

Rule 3-1

STATE CONTRACTS

1. AUTHORITY:

Article V, Section 33, Constitution of Colorado
Article XII, Section 13 (2), Constitution of Colorado
Governor's Executive Order, signed April 7, 1978
2-2-320(2), C.R.S. (Attorney General Contract Approval)
24-30-903(d), C.R.S. (Telecommunications Contract Approval)
24-30-1104(1)(h), C.R.S. (Central Service Contract Approval)
24-30-1107, C.R.S. (Central Services Contracts)
24-30-1303(1)(a), C.R.S. (State Buildings Contract Approval)
24-31-101, C.R.S. (Attorney General - Legal Advisor)
24-30-202, C.R.S. (State Controller Authority)
24-101-105 (Procurement Code)

2. DEFINITIONS:

2.1 State Contract - Formal legally binding agreement between two State agencies and/or institutions of higher education or one State agency or institution of higher education and another party or an amendment to such agreement. State contracts, as used in this fiscal rule, do not include purchase orders. For the purpose of this fiscal rule, State contracts include, but are not limited to:

- Expenditure contracts
- Revenue contracts
- Sponsored Projects contracts
- Interagency contracts

2.2 Expenditure contracts – Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which ultimately results in an expenditure of funds, either directly or indirectly, or in an obligation to the State. Expenditure contracts include non-financial and in-kind contracts where the State incurs an obligation. Examples of expenditure contracts include, but are not limited to:

- Personal service contracts
- Outsource contracts
- Settlement agreements
- Leases and licenses of real property

2.2.1 Personal service contracts - Service or goods purchased by the State where the State or a third party is to receive a benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of the State.

2.2.2 Outsource contracts - Formal legally binding agreement between a State agency or institution of higher education and another party or an amendment to such agreement whereby the State agency or institution of higher education remains fully responsible for the provision of affected services and maintains control over management decisions while another entity operates the function or performs the services. All contracts that meet the definition of outsource contracts shall be submitted to the State controller's office for review unless specifically exempted by State statute. Any outsource contracts that divert revenues due the State are subject to State Controller's review.

- 2.2.3 Settlement agreements - Formal legally binding State contract between two or more parties for the purpose of ratifying decisions reached concerning employment or contractual disputes.
- 2.2.4 Leases and licenses of real property – A lease is a formal legally binding agreement where the landlord give the right of possession to the State as tenant for a specified period of time. A license is a personal privilege to use the property without possessing any interest therein.
- 2.3 Revenue contracts - Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which does not result in the expenditure of funds or an obligation to the State. Examples of revenue contracts include, but are not limited to:
- Granting Franchises
 - Sale of Real Property
- 2.3.1 Granting Franchises – In franchising external services to private firms, the State agency or institution of higher education grants a concession or privilege to a private-sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain State parks. The State agency or institution of higher education may regulate the service level or price, but users of the service pay the provider directly.
- 2.3.2 Sale of Real Property – The State agency or institution of higher education has statutory authority and sells State property and the State has no obligation regarding the real property after the sale is completed. Real property includes land and improvements such as buildings and other structures.
- 2.4 Sponsored Projects – Formal legally binding agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.
- 2.5 Interagency Contracts - Formal legally binding agreements between two State agencies and/or institutions of higher education and enforced by the State Controller. These are State contracts as defined in this fiscal rule and shall be subject to the provisions and requirements of this fiscal rule.

3. RULE:

Each State agency or institution of higher education shall use a State contract as the commitment voucher in accordance with Fiscal Rule 2-2. Each State agency or institution of higher education is responsible for assuring that all constitutional and statutory requirements have been met prior to signing a State contract.

- 3.1 State contract form – All State contracts, including leases, shall be prepared on standard letter size paper, 8 ½ x 11”
- 3.2 State contract content – All State contracts, except Leases, Settlement Agreements, Sponsored Projects, and Interagency Agreement shall include the following elements:
- a. Identification of the Parties
 - b. Funding Obligation Authority
 - c. Statutory Authority
 - d. Statement of Work
 - e. Payment Terms

- f. Performance Period – beginning date and specific termination date or an event from which such date may be determined
- g. General Terms and Conditions
- h. Special Provisions (see appendix to this fiscal rule for Special Provisions)
- i. Signature Page

3.3 Approved State Contract Forms

All State contracts shall be in a form approved by the State Controller. The State Controller has approved the following forms for use as or with State contracts:

- 3.3.1 Model Contracts – The State Controller has developed model contracts for personal services, information technology contracts and interagency contracts, and may develop other model contracts. See State Controller policy on Use of Model Contracts.
- 3.3.2 Waived Contracts – This type of form contract may be used where multiple contracts contain the same provisions and only the name of the contractor and amount of the contract changes. After the agency obtains approval from the State Controller for a waived contract, the agency can use the waived contract form without obtaining State Controller approval for each individual contract, as long as none of the provision, other than the name of the contractor and the contract amount are changed.
- 3.3.3 Contract Modifications – Contract modification tools may be used to modify the terms of an existing contract during the contract term. Each of these modification tools contains specific language for specific situations. See State Controller policy on Contract Modifications. The State Controller has approved the following contract modification forms:
 - a. Options
 - b. Funding Letters
 - c. Change Orders
 - d. Task Orders
 - e. Contract Amendments
- 3.3.4 State leases and licenses of real property – All State leases and licenses shall contain:
 - a. State Controller’s approval clause (Special Provision Number 1),
 - b. Funds availability clause (Special Provision Number 2),
 - c. Collocation clause, The State Controller may agree to modify or waive the collocation clause upon good cause shown.
 - d. Vendor offset (special provision number 7)
 - e. Clauses specifying cancellation rights where the premises are destroyed by fire and/or where the premises are subject to eminent domain.
- 3.3.5 Sponsored Projects Contracts – All sponsored projects contracts shall be in the form of approved by the State Controller. See State Controller policy on Sponsored Projects.
- 3.3.6 Settlement Agreements – All settlement agreements shall be in a form approved by the Office of the State Controller and the Attorney General’s Office.
- 3.3.7 Any other contract form approved by the State Controller.

4. STATE CONTRACT APPROVALS

The chief executive officer, or a delegate, of a State agency or institution of higher education shall sign all State contracts on behalf of the State agency or institution of higher education.

It shall be the responsibility of the contracting State agency or institution of higher education to obtain all required approvals. Approvals by certain State agencies are required by statute, executive order, or fiscal rule depending on the subject matter of the State contract. Proof of all required signatures shall be retained by the contracting State agency or institution of higher education. State contracts requiring central approvals include:

- 4.1 Service contracts require the approval of the State Personnel Director or a delegate.
- 4.2 Construction contracts and controlled maintenance contracts require the approval of the State Architect, or a delegate, unless otherwise exempted by statute or waived by the State Architect.
- 4.3 Real property contracts, including leases, easements, and rights of way contracts, require the approval of the Director of the Real Estate Program or a delegate, unless otherwise exempted by statute. Excluded from this requirement are those real properties administered by the State Board of Land Commissioners and the Department of Transportation.
- 4.4 Communication system contracts over \$10,000 involving telephone, radio, microwave, teletype, closed circuit television, automated data processing communications systems require the approval of the State Communications Coordinator, or a delegate.
- 4.5 Legal and paralegal service contracts require the approval of the Attorney General's Office.
- 4.6 Centralized service contracts require the approval of the Director of the Division of Central Services, or a delegate, for all State agencies within the counties of Adams, Arapahoe, and Jefferson and the city and county of Denver. Examples include State contracts for the acquisition of the following: motor pool operation, motor vehicle maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of management forms.
- 4.7 Debt collection service contracts require the approval of the State Controller, or a delegate.
- 4.8 State agency or institution of higher education financial systems used to record their financial transactions and financial information and to develop their financial reports and prepare their financial Statements shall be approved by the State Controller, or a delegate.
- 4.9 All information technology projects with a purchase price of over \$100,000 require the approval of the Office of Information Technology.

5. STATE CONTRACT LEGAL REVIEW

At the discretion of the State Controller or delegate, State contracts shall be reviewed by the Attorney General's Office. This does not include interagency contracts and those State contracts for which the State Controller has designated in writing an attorney, employed by the State agency or institution of higher education and authorized by the State Attorney General, to perform the required legal review.

Review by the Attorney General's Office or an attorney delegated by the State Controller shall include the following:

- 5.1 Compliance with the Colorado Constitution, State statutes, regulations, and executive orders;
- 5.2 Authority of the contracting State agency or institution of higher education;
- 5.3 The contract contains all essential elements of a legally binding contract;
- 5.4 The contract contains the required signatures; and

- 5.5 The Statement of work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances applicable to the contract to be enforceable.

Attorney General review may also include:

- 5.6 Risk analysis, including advice regarding significant risks and issues in any particular transaction. The Agency remains responsible for risk assessment and the decision whether to proceed with a contract despite the exposure to risks;.
- 5.7 Availability of specific remedies;
- 5.8 Compliance with grant conditions, federal funding requirements, or required assurances.

6. REVIEW AND APPROVAL BY THE STATE CONTROLLER

Upon receipt of a State contract, the State Controller, or a delegate, shall review all State contracts, except revenue contracts, to ascertain:

- Whether the proposed expenditure is authorized by the appropriation to which it is proposed to be charged;
- Whether the prices or rates are fair and reasonable and in accordance with law or administrative rules;
- Whether the amount of the expenditure exceeds the unencumbered balance;
- Whether the expenditure is in compliance with all statutes, fiscal rules, and policies.

Upon approval, the State contract shall be executed by affixing the signature of the State Controller, or a delegate.

All State contracts, except for revenue contracts, shall be executed by the State Controller or by an individual delegated to execute State contracts by the State Controller. If an attempt is made to execute a State Contract without the approval of the State Controller, or a delegate, the State contract shall be null and void and not binding against the State. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.

See State Controller policy on Review and Approval of State Contracts.

7. INTERAGENCY CONTRACTS

Interagency contracts require approval of the State Controller, or a delegate, unless the State agency or institution of higher education disbursing the funds has been delegated State Contract signature authority by the State Controller. Interagency contracts shall, at a minimum, include the following elements:

- a. Identificaiton of the parties to the State contract;
- b. Appropriation authority, including fund, State agency or institution of higher education, appropriation code, and encumbrance number;
- c. Statement of work;
- d. Statement of consideration (if applicable);
- e. Payment and other performance;
- f. Definition of breach and remedies (consistent with Fiscal Rule 2-6); and
- g. Signature Page

8. EMPLOYEE/EMPLOYER OR INDEPENDENT CONTRACTOR

Careful distinction shall be made between work that should be accomplished by persons who are employees of the State and work that may be accomplished by individuals or firms on a personal services contract. The responsibilities and obligations of the State differ between employee/employer arrangements and agreements with independent contractors. The State has a third party liability for the acts of its employees, whereas independent contractors are liable for their own actions. The status should be carefully considered and cases of doubt generally resolved in favor of the employee classification. An erroneous classification as an independent contractor may result in serious penalty to the State for failure to deduct applicable taxes. State agencies and institutions of higher education should follow guidelines issued by the Internal Revenue Service and the Colorado Division of Human Resources as well as Colorado statutes and legal opinions in determining whether an individual is an employee or independent contractor.

9. EXCEPTIONS TO RULE:

Excluded from this fiscal rule are:

State contracts for personal services exempted from the State personnel system by the Colorado Constitution and paid through an authorized State payroll system. Examples include appointees by the Governor and Lieutenant Governor and their administrative staffs, members of boards or commissions, faculty members of educational institutions, attorneys at law serving as assistant attorneys general, and employees of the Legislative and Judicial Departments of the State. These State contracts are considered to be advises of employment and, therefore, are not covered by this fiscal rule.

SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, and its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related

costs, incurred as a result of any act or omission by contractor, or its employees, agents, subcontractors, or assignees, pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] 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, protection, 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. 2671 et seq., as applicable, now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-1.** 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 or shall be deemed to be an agent or employee of the State. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the State pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the State does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, and provide proof thereof when requested by the State, and shall be solely responsible for its acts and those of its employees and agents.

5. **COMPLIANCE WITH LAW.** Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. No provision included or incorporated by reference herein, shall provide for binding arbitration by any extra-judicial body or person or otherwise conflict with said laws, rules, and regulations shall be null and void. No provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall 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.

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (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 or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, for the term of this contract and any extensions, contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. 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 certifies, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment in the United States, through participation in the Employment Eligibility Verification Program/Basic Pilot administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., may be cause for termination for breach and, if so terminated, contractor shall be liable for damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen of or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) has produced one (1) form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised June 13, 2007