

**OFFICE OF THE STATE CONTROLLER (OSC)**  
**CONTRACT COMPLETENESS RESOURCE GUIDE – Part II**

(\*\*\*This guide 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 resource guide was developed to be used in conjunction with the "Office of the State Controller Contract Completeness Checklist". This is a valuable resource tool that will help you in understanding the statewide contracts process, policies and procedures. The use of this guide is necessary to insure that all contracts, amendments, work authorizations, supplements, task orders, grant funding letters, option letters, change orders, assignments, etc. executed by the Office of the State Controller's or delegated Agencies/Departments/Institutions of Higher Education 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 tool should be directed to the Office of the State Controller, Central Contracts Unit. **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. The changes made to these specific Rules are too extensive to discuss in this Resource tool and the number of new policies are too numerous to mention as well. However, **it is the responsibility** of the a 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.

Other 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 analysis is required for certain amendments and for particular contract types. The State Controller requires a risk-based approach to state contracting and has determined that certain contract types and some amendments are either "automatic low risk" or "automatic high risk". If you have a contract that does not meet the requirement of an "automatic

low" or an "automatic high", then a Risk Assessment shall be performed by the Agency/Department/IHE. Please refer to the OSC policy, **"Review and Approval of State Contracts – Delegated Agencies". For Higher Ed (IHE) institutions: Please follow the policy, "Review and Approval of State Contracts – Delegated Institutions of Higher Education"**. If after the Agency/Department performs the risk analysis and the contract is deemed "high" risk, then the Agency/Department shall forward the contract request to the OSC Central Contracts Unit for review and final approval.

2. **CLIN & Contract Management System (SB-228) requirements:** A separate CLIN is required to be set up for every contract transaction that is processed (i.e.- original contracts, amendments, work authorizations, supplements, task orders, grant funding letters, option letters, change orders, assignments, etc.) This means that the CLIN number for the original contract **would not be the same** CLIN number for a subsequent amendment, option, grant funding letter, task order, change order, assignment, work authorization, supplement, etc. The same requirement shall apply when the new state-wide Contract Management System database is up and running which is scheduled for July 1, 2009.
3. **Encumbrance document:** An encumbrance document is required to be created per Fiscal Rule 2-2 which means that the monies has been set aside to be used at a future date for the services/goods that an Agency/Department wants to acquire. The encumbrance which is called, (specifically a PO or SC) **shall equal** the same amount stated in the contract **and** the document shall be ready for Level 3 approval. Does the contract span two Fiscal years? **CHECKPOINT 1:** If so, the encumbrance should be set up **to reflect the dollars spent in the current Fiscal year only**. **Exception:** If the contract is a 100% federally funded contract, then the full amount of the contract can be encumbered; however it is up to each individual agency to determine how federal dollars are to be encumbered per their own internal processes and policies.  
  
**CHECKPOINT 2:** If the encumbrance does not equal the contract request because of an unusual circumstance, then the contract packet and the file must have a written statement by your Agency/Department/IHE Chief Financial Officer that explains the situation. **The encumbrance amount shall be for dollars expected to be expended in the current Fiscal year (no later than June 30) UNLESS you have a contract that is 100% federally funded or a Capital Construction contract with funds being released from Fund 461.** **NOTE:** If your agency 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:** The Agency/Department/IHE shall use a **contract checklist or sufficiency checklist on every contract request to include:** original contracts, amendments, work authorizations, supplements, task orders, grant funding letters, option letters, change orders, assignments, etc. This form may be the *OSC Contract Completeness Checklist* form or an agency specific checklist form. If you choose to create your own checklist, it should include several elements from the OSC checklist (and don't forget the "Resource Guide"). By using the OSC Contract Completeness Checklist, we guarantee that 99.9% of your contract issues/errors will be identified "up front", so you have an opportunity to resolve all the issues before your contract is sent forward for internal and/or external review. **NOTE:** The **OSC Contract Completeness Resource Guide** shall be used in conjunction with the OSC Contract Completeness Checklist.
5. **Contract beyond 5-year term limit:** There shall be evidence that the Agency/Department/IHE asked for and received approval (in writing) from the State Purchasing Director to extend the contract beyond the 5-year time limit. **One exception:** to the 5-year rule is for leased office space.
6. **Fair & Reasonable Justification:** If your Agency/Department/IHE is spending a large amount of dollars in a short period of time or if your agency is doubling the amount of the contract via an amendment and the amendment just states, "the contractor is to take additional samples" and there is not **an updated budget** and **updated Statement of Work** (with the number of additional samples and when they are to be completed), then have supporting documentation along with your contract request for internal/external review and also a part of your Agency/Department/IHE contract file. This information will help your Agency/Department/IHE State Controller delegate or the OSC to make a determination on fair and reasonable pricing.
7. **Statement of Work Checklist:** This is a topic of its own, but this is it in a nutshell. The **Statement of Work** describes the objectives of the services to be performed or achieved (in detail); the methodology for performance; the products to be produced (deliverables), again in detail; the timetable for performance; the specifications; the means to measure outcome and performance. You want to be able to compare very specifically the product and the **functionality** of what you *received* against the specifications set out in the **Statement of Work** -- just in case the work is substandard and indicates a breach of contract. A breach of contract means a **failure** by a party **to perform** up to the standards of the contract. (But in that case, **you already have your REMEDIES!**) If a good RFP was written or detailed program scope, much of the **SoW** may already be done for you. Quantify performance as much as possible, even in subjective areas (e.g., the **certified** counselors will have no less than 7 sessions on this (described) **health topic**, in **three** different counties, between November and December, 2008, with attendance by **no less than 10 respondents per session**).
8. **Pre-approvals from other state agencies:** Required 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). The pre-approval and/or approval shall be in writing and indicated in the contract packet and contract file. **Please refer to the State Controller's policies on: "Information Technology Contracts" and "Routing of Contracts".**
9. **Personal Services Review** by the 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".**

10. **State Fiscal Rule waiver request:** All requests for a Fiscal Rule waiver must be forwarded to the Office of the State Controller where a member of the FAST (Field Accounting Specialist Team) will review and make a final determination. Approvals or disapprovals shall be in writing from the FAST and shall be attached to the contract packet for internal or external review and also a part of the Agency/Department/IHE contract file.  
**CHECKPOINT 3:** There are several instances when a Fiscal Rule waiver request is required. As a delegate or contract reviewer, it is your responsibility to know.

11. **Other required contract documentation:** A Copy of the original contract and **all** previous amendments to also include **ALL** other mod tools used (option, change order, task order, grant funding letter, work authorization, supplementals, etc.) is part of the contract request and contract file.

12. **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 L: Capital Construction on page 10 for more information related to insurance requirements.

c. **Some additional advice:** Some types of contracts may need to include "other" kinds of insurance. For example, if your agency is in need of an outside vendor to perform janitorial services then your contract may possibly need crime insurance. Please, address the questions above in Item a. and if you have additional questions regarding insurance or need advice on what other kinds of insurance are required for a particular personal services contract (other than the current required insurance clauses), please contact the state's Risk Management Office, specifically Tom Montoya at (303) 866-2014.

13. **Holdover documentation:** Remember, in order to invoke the holdover; **the provision had to be included** in the original contract terms and if your Agency/Department/IHE does not have proof regarding this issue then it will be assumed that your Agency/Department/IHE has incurred a violation. In addition, the Agency/Department/IHE had to have invoked the "holdover" **before the contract expired**, then your contract file shall 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.

14. **Late Justification (via letter/memo/email):** A **Late Justification** shall be submitted to the State Controller's Office or to your Agency/Department/Institution controller delegate when a contract request (original contract, amendment, change order, task order, grant funding letter, option, supplement, work authorization, etc.) is deemed **late**. This means that the targeted start date has passed (this date appears in the performance term language of the contract) **without the approval** of the State Controller or delegate, and/or a deliverable date listed on the scope of work has passed **without** a fully signed contract in place. **The late justification shall address:** 1) Whether the vendor has been working; AND 2) If any payments have been made to the vendor.

15. **Statutory violations:** A memo is required in accordance with the State Controller's Policy, **"Statutory Violations: Processing Commitment Vouchers that Violate State Statutes"** because a statutory violation has been incurred because the vendor has been working and/or payments have been made to the vendor prior to the contract, amendment, or other modification being signed by the State Controller or his/her delegate.

**How do I know if a statutory violation exists?** The *Effective Date* is the date the contract is signed by the State Controller or the State Controller delegate. The following term clause is recommended: "This contract shall be effective upon approval by the State Controller, or designee, or on (*estimated start date*), whichever is later." If an estimated *start date* is used without the above quoted State Controller caveat, make sure the contract will reach the Central Contract Approver and/or your Agency/Department/IHE State Controller delegate well before the *estimated start date to allow the State Controller or Agency/Department/IHE delegate sufficient time for his/her review*. If the *estimated start date* passes before the contract reaches a Central Contract Approver or State Controller delegate, you will be asked to confirm in writing that the vendor has not started work and that a violation of CRS 24-30-202 has not occurred. **Finally, the initial term of the contract should not**

commence on a date before the effective date. If a delegate is performing all the assessment required by their State Controller signature authority delegation, it will take him or her adequate time to review the documents as well.

16. **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" shall be included with the contract request for external/internal review and approval, as well as, the Agency/Department/IHE contract file. 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. This requirement is entirely statutory. Corporations and other types of legally recognized entities are required to register anytime they do business in the State. If an entity is a general partnership, (general partnerships are not required to be filed with the Secretary of State) obtain the names and addresses of each partner in a letter or email to be placed in the contract file (even if only one partner signs). However, a "natural person" does not have to do so. This does provide the State with an in-state registered agent on whom process can be served. The definition of a "natural person" is: a living, breathing, sentient human being as opposed to a legally created artificial entity with rights such as a corporation or an LLC.
17. **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. ENCUMBRANCE ISSUES:** Please refer to the discussion on encumbrance issues found in Section A: Records Requirements Item 3 on page 2.

**C. CONTRACT ISSUES:**

Opening paragraph checklist:

1. **Model contract templates:** A standard OSC model contract template form is being used or another model contract version has been previously reviewed and approved (in writing) from the OSC. Please refer to the State Controller's policy on, "Model Contracts".
- a. **Made date: The "made date" is now optional.** It is the discretion of the agency/department/IHE to determine to use or not use a made date. Please refer to the State Controller's policy, "Effective and Made Dates".
- b. **Agency/Department/Institution full name and mailing address:** A best practice is to include the actual state Agency/Department/IHE mailing address and include the agency's/department or IHE division if appropriate.
- c. **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?  
**CHECKPOINT 5:** It is critical that ALL references to the contractor name shall be the correct legal entity name as the State issues a 1099 to vendors based upon their legal name. Please refer to the "Secretary of State Information" listed in Section A: Records Requirements – Item 16.
- d. **Contractor/lessor complete business address**
- e. **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? Refer to Item c. above. In addition, these entities along with their correct legal entity name must appear on the signature page with the proper signatures. Please refer to the "Secretary of State Information" – Item 16, listed above.

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

1. **Recitals to include:** 1) funds available statement, 2) authorized by appropriation, and 3) federal or state statutory authority for purchase or program cited

**CHECKPOINT 6:** If you are citing a State statutory authority, it is your responsibility or your Agency/Department/IHE controller to check the statute(s) to see if your agency has the authority to enter into the contract. If your contract also cites federal regulations, they must be cited correctly and accurately and require the contractor to comply with the regulations. It is the responsibility of the Agency/Department/IHE (usually the grant program manager) for insuring that the grant contract complies with the requirements of the grant. This includes a working knowledge of the federal and/or state regulations.

2. **Other required items and/or clauses:** 1) Definitions; 2) Order of Precedence clause; 3) Compensation method, timing and amount defined; 4) Termination provisions (termination for default and termination for convenience); 5) Future funding contingency clause; 6) Current Insurance clauses (you know you have the correct ones if the limits are set at \$1 million dollars) 7) All pages of the contract have been numbered appropriately, such as 1 of \_\_\_\_ pages, 2 of \_\_\_\_ pages, 3 of \_\_\_\_ pages, etc.?. 8) Have you properly identified, labeled and numbered all pages of all referenced exhibits and/or attachments? 9) Does the text of the contract accurately cite exhibits and attachments by both number or letter designation and specific

page reference?

3. **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**. **CHECKPOINT 7:** The term or performance period is not the "Effective Date". The Effective Date is the date the contract is signed by the State Controller or State Controller delegate. This signature approval (SCO signature or delegate) is required for performance to begin, or for the State to become obligated for payment.
4. **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. Also, if you have a multi-year contract the "maximum amount" payable should be properly allocated by Fiscal year and stated in this section. **CHECKPOINT 8:** The Agency/institution **must make required findings in writing by CRS 24-103-503** to utilize a multi-year contract. Also, the State must be the party to initiate the renewal or extension of a contract. If your contract does not have a maximum amount stated, then a Fiscal Rule waiver should be requested by your Agency/Department/IHE controller.
5. **State Special Provisions:** Please make sure that you have used the January 1, 2009, version of the Special Provisions and that they have been incorporated in the body of the contract **as the page before** the current contract signature page.
6. **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"**. **CHECKPOINT 9:** Advance payments are not the normal mode of business for the state as vendors are expected to have adequate resources or working capital to provide goods/services to the state. In addition, an advance payment results in a loss of interest earnings for the state and more importantly a risk of loss of the funds if the vendor goes bankrupt or the vendor has not performed adequately. For more information regarding an advance payment, please refer to Fiscal Rule 2-2 on "Advance Payments".
7. **Tax treatments:** Does the contract contain representations by the state regarding the tax treatment of the payments to the vendor?
8. **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 **"Modification of Contracts – Tools & Forms"** policy? **CHECKPOINT 10:** You may not use a Modification Tool if the prerequisites of their use are not met. Several "Mod Tools" **REQUIRE** unit pricing or rate pricing. Do not use a Mod Tool if you cannot meet these requirements in the contract. **NOTE:** Only an amendment can be used to change terms and conditions set out in the original contract; **to use another modification tool to do this is inappropriate.**
9. **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 11:** Remember to explain what the acronyms mean.
10. **Performance Bond:** Is this a personal services contract (other than Capital Construction) that requires a performance bond?
11. **Signature Page 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"**.
12. **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.

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

1. **CHECKPOINT 12:** Know the difference between the "made date", the "effective date", and the "performance date". **Please refer to the State Controller's policy, "Effective and Made Dates"**.
2. **"Retroactive" effective date: One exception exists:** If your contract/amendment contains a retroactive date **AND** the contract dollars are paid for with **100% federal funds**, then an allowance is granted if the following conditions are met: 1) The original contract must contain language to allow for this based on the Federal Grant Award/Letter; 2) A copy of the federal grant award/letter that permits a retroactive date must be part of the contract packet and file; and 3) Despite a retroactive effective date, **NO actual payments** can be made until the contract has been signed by the State Controller or controller delegate. **Please refer to the State Controller policy, "Grant Contracts – Federal Sub-Recipient"**.
3. **Automatic Renewal of a contract:** Is there language in your contract that contains an **"automatic renewal" of the contract?** **CHECKPOINT 13:** The statutes do not permit this, and the language in any contract will need to be changed to have a definite beginning and ending date with a proper modification tool utilized to renew the contract.
4. **Statement of Work date issues:** 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. **CHECKPOINT 14:** A date in the SOW that is earlier

than the targeted effective date may indicate a statutory violation. Moreover, using specific dates in an SOW can throw off an entire schedule right from the beginning. Draft the SOW so that performance activity begins upon the effective date, with milestones or deliverables due a calculated number of days "after the effective date" and after each milestone completion. Also, it is best to have the contract final end date be a few weeks or a month after the agreed work schedule anticipates completion. This builds in a cushion for the contract to be fully completed despite an unexpected delay.

5. **Dates stated in the scope of work conflict with the time of performance stated in the contract:**

**NOTE:** 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.

**F. POTENTIAL LEGAL ISSUES:**

1. **Binding Arbitration:** Does your contract contain or propose a binding arbitration clause? **CHECKPOINT 15:** This is not allowed per Fiscal Rule 3-1, Special Provision #6 – Choice of Law.
2. **Contracts with Indian tribes:** **CHECKPOINT 16:** 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"**? **CHECKPOINT 17:** Please check that you are using the correct Mod Tool and that the contract has the language that "matches" that Mod Tool. Don't attach a Mod Tool or tools to a contract unless it fits!
4. **State Special Provisions (dated January 1, 2009) been altered?** **CHECKPOINT 19:** If so, you must obtain a Fiscal Rule waiver approval. This waiver, along with the reasons for the request, must be forwarded to the State Controller (see Section A. Records Requirements – Item 10. State Fiscal Rule Waiver Requests).
5. **Governmental Immunity Provisions:** These are now part of the Special Provisions (dated January 1, 2009) as the new Special Provision #3. The prior Special Provision #3 was the **Indemnification clause** which shall be part of the state's general terms and conditions in all state contracts.
6. **Indemnification clause:** This clause used to be the prior Special Provision #3; however effective January 1, 2009, this clause was removed but shall be part of the state's general terms and conditions in all state contracts.
7. **Limitation of Liability issues:** **CHECKPOINT 20:** A contract that contains a limitation of liability clause shall meet the State Controller policy requirements titles, "Vendor Agreements" and Fiscal Rule 2-2 & 3-1 requirements. In some cases, the contract shall have the review of the State Controller. 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? In other words, is this a vendor contract? **CHECKPOINT 21:** If so, get the involvement of the Office of the State Controller & Attorney General's Office upfront so **all** contract issues are resolved prior to the contract being signed by the vendor and the State. **A few other important items:** 1) Your contract should look like and read like a "state" contract, not a vendor contract; and 2) More importantly, only the State Controller can prescribe the form of commitment document. A vendor's agreement/contract **is not** an approved commitment document. **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 22:** 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:** Please be careful with these types of contracts. If the state is required to compensate the vendor in any way such as if a state employee is working on the particular contract, etc., then you may not have a revenue generating contract at all. If the state is being compensated then this next checkpoint applies. **CHECKPOINT 23:** All State Controller reviews and approvals **are required.** **NOTE:** Revenue generating contracts are tricky and most Agency/Department/IHE personnel really have a difficult time distinguishing between this type of contract and a personal services contract. In most cases, you have a combination contract, a "Personal Services" contract mixed with a "Revenue-generating" contract, which is the reason your contract needs to have a State Controller review and approval. **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.)

**NOTE:** It is never a best practice to hire any professional who is working with wards of the state such as those that are incarcerated who have a stipulation on their professional license as this creates an extreme liability for the state.

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 24:** If so, please consult with the Office of the State Controller & Attorney General's Office or your institution's legal counsel.

13. **HIPPA (Health Insurance Portability and Accountability Act of 1996):** If HIPAA requirements are applicable; please insure that the contract and/or contracts contain a signed Business Associate Addendum and/or appropriate HIPPA language. To find information on HIPPA, please go to the Office of the State Controller website, click on "Authoritative Guidance" and scroll down until you see the words, "HIPPA".

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., and/or in any exhibits/attachments/schedules, etc.:** Are there any strikeouts within the contract document and/or exhibits/attachements/schedule, which are not initialed by **all signatories on the signature page** of the contract?

#### **G. PAGINATION & CONTRACT REFERENCES:**

1. **Contract pages numbered: ALL pages** of the contract shall be 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. ALL pages** of your contract exhibits/attachments/schedules, etc., shall be numbered. **CHECKPOINT 25:** If you have multiple pages to an exhibit/attachment/schedule then the pages should be numbered such as 1 of \_\_\_\_\_ pages, 2 of \_\_\_\_\_ pages, 3 of \_\_\_\_\_ pages, and so forth. Again, have the text of the contract cite to the exhibit/attachment/schedule and appropriate page number.
3. **Exhibits/Attachments/Schedules, etc., identified properly:** For example, 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.). **The same holds true if you have any attachments/schedules, etc., as part of your original contract.** In addition, if you are processing an amendment that already had an "Exhibit A" as part of the original contract and now you need to make changes to this "Exhibit A", then you shall identify in the amendment the new Exhibit as "Exhibit A-1" and label the updated exhibit appropriately. Your contract shall not have (2) exhibits identified and labeled as "Exhibit A". The same holds true when you are updating attachments/schedules as part of an amendment as well.
4. **Improper References:** Please double-check the language in your amendments, Renewals, and other similar contract modifications as we do find that they 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 26:** 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..." please 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.

#### **H. 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"** for more information.

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. The exact legal entity name is based on the information found on Colorado Secretary of State's web page in the business database. A printed copy is part of the agency contract files. A copy should also be included if this contract is being routed for external review and approval. (See **Section A: Records Requirements, Item 16** on page 3)
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. However, your contract file should have an updated W-9 from the vendor.
4. **Signature Authority:** Please refer to the State Controller's policy, **"Signature Authority Delegation"**. Required contract signatures by all authorized Agency/Department/IHE signatories (the Office of the State Controller must have a current *"Record of Authorized Signatures"* of all Agency/Department/IHE signatories on file). **CHECKPOINT 27:** Similarly, be familiar with the limits of your Agency/Department/IHE delegation from the State Controller and exercise only those specific functions for which you have authority. If you have questions, contact the Office of the State Controller.
5. **Stamped, Photocopied and/or Facsimile signatures on the signature page:** **CHECKPOINT 28:** If so, then you will need to ask for original signatures. The state **does NOT** accept stamped or photocopied signatures.
6. **Notary signature on the signature page:** **CHECKPOINT 29:** 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? **CHECKPOINT 30:** For more information regarding the state's signature requirements, review the policy on, **"Vendor Signature Authority"**. Also, be mindful when reviewing your contract document that the same person (for the vendor) is the same person signing on all contract documents. If you have a situation where, 2 or more people are signing for the vendor then more than likely you will need to ask for more documentation. **A Best Practice:** Have the same person's signature throughout the entire contract request. What should an Agency/Department/IHE do if 2 or more different people have signed contract documents for a particular contract request? The Agency/Department/IHE shall ask the vendor to send a letter on company letterhead, signed by the President that authorizes the authority of the person in question. In a recent contract situation that the OSC was involved with, the President of the particular company was not aware of who was signing and the President then decided she did not want to verify the person in question signature authority.
8. **Documentation related to signature authority:** There will be times when the agency will need to request more information regarding the signature authority of the person signing for the vendor (i.e., bylaws, a board resolution, articles of incorporation, a letter from the President of the company, etc.) It is not unusual to find a situation where the contract vendor signatory did not have the authority from the President of the company. In a recent situation, a President of a company was asked to put in writing that the person that signed for her company (note that their title appeared to be someone with "actual" authority) was authorized to do so, she did not want formalize his authority in writing. For what reasons we do not know, yet when the issues of signature authority were brought to her attention she then choose to sign the contract requests. As you will note in the policy, we do want agency personnel to exercise judgment yet we also mention that some investigation may need to occur which may then lend to requesting documented proof of which our office will also want to see if we are reviewing your contract. This documentation shall be part of your contract request for internal or external review and approval and part of the Agency/Department/IHE contract file and the documentation should **clearly state the names and titles** of those who do have signature authority.
  - a. \_\_\_\_ Is there documentation that supports the signature authority of the individual signing the contract (i.e., bylaws, a board resolution, articles of incorporation, articles of organization, a letter from the company President)? This documentation should be with contract request for internal/external review and also 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 in the opening paragraph of the contract (**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: CHECKPOINT 31:** If you are contracting with an intergovernmental entity such as a city, county or school district then insure you are obtaining the correct signatories. **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.

## **I. 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 37:** 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. The specific Fiscal Rule is 2-5.
2. **An outside bank account: CHECKPOINT 38:** The State Treasurer **must grant prior approval** and his/her approval must be placed with the contract 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 39:** 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"**.

## **J. AMENDMENTS:**

1. **Standard Amendment Form** (current State Controller policy **"Modification of Contracts – Tools and Forms"**): **A few words of guidance:** Since every contract situation is different, it is rather difficult to impart guidance that is a one size fits all when it comes to writing an amendment. The person drafting the amendment really has to think through what they want to accomplish and communicate in the amendment so that a third party can read and completely understand the how, when, where, what, and why of the amendment. In addition, an amendment should clearly state what you are doing. Actually, the more information you have in your amendment that further explains the reasons why the amendment is needed, the better.
2. **Additional consideration:** Does your amendment recite additional consideration to the State for the contract change? **CHECKPOINT 40:** 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:**
  - a. Is the cost a significant increase from the original contract (more than 30% is considered significant)? **CHECKPOINT 41:** 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. **Conflicting documents:** Do any of the new exhibits and/or attachments have any term or conditions or Statement of Work requirement or payment schedule requirements that conflict with any part of the original contract?
5. **Settlement with a vendor(s):** Is the purpose of this amendment to make a settlement with the vendor for any reason?  
**CHECKPOINT 42:** If so, your amendment will need to have a review and approval by the State Controller.
6. **Encumbrance issues:** Does the encumbrance document equal the amount of the amendment? **CHECKPOINT 43:** If not, an explanation as to the reasons must be part of the contract request and signed off by your agency/institution controller.
7. **Attach a spreadsheet:** **A best practice** would be to have 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.
8. **Strikeouts or strikethroughs in amendment body and/or attached exhibits/attachments /schedules:** If any strikeouts appear within the amendment and/or exhibits, attachments, schedules, etc., then initials shall be affixed by **all signatories on the signature page** of the amendment.
9. **Amendment pages numbered:** **ALL PAGES** of the amendment shall be 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.
10. **Exhibits/Attachments/Schedules, etc.:** **ALL PAGES** of your amendment exhibits/attachments/schedules, etc., shall be numbered.
11. **Exhibits/Attachments/Schedules, etc., identified properly:** **All exhibits/attachments/schedules**, shall be 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.).

#### **K. CONTRACT TYPE ISSUES:**

1. **Is this an interagency agreement?**
  - a. Have you used the state's standard form? **CHECKPOINT 32:** If not, 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? **CHECKPOINT 33:** If so, a letter from the company (signed by an authorized signatory) needs to be obtained with a statement that the Finance company has agreed to the assignment of payments. **NOTE:** The encumbrance needs to be set up with the company (not the Finance company) for 1099 purposes. **It is a much less complicated arrangement if the leasing company will do the financing or arrange financing for the State rather than the State obtaining separate financing. These contracts are considered automatic high risk and shall be reviewed and approved by the Office of the State Controller.**
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. **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 34:** This is a requirement of SB 04-171 as a result of a really bad "contingency fee" contract that was all over the press which cost the state millions of dollars. 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 if 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 with the contract request for internal and/or external review and approval, as well as, part of the contract file.
9. **"Assignment" Agreement (formally referred to as a novation):** 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?

**L. 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.
5. **"Power of Attorney" form:** Shall 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.

**M. 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?
2. **Additional provisions added to the state's standard lease form: CHECKPOINT 35:** If so, a **"Risk Assessment"** review must be performed because of the changes made to the state's standard lease form. **NOTE:** The Risk Assessment Analysis form is found in the policy, **"Review and Approval of State Contracts – Delegated Agencies"**.
3. **CHECKPOINT 36:** If you have chosen to not use the state's standard lease form and have either used a lease form your Agency/Department/IHE created OR a vendor contract form, you will need to contact Mike Karbach in the state's Real Estate Program Office (303-866-4564).

4. **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.
5. **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".**
6. **Build-out Provision:** Another important policy related to leases is, **"Real Property Leases – Build out"** as several requirements have to be met. Please be aware of what the requirements are.

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