

**OFFICE OF THE STATE CONTROLLER (OSC)**  
**CONTRACT COMPLETENESS CHECKLIST – Part I**

(\*\*\*This checklist applies to all original contracts, amendments, option letters, grant funding letters, change orders, work authorizations, supplementals, task orders, assignments, etc.)

Issued: March 1, 2007

Updated: March 9, 2009

**Instructions:** This checklist was developed to document compliance with the Office of the State Controller (OSC) re-engineering of the state's contracts process (March 1, 2007) and shall be used in conjunction with the **OSC Contract Completeness Resource Guide – Part II**. As part of the process, every \*\*\*contract request is required to have a "Risk Assessment" review. Prior to executing any contract document, all items in this checklist shall be reviewed; however some sections of this checklist may not be applicable to all contract situations so be careful about the sections you do skip over as you may be leaving out other important items to be reviewed and checked. This review is necessary to ensure that all contracts executed by the Office of the State Controller's or delegated agencies are: 1) In compliance with all applicable state of Colorado statutes and fiscal rules, 2) Contain all necessary and authorized signatures, and 3) Protect the state from unnecessary risk. Questions concerning the use of this resource checklist should be directed to the Office of the State Controller. **NOTE: All resources related to state contracting (i.e. new statewide contract policies, Fiscal Rules 2-2 & 3-1 related to state contracting, sample "Model" contracts, new legislation that impacts state contracts such as SB-228, Amendment 54 and the Colorado Immigration Law – Public Contracts for Services and Illegal Aliens; Colorado Contract Procedures & Management Manual, other contract tools) is located on the OSC website: [www.colorado.gov/dpa/dfp/sco](http://www.colorado.gov/dpa/dfp/sco) under the "Contracts" tab.**

Date: \_\_\_\_\_ Reviewer: \_\_\_\_\_

CLIN Number or Higher Education Internal Routing #: \_\_\_\_\_

Type of Contract: \_\_\_\_\_

Current FY (July 1 – June 30) Contract Value: \_\_\_\_\_

TOTAL CONTRACT VALUE: \_\_\_\_\_

**WHAT'S NEW:** Effective January 1, 2009, the State Controller approved extensive changes to Fiscal Rules 2-2 & 3-1 and the Special Provisions. In addition, 23 new statewide contract policies and 7 current policies were updated and issued by the State Controller. Please note that **it is the responsibility** of the Agency/Department/IHE contract managers, contract administrators, program managers, purchasing personnel, the agency controller and any other personnel who have a role in the state's contracts process to be familiar with and be fully aware of all changes, updates and additions mentioned here.

**More of the NEW policies:**

- **Categories & Identifiers for Contracts for the Contract Management System requirements are effective July 1, 2009;**
- **Independent Contractor**
- **Mixed Procurements**
- **Records Retention Periods for Contracts**
- **Monitoring Review – OSC Contract Approval Delegation**
- **Review and Approval of State Contracts for Delegated Institutions of Higher Education**
- **Settlement Agreements**
- **Sponsored Projects**
- **Review and Approval of State Contracts – Non-delegated Agencies and Non-delegated Institutions of Higher Education**
- **What if I have an Emergency and/or Rush Contract: Please review the policy, "Routing of Contracts"**
- **Review and Approval of State Contracts by the Office of the Attorney General**
- **Grant Contracts – Federal Sub recipient – Be cautious as you may incur a violation without knowing it!**
- **Split Purchases – Again, please be cautious. An Agency/Department/IHE shall not be allowed to split a purchase to avoid Fiscal Rule, policy or procedure.**

**A. RECORD REQUIREMENTS:** If not already part of your contract request being forwarded to the Office of the State Controller and/or Agency/Department/IHE controller delegate, the following documents shall be included. In addition, the following documents shall be part of the central Agency/Department/IHE file and easily accessible to the Office of the State Controller upon request

\_\_\_\_\_ **1. Risk Assessment:** A "Risk Assessment" analysis has been performed. Please refer to the OSC policy, **"Review and Approval of State Contracts – Delegated Agencies"**.

- \_\_\_\_\_ 2. **CLIN requirements:** Screen prints of both the CLIN and CLI2 tables. **Note:** Effective, July 1, 2009, elements of SB-228 will be required.
- \_\_\_\_\_ 3. **Encumbrance document:** An encumbrance document has been created (specifically a PO or SC) **and** equals the same amount stated in the contract/amendment/option/funding letter/task order/assignment **and** the document is ready for Level 3 approval. **NOTE:** If your Agency/Department/IHE has State Controller delegation, the person performing the Fiscal review must also initial and date the approval of the encumbrance document.
- \_\_\_\_\_ 4. **OSC Contract Completeness Checklist:** Evidence that Agency/Department has used a **contract checklist or sufficiency checklist**. The best practice would be to use the "OSC Contract Completeness Checklist" form as we are finding that when agencies use their own checklist form that several elements of importance is not included.
- \_\_\_\_\_ 5. **Contract beyond 5-year term limit:** When appropriate, documentation that the Agency/Department/IHE asked for and received written approval from the State Purchasing Director to extend the contract beyond the 5-year time limit.
- \_\_\_\_\_ 6. **Fair & Reasonable Justification:** Applicable when an Agency/Department/IHE is spending a large amount of dollars in a short period of time (particularly at the end of the Fiscal year) or if your agency is doubling the amount of the contract via an amendment.
- \_\_\_\_\_ 7. **Statement of Work Checklist:** Evidence that Agency/Department/IHE has used a Statement of Work Checklist or has a Statement of Work "tool" available for agency personnel to use.
- \_\_\_\_\_ 8. **Pre-approvals from other state agencies:** Written approvals or pre-approvals from all necessary Central Approvers or other specific agency or departmental approvals required by statute and Fiscal Rule 3-1. (e.g., GOIT - Governor's Office of Innovation & Technology; OSPB - Office of State Planning & Budgeting). Please refer to the State Controller's policies on: **"Information Technology Contracts" and "Routing of Contracts"**.
- \_\_\_\_\_ 9. **Personal Services Review:** Documentation evidencing review by the by Agency/Department/IHE Human Resources Office or Agency/Department/IHE Personal Services Program Waiver; **OR** Personal Services Certification Form. Please refer to the OSC policy on, **"Routing of Contracts", specifically Item 3 Mandatory Content which then refers you to a corresponding policy, "Monitoring Reviews – OSC Contract Approval Delegation", specifically Item 4.**
- \_\_\_\_\_ 10. **State Fiscal Rule waiver request:** A copy of all written approvals granted by the Office of the State Controller.
- \_\_\_\_\_ 11. **Number of contract copies:** At least three complete copies of the contract to be reviewed and approved (at least four copies if a lease).
- \_\_\_\_\_ 12. **Other required documentation:** A Copy of the original contract and **all** previous amendments. Also, include **ALL** other mod tools used (option, change order, task order, funding letter, etc.) is part of the contract request and contract file.
- \_\_\_\_\_ 13. **Insurance Requirements:** **A copy of a current insurance certificate shall be part of the contract request for internal/external review and also included in the Agency/Department/IHE contract file.**
- a. **Risk Analysis:** Here are some important questions to be asked when contemplating "additional insurances": 1) What are the risks? 2) Who will be sued and will the vendor lose their business if sued; 3) Will the company's capital assets cover the insurance loss? AND 4) Does the contract price increase because of additional insurance coverage's? If so, an explanation as to the cost is required. An explanation that addresses these questions shall be part of the Risk Assessment as required by policy.
- b. **Insurance Certificate:**
- \_\_\_\_\_ 1. Do you have a copy of a current insurance certificate on file for the contractor?
- \_\_\_\_\_ 2. Do the names on the insurance certificate match the name of the Contractor?
- \_\_\_\_\_ 3. Are the amounts of liability coverage correct?
- \_\_\_\_\_ 4. Is the state not specifically listed as an "Additional Insured" in the endorsement box of the insurance certificate to include General Liability and Automobile liability? If not, then the vendor needs to be asked for an updated **"Certificate of Insurance"** which includes the endorsement.
- CHECKPOINT 4:** Please insure that the limits listed on the certificate and any other requirements are clearly defined in the contract. Please refer to **Item K: Capital Construction on page 7 & 8** for more information related to insurance requirements.
- \_\_\_\_\_ 14. **Holdover documentation:** If your Agency/Department/IHE invoked the "holdover" **before the contract expired**, then your contract file should include this documentation (an email to the vendor or a formal letter/memo to the vendor). **NOTE:** A phone call or text message is not sufficient proof. Remember, in order to invoke the holdover; the provision had to be included in the original contract terms and if your agency does not have proof regarding this issue then it will be assumed that your agency has incurred a violation.

- \_\_\_\_\_ 15. **Late Justification (via letter/memo/email):** A **Late Justification** shall be submitted to the State Controller's Office or to your **Agency/Department/IHE** controller delegate when a contract request (original contract, amendment, change order, task order, grant funding letter, supplement, work authorization, etc.) is deemed **late**.
- \_\_\_\_\_ 16. **Statutory violations:** Written documentation in accordance with the State Controller's Policy, **"Statutory Violations: Processing Commitment Vouchers that Violate State Statutes"**.
- \_\_\_\_\_ 17. **Secretary of State Information:** A copy of the **"Information of File"** page from the Secretary of State's (SOS) web page showing the vendor's **(this does not apply to contracts with cities, counties, school districts, & the Federal government)** status to be in "good standing". This "Information of File" is the vendors' official registration with the SOS that they are doing business within the State of Colorado and clearly identifies their correct legal entity name.
- \_\_\_\_\_ 18. **Task Orders to a Master Task Order Contract:** The proposal from the vendor shall include a detailed description of the work that they will be providing, how many hours it will take, and an updated budget. If your task order proposal is only a budget detail, then an explanation must accompany your contract request for internal/external review and also be part of the contract file.

**B. CONTRACT ISSUES:**

**Opening paragraph checklist:**

- \_\_\_\_\_ 1. **Model contract templates:** Agency/Department has used the standard OSC model contract template form and/or has used another model contract version previously reviewed and approved (in writing) from the OSC. **Please refer to the State Controller's policy on, "Model Contracts"**.
  - \_\_\_\_\_ a. **Agency/Department/IHE full name and mailing address**
  - \_\_\_\_\_ b. **Full legal name of contractor,** state of legal formation and entity status (corporation, limited partnership, general partnership, sole proprietor, non-profit corporation). Does the full Contractor name in the first paragraph of the contract, match the name exactly as it appears on the SOS website and on the contract signature page?
  - \_\_\_\_\_ c. **Contractor/lessor complete business address**
  - \_\_\_\_\_ d. **Third parties:** Are there other entities (other than the State and one other vendor) that are also parties to the contract that are not identified in the opening paragraph?

**C. Body of contract checklist:** **Please refer to the State Controller's policy, "Content- Mandatory Provisions in State Contracts" for more information.**

**NOTE: The state's general terms and conditions were updated in January 2007. Please ensure you have updated the appropriate clauses in your contracts. The insurance clauses were updated several years ago and shall have the minimum coverage's at \$1 million. Any other dollar limits indicates you are using the wrong set of the required insurance clauses.**

- \_\_\_\_\_ 1. **Recitals to include:** 1) funds available statement, 2) authorized by appropriation, and 3) federal or state statutory authority for purchase or program cited
- \_\_\_\_\_ 2. **Definitions**
- \_\_\_\_\_ 3. **Order of Precedence clause**
- \_\_\_\_\_ 4. **Term or Performance Period:** This is the period of time that the contractor is performing services and must include a beginning date and a date that the contracts end as set forth by Fiscal Rule 3-1.
- \_\_\_\_\_ 5. **Compensation method, timing and amount defined**
- \_\_\_\_\_ 6. **Maximum Amount Payable:** Have you included language in the "compensation" section of your contract that clearly **states the maximum amount payable** for the contract term? Please refer to Fiscal Rule 3-1 for required language to be included in your contract.
- \_\_\_\_\_ 7. **Termination provisions** (termination for default and termination for convenience)
- \_\_\_\_\_ 8. **Future funding contingency clause**
- \_\_\_\_\_ 9. **State Special Provisions:** Has the January 1, 2009, version been incorporated in the body of the contract **as the page before** the current contract signature page?
- \_\_\_\_\_ 10. **Page Numbering:** All pages of the contract have been numbered appropriately, either by indicating the actual page number; the best practice is to use the following method: 1 of \_\_\_\_\_ pages, 2 of \_\_\_\_\_ pages, 3 of \_\_\_\_\_ pages, etc.?
- \_\_\_\_\_ 11. **Exhibits/Attachments/Schedules, etc., identified properly:** Have you **properly identified, labeled and numbered all pages** of all

referenced exhibits/attachments/schedules, etc? Does the text of the contract accurately cite exhibits/attachments/schedules, etc., by either number or letter designation and specific page reference?

- \_\_\_\_\_ 12. **Advance payments:** Is there language in your contract that allows for an advance payment to the contractor, please remember you are required to obtain a Fiscal Rule waiver from the State Controller's Office **prior to** forwarding your contract through the central approval process or to your agency/institution controller delegate unless the advance payment meets the specific exception requirements listed in **Fiscal Rule 2-2 on "Advance Payments"**.
- \_\_\_\_\_ 13. **Tax treatments:** Does the contract contain representations by the state regarding the tax treatment of the payments to the vendor?
- \_\_\_\_\_ 14. **Use of Modification Tools/Forms:** Have you included the required language in the body of the contract and the appropriate sample forms as an exhibit(s) to your contract that allows for the use of certain modification tools as set out in the current State Controller's policy on, **"Modification of Contracts – Tools & Forms"**?
- \_\_\_\_\_ 15. **Use of Acronyms:** Is there language in your contract; exhibit and/or other documents as part of your contract packet includes the use "of acronyms"? **CHECKPOINT:** Remember to explain what the acronyms mean.
- \_\_\_\_\_ 16. **Performance Bond:** Is this a personal services contract (other than Capital Construction) that requires a performance bond?
- \_\_\_\_\_ 17. **Signature Page Form Requirements:** The OSC has created (6) new signature page forms to be used for all state contracts, please refer to the State Controller's policy on, **"Signature Page – Form Of"**. Have you used the correct signature page for the type of contract?
- \_\_\_\_\_ 18. **An unusual contract /amendment/other modification situation:** This always warrants an explanation memo as to the reasons why and most of the time will include other supporting information that is needed to document the contract file and also be part of the contract packet for review and approval. A few examples: A settlement with a vendor or a situation where the State may be sued because an agency changed its name and infringed on a copyright.

#### **D. DATES: Original Contract /Amendment /Other Modification tools/Proposals:**

- \_\_\_\_\_ 1. **"Retroactive" effective date:** Does your contract/amendment contain a "retroactive" effective date?
- \_\_\_\_\_ 2. **Automatic Renewal of a contract:** Is there language in your contract that contains an "automatic renewal" of the contract?
- \_\_\_\_\_ 3. **Statement of Work date issues (this will apply to amendments as well):** Is the "targeted" effective date of the contract a different date than any of the dates included in the scope of work (SOW)? If so, you or the program manager will need to attach a memo that verifies that no work has been performed and no payment has been made to the vendor.
- \_\_\_\_\_ 4. **Dates stated in the scope of work conflict with the time of performance stated in the contract (this will apply to amendments as well)?** If so, you or the program manager will need to attach a memo that verifies **that no work has been performed and no payment has been made to the vendor.**

#### **E. POTENTIAL LEGAL ISSUES:**

- \_\_\_\_\_ 1. **Binding Arbitration:** Does your contract contain or propose a binding arbitration clause? **CHECKPOINT:** This is not allowed per Fiscal Rule 3-1, Special Provision #6 – Choice of Law.
- \_\_\_\_\_ 2. **Contracts with Indian tribes:** Is this a contract with an Indian tribe? **CHECKPOINT:** Please seek the counsel of the Attorney General's Office because issues exist between federal tribal law and state law.
- \_\_\_\_\_ 3. **Inconsistent use of Modification policy related to modification tools and forms:** Does the contract contain any modification provisions that are inconsistent with the current State Controller's policy on **"Modification of Contracts – Tools & Forms"**?
- \_\_\_\_\_ 4. **Have the State Special Provisions (dated January 1, 2009) been altered?** **CHECKPOINT:** If so, you must obtain a Fiscal Rule waiver approval. This waiver, along with the reasons for the request, must be forwarded to the Office of the State Controller.
- \_\_\_\_\_ 5. **Indemnification clause:** Have you included this clause as part of the state's general terms and conditions?
- \_\_\_\_\_ 6. **Limitation of Liability (LOL) issues:** **CHECKPOINT:** #1 Rule: The State Controller does not want these clauses in State contracts. Please refer to the policy on, **"Vendor Agreements"** and Fiscal Rule 2-2 & 3-1 for requirements. If you are faced with an LOL situation, then in most cases, you will need to contact the State Controller's Office – Central Contracts Unit. Does the contract contain or does the vendor propose limitation of liability provisions that either: 1) limits the vendor's liability for particular types of damages OR 2) caps the recovery in dollars to which the State is entitled? **For Higher Education:** Consult with your institution's legal counsel.
- \_\_\_\_\_ 8. **Vendor's Contract/Agreement Form:** Is this a contract that has been written strictly by the contractor? **Please refer to the**

State Controller's policy on, "**Vendor Agreements**".

- \_\_\_\_\_ 9. **Vendor's Terms and Conditions:** Has the contractor insisted that some of their terms and conditions be included in the contract? **CHECKPOINT:** If so, there is a 99.9% probability that the vendor's terms and conditions conflict with the state's terms and conditions. Please contact the Office of the State Controller prior to the contract being signed by the vendor and/or state.
- \_\_\_\_\_ 10. **Revenue-generating contracts:** Is this a revenue generating contract? **Please refer to Fiscal Rule 2-2 for more information.**
- \_\_\_\_\_ 11. **Federal Government Contracts:** The state cannot agree to certain provisions as outlined in the State Controller's policy, "**Federal Government Contracts**". Please review the definitions outlined in Fiscal Rule 3-1 as the term "Reviewing Attorney" is explained.
- \_\_\_\_\_ 12. **Contractor is required by law to have a license:** (A few examples include a dentist, doctor, lawyer, psychiatrist, etc.);
  - a. \_\_\_\_\_ Do you have a current certification or license from the contractor on file?
  - b. \_\_\_\_\_ Are there any notations or stipulations on the contractor's licenses? **CHECKPOINT:** If so, please consult with the Office of the State Controller & Attorney General's Office or your institution's legal counsel.
- \_\_\_\_\_ 13. **HIPPA Requirements:** If HIPAA requirements are applicable; does the contract contain a signed Business Associate Addendum and/or appropriate HIPPA language?
- \_\_\_\_\_ 14. **Strikeouts or strikethroughs in any type of contract document no matter what it is called (amendment, change order, task order, supplement, option, grant funding letter, etc., contract and/or exhibits/attachments/schedules, etc.):** Are there any strikeouts within the contract and/or exhibits, which are not initialed by **all signatories on the signature page** of the contract?

**F. PAGINATION & CONTRACT REFERENCES:**

- \_\_\_\_\_ 1. **Contract pages numbered:** Are **ALL PAGES** of the contract numbered including *the Special Provisions*? For example: If your page number looks like the following, "Page 6 of 5" or something similar, then clean up of your pagination is required.
- \_\_\_\_\_ 2. **Exhibits/Attachments/Schedules, etc.:** Do **ALL PAGES** of your contract exhibits/attachments/schedules, etc., have page numbering?
- \_\_\_\_\_ 3. **Exhibits/Attachments/Schedules, etc., identified properly:** Are **all exhibits/attachments**, etc., properly identified? If a contract refers to "Exhibit A," then the attached exhibit should be marked on the first page as "Exhibit A." Also, when more than one exhibit is being attached, each exhibit should be placed in the proper order as part of the contract (i.e. - A, B, C, D or 1, 2, 3, 4 not as D, B, A, C, etc.).
- \_\_\_\_\_ 4. **Improper References:** Amendments, Renewals, and other similar contract modifications often improperly refer to the original contract by indicating the wrong original contract routing number, or to the wrong provisions in the original contract. **CHECKPOINT:** Double-check all references used in the body of the contract. For example, if your renewal letter says "Pursuant to Paragraph 3(a) of the original contract...." make sure that Paragraph 3(a) of the original contract contains the information you intended to cite, as well as that there is a provision entitled "3(a)". In other words, proof read every citation very carefully.

**G. SIGNATURE & SIGNATURE PAGE REQUIREMENTS:**

**90% of the errors on contracts are on the signature page**

**Please refer to the State Controller's policies on: "*Signature Authority Delegation*" & "*Vendor Signature Authority*"**

- \_\_\_\_\_ 1. Did you include a letter with the contracts sent to the contractor for signature that explain the state's signature requirements?
- \_\_\_\_\_ 2. **Certification of correct legal entity name:** The Agency/Department/IHE certifies that they have completed the correct legal entity name of vendor, for them, on the signature page.
- \_\_\_\_\_ 3. **Vendor's FEIN or SS# & W-9 Information:** Note that this requirement was removed from the signature page in February 2008, because of security reasons. Do you have a current W-9 on file for this vendor?
- \_\_\_\_\_ 4. **Signature Authority:** **Please refer to the State Controller's policy, "*Signature Authority Delegation*".** Required contract signatures by all authorized agency/institution signatories (the Office of the State Controller must have a current "*Record of Authorized Signatures*" of all agency/institution signatories on file).
- \_\_\_\_\_ 5. Does a **stamped, photocopied and/or facsimile signature appear on signature page?** If so, then you will need to ask for original signatures.
- \_\_\_\_\_ 6. **Notary signature on the signature page:** Does a **notary signature appear on the signature page?** **CHECKPOINT:** The state **does not** recognize a notarized signature since a notary only confirms that the individual is the person they say they are; a notary **does not** verify the authority of the individual to bind the company.

- \_\_\_\_\_ 7. Apparent Authority: Does the individual signing for the contractor have apparent authority (i.e. - President or Vice-President) based upon their position relative to their organization?
- \_\_\_\_\_ 8. Documentation related to signature authority: Is there documentation that supports the signature authority of the individual signing the contract (i.e., bylaws, a board resolution or articles of incorporation)? This documentation shall be with your contract request and filed with your contract and the documentation should **clearly state the names and titles** of those who do have signature authority.
- \_\_\_\_\_ 9. Signature block must include: 1) Full legal name of contractor as it appears on page 1 (**remember the SOS "Information of File"**); 2) All original signatures; 3) Printed name and title of all signatories; and 4) Agency/institution name.
- \_\_\_\_\_ 10. Other entities appropriate signatories: Are you **contracting with an intergovernmental entity** such as a city, county or school district? Do you have the correct signatories? **CHECKPOINT**: **City signatories** are either the mayor or city manager; A **County signatory** is always the county commission chairperson; A **school district signatory** is usually the superintendent. For more information regarding the state's signature authority requirements, please refer to Chapter 6 of the Colorado Contract Procedures & Management Manual.

## **H. FISCAL RULE ISSUES:**

- \_\_\_\_\_ 1. Are there any vendor terms stated in with the contractors' proposal, on a wage rate or fee schedule, or other vendor document that has terms related to outstanding invoices that are to be paid within 30 days and at an interest rate above what state law allows? **CHECKPOINT**: The statute allows the state to make payment within 45 days and after that date interest is to be compounded at 1%. Terms other than these require a Fiscal Rule waiver and subsequent approval by the State Controller refer to **Fiscal Rule is 2-5**.
- \_\_\_\_\_ 2. Outside bank account: Are you setting up an outside bank account because of this contract? **CHECKPOINT**: The State Treasurer **must grant prior approval** and their approval shall be placed with the contract packer and/or file.
- \_\_\_\_\_ 3. Was a purchase order initially issued for the services: Was a contract then written for the same services and with the same vendor at a later date in follow-up to the purchase order? **CHECKPOINT**: A Fiscal Rule waiver approval is required **prior to** the issuance of a purchase order. The approval must be granted in writing by the State Controller's Office and this documentation must be with the contract file. **Also refer to the State Controller's policy on, "Split Purchases"**.

## **I. AMENDMENTS:**

- \_\_\_\_\_ 1. Standard Amendment Form: Have you used the state's standard amendment form set out in the most current policy, **"Modification of Contracts – Tools and Forms"** issued by the State Controller?
- \_\_\_\_\_ 2. Additional consideration: Does your amendment recite additional consideration to the State for the contract change? **CHECKPOINT**: If not, then additional consideration must be clarified in the contract amendment. An amendment cannot be used to increase the cost to the State for the same scope of work and services as the original contract.
- \_\_\_\_\_ 3. Additional dollars: Are additional dollars part of the current amendment?  
\_\_\_\_\_ a. Is the cost a significant increase from the original contract (more than 30% is considered significant)? **CHECKPOINT**: If so, you have a **"high risk"** amendment that needs review by the Office of the State Controller, as well as, the agreement of State Purchasing for the significant cost increases.
- \_\_\_\_\_ 4. Settlement with a vendor(s): Is the purpose of this amendment to make a settlement with the vendor for any reason? **CHECKPOINT**: If so, your amendment will need to have a review and approval by the Office of the State Controller.
- \_\_\_\_\_ 5. Attach a spreadsheet: Is a spreadsheet attached to the contract packet showing the dollar amount of the original contract and every amendment thereafter? Mathematical errors are being found in increasing numbers on contracts with multiple amendments. To help eliminate these errors and shorten the contract review and approval time a **spreadsheet** is helpful.
- \_\_\_\_\_ 6. Strikeouts or strikethroughs in amendment body and/or attached exhibits/attachments /schedules: Are there any strikeouts within the amendment and/or exhibits, attachments, and/or schedules, which are not initialed by **all signatories on the signature page** of the amendment?
- \_\_\_\_\_ 7. Amendment pages numbered: **Are ALL PAGES** of the amendment numbered? For example: If your page number looks like the following, "Page 6 of 5" or something similar, then clean up of your pagination is required.
- \_\_\_\_\_ 8. Exhibits/Attachments/Schedules, etc.: Do **ALL PAGES** of your amendment exhibits/attachments/schedules, etc., have page numbering?
- \_\_\_\_\_ 9. Exhibits/Attachments/Schedules, etc., identified properly: Are **all exhibits/attachments**, etc., properly identified? For example, if your amendment refers to "Exhibit A-1," then the attached exhibit should be marked on the first page as "Exhibit A-1." Also, when more than one exhibit/attachment/schedule is being attached, each exhibit/attachment/schedule should be placed in the proper order as part of the contract (i.e. - A, B, C, D or 1, 2, 3, 4 not as D, B, A, C, etc.).

## **J. CONTRACT TYPE ISSUES:**

- \_\_\_\_\_ 1. Is this an interagency agreement?

- \_\_\_\_\_ a. Have you used the state's standard form? **Please review Fiscal Rule 3-1** and then use the "Risk Assessment Analysis Tool" (located on the State Controller's Office website, select the "Contracts" tab located in the left hand column) to determine if your agreement will need further review by the Office of the State Controller.
- \_\_\_\_\_ 2. **Is this a loan contract?** Several agencies of the State loan money to mostly intergovernmental entities for various projects (i.e. – Colorado Water Conservation Board within the Department of Natural Resources; Colorado Tolling Enterprise within the Department of Transportation), and there are certain requirements that shall be part of a loan contract.
- a. \_\_\_\_\_ **A Project Summary** shall be made an attachment/exhibit to the contract that describes Borrower Information, the Project Description, the authority from the state board and/or commission for making the loan, and the state board and/or commission approval and legislative authorization which identifies the amount of the loan and terms of repayment.
- b. \_\_\_\_\_ **A Promissory Note** shall be made an attachment/exhibit to the contract
- c. \_\_\_\_\_ **Attorney's Opinion Letter** that shall include 4 requirements
- d. \_\_\_\_\_ **Borrower's Liability Insurance**
- e. \_\_\_\_\_ **An Annual Statement of Debt Coverage** from the loan recipient is an annual requirement
- f. \_\_\_\_\_ **Other insurance requirements** are part of the loan contract provisions for sub-contractors and other contractors who are performing construction related activities
- g. \_\_\_\_\_ Several other required clauses shall be included in all loan contracts to include the latest Special Provisions (please see "Model" Loan Contract form located on the OSC website)
- \_\_\_\_\_ 3. **Equipment leases:** Does the company leasing the equipment to the State want to assign the payments to a Finance company?
- \_\_\_\_\_ 4. **Third party financing:** If the State must arrange its own **third party financing** (and the lessor/supplier was paid off), has the finance company agreed to assign all warranties and maintenance rights to the State so the State may proceed directly against the lessor/supplier if equipment fails? Who holds the title to the equipment during the lease to the State—the finance company or the lessor/supplier? Is there a clause that gives the State the right to take title at the end of the lease? **Please consult the Office of the State Controller if your agency is in this situation.**
- \_\_\_\_\_ 5. **Lease Purchase:** Have all the prerequisites and requirements of CRS 24-82-801 been complied with?
- \_\_\_\_\_ 6. **Do you have an easement that costs more than \$40,000?** An explanation as to how price was determined is required **and shall be part of the contract request and the Agency/Department/Institution contract file.**
- \_\_\_\_\_ 7. **A "contingency fee" or the contractor "collects fees" is mentioned in the contract terms:**  
**CHECKPOINT:** This is a requirement of SB 04-171 and these types of contracts are considered **"high risk"**, involve the review and approval of the Office of State Planning & Budgeting **AND** also need the approval of the Attorney General and the State Controller. **For Delegated Agencies:** Please refer to the State Controller's policy, **"Review and Approval of State Contracts"**. **For Non-delegated agencies:** The OSC reviews all your contracts anyway, so we will see this type of contract is you have one.
- \_\_\_\_\_ 8. **A real estate purchase contract that is for more than \$100,000:** An appraisal shall be part of the contract packet for review and approval.
- a. \_\_\_\_\_ If the appraisal reflects a depreciated value, please insure there is adequate documentation as part of the contract file and with the contract request for internal and/or external review and approval.
- \_\_\_\_\_ 9. **"Assignment" Agreement (formally referred to as a novation):** Is this an "Assignment" agreement? Please review the State Controller's policy on, **"Modification of Contracts – Tools and Forms"** for the requirements and standard form template.
- a. \_\_\_\_\_ Have you determined the correct dollars owed to the State in order to liquidate monies with the old vendor and then have available dollars encumbered for the new vendor?

**K. CAPITAL CONSTRUCTION CONTRACTS:** If the answer to any one of the questions listed below is "YES", then your contract will need review by the State Buildings Program. If you are a non-delegated agency, your Capital Construction and/or Controlled Maintenance will need the review of the Office of the State Controller, Central Contracts Unit.

- \_\_\_\_\_ 1. The services are professional and include one of the following: (architect, land surveyor, industrial hygienist, and engineer.) and a commitment document other than a contract was used.
- \_\_\_\_\_ 2. **Insurance Requirements:** Are any of the end dates listed on the insurance certificate expired when compared to the "effective date" of the contract? If so, then please request from the vendor and attach to your contract packet and/or file an updated insurance certificate.
- a. \_\_\_\_\_ Are the dollar amounts for the required insurance provisions different than the requirements listed in the General Terms and Conditions as part of the approved waived contract form?
- b. \_\_\_\_\_ Is the state **not specifically listed** as an "Additional Insured" in the endorsement box of the insurance certificate for General Liability and Automobile liability? **If not, then the vendor needs to be asked for an updated "Certificate of Insurance" which includes the endorsement.**

- \_\_\_\_\_ 3. **Performance Bonds:** Are the required bonds (Performance, Labor/Material Bond) not included in the contract packet?
- a. \_\_\_\_\_ Are the (above mentioned bonds) not dated properly? **NOTE:** The second page of the bond forms shall be dated by the company and the agency shall fill in the date on the first page of the bond form if the company has not filled in the date with the following condition: The agency or IHE shall obtain a letter from the bond company signed by the company attorney, authorizing the state representative to fill in the bond date once the contract has been reviewed and approved (i.e. – effective date) by the State Controller and/or his delegate.
- \_\_\_\_\_ 4. **Power of Attorney:** Is this not included in the contract packet? **NOTE:** The power of attorney verifies the proper authority of the signatory.
- a. \_\_\_\_\_ Is the "Power of Attorney" form be dated by the company? **NOTE:** The "Power of Attorney form" shall be dated in two places by the company. The company shall place the date where they (not the State) affix their seal and witness (this is located at the bottom of the Power of Attorney form that specifically states, "In Witness Whereof, I have hereunto set my hand and affixed the facsimile seal of said corporation"). The State agency shall not date any part of this form.

**L. LEASE CONTRACTS:**

- \_\_\_\_\_ 1. **State's Standard Lease Form:** Have you used the most recent version of the state's standard contract lease form (7 page contract) without making any changes to the lease form?
- a. \_\_\_\_\_ If you have chosen to not use the state's standard lease form and have either used a lease form your agency/institution created or a vendor contract form, have you contacted Mike Karbach in the state's Real Estate Program Office (303-866-4564)?
- b. \_\_\_\_\_ Have additional provisions be added to the state's standard lease form? If so, a **"Risk Assessment"** review shall be performed because of the changes made to the state's standard lease form. The Risk Assessment Analysis form is found in the policy, **"Review and Approval of State Contracts – Delegated Agencies".** **The Office of the State Controller shall also review the type of contract because of the changes.**
- \_\_\_\_\_ 2. **Other lease issues:** Do you have an amended, extended, or renewed lease, that includes language that requires a payment by the Lessor for "build out" using tenant allowance **OR** a termination clause that requires payment by the State? If so, then please consult with the Attorney General's Office and the Office of the State Controller.
- \_\_\_\_\_ 3. **Transfer of Ownership:** Has the existing landlord transferred ownership to a new landlord? Please refer to the State Controller's policy, "Real Property Leases - Payments to New Landlord".
- \_\_\_\_\_ 4. **Build-out Provision:** Does your lease contain a "build out" provision with terms? If so, please refer to the policy, **"Real Property Leases – Build Out".**