STATE CONTROLLER POLICY

Managing Commitment Vouchers That Violate State Statutes

A policy concerning state agency and institution requirements when a violation of CRS 24-30-202(1) or (3) has occurred. This situation arises when a liability is incurred by the state or a payment made without a valid commitment voucher.

Background

A Formal Opinion of the State Attorney General (No. 97-2), dated December 23, 1997 clarified the State Controller's authority to manage commitment vouchers that violate state statutes. Upon receipt of this opinion, the State Controller issued a memorandum to all contract signature delegates, dated March 17, 1998. The memorandum contained specific guidelines for state agencies and institutions to follow when processing state contracts where a statutory violation had occurred.

This policy, *Managing Commitment Vouchers that Violate State Statue*, was originally issued as *Managing Contracts that Violate State* Statute on July 12, 1999 and revised on May 1, 2001. This new policy reflects the fact that the State Controller will review all violations of CRS 24-30-203 (1) or (3), regardless of the form of commitment voucher that was required for the procurement.

Authority to Execute Commitment Vouchers that Violate State Statute

The authority to approve a commitment voucher in violation of CRS 24-30-202 (1) or (3) is the sole responsibility of the State Controller. This authority has not been delegated to any state agency or institution.

Contract Policy

When a **contract** is the required commitment voucher and the obligation incurred is in violation of CRS 24-30-202 (1) or (3), the Central Contract Unit (CCU) in the State Controller's Office will contact the state agency or institution to determine why the violation occurred. Based on the information received, the CCU will determine the most appropriate way to address the violation. If the CCU determines that the violation is intentional or of a serious nature, the chief fiscal officer (CFO) will be notified. It will be the responsibility of the CFO to investigate the violation, document and submit the results to the State Controller through the chief executive officer, and request the State Controller or the State Controller's Contract Signature Delegate to execute the contract.

The formal request from the CFO through the CEO to will address each of the following items in detail:

1. The circumstances surrounding the commitment to include: the unit and person(s) responsible, funds availability, reasons for delay and any disbursements that have been made.
2. The reason(s) why proper procedures were not followed and the violation occurred.
3. The internal administrative and accounting controls and procedures in place at the state agency or institution for controlling instances of contractual commitments and why these controls and procedures were not sufficient to prevent the violation.
4. Whether all state procurement procedures were followed and whether all other required approvals were obtained and an affirmation that the prices are fair and reasonable.
5. What corrective actions are intended or have been taken to improve internal controls and prevent a recurrence by the organization and the employees involved.

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Purchase Order Policy

When a **purchase order** is the required commitment voucher and the obligation incurred is in violation of CRS 24-30-202 (1) or (3), the state agency or institution's CFO will be notified. It will be the responsibility of the CFO to investigate the violation and to document the results of the investigation.

The information obtained by the CFO will address each of the following items in detail:

1. The circumstances surrounding the commitment to include: the unit and person or persons responsible, funds availability, reason for delays and disbursements made.
2. The reasons why proper procedures were not followed and why the violation occurred.
3. The internal administrative and accounting controls and procedures in place at the state agency or institution for controlling instances of purchase order commitments and why these controls and procedures were not sufficient to prevent the violation.
4. A description of the terms of the commitment, when it arose, when performance ended, how the pricing was negotiated and evaluated, and copies of any relevant correspondence, documents, invoices, or purchase orders, if available that define the terms of the commitment. If a purchase order is not considered necessary to memorialize the terms of an on-going contractual relationship, please explain why.
5. Whether all state procurement procedures were followed and whether all other required approvals were obtained and an affirmation that the prices are fair and reasonable.
6. What corrective action is planned or taken to improve internal controls and prevent a recurrence by the organization and the employees involved.
7. If similar violations have occurred in the past, please explain why the corrective actions taken have not prevented the problem from recurring.

Once the CFO has reviewed the information provided, determined the reason for the violation, and is satisfied that the corrective action planned or taken is sufficient to prevent future occurrences, the CFO will notify the State Controller and request ratification of the procurement. This notification can be in the form of a memorandum from the CFO to the State Controller or an e-mail from the CFO to the State Controller, or delegate. The notification must summarize the violation, including the amount of the procurement, state why it occurred, and the corrective action taken. Once the State Controller has ratified the procurement, any amount owed the vendor can be processed for payment. It is the responsibility of the CFO to maintain a file containing these commitments that violate State Statutes. This file will be open for inspection by the State Controller, if deemed necessary.

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