

STATE CONTROLLER POLICY

REVIEW AND APPROVAL OF STATE CONTRACTS

DELEGATED AGENCIES

- 1) **Delegation.** Agencies may review and approve State Contracts using a risk-based approach with the approval of the State Controller as set forth in the State Controller's delegation letter. The State Controller will provide agency controllers of approved Agencies the requirements the State Controller delegate shall follow when using the risk-based approach.
- 2) **Risk Categorization.** All contracts shall be categorized as either high-risk or low-risk. Attached to this policy is a list of certain types of contracts classified by the State Controller as **automatic low-risk** and **automatic high-risk**. Contracts included in such list do not require a risk analysis. Agencies shall review contracts not included in such list (**undetermined-risk**) and determine whether they are low-risk or high-risk in accordance with the attached risk review guidelines.
- 3) **Signature Requirements.** Once a contract has been properly categorized as either high-risk or low-risk, the following review, approval, and signature requirements apply:
 - a. **Low-Risk Contracts** – Do not require State Controller review and approval and the agency/institution controller or other delegate may sign them (see list on next page).
 - b. **High-Risk Contracts** - Require review and approval by, and the signature of, the State Controller (see list on next page).
- 4) **Routing.** Please see OSC Policy entitled "*Routing of Contracts*".

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State Controller

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AUTOMATIC HIGH AND LOW RISK CONTRACTS

1) Automatic Low Risk Contracts:

- a. **Amendments** that meet at least one of the following criteria (all other reasons for an amendment require completion of a risk assessment). Such criteria are:
 - i. Extend the expiration or termination date by one year or less,
 - ii. Rate increases consistent with the terms of the original contract,
 - iii. Amendments that do not change the scope of the original contract,
 - iv. Re-statement of amendments – incorporates amendments and original contract (NOTE: a restatement cannot be used if the contract has expired),
 - v. Making changes required by and consistent with State law, or
 - vi. Amendments that reduce the scope and the cost within the contract terms and rates.
- b. **Interagency Agreements** using the Office of the State Controller's (OSC) model contract. Amendments to interagency agreements using the OSC's model amendment are also low risk.
- c. **Modification Tools.** Options, change orders, funding letters, and task orders that are consistent with the original contract and in compliance with the State Controller's policy entitled "*Modifications of Contracts*".
- d. **Phase I Waived** contracts for which Agencies have received written State Controller authorization to use following approval under OSC Policy entitled "*Phase I Waivers*".
- e. **OSC Approved.** Other Agency contract templates previously approved and authorized in writing by the State Controller that are not part of the Phase I waiver program.
- f. **Statewide Pre-Approved.** All other statewide standard pre-approved contract forms, such as Office of the State Architect capital construction and controlled maintenance work authorizations, change orders, supplements, code reviews, and architect and engineering base agreements.

2) Automatic High Risk Contracts: NOTE: the State Controller may provide specific delegation to an Agency or IHE for the following contracts depending on Agency or IHE expertise in the particular subject matter.

- a. **Contingency** contracts defined in CRS §24-17-203;
- b. **COPS** (Certificates of Participation);
- c. **Dangerous Activities.** Contracts involving dangerous activities;
- d. **Debt Collection.** Contracts associated with debt collection services;
- e. **Employee Voluntary Separation Agreements.** (classified and non-classified)
- f. **Energy Performance** contracts under CRS §§24-30-2003;
- g. **Federal Government.** All intergovernmental contracts with agencies of the federal government unless on an unchanged OSC model contract;
- h. **Financing by Third Parties.** All transactions involving third party financing;
- i. **Financial Systems.** Contracts for the acquisition of new or replacement of existing financial systems;
- j. **Legal Issues.** Contracts with technical legal issues requiring an opinion from the Office of the Attorney General.
- k. **Lease Purchase** contracts (except for Higher Education);
- l. **Limitations of Liability.** Contracts containing provisions limiting liability, including limits on actions for which they are liable, the dollar amount of damages, the types of damages, the source of damage payments, or some combination thereof.
- m. **Hazardous Materials.** Contracts involving the handling, removal, treatment, movement, installation, and disposal of hazardous materials, but not the discovery, analysis, study, and review of them.
- n. **Information Technology.** Information Technology goods and services contracts and amendments to such contracts;
- o. **Master Contracts** by DPA for the entire State, such as RTD Eco Pass Program;
- p. **Master Task Order** contracts;

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- q. **Native Americans.** Contracts with native American tribes;
- r. **Outsource** contracts as defined in Fiscal Rule 3-1;
- s. **Price Agreements.** Statewide price agreements;
- t. **Prisons.** Contracts concerning the operation of prisons; and
- u. **Settlement Agreements.** Includes all settlement agreements between the State and individuals and also between the State and contractors; and
- v. **Water Rights.** Contracts involving the purchase or sale of water rights. This does not apply to: i) the purchase or sale of water rights and/or shares of stock in: an irrigation district, a water district, a mutual ditch company, a water company, or similar entities included as part of or associated with the purchase or sale of real property, or ii) participation in substitute water supply plans or in plans for augmentation, or iii) the purchase or sale of fully consumable water.

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RISK ASSESSMENT FORM

Contract Routing No. _____

Overall Risk Assessment

Agencies shall complete a Risk Assessment Narrative and at a minimum answer the first three questions below. Agencies should use all of the Risk Assessment Questions for assistance in completing the narrative.

Risk Assessment Questions

1) **What** are the risks outside of those listed herein?

2) **How** does the Contract or the Agency address all attendant risks?

3) **Controller Comfort:** Does the Contract have unusual provisions or is it one with which the Agency is unfamiliar? Yes or No. If Yes, explain why: _____ . After explanation, is the Controller comfortable signing the Contract? Yes or No.

4) **Financial Impact**

a. Dollar amount? \$ _____

b. Explain any significant financial impact beyond dollar amount? _____

5) **Contract Document**

a. Explain any Special Provisions modification and authority for the modification: _____

b. Explain any changes to the General Provisions: _____

c. Is the Statement of Work clear enough so that the State can monitor performance, identify non-performance, and take appropriate action for non-performance? Yes or No. Explain why: _____

6) **Nature of Project**

a. Is project/contract complexity an issue Yes or No. Explain why: _____

b. If IT/Software or new technology is involved – describe its impact: _____

c. If new contractor with no proven history of performance is involved – describe impact: _____

d. If a new project and/or lack of experience with type of project is involved – describe impact: _____ :

e. Does work involve hazardous substances or activities – describe impact and related insurance issues: _____

f. Discuss any Federal privacy requirements and issues: _____

g. If a lease with build out/construction is involved – describe impact: _____

7) **Conclusion:** High Risk or Low Risk.

Why?: _____

8) **Risk Assessment was completed by _____ and approved by _____**