified" and "Unless otherwise agreed" refers to the University's terms in the solicitation or other instructions to offerors that are inconsistent with these terms and conditions and, when the context requires, the resulting purchase order or contract that are inconsistent with or otherwise modify these terms and conditions.

"Vendor" refers to any person or entity responding to a solicitation, and has the same meaning as "contractor" or "offeror".

E-mail, and Electronic Quotes

If permitted by the solicitation issued by the University, e-mail or other electronic quotations may be submitted in response to request for documented quotes.

Late Quotes, Bids, and Proposals

Vendors submitting quotes, bids, and proposals bear the risk that quotes, bids, and proposals may not arrive within the time required in the solicitation.

Quotes by vendors received prior to the time of award may be considered at the discretion of the Chief Procurement Officer. However, vendors are cautioned that proposals may or may not be considered if received after the time specified in the solicitation.

Present/Former Employee Standards of Conduct – Disclosures

Pursuant to sections 24-18-101 and 201 et. seq., CRS, and section 24-50-507, CRS, former and present public employees and officials may not "be interested" in some State Agency contracts and are prohibited from engaging in certain activities in relation to State contracts. The University reserves the right to void or terminate contracts entered into in contravention of those provisions, or contracts in which a current State employee performs any contract administration function involving the use of University time or resources or that is otherwise contrary to State law. Notwithstanding the disclosure provisions in section 24-18-201, CRS, the University reserves the right to disqualify any quote, bid, or proposal, or void or terminate any contract involving the

participation or use of a present or former employee within the meaning of that section where such disqualification or termination is deemed to be in the best interest of the University. At the time of the submission of any quote, bid, or proposal, the contractor shall disclose to the Purchasing Department the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of receipt of quotes, bids, or proposals) participating in development of the quote, bid or proposal. Further, the contractor shall disclose during contract performance the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of any resulting contract or purchase order).

Alternative Bids or Offers/Affiliated Vendors

Unless otherwise permitted by the University, alternative bids or proposals by any vendor are not permitted. Unless otherwise permitted by the University, quotes, proposals or bids by affiliated vendors are not permitted except in accordance with this paragraph. An affiliated vendor is one who is controlled or owned by another vendor responding to this solicitation, or owned or controlled by a third person or other entity that controls or owns two vendors responding to this solicitation. "Affiliation" includes one person's having a substantial role in the preparation of offers by two vendors responding to this solicitation. A submission of a quote, bid or proposal in connection with any solicitation represents a certification that the quoter, bidder, or offeror is not affiliated with any known vendor also submitting a quote, bid, or proposal in response to the solicitation, except to the extent the nature of such affiliation is described with particularity. The University reserves the right to disqualify any quote, bid or proposal by, or void any resulting purchase order or contract with, any vendor responding to a solicitation in violation of this provision or the following certificate of independent price determination.

Certificate of Independent Price Determination

Except as otherwise disclosed with particularity, through its submission of a quote, bid, or offer, the vendor certifies that the prices and other terms in the quote, bid, or offer have been arrived at independently without any consultation, communication, agreement with, or knowledge of the contents of the quote, bid, or offer by, any other competing vendor. For purposes of this paragraph, "consultation, communication, agreement with, or knowledge" does not include knowledge of prices or terms gained through availability of established price lists or catalogues made available to the public by the competing vendor.

Submission of Quotes, Bids and Proposals

Unless otherwise specified in the solicitation, any written bid or proposal must be signed by an individual authorized to bind the vendor. Vendors are requested to use any signature/cover sheet included as an attachment to the solicitation by the University. Otherwise, include with the signature page at least the name of vendor, federal employer identification number (FEIN/tax ID), address, point-of-contact, and telephone number. In IFB's and RFP's, comply also with the requirements outlined in the bid. The vendor's signature represents vendor's acknowledgment that it has received all attachments referred to on the BidNet solicitation pages, and all solicitation modifications posted on BidNet through the date established for receipt of quotes, bids, or proposals.

Specifications; Samples; Brand Name or Equal

Specifications are provided to identify the product/service required and to establish an acceptable quality level. Bids on products of equal quality and usability will normally be considered unless otherwise stated. The University will be the sole judge in determining "equals" in regard to quality and performance.

Failure to furnish brochures, specifications, and/or samples as requested may be sufficient cause to consider a quote unacceptable or a bid non-responsive.

Samples of product(s), when required, must be furnished free of expense to the University, and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

A brand name or equal specification means that the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired. Unless otherwise specified, information to address equivalent substitutes in brand name or equal descriptions must include published information – such as brochures, descriptions, or other information made available in the general course of the vendor's business – that demonstrates; equivalent functionality in terms of significant (or other specified e.g. form, fit or function) performance characteristics; similar duration and scope of warranty protections; comparable experience with the same, similar, or predecessor product line; and an adequate period (or minimum period specified in the solicitation) of customer support experience to demonstrate a comparable acceptable level and availability of customer support. The determination of whether a proposed substitute is acceptable is totally within the discretion of the University.

Number of Awards

Unless otherwise specified in the solicitation, the University may award individual line items to different vendors or otherwise make multiple awards to vendors who, in the University's judgment, best satisfy the requirements consistent with the award criteria in the solicitation.

Vendor Inquiries

Vendors may make written, if permitted by the University, e-mail inquiries concerning the solicitation before the date and time indicated for receipt of quotes, bids, or offers. Send all inquiries to the point-of-contact indicated in the solicitation. Responses to vendor's inquiries amending or clarifying invitations for bids or requests for proposals will be made in writing by the University and posted. Vendors may not rely on any other statements, written or oral, that alter any specification or other term or condition of the solicitation. It is incumbent upon offerors to carefully and regularly monitor BidNet notifications for any such postings.

Protest

A protest of any portion of the University's solicitation must be submitted in writing to the University Chief Procurement Officer, in accordance with Title 24, Article 109, CRS as amended. Vendors must protest within seven (7) working days after becoming aware of the facts giving rise to the protest. The requirement for timely (seven working days) submission of any protest relating to award will begin on the first working day following posting of the award notice on BidNet, or on receipt of any other award notice issued by the University's Purchasing Department, whichever is earlier.

Cancellation of Solicitation

Pursuant to CRS 24-103-301, the University reserves the right to cancel any or all quotes, bids or proposals rejected when it is in the best interests of the University.

Documented Quotes

Applicability

Except as replaced, modified or supplemented by the University in the solicitation, these procedures apply to any solicitation identified on the solicitation as a "request for documented quoted" or a "documented quote" issued by the University.

Description

The documented quote process is a small purchase procedure that is informal and results in awards that are most advantageous to the University. Small purchase is defined as the purchase of commodities between \$10,000 and \$150,000 and the purchase of services between \$25,000 and \$150,000.

Responsiveness of Quotations

Vendors must furnish the samples (if required) and other information necessary to provide the University with information sufficient to evaluate the price, acceptability of the supply or services, equivalency of substitutes in brand name or equal descriptions, or other factors being considered in the evaluation of quotations.

Unless otherwise specified, information to address delivery terms must describe the time for delivery, terms for transportation (e.g. FOB terms), any unusual or unique packing and handling provisions, or any other delivery and shipping terms.

The University may, but is not required to, contact quoting vendors to obtain additional or missing information and clarify aspects of the quote as deemed necessary to determine the acceptability of the quote. The University may reject as unacceptable quotes that do not provide sufficient information to permit their evaluation, or quotes that do not meet the minimum requirements in the solicitation.

Award

In the case of goods or services, the award will be made to the quote determined by the University to be the most advantageous to the University price/cost being the primary consideration. The determination of whether the quote is acceptable and meets the minimum requirements of the solicitation is solely within the discretion of the University. No formal evaluation system or methodology is required for any documented quote process.

The award notice will be posted on BidNet for any solicitation posted on BidNet.

Invitation for Bids and Requests for Proposals

Except as replaced, modified or supplemented in the solicitation, the following provisions apply to invitations for bids and requests for proposals issued by the University. For simplicity, unless the context required another meaning, the term "bid" or "bidder" in this section refers to a bid submitted in response to an invitation for bids (IFB) and a proposal submitted in response to a request for proposals (RFP), both of which are considered "offers".

Information Required

Bidders shall furnish all the information required to be submitted at the time of bid submission. Bidders are expected to examine the drawings, specifications, schedule of delivery and all instructions. Should the bidder find any part of the listed specifications or terms and conditions to be discrepant, incomplete or otherwise questionable in any respect, it shall be the responsibility of the bidder to call such matters to the attention of the purchasing agent immediately. Failure to do so will be at the bidder's risk. Amendments to the solicitation will be official only furnished, in writing, by the University. Bidders shall not rely on verbal statements that alter any specification or other term or condition of the solicitation.

Products/Services Provided

The bidder shall furnish the products and/or services in strict accordance with the specifications, and at the price set forth for each item. All products quoted shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

Bid Return Format for Written Responses

Written IFB and RFP responses shall be submitted in a sealed envelope and in accordance with the instructions by the University in the solicitation. The IFB or RFP number and the opening date and time shall be written on the face of the envelope. If the bid package is too large to be submitted in a bid envelope, a bid envelope should be affixed to the outside of the sealed bid package.

Valid Bid Period

Bids shall be firm for a period of no less than thirty (30) calendar days will not be considered in evaluating offers for award, unless otherwise specified. Discounts of less than thirty (30) calendar

days will be taken if payment is made within the discount period, even though not considered in evaluation of the bid.

Bid Acceptance/Obligation

The University reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received and to accept all or any portion of the bid, deemed in the best interest of the University and not contrary to law. This solicitation implies no obligation on the part of the University to pay any costs incurred in the preparation or the submission of bids or proposals, or to purchase or contract for products or services offered, nor does the University's silence imply any acceptance or rejection of any offer.

Modification or Withdrawal of Proposals

Bids or proposals may be modified or withdrawn by the vendor prior to the established due date and time for receipt of offers.

Evaluation and Award

In the case of competitive sealed proposals (RFP), the University reserves the right to make an award on receipt of initial proposals; offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Proposals requiring major revision in order to be susceptible of award, or otherwise not meeting the mandatory or other requirements required for further consideration as specified in the RFP, may be classified as unacceptable and shall be ineligible for further consideration. The University may conduct discussions with offerors in the competitive range for the purpose of promoting understanding of the University's requirements and the offeror's proposal, to clarify requirements, and to make adjustments in services to be performed and in prices. Revisions to proposals, if permitted, will be requested in writing or electronically from offerors.

Award of a contract as a result of an IFB will be made to the low responsive and responsible bidder. For a competitive sealed proposal award (RFP), award will be made to the responsible offeror whose proposal is determined to be the most advantageous to the University, price and other factors considered, in accordance with the criteria described in the RFP.

In the case of IFBs, if low tie bids are received, in accordance with section 24-103-202.5, CRS, resident bidders shall be given a preference over non-resident bidders. If low tie bids are among resident bidders or non-resident bidders, the procurement officer will use the procedure in 24-103-202.5, CRS, to determine the award, after notice to the interested vendors. Any bidder who wishes to be considered a "resident" bidder for purposes of 24-103-202.5, CRS, shall include with its bid proof that the vendor meets the definition of "resident bidder" set forth in 24-103-101(6) CRS.

Requirement for Valid Contract

The University will not be responsible for any products delivered or services performed prior to issuance of a purchase order signed by an authorized representative of the University's purchasing department, or a contract signed by a duly authorized representative of the University and approved by the State Controller or designee.

Vendor Forms

In the event bidder's form(s) or part(s) of forms are included as an attachment(s) bidder agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document shall supersede and control over those contained in the bidder's form(s) regardless of any statement to the contrary in a bidder form(s). Unless the University specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

Purchase/Contract Terms and Conditions

Except as replaced, modified, or supplemented by the terms of the solicitation, a purchase order or a contract executed between the University and vendor, an award will be governed by provisions in the Purchase Order Terms and Conditions.

The University reserves the right to negotiate and clarify the terms and conditions where there is no appreciable effect on price/cost, quality, delivery, or other performance.

Except as replaced, modified or supplemented by the University the following insurance provision is specified in accordance with paragraph 19 of the Purchase Order Terms and conditions for all IFBs and RFPs involving services on State property (unless incidental to the delivery of a supply or good), or having services separately priced in excess of \$50,000:

Insurance Requirements

- A. The contractor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:
 - 1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.
 - 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - a. \$1,000,000 each occurrence;
 - b. \$2,000,000 general aggregate;
 - c. \$2,000,000 products and completed operations aggregate; and
 - d. \$50,000 any one fire.
 - 3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
- B. Colorado Mesa University shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance carried by the University.
- C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the University.
- D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the University, its organizations, officers, agents, employees and volunteers.
- E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the University.
- F. The contractor shall provide certificates showing insurance coverage required by this contract to the University within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the University may request in writing, and the contractor shall thereupon within 10 days supply to the University, evidence satisfactory to the University of compliance with the provisions of this section.
- G. Notwithstanding subsection A of this section, if the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain

only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the University, the contractor shall show proof of such insurance satisfactory to the University.

Software Piracy Prohibition

No University or other public funds payable under any contract or purchase order executed as a result of a solicitation shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor certifies that, for the term of any purchase order or contract, and any extensions, the Vendor has in place appropriate systems and controls to prevent such improper use of public funds. If the University determines that the Vendor is in violation of this paragraph, the University may exercise any remedy available at law or equity or under the contract or purchase order, including, without limitation, immediate termination of the contract or purchase order and any remedy consistent with United States copyright laws or applicable licensing restrictions.

State law limits the use of purchase orders and requires contracts that include services priced at more than \$100,000, or supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction, to be bilaterally executed, reviewed by the Attorney General, and approved by the State Controller or his designee. Fiscal Rule 3-1, 1 Code of Colorado Regulations Section 101-1. The Special Provisions following the Purchase Order Terms and Conditions are required by State law to be included in State contracts, and the Special Provisions govern over any other terms and conditions in the solicitation, including the provisions in the Purchase Order Terms and Conditions to the extent they are inconsistent.

State Contracts and Colorado Special Provisions

Under State law, bilateral State Contracts must be used in lieu of a purchase order for transactions including services priced at more than \$100,000 or for supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction. In State Contracts, the Colorado Special Provisions attached are required by the Colorado Code of Federal Regulation, Fiscal Rule 3-1, 1 CCR 101-1. The provisions in the Special Provisions govern in the event of conflict or inconsistency with any other term or condition in the solicitation or the vendor's offer.

SPECIAL PROVISIONS

These Special Provisions apply to all Contracts except where noted in italics.

A. VICE PRESIDENT AND UNIVERSITY CONTROLLER APPROVAL.

This Contract shall not be valid until it has been approved by the University's Vice President for Finance and Administration and the University Controller or their authorized delegates.

B. FUND AVAILABILITY.

Financial obligations of the University payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the University. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the University and the University shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the University to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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 University, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and state laws, University policies, procedures, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

Colorado law, and procedures and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, procedures, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The signatories aver that to their knowledge by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

H. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.

See CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the University has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

I. VENDOR OFFSET.

[Not applicable to intergovernmental agreements]

If required by CRS §24-30-202.4 (3.5), the University Controller may withhold payment under the state's vendor offset intercept system for debts owed for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the state as a result of final agency determination or judicial action.

J. PUBLIC CONTRACTS FOR SERVICES. See CRS §8-17.5-101.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the University within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the University a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the University may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

K. PUBLIC CONTRACTS WITH NATURAL PERSONS. See CRS §24-76.5-101.

If a natural person eighteen (18) years of age or older, Contractor hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Contract.