

STATE OF COLORADO FISCAL RULES

CHAPTER 2: DISBURSEMENT

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Rule 2-1 PROPRIETY OF EXPENDITURES

AUTHORITY:

24-30-202 (2) and (5)(a), C.R.S.

RULE:

All expenditures by state agencies and institutions of higher education shall meet the following standards of propriety:

- .01 Are for official state business purposes only.
- .02 Are reasonable and necessary under the circumstances.

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Rule 2-2 COMMITMENT VOUCHERS

1. Authorities
2. Definitions
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5. State Purchase Orders
6. State Contracts
7. Statutory Violations
8. Advance Payments
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10. Vendor Agreements
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1. AUTHORITIES

- CRS §24-30-202 (1-4), and (5)(a) (State Controller Authority)
- CRS §24-30-1401, et seq., (Professional Services)
- CRS §24-102-205 (Centralized Contract Management System)
- CRS §24-102-206 (Contract Performance Outside United States or Colorado)
- CRS §24-103-601 (Right to Audit Records)
- CRS §24-103.5-101 (Monitoring of Vendor Performance)
- CRS §24-105-102 (Performance Evaluation Reports)

2. DEFINITIONS

All references to “contract” or “agreement” refer to State contracts, which are formal, legally binding documents. The terms “contract”, and “agreement” are used interchangeably in the following definitions to reflect their common usage in the State and include any amendments and modifications thereto.

- 2.1 Advance Payment** – A payment made for goods or services prior to the receipt thereof.
- 2.2 Advice of Employment** – A document that includes an offer of employment.
- 2.3 Agency** – An executive department of the State of Colorado, or any subdivisions thereof.
- 2.4 Commitment Voucher**
 - 2.4.1 Elements.** A document, the form of which has been approved by the State Controller, evidencing the following:
 - 2.4.1.1** A description of goods or services being purchased or other reasons for the disbursement of funds;
 - 2.4.1.2** The amount to be paid;
 - 2.4.1.3** That the obligation of the State is being charged to the appropriate account; and
 - 2.4.1.4** That procurement requirements have been satisfied.
 - 2.4.2 Inclusions.** Commitment vouchers include any approved form of purchase order, State contract, travel authorization, advice of employment, grant contract, license agreement, parking license agreement, and other written authorizations for disbursement which satisfy the requirements of subsection 2.4.1 (Elements) of this Fiscal Rule.
 - 2.4.3 Exclusion.** Procurement cards are not commitment vouchers. Procurement cards are a method of payment, not a method of procurement. Purchases made with a procurement card also require the use of an appropriate commitment voucher or small purchase documentation.
- 2.5 Delegated Agency or Institution of Higher Education** – An Agency or Institution of Higher Education whose controller has received delegated signature authority from the State Controller.
- 2.6 Emergency** – An unexpected event creating an immediate threat to the public health, welfare, or safety, the functioning of government, or the preservation or protection of property, which requires an immediate response.

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- 2.7 Encumbrance** - An amount reserved on the State financial system or an approved Agency or Institution of Higher Education accounting system to reflect a formal obligation of the State. When required by this Fiscal Rule, an Agency or Institution of Higher Education shall encumber funds prior to recording expenditures and disbursing funds.
- 2.8 Institution of Higher Education** - A college or university established as part of the State of Colorado.
- 2.9 Interagency Agreement** - An agreement between two Agencies, two Institutions of Higher Education, or an Agency and Institution of Higher Education, which includes a dispute resolution process giving the State Controller final decision-making authority.
- 2.10 Interagency Purchase Order** - A purchase order issued by an Agency or Institution of Higher Education to another Agency or Institution of Higher Education.
- 2.11 Procurement Officer** – Head of the procurement function for an Institution of Higher Education or for an Agency that has received delegation from the State Purchasing Office.
- 2.12 Purchase Order** - A document, in a form prescribed by the Office of the State Controller, prepared and approved by an authorized employee of an Agency or Institution of Higher Education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this Fiscal Rule, a purchase order is not a State contract.
- 2.13 Reviewing Attorney** – An assistant attorney general, special assistant attorney general, or other attorney authorized by the State Attorney General and employed by an Agency or Institution of Higher Education, who has received a written designation as a Reviewing Attorney from the State Controller. A written designation by the State Controller is personal to the Reviewing Attorney and may not be assigned or further delegated. The designation is limited to the specific responsibilities and authority set forth in the written designation, which may be terminated or modified at any time, at the sole discretion of the State Controller.
- 2.14 Small Purchase Documentation**
- 2.14.1 Applicability.** Small purchase documentation is required for purchases of \$5,000 or less.
- 2.14.2 Elements.**
- 2.14.2.1** Documentation shall include:
- 2.14.2.1.1** Description of goods or services being purchased or other reasons for the disbursement of funds; and
- 2.14.2.1.2** The amount to be paid.
- 2.14.2.2** The Agency or Institution of Higher Education shall ensure that:
- 2.14.2.2.1** The State's obligation is being charged to the appropriate account; and
- 2.14.2.2.2** Procurement requirements have been satisfied.
- 2.14.3 Inclusions.** Small purchase documentation includes, without limitation, an invoice, billing, receipt, court order, or any other document appropriate to the transaction and approved by the State Controller.
- 2.14.4 Exclusions.** Small purchase documentation is not required for purchases that do not require a receipt under Fiscal Rule 5-1(Travel).
- 2.15 State Contract** – See Fiscal Rule 3-1 (State Contracts).
- 2.16 Statutory Violation** – A statutory violation occurs when liabilities are incurred or payments are made on the State's behalf without prior approval of a State purchase order or contract by the State Controller, when required under this Fiscal Rule.
- 2.17 Vendor Agreement** – A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

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3. RULE

An Agency or Institution of Higher Education shall not disburse funds unless the disbursement is supported by a commitment voucher or small purchase documentation. With respect to proposed expenditures, Agencies and Institutions of Higher Education shall ensure that the commitment voucher:

- 3.1 Expenditure is authorized by the appropriation and required approvals have been received;
- 3.2 Expenditure is reasonable and necessary;
- 3.3 Prices or rates are fair and reasonable;
- 3.4 Expenditure amount is within the available unencumbered balance;
- 3.5 Adequately defines the requirements, respective performance obligations of the parties, and pricing;
- 3.6 Terms and conditions represent a commercially reasonable allocation of risks between the parties;
- 3.7 Complies with applicable statutes, executive orders, rules and policies; and
- 3.8 Is encumbered, if a purchase order or contract. The encumbrance of funds is not required for interagency agreements between Agencies and Institutions of Higher Education charged to a special line item appropriation dedicated to that commitment, routine internal services, and other items specified in §4.2 (Exempt Disbursements) of this Fiscal Rule.

4. DOLLAR LIMITS AND REQUIREMENTS

<u>TYPE OF AGREEMENT</u>	<u>DOLLAR LIMIT</u> <small>Total value of the commitment; for multiple-year commitments, the total value is equal to the sum of the commitments for all contract years.</small>	<u>REQUIREMENTS</u>
Goods	\$5,000 and less	Small purchase documentation or any commitment voucher
	Above \$5,000	PO or State contract Create Encumbrance
Services	\$5,000 and less	Small purchase documentation or any commitment voucher
	\$5,001 to \$100,000	PO or State contract Create Encumbrance
	Above \$100,000	State contract Create Encumbrance
Capital Construction / Controlled Maintenance	NA	See Fiscal Rule 4-1 (Capital Construction Administration) and Fiscal Procedures Manual
Professional Services under CRS §24-30-1401, et seq., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services	Any dollar amount	State contract Create Encumbrance
Real Property lease or license of land, buildings, or a portion thereof for term of more than 30 days	Any dollar amount	State contract Create Encumbrance

- 4.1 Protecting the State's Interests.** State contracts shall be used in situations in addition to those described in this § 4 if other commitment vouchers do not adequately protect the State's interests. Refer questions regarding the proper form of commitment voucher to the State Controller.

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- 4.2 Exempt Disbursements.** A purchase order or State contract is not required for the following types of disbursements regardless of the amount of funds disbursed:
- 4.2.1** Calculated payments required under a program within an Agency or Institution of Higher Education (e.g., formula distributions, other distributions required by regulatory or statutory formulas);
 - 4.2.2** Copier rental agreements when the payment is based on cost per copy;
 - 4.2.3** Conference registrations;
 - 4.2.4** Financial aid or tuition assistance programs;
 - 4.2.5** Insurance purchases;
 - 4.2.6** Internal services routinely provided by an Agency or Institution of Higher Education (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to an Agency or Institution of Higher Education by the Department of Law);
 - 4.2.7** Intra-Agency or intra-Institution purchases;
 - 4.2.8** Moving expenses reimbursed to State employees;
 - 4.2.9** Payroll and related disbursements (withholding, authorized benefits, etc.);
 - 4.2.10** Postal and other delivery charges, including messenger fees;
 - 4.2.11** State program payments to or on behalf of individuals qualified for the program's benefits;
 - 4.2.12** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
 - 4.2.13** Utility hook ups and line extensions performed by a utility company;
 - 4.2.14** Water, gas, electric, and customary local and long-distance telephone services, including pagers and cell phones, which are routinely purchased by an Agency or Institution of Higher Education; and
 - 4.2.15** Other disbursements approved in writing by the State Controller.

5. STATE PURCHASE ORDERS

- 5.1 Standard Provisions** – All purchase orders issued by State Agencies and Institutions of Higher Education shall include the provisions set forth in §11 (Purchase Order Terms and Conditions of this Fiscal Rule.
- 5.2 Interagency Purchase Orders** – An Agency or Institution of Higher Education issuing a purchase order to another Agency or Institution of Higher Education may change or delete any standard provision.
- 5.3 Revision of Standard Terms and Conditions** – An Agency or Institution of Higher Education issuing a purchase order to a party, other than another Agency or Institution of Higher Education, shall not change or delete the standard purchase order provisions unless it obtains prior written approval of a procurement officer or authorized State Controller delegate, in the case of a fully delegated Agency, or the State Purchasing Office or the State Controller, in the case of a partially delegated Agency, except that:
- 5.3.1** No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, and Funds Availability may be made without the prior approval of the State Controller; and
 - 5.3.2** No changes to the Choice of Law, Public Contracts for Services, or Public Contracts with Natural Persons provisions may be made without legal review and written approval by the Office of the State Controller, Attorney General, or a Reviewing Attorney.
- 5.4 Services involving transfer of confidential information** - All purchase orders issued by an Agency or Institution of Higher Education that involve the transfer of or access to confidential electronic information shall comply with Data Security policies issued by the Governor's Office of Cyber Security or by the contracting Institution of Higher Education.

6. STATE CONTRACTS

Agencies and Institutions of Higher Education shall use a State contract as the commitment voucher for all purchases or leases of goods and services, as required under Fiscal Rule 3-1 (State Contracts). State contracts shall comply with the requirements of Fiscal Rule 3-1 and this Fiscal Rule.

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7. STATUTORY VIOLATIONS

A statutory violation occurs when liabilities are incurred or payments are made on the State's behalf without prior approval of a State purchase order or contract, when required under this Fiscal Rule.

- 7.1 Payment Prohibition.** An Agency or Institution of Higher Education shall not make payments to a vendor when a statutory violation has occurred, unless the violation has been ratified by the State Controller.
- 7.2 Personal Liability.** Under CRS §24-30-202(3) any person(s) who incurs, orders or votes for an obligation or makes a payment which creates a statutory violation shall be personally liable for such obligation, unless the statutory violation is ratified by the State Controller.
- 7.3 Internal Controls.** All Agencies and Institutions of Higher Education shall maintain an adequate system of internal controls to identify statutory violations, to prevent or minimize such violations, and to implement the provisions of this section.
- 7.4 Ratification.** The State Controller, in his or her sole discretion, may ratify the expenditure or obligation creating a statutory violation, if he or she finds all of the following:
 - 7.4.1** The prices or rates are fair and reasonable;
 - 7.4.2** The amount of the expenditure is within the unencumbered balance;
 - 7.4.3** The Agency or Institution of Higher Education provides a written explanation in accordance with the State Controller Policy entitled "*Statutory Violations*";
 - 7.4.4** The parties did not act in bad faith or in a fraudulent manner; and
 - 7.4.5** The violation is not repeated or part of a consistent pattern of statutory violations.

8. ADVANCE PAYMENTS

An advance payment is a payment made for goods or services prior to the receipt thereof.

- 8.1 General Prohibition.** State contracts and other commitment vouchers shall not provide for advance payment for goods supplied and/or services performed or for any other contractual obligation, except as permitted in subsection 8.3 of this Fiscal Rule.
- 8.2 Waiver Process.** The State Controller, in his or her sole discretion, may grant the request of an Agency or Institution of Higher Education for a waiver, allowing an advance payment not listed in the exceptions in subsection 8.3. The waiver request shall include evidence that advance payment is an established industry standard and/or provides a benefit to the State at least equal to the cost and risk of the advance payment.
- 8.3 Exceptions - Prior Approval Not Required.** Advance payments for a period of one year or less are permitted without prior approval of the State Controller for the following:
 - 8.3.1** Advertising services and related goods;
 - 8.3.2** Charter transportation;
 - 8.3.3** Construction permits;
 - 8.3.4** Federal grants awarded by the State to subgrantees (in compliance with Federal requirements);
 - 8.3.5** Overnight travel accommodations such as hotels, motels, etc. (See Fiscal Rule 5-1 Travel);
 - 8.3.6** Information Technology (IT) service agreements (including internet access, systems and database access),
 - 8.3.7** Insurance premiums;
 - 8.3.8** Interagency agreements;
 - 8.3.9** Licenses, including licenses for software;
 - 8.3.10** Maintenance of office equipment or information technology (IT) (software and hardware), and other maintenance agreements;
 - 8.3.11** Membership dues;
 - 8.3.12** Personal property leases or rentals;
 - 8.3.13** Post Office Box rentals;
 - 8.3.14** Professional services provided by expert witnesses hired for litigation purposes, mediators, entertainers, and speakers;

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- 8.3.15** Real property leases, where the State is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;
- 8.3.16** Sponsored projects – See Fiscal Rule 3-1 (State Contracts);
- 8.3.17** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
- 8.3.18** Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;
- 8.3.19** Utility hook ups and line extensions performed by a utility company; and
- 8.3.20** Water rights purchases or temporary leases.

- 8.4 Exceptions - Prior Delegate Approval.** Advance payments of up to \$10,000, for one or more fiscal years, if the State Controller delegate for the Agency or Institution of Higher Education determines, and documents in the contract file, that the advance payment provides a benefit to the State at least equal to the cost and risk of the payment.

9. EMERGENCIES

Disbursements for emergency procurements may be made upon presentation of invoices, receipts, or other statements describing goods or services purchased and the amount to be paid. Goods and services necessary to respond to an emergency may be procured immediately, without issuing a commitment voucher or obtaining a written waiver from the Office of the State Controller, where all of the following conditions are met:

- 9.1** The nature of the threat requires an immediate response and there is insufficient time to issue a commitment voucher;
- 9.2** The procurement is authorized by the individual who has final executive authority for an Agency or Institution of Higher Education, or his or her delegate;
- 9.3** The procurement is made with such competition as is practicable under the circumstances;
- 9.4** A commitment voucher is executed as soon as possible to define future performance obligations, if any, of the vendor and State, as required by Fiscal Rules; and
- 9.5** The Agency or Institution of Higher Education notifies the Office of the State Controller in writing, as soon as possible, of the circumstances, goods and services purchased, and the dollar amount of the commitment.

10. VENDOR AGREEMENTS

A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

- 10.1 Prohibited Use.** A vendor agreement shall not be used in lieu of a State purchase order or contract, where one is required, absent the prior written approval of the State Controller. A vendor agreement shall not be used where a State purchase order or contract is not required, except as provided in this §10.
- 10.2 Permitted Use.** The chief fiscal officer or procurement director of an Agency or Institution of Higher Education may authorize the use of vendor agreements up to \$5,000, if a State contract or purchase order is not required.
- 10.3 Conditions of Use.** All of the conditions set forth in the State Controller Policy entitled “*Vendor Agreements*” shall be met whenever a vendor agreement is used.

11. PURCHASE ORDER TERMS AND CONDITIONS

See next page.

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1. Offer/Acceptance. If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof.

2. Safety Information. All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. Changes. Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.

4. Delivery. Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. Intellectual Property. Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure

agreements, security controls, and reporting requirements.

6. Quality. Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.

7. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.

8. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

9. Cash Discount. The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.

10. Taxes. Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes.

11. Payment. Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on

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delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.

12. Vendor Offset. [*Not Applicable to Inter-governmental POs*] Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

13. Assignment and Successors. Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.

14. Indemnification. If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold harmless buyer from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO.

15. Independent Contractor. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly

set forth herein. Vendor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by buyer, and **(c)** be solely responsible for its acts and those of its employees and agents.

16. Communication. All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.

17. Compliance. Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

18. Insurance. Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

19. Termination Prior to Shipment. If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.

20. Termination for Cause. **(a)** If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. **(b)** Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. **(c)** If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.

21. Termination in Public Interest. Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of

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termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

22. PO Approval. This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.

23. Fund Availability. Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

24. Choice of Law. State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

25. Public Contracts for Services. [Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or

information technology services or products and services] Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, (c) terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and (d) comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

26. Public Contracts with Natural Persons. Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.

STATE OF COLORADO FISCAL RULES

Rule 2-3 RECEIVING REPORTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

Receiving reports, or other sufficient documentation, shall be prepared for all goods and services received, showing actual quantities, any unsatisfactory condition, and compliance with specifications, prior to processing a voucher for payment.

EXCEPTIONS TO RULE:

- .01 A receiving report need not be prepared for personal service expenditures.
- .02 When an adequate system of internal accounting and administrative controls exists to provide sufficient verification that goods or services were received, a state agency or institution of higher education may not require a certified receiving report.

STATE OF COLORADO FISCAL RULES

Rule 2-4 PURCHASE DISCOUNTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

Payments shall be processed in a timely manner and made within the allowable discount period to ensure the state takes advantage of purchase discounts.

STATE OF COLORADO FISCAL RULES

Rule 2-5 INTEREST PAYMENT ON DELINQUENT PAYABLES

AUTHORITY:

24-30-202(24), C.R.S. (State Controller Authority)

DEFINITIONS:

Payable - A payable is a liability incurred by the state. A liability shall arise upon receipt of supplies and services and a correct notice of the amount due. A liability shall not arise if a good faith dispute exists as to the state agency or institution of higher education's obligation to pay all or a portion of the liability.

Delinquent - A payable is delinquent if a disbursement is not made within forty-five days after a liability arises, unless the time of payment has been otherwise provided in the contract or purchase order. A payable being disputed by a vendor or state agency shall become delinquent if a disbursement is not made within forty-five days after resolution of the dispute.

RULE:

State agencies and institutions of higher education shall process invoices and other notices of liability as efficiently as possible in order to ensure payment in accordance with contractual or invoice terms, and in the absence of such terms, as soon as possible, or in accordance with statutory provisions. A delinquent payable shall be assessed interest at 1% per month as required by 24-30-202(24), C.R.S.

All written contracts and purchase orders shall provide for a reasonable time of payment considering the nature of the goods or services provided and review and approval required for payment. If no time for payment has been provided for in writing, interest on the unpaid balance shall be calculated beginning with the forty-sixth day after the liability for such payment arises under this Fiscal Rule. Interest shall be assessed at 1% per month or as stated in the contract or purchase order and, if higher, approved by the agency controller.

Payment of the interest liability incurred under this fiscal rule shall be processed on a separate voucher. The voucher shall be supported by a written claim, prepared by the state agency or institution of higher education or the vendor, referencing the delinquent payment, the number of days of interest to be paid, and the applicable interest rate. Such claims may be modified by the state agency or institution of higher education to adjust payments to include such items as additional interest due for time required to process interest payments.

STATE OF COLORADO FISCAL RULES

Rule 2-6 INTERAGENCY PURCHASES AND PAYMENTS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

RULE:

A state agency or institution of higher education shall make payment for purchases of goods and services from another state agency or institution of higher education within 30 days after receipt of a valid invoice. Where possible or practical payments shall be made by an interagency document in lieu of a state warrant.

Disputes Arising from Interagency Purchases

If a dispute arises as a result of an interagency purchase, the following steps will be used to resolve the dispute:

- .01 The state agency or institution of higher education disputing the charge shall notify the state agency or institution of higher education providing the goods or services and attempt to resolve the dispute. If necessary, the chief executive officer of these agencies involved shall assist in the resolution.
- .02 If the state agencies and/or institutions of higher education involved cannot reach a satisfactory resolution, the state agency or institution of higher education disputing the charge shall, within 30 days of the date of the last meeting held to resolve the dispute, petition the State Controller to resolve the dispute.
- .03 If the State Controller is petitioned to resolve the dispute, the decision of the State Controller will be rendered within a reasonable time and be final and binding on all parties concerned.

STATE OF COLORADO FISCAL RULES

Rule 2-7 OFFICIAL FUNCTIONS AND TRAINING FUNCTIONS

AUTHORITY:

24-30-202, C.R.S. (State Controller Authority)

DEFINITIONS:

Official Function - A meeting, conference, meal, or other function that is hosted by the chief executive officer, or representative, of a state agency or institution of higher education, attended by guests and/or state employees, and held for official state business purposes.

Training Function - A meeting, conference, or other function which is hosted by a state agency or institution of higher education, attended by customers of the state and/or state employees, and held to enhance staff knowledge or to educate customers of the state or state employees, that are affected by the state agency or institution of higher education's operations or regulations. Training functions should have a written agenda, study materials, and be led by an identified presenter.

RULE:

Official functions and training functions shall be held to achieve program objectives and shall be limited to reasonable and actual costs. The attendance of state employees at official functions shall be kept to a minimum and shall include only those individuals directly related to the purpose of the function. Expenditures shall be kept to a minimum as they have the potential of being perceived to be for personal benefit and an abuse of public funds. Expenditures incurred for official functions shall be approved by the chief executive officer or by a representative of the state agency or institution of higher education that has been delegated authority by the chief executive officer.

STATE OF COLORADO FISCAL RULES

Rule 2-8 MISCELLANEOUS COMPENSATION AND OTHER BENEFITS (PERQUISITES)

AUTHORITY:

24-2-103, C.R.S. (Compensation for State Employees)
24-30-202 (22), C.R.S. (State Controller Authority)

DEFINITIONS:

Benefits - Any pecuniary or material advantage provided by the state to a state employee other than salary, leave, incentives, awards, retirement benefits, insurance benefits, and travel and non-travel related reimbursements. Incentive awards, salary increases, fringe benefits established pursuant to CRS 24-50-104(8) and (9) are not considered benefits under this Fiscal Rule.

Economic Rent Study - A study conducted by a state agency or institution of higher education to determine the rent to be charged for a state-owned house or dwelling. The purpose of the study is to determine the rental rate the house or dwelling would command if available on the open market.

Limitations Placed on Employees - Limitations placed on a state employee as a condition of employment may include that the employee is required to live in the state facility, that the employee is required to be available twenty-four hours a day to perform the assigned duties, or that the employee is required to live in close proximity to the state facility in order to provide protection or discourage trespassers from entering the property.

Location of Work Place - The location of the work place assigned may vary from a metropolitan area where housing is readily available to a remote area that is difficult to reach and has no housing other than state furnished housing available.

RULE:

An employee of the state shall not receive any type of benefit by virtue of their position unless such benefit is provided by state statutes or state fiscal rule. An employee shall not have the authority to grant any perquisites, nor shall any employee receive any perquisite except as provided by state statute or state fiscal rule. Monetary allowances shall not be given to employees in lieu of benefits, except as provided by statute or approved by the State Controller. Where state statutes provide allowances for maintenance and ordinary expenses incurred in the performance of duty, it is the responsibility of the chief executive officer of the state agency or institution of higher education to establish specific expenses that are covered by the allowance so that the same expenses are not also directly reimbursed.

Miscellaneous Compensation

.01 Honorariums

State officials and employees may be asked to address an audience for which they receive an honorarium. If such speaking engagements occur outside normal working hours, or their normal work load, or while on annual leave, and there is no cost to the state for travel expenses, the official or employee may retain the honorarium. However, if the engagement occurs during normal working hours, or within their normal workload, as any other duty, the honorarium is to be turned over to the state. Any travel expenses related to the engagement would then be valid expenses for reimbursement by the state.

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Other Benefits (Perquisites)

.01 Clean air transit benefit for state employees:

To promote the state's mission of mitigating traffic congestion and creating clean air solutions, and to help equalize benefits for those state employees that do not receive free parking, the executive director of a state department, or the president or chancellor of an institution or campus of an institution of the Department of Higher Education (referred to as a state agency or institution of higher education for this rule) may offer a clean air transit benefit to their employees. If offered by a state agency or institution of higher education, the benefit shall be offered on an equal basis to all permanent full-time employees within the geographic area served by the mass transit provider and also, if deemed appropriate by such state agency or institution of higher education, may be offered on an equal basis to all part-time employees within the same geographic area. Further, where a state agency or institution of higher education has employees in different locations, the benefit shall be offered based upon the applicable price structure of the mass transit provider for each of those specific locations. The clean air transit benefit may be the total cost of using mass transit or a portion of the total cost.

Prior to offering the benefit, the state agency or institution of higher education shall develop an implementation plan. The plan shall contain the number of employees expected to receive the benefit, the estimated cost, if any, to be paid by the employee, and the estimated fiscal impact on the state agency or institution of higher education. Any contract between the state agency or institution of higher education and the mass transit provider shall be approved by the State Controller.

Each state agency or institution of higher education providing the clean air transit benefit for their employees shall maintain records showing the actual number of employees receiving the benefit, the actual cost, if any, paid by the employee and the cost to the state agency or institution of higher education for providing the benefit.

.02 Events sponsored by state agencies and institutions of higher education:

A reasonable discount may be offered by a state agency or institution of higher education to officials and employees to improve attendance or participation in State sponsored events. Examples included discounts on admission to athletic games and cultural, educational, recreational, or other events.

Such discounts shall generally be offered on a first-come, first-served basis, except that a state agency or institution of higher education may reserve a specified and reasonable number of admissions to particular events to be distributed on a targeted basis for the purpose of public relations or alumni relations, or for the purpose of student or employee recruitment. The chief executive officer of the state agency or institution of higher education or a delegate shall approve in writing all plans for discounted admissions.

.03 Meals

Meals prepared at state dining facilities are primarily for the benefit of the students, patients, or inmates housed at these facilities. However, meals may be provided to state employees working at these facilities and guests visiting these facilities. When a meal is provided to state employees or guests, the amount charged for the meal shall be established to at least recover the full cost of the meal. If an employee is required to eat at a state facility, the amount charged for the meal should be 50% of the full cost of the meal as determined above.

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The amount charged for the meals provided shall be approved annually by the chief executive officer of the state agency or institution of higher education. The chief executive officer, or a delegate, may establish separate meal rates for each facility or a single rate for all their facilities. Adequate documentation shall be maintained to substantiate the cost charged for the meals provided.

.04 Instructional courses and job related training

Job related and career enhancement courses may be provided to state employees at no cost or at a reduced cost as authorized by their state agency or institution of higher education. Written approval shall be obtained by the state employee from the chief executive officer, or a delegate, of the state agency or institution of higher education providing this benefit prior to enrollment. Only courses that will benefit the state and enhance the employee's performance shall be approved.

.05 State owned housing provided to state employees:

A state agency or institution of higher education may provide housing for a state employee where state-owned facilities are available and it is in the best interest of the state. The rent charged shall be based on the economic rent determined by the state agency or institution of higher education and shall take into consideration any limitations placed on the employee as a condition of employment, location of the employee's work place, and other factors deemed appropriate by the state agency or institution of higher education.

An economic rent study shall be conducted prior to the house or dwelling being offered for rent to a state employee. A new economic rent study shall be conducted on or before July 1, every three years thereafter. The rent charged shall be reviewed and if necessary, adjusted on an annual basis. The rent charged for each house or dwelling shall be approved in writing on July 1 of each year by the chief executive officer or a delegate of the state agency or institution of higher education.

State agencies and institutions of higher education shall execute a rental agreement with the state employee and make payroll deductions for the rent. If the rented unit does not have separate utility meters, the state agency or institution of higher education shall also make payroll deductions for the estimated utility costs. The state agency or institution of higher education shall maintain adequate documentation to support the rent and utility costs assessed for each house or dwelling.

.06 Temporary housing provided to visitors and guests:

Where space is available, temporary housing may be provided to visitors and guests by a state agency or institution of higher education with the approval the chief executive officer, or a delegate. The charge for such accommodations shall be set at an amount which will at least recover all direct and indirect costs and be reasonable in comparison to the charge for similar housing, if such housing is available. The state agency or institution of higher education shall maintain adequate documentation to substantiate the cost charged for the housing provided.

.07 Uniforms and maintenance of uniforms:

Uniforms required to be worn by state employees and the necessary maintenance of these uniforms may be provided to the employee by the state agency or institution of higher education at no charge, or at a reduced charge, or through a uniform allowance.

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.08 Bookstore discounts:

Discounts not to exceed 10% of retail price may be authorized by each institution for its faculty members and employees for purchases at its bookstores.

.09 Authorized Commuting

Where state-owned motor vehicles are used for taxable commuting, the employee must obtain prior written authorization signed by the chief executive officer of the state agency or institution of higher education based on review and verification of the justification in accordance with section 24-30-1113 C.R.S. and submit the commuting authorization form to Colorado state fleet management. The employee shall be imputed income for the use of the state vehicle at a rate that approximates the benefit derived from the use of the vehicle and that complies with Internal Revenue Service publications and regulations.

EXCEPTIONS TO RULE:

.01 The governing boards of institutions of higher education, consistent with policies developed by the Commission on Higher Education and approved by the State Controller, may provide housing or a housing allowance for the chief executive officer of a state college or university as part of his/her employment contract.

.02 Self-liquidating facilities such as faculty apartments and student housing or trailer houses used as temporary housing at remote work place stations are exempted from this fiscal rule.

.03 The governing boards of institutions and agencies of the Department of Higher Education, with prior approval by the State Controller and the Governor or delegate, may authorize a voluntary separation incentive plan for its employees who are exempt from the State Personnel System under Article XII, Section 13(2) of the Colorado Constitution and Section 24-50-135, C.R.S. Any such plan shall offer uniform and equitable incentives to all employees similarly situated in defined categories within the institution or agency for which the plan is proposed. All proposed separation incentives in the plan must be justified as reasonable and necessary expenditures

STATE OF COLORADO FISCAL RULES

Rule 2-9 MOVING AND RELOCATION

AUTHORITY:

24-50-134, C.R.S. (Moving and Relocation Expenses)

DEFINITIONS:

Household Effects - Household or personal effects such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual and necessary for the maintenance of a household.

Installation - Normal hookup of appliances to existing utilities. It does not include adding wiring, plumbing, or vents.

APPLICABILITY:

This fiscal rule applies only to employees in the state personnel system.

RULE:

A state agency or institution of higher education shall not reimburse or pay moving expenses for a state employee when the move is made solely for personal reasons. Moving expenses shall be authorized by the chief executive officer, or a delegate, of a state agency or institution of higher education if the move of residence is occasioned by a change in assignment, a promotion, or for another reason related to the employees' duties. This rule does not apply to new hires.

Reimbursement for Moving Expenses and Allowances

.01 Moving of household effects - commercial mover:

State payment shall be allowed for the necessary expenses incurred for the packing, insurance, transportation, and storage in transit not to exceed thirty days, unpacking, and installation at the new location of an employee's household effects.

State payment shall not be made for moving household effects in excess of ten thousand pounds net weight for those with dependents and five thousand pounds net weight for those without dependents. Any expenses, including insurance for household effects exceeding the weight limitations shall be borne by the employee being moved. Claims shall be accompanied by at least two competitive bids and state payment shall be made at the rates proposed in the lowest responsible bid. If a move is billed at an hourly rate, the carrier shall weigh the items moved and this weight shall be used to apply the above weight limitations.

.02 Moving mobile homes and house trailers:

State payment shall be allowed for charges by commercial vendors for towing of mobile homes or house trailers containing the household effects of a state employee.

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Towing charges may include such additional items as labor and incidental material charges for packing, tie down of household effects, removal and reattachment of skirts, and utility costs for disconnecting and reconnecting from existing utilities. It does not include the costs of concrete pads or additional labor or supplies to add or modify connections for plumbing or electrical service. Claims shall be accompanied by at least two competitive bids and state payments shall be made at the rates proposed in the lowest responsible bid.

.03 Employee moves household effects:

A state employee may prefer to move household effects by rental trailer or truck in lieu of using a commercial mover. Two responsible bids shall be required for reimbursement of the rental trailer or truck if the cost exceeds \$1,000.

If the employee chooses to move household effects and requests reimbursement for moving expenses from the state, two responsible bids shall be obtained from a commercial mover, prior to the move. The employee shall be reimbursed one-half of the lowest responsible bid for commercial moving not to exceed \$1,500 and be reimbursed for the rental trailer or truck at the lowest responsible bid if required. This provision may also apply in certain circumstances when the employee's mobile home or house trailer cannot be used to move household effects.

Mileage allowance for one personal automobile shall be authorized and reimbursed at the statutory rate.

An employee shall receive the per diem allowance up to a maximum of thirty days for necessary expenses incurred while locating permanent residence at the new location. The employee may exclude interruptions caused by sick leave, vacation, other authorized leave of absence, or ordered travel. Reimbursement shall not exceed the travel rates authorized by the fiscal rules.

Per diem shall consist of lodging, meals, and other miscellaneous allowances as provided in these fiscal rules.

Any employee required to take another position within the state system and relocate due to the layoff process shall be allowed to claim reimbursement for moving expenses. Costs of the move shall be paid by the state agency or institution of higher education laying off the employee.

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Rule 2-10 PROCUREMENT CARD

RULE:

All state agencies and institutions of higher education eligible for the State of Colorado procurement card program shall enter into an agreement with the State Procurement Card Program to participate. State agencies and institutions of higher education may not enroll in other credit or debit card program agreements for purchases covered by the procurement card program.

Personal Services

Procurement cards may be used to pay for services as well as goods. It is the responsibility of the controller at each state agency or institution of higher education using procurement cards for 1099 reportable transactions to have in place a methodology to identify and report this information.

Purchases in Excess of \$5,000

If authorized by the controller of the state agency or institution of higher education, procurement cards may be used to pay invoices in excess of \$5,000. Use of the procurement card is not a substitute for a commitment voucher or encumbrance as required by Fiscal Rule 2-2.

Preaudit Responsibility

Use of the procurement card does not eliminate the need for a preaudit, which shall be completed when the disbursement is made to the bank or when distributions are made. The agency or institution of higher education is responsible for reconciling the disbursements made to the bank with the total of validated individual charges for the state agency or institution of higher education. The dispute mechanism shall be used when charges from the bank are challenged.

Reporting Misuse

All incidents of procurement card misuse that are recurring, significant, or in excess of \$500 should be reported in writing to the State Controller at least annually. Reports shall be submitted to the State Controller's Office by November 1 each year. This report should include results of any investigation or follow-up including corrective measures implemented to prevent or reduce the likelihood of future occurrences.

All incidents of procurement card suspected theft or embezzlement shall be reported according to Fiscal Rule 1-9.

Open Charge Accounts

State agencies or institutions of higher education participating in the procurement card program shall use the state procurement card for purchases at local vendors in lieu of open or other charge accounts. The state agency or institution of higher education's procurement card administrator and the controller or chief fiscal officer must approve exceptions to this requirement in advance. Open accounts should be closed as soon as procurement cards are available to state agency or institution of higher education personnel.