

STATE CONTROLLER POLICY

CONTENT - MANDATORY PROVISIONS IN STATE CONTRACTS

- 1) **Policy.** As outlined in Fiscal Rule 3-1, State Contracts shall contain the following provisions:
 - a. Identification of the Parties
 - b. Effective Date
 - c. Appropriated and Non-Appropriated Spending Authority (except for institutions of higher education)
 - d. Statutory Authority (except for institutions of higher education)
 - e. Statement of Work
 - f. Payment Terms
 - g. Maximum dollar amount of the contract
 - h. Performance Period
 - i. General Terms and Conditions (including Contract Management System provision if applicable - CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102)
 - j. Special Provisions (most current version)
 - k. Signature Page
 - l. If there are Exhibits or other Attachments, a separate section listing and identifying them
 - m. If the contract is a Phase I Waived Contract, it shall identify the contract as a Phase I Waived Contract along with the number assigned to that waiver by the Office of the State Controller (OSC) in either in the header, footer, or recitals.

- 2) **Identification of the Parties.**
 - a. The Parties shall be clearly identified in the contract's introductory section. If a Party is called more than one name (this often occurs when a Party is called by its name in the body of the contract but called "Contractor" in the Special Provisions), each different name used should be identified; for example XYZ Corporation, hereinafter referred to as "XYZ" or the "Contractor".
 - b. The preferred name for a State Agency or institution of higher education (IHE) is the "State", unless there is a need to distinguish between the Agency or IHE and the State of Colorado. In the latter instance, use an acronym or other name for the Agency or IHE. The following are acceptable examples:
 - i. The STATE OF COLORADO acting by and through the Division of Wildlife (hereinafter called the "State")
 - ii. The STATE OF COLORADO (hereinafter called the "State") acting by and through the Division of Wildlife (hereinafter called "DOW")
 - c. The first section of all contracts shall contain the following content and be in substantially the following form (for Grants, change "Contract" to "Grant" and "Contractor" to "Grantee"):
 1. **PARTIES**

This Contract is entered into by and between "Insert Name of Contractor" (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Insert Name of Department and Division/Office (if applicable) (hereinafter called the "Department/Division/Office").
 - d. The preferred term of reference for the other contracting party is "Contractor", with two exceptions: (i) real property leases commonly refer to the parties as "Lessee" and "Lessor" or "Landlord" and "Tenant", and (ii) Grants, which may refer to the party receiving fund as "Grantee". Other names for the State are often used in agreements drafted by Contractors. This is acceptable if it is made clear that such names, such as "customer," "client," or "purchaser", refer to the State. Public entities are often referred to as the "County", "City", or "District", which is appropriate if used consistently.
 - e. Contracts with public entities should be entered into in the name of the highest level of the public entity, not with an administrative division. For example, contract with the "City of Aurora" and not with the "Aurora Division of Parks and Recreation", although language such as the "City

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of Aurora by and through the Division of Parks and Recreation” is acceptable. Contracts with counties should be entered into with the Board of Commissioners of the County.

- f. It is often convenient to refer to the Parties or a Party (when using “Party” in this manner the word becomes a proper name and should have a capital “P”, which will also distinguish its use when referring to third parties). In this case, include the following language in the introduction: “Party” or “Parties” means one or both of the State and Contractor.

- 3) **Effective Date.** See OSC policy entitled “*Effective and Made Dates*” for definition of effective date. The second section of all contracts shall contain the following content and be in substantially the following form:

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or delegate (hereinafter called the “Effective Date”), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

- 4) **Appropriated or Non-Appropriated Spending Authority** (Not applicable to IHEs) – Agencies shall cite the source of its spending authority whether it is a section of the Colorado Revised Statutes (CRS) or an appropriation and include language that the agency has the funds available and a sufficient unencumbered balance for the payments in the contract.
- 5) **Statutory Authority** (Not applicable to IHEs) – Agencies shall cite the CRS section that provides it authority to enter into this contract.
- 6) **Statement of Work (SOW).** Agencies and IHEs shall include a statement of work (SOW) in every State contract that includes sufficient detail regarding the goods or services the Contractor provides and/or other obligations the Contractor is to perform such that Agencies, IHEs, and contract administrators can evaluate germane aspects of the Contractor’s performance, including cost, quality, and timeliness. SOWs shall include the following topics:
 - a. General description of the Project and/or contract purpose;
 - b. Definitions of important terms or words or graphic art used in the contract;
 - c. Deliverables - What the Contractor is to do, i.e., goods/services provided, obligations to perform, and responsibilities;
 - d. State’s obligations and responsibilities;
 - e. Performance schedule;
 - f. Location of performance (if location is material);
 - g. Personnel, testing and acceptance criteria (if relevant).
- 7) **Payments**
 - a. **Terms.** Payment terms shall identify the total amount of money due Contractors, when payments are to be made, where they are to be made, to whom they are payable, and any payment contingencies. Payment terms in multi-year contracts shall reflect the total amount to be paid in each fiscal year.
 - b. **Payments and Performance.** With very few exceptions, Contractors should be paid after they perform. Payments before performance require prior approval of the State Controller in accordance with Fiscal Rule 2-2 §8 entitled “*Advance Payments*”.
 - c. **Payment Types.** There are three common payment types used in State Contracts:
 - i. Firm, fixed price, or lump sum;
 - ii. Cost reimbursement; and

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iii. Time and material, or labor hours.

- 8) **Maximum Dollar Amount.** State Contracts shall contain a maximum dollar amount for which the State is liable during each fiscal year. A Fiscal Rule Waiver shall be obtained if a maximum contract amount cannot be determined, except when using Task Orders pursuant to §2 of the Task Order section of the OSC Policy entitled "*Modifications of Contracts - Tools and Forms*".
- 9) **Performance Period.** All State Contracts shall include the date on which performance begins (which may be the same as or after the Effective date, but not before it) and a specific termination date or an event from which such date may be determined. While the term of most State Contracts is the same as the fiscal year, some extend over one or more fiscal years. Performance periods (including term extensions) of State Contracts governed by the State Procurement Code, shall not exceed five years unless approved in writing by the State Purchasing Director (see Procurement Rule R-24-103-503).
- 10) **General Terms and Conditions.** These are provisions that are generally applicable to any State Contract as opposed to provisions specific to a particular contract. They serve many purposes including defining the relationship between the State and Contractor; i.e., inspection rights, rights in documents and software, default procedures, liquidated damages for delay, termination, etc. Agencies and IHEs should use the general terms and conditions in the model contracts for different types of contracts, i.e., personal services, information technology services, real property leases, and grants and not change them without documenting the changes as outlined in the OSC Policy entitled "Model Contracts".
- 11) **Special Provisions** - See appendix to Fiscal Rule 3-1 for Special Provisions.
- 12) **Signature Page.** See OSC Policy entitled "*Signature Page-Form Of*".
- 13) **Federal Identification Numbers.** State Contracts shall not contain social security numbers or federal employment identification numbers.

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