

Colorado’s Contract Management System and Vendor Performance Statutes

Form Completion - Technical Assistance Guide – May 2010

1. Authority

CRS § 24-102-205	Centralized contract management system – personal services contracts – legislative declaration – definitions
CRS § 24-102-206	Contract performance outside the United States or Colorado
CRS § 24-103.5-101	Monitoring of vendor performance – definitions
CRS § 24-105-102	Performance evaluation reports - definitions

2. Purpose and Summary

The Office of the State Controller (OSC) is providing this guidance to assist state agencies (“Agencies”) and institutions of higher education (IHEs) in complying with the certification requirements of CRS §§ 24-102-205, 24-102-206, 24-103.5-101, and 24-105-102, collectively referred to in this Guidance as the “CMS Statutes.” This Guidance outlines the certifications required by the CMS Statutes, the types of contracts for which certifications must be completed, and the timing for completion of certifications by Agencies and IHEs which are not exempt from the State Fiscal Rules pursuant to CRS §24-30-202. Due timing of annual certifications, the OSC is issuing this guidance prior to the Governor’s final signature on SB 10-03. This guidance is written as the the Governor has signed SB 10-03.

Agencies and IHEs shall complete the forms required by the CMS statutes for contracts which meet all the following criteria:

- a) Personal services contract
- b) Value greater than \$100,000
- c) Entered into after July 1, 2009

The OSC developed eight (8) forms to be used by Agencies and IHEs in making certifications and meeting other requirements of the CMS Statutes. These forms are summarized in the table in Section 3 of this Guidance and each form is attached. To accurately complete these forms, Agencies and IHEs shall be required to provide contract information, starting with the initial drafting of a statement of work and continuing through solicitation, award, contract execution, performance, monitoring, evaluation and contract close.

Completion by Agencies and IHEs of five (5) of the certifications described in Section 3 of this Guidance is mandatory for all contracts subject to the CMS Statutes. Two (2) of the mandatory certifications, Performance Measures and Standards Certification for Original Contract and Annual Certification, may be certified by Agencies and IHEs on the State’s Contract Management System (CMS), without use of these two forms if this approach is approved by your Agency’s or IHE’s procurement office.

Section 4 of this Guidance defines the types of contracts that qualify as personal services contracts. Section 5 identifies the stages of a “typical” state personal services contract.

Agencies and IHEs are required to establish their own internal processes and procedures for managing contracts, which shall include certifications for the original contract and annual renewals, the level of vendor monitoring, and other CMS requirements.

3. Table #1 – Form Summary

See next page

Form Name	Required by Statute?	For What?	When Completed?	Certification?
Performance Measures and Standards Certification for Original Contract	Yes §24-103.5-101(4)	Personal services contracts greater than \$100,000 after 7/1/09	Before Agency or IHE enters into personal services contract	Yes; input in CMS field and, if required by your Agency or IHE procurement office, complete form
Sole Source Justification and Certification	Yes §24-102-205 (3)(a)(VI)	Sole source personal services contracts greater than \$100,000 after 7/1/09	Upon award of personal services contract	Yes; signed by Agency or IHE procurement office
Annual Certification	Yes §24-103.5-101(5)	Personal services contracts greater than \$100,000 after 7/1/09	Annually on or before each 12-month anniversary of contract effective date	Yes; input in CMS field and, if required by your Agency or IHE procurement office, complete form
FINAL Contractor Performance Evaluation	Yes; posted to public website §24-102-205(6)	Personal services contracts greater than \$100,000 after 7/1/09	Within 30 days of contract completion; Agency or IHE must send completed form to contractor in same time period	Yes; signed by contract monitor
Construction Contractor Performance Evaluation Report	Yes §24-105-102(2)	Construction contracts with value of \$500,000 or more after 7/1/09	Forward to CMS within 30 days of report completion	No
Contractor's Statement of Rebuttal to Performance Evaluation	Optional; rebuttal of results of appeal of evaluation results §§24-103.5-101(6) and 24-105-102(6)	Personal services contracts greater than \$100,000 after 7/1/09	Following resolution of appeal	No
Vendor Disclosure Statement	Information required; form optional; information may be included in contractor's response to solicitation §24-102-206	Personal services contracts greater than \$100,000 after 7/1/09	Prior to effective date of personal services contract	No
INTERIM Contractor Performance Evaluation Worksheet	No; best practice; used to support Annual Certification	Personal services contracts greater than \$100,000 after 7/1/09	At least annually	No

4. Personal Services Definition for CMS Reporting

The CMS Statutes apply to personal services contracts with a value greater than \$100,000 entered into on or after July 1, 2009. The State Procurement Code (CRS §24-101-101, et seq.) does not define the term “personal services contract.” Section 2.27 of Fiscal Rule 3-1 defines “personal services contract” as:

“A contract between an Agency or Institution of Higher Education and another party, where the other party provides personal services for the benefit of the Agency or Institution of Higher Education or a third party. An individual or entity performing services under a personal services contract is an independent contractor and not an employee of the State.”

The definition is broad and covers all contracts in which the State receives services, unless exempted by statute. CRS §24-102-205(2) exempts only the following types of contracts:

- Medicaid contracts
- Colorado Medical Assistance Act contracts
- Children's Basic Health Plan Act contracts
- Colorado Indigent Care Program contracts

Personal services contracts include the following categories:

- Construction contracts (including those entered into using forms provided by the Office of the State Architect)
- Grants contracts
- Individual task orders when evaluated separately by the Agency or IHE
- Master task orders when evaluated by the Agency or IHE
- Information technology contracts
- Interagency contracts (no evaluation required)
- Intergovernmental contracts, including grants
- Mixed procurements where the service component is greater than \$100,000
- Multi-party contracts
- Outsource agreements
- Price agreements for services
- Professional services as defined in CRS §24-30-1402(6)
- Purchase orders for services greater than \$100,000
- Purchased services as defined in CRS §24-50-502(3)

Agencies and IHEs may use CMS to track other types of contracts, which do not fall within the definition of “personal services contract”, but are not required to complete the attached forms for these other types of contracts. A complete list of all contract types is included in the attached Table #2 - Contract Type and Forms & Certification Applicability.

5. Contract Completion

CRS §24-102-205(6) requires Agencies and IHEs to finalize the evaluation of the contractor and enter the evaluation on CMS within 30 days of contract completion. In addition, CRS §24-105-102(4) requires Agencies and IHEs to finalize the report for construction contracts and enter the report on CMS within 30 days of the date on which the report is completed.

- a) For construction contracts - contract completion shall mean the later to occur of either:
 - the end of the contractor warranty period, occurring one (1) year following the date of the Notice of Substantial Completion, or as otherwise provided in the construction contract; or
 - the completion of the public notification requirements under CRS §38-26-107.
- b) For all other contracts – contract completion shall mean the date upon which the contractor has finished all of its performance obligations, including submission of its final invoice, and the earlier to occur of either:
 - the Agency or IHE has accepted contractor’s performance and agreed upon the final payment to the contractor, or
 - six (6) months after the contractor submits its final invoice.

6. Stages of a “typical” personal services contract

- a) Solicitation Stage:
 - Responding vendors are requested to provide vendor disclosure information as part of their bid/proposal.
 - The **Vendor Disclosure Statement** form may be attached to the solicitation with appropriate instruction for completion of fields.
 - The **Sole Source Justification and Certification** form, if applicable, may be scanned and attached to the CMS record when the record is created.
 - If applicable, the **Personal Services Certification** form prepared by the Division of Human Resources may be scanned and attached to the CMS record when the record is created.
- b) Pre-Contract Execution:
 - Ensure that the Statement of Work includes:
 - Performance measures and standards tied to the work to be performed.
 - Accountability language tied to the performance measures and standards.
 - Monitoring requirements tied to the performance measures and standards.
 - Resolution methods specific to the work to be performed.
 - If using the **Performance Measures and Standards Certification for Original Contract** form, maintain the form as part of the official contract file or scan the form and attach it to the CMS record when the record is created.
 - Complete the field in CMS asking if the contract has been certified.
- c) Executed Contracts:
 - Create a contract record in CMS.
 - Include vendor disclosure information in appropriate record fields.
 - Attach scanned **Vendor Disclosure Statement** form, if applicable (optional but recommended).

- Begin monitoring of contractor's performance obligations in the contract Statement of Work
- d) Multi-Year Contracts - Annually On or Before Each 12-month Anniversary of Contract Effective Date:
- **Annual Certification.** If using this form, maintain it as part of the official contract file. The form may be scanned and attached to the CMS record when the record is created.
 - Complete recertification fields in CMS.
 - Use of the **INTERIM Contractor Performance Evaluation Worksheet** is optional. The form is provided as an aid in gathering information in support of contract completion, recertification and vendor evaluation. Individual Agencies and IHEs should incorporate the use of this form (or a similar form) as part of their own contracting process.
 - Assignment of an interim rating at the end of each contract term is recommended. If such rating is assigned, record the interim rating and date the rating was assigned in a CMS Notes field.
- e) End of the Full Contract Period:
- Complete the **FINAL Contractor Performance Evaluation** form.
 - Attach the scanned **FINAL Contractor Performance Evaluation** form to the CMS record.
 - Send the **FINAL Contractor Performance Evaluation** form to contractor for review.
 - Update the CMS record with the contractor's response to its evaluation and rating, if any.
 - Enter the final rating into the appropriate CMS record field.
 - The **FINAL Contractor Performance Evaluation** form and contractor's response, if any, shall be posted on the public website.
- f) Construction Contracts Equal to or Greater than \$500,000.00:**
- * Prior to completion of the construction contract:
 - Complete and sign the **Construction Contractor Performance Evaluation Report** form.
 - Attach the scanned **Construction Contractor Performance Evaluation Report** form to the CMS record.
 - Send form to the contractor for review.
 - Update CMS record with the contractor's response to its evaluation and rating, if any.
 - Enter final rating into appropriate CMS record field.

**Note that Agencies and IHEs entering into construction contracts with a dollar value over \$100,000.00 also must comply with the requirements of the preceding stages.

7. Pre-July 1, 2009 personal services contracts, amended *after* July 1, 2009

The reporting and certification requirements of the CMS Statutes took effect on July 1, 2009. Personal services contracts originally executed before that date will be subject to the CMS Statutes, if they are amended *after* July 1, 2009 and the total value of the amended contract exceeds \$100,000. For example, if the original pre-July 1, 2009 contract is for \$75,000 and the post-July 1, 2009 amendment is for \$50,000, the total value of the amended contract of \$125,000 exceeds \$100,000 and is subject to the CMS Statutes. If the original pre-July 1, 2009 contract is for \$150,000 and the post-July 1, 2009 amendment is for \$10,000, the total value of the amended contract of \$160,000 exceeds \$100,000 and is subject to the CMS Statutes.

The OSC requires all amendments to pre-July 2009 contracts, which are subject to the CMS Statutes following amendment, to include mandatory CMS provisions calling for performance review of the contractor. Agencies and IHEs are required to create a record for the amendment in CMS, using the applicable contract modification format set forth in the OSC Policy “Modifications of Contracts – Tools and Forms”, and to follow the process detailed above for the completion of forms. Agencies and IHEs also are required to create a record for the original contract in CMS at the same time that the record of the amendment is created and to link the original and amendment records, creating a complete summary of the amended contract.

8. Attachments

- a. Forms (8 separate documents)
 - Vendor Disclosure Statement
 - Sole Source Justification and Certification
 - INTERIM Contractor Performance Evaluation Worksheet
 - FINAL Contractor Performance Evaluation
 - Construction Contractor Performance Evaluation Report
 - Statement of Rebuttal to Contractor Evaluation
 - Performance Measures and Standards Certification Original Contract
 - Annual Certification
- b. Table #2 - Contract Type - Forms & Certification Applicability (page 7 of this document)

Table #2

FORM USE and CERTIFICATION APPLICABILITY per CONTRACT TYPE

Form →	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Initial Certification	Annual Certification	Formal Evaluation & Rating Form	Construction Report Form	Vendor Rebuttal Form	Sole Source Justification Form and Certification	Vendor Disclosure Statement	Interim Evaluation Worksheet	Personal Services Certification
Contract Type ↓									
Commodities/Goods						Ψ	✓		
Construction	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
Easement/ROW									
Grant Agreement	✓	✓	✓		✓	Ψ	✓	✓	✓
IT - Inclusive	✓	✓	✓		✓	Ψ	✓	✓	✓
IT - Maintenance	✓	✓	✓		✓	Ψ	✓	✓	✓
Interagency									
Intergovernmental	✓	✓	✓		✓	Ψ	✓	✓	✓
Loans									
Modification	**	**	**		**	Ψ	**	**	
Multi-party	‡	‡	‡	‡	‡	Ψ	‡	‡	✓
OSA AE Agreements	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
OSA AE As Needed	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
OSA CM/GC Std	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
OSA Consultant Agreement	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
OSA Contractor Agreement	✓	✓	✓	✓	✓	Ψ	✓	✓	✓
Outsource Agreements	✓	✓	✓		✓	Ψ	✓	✓	✓
Price Agreement (Master)	✓	✓	✓		✓	Ψ		✓	✓
Professional Services						Ψ			✓
Purchase Order ∞	∞ ✓	∞ ✓	∞ ✓		∞ ✓		∞ ✓	∞ ✓	
Personal Services	✓	✓	✓		✓	Ψ	✓	✓	✓
Purchased Services	✓	✓	✓		✓	Ψ	✓	✓	✓
Real Property									
Revenue									
Settlement Agreement									
Vendor Agreement									

Ψ Use of the Sole Source Justification Form and completion of the Certification fields will depend on the solicitation process.

** Form use for Modifications will depend on the type of modification executed. For example if the modification is an Amendment adding money that results in a total value of greater than \$100,000 then 1 through 5 and 7 would apply. If the modification is a simple Option Letter to extend nothing additional would be applicable other than what applies to the underlying contract being modified.

‡ Multi-party contracts can be any of the other contract types with multiple signature lines. If the forms and certifications apply to the other contract type in which there are simply more parties signing the contract, the forms and certifications apply to the multi-part contract as well.

∞ Applies only to Purchase Orders for Services greater than \$100,000.00.