

## **CHAPTER 4: CONSTRUCTION**

RULE 4-1: CAPITAL CONSTRUCTION ADMINISTRATION

RULE 4-2: CAPITAL CONSTRUCTION PROJECTS

RULE 4-3: CAPITAL CONSTRUCTION CARRYFORWARDS AND REVERSIONS

## **RULE 4-1: CAPITAL CONSTRUCTION ADMINISTRATION**

### **1. AUTHORITY:**

- §24-30-1301, C.R.S. (State Buildings)
- §24-30-1303, C.R.S. (Office of the State Architect)
- §24-75-302, C.R.S., *et seq.*, C.R.S. (Capital Construction Fund)
- Title 24, Article 91, C.R.S. (Construction Contracts)
- Title 24, Article 92, C.R.S. (Construction Bidding)
- §38-26-106, C.R.S. (Contractor Bonds)
- §38-26-107, C.R.S. (Supplier Claims)

### **2. DEFINITIONS:**

- 2.1.** Capital Construction – Any work defined as “Capital Construction” in §24-30-1301(2), C.R.S., regardless of the funding source for that work.
- 2.2.** Capital Construction Fund – A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the State, as described in §24-75-302, C.R.S.

### **3. RULE:**

The State Capital Construction Fund was established to provide a source for appropriations to State Agencies and Institutions of Higher Education to acquire and maintain their physical facilities. The fund has special requirements that must be followed by State Agencies and Institutions of Higher Education receiving appropriations from the State Capital Construction Fund.

#### **3.1. Capital Construction Contracts**

- 3.1.1.** Formal State Contracts are required when expending funds in excess of \$150,000 appropriated for emergency maintenance projects including construction services or installation of fixed equipment unless previous approval has been obtained from the Office of the State Architect to use a Purchase Order.
  - 3.1.1.1.** Purchases of fixed equipment that do not require installation services may be purchased with a Purchase Order.
  - 3.1.1.2.** A Purchase Order may be used for construction not exceeding \$150,000 if the State Architect or a delegate records written approval on the face of the Purchase Order. Such approval by the State Architect or a delegate shall require compliance with approved building codes and signify compliance with bonding requirements in §§38-26-106 and 24-105-201 C.R.S. In addition, the Purchase Order shall be bilateral requiring written acknowledgment of acceptance by the contractor prior to beginning work.
- 3.1.2.** Capital Construction Contracts shall follow the State Contract routing procedures established by the State Controller's Office.

## **RULE 4-2: CAPITAL CONSTRUCTION PROJECTS**

### **1. AUTHORITY:**

§24-30-1301, C.R.S. (State Buildings)

§24-30-1404, C.R.S. (Professional Services Contracts)

Title 24, Article 75, Part 3, C.R.S. (Capital Construction Fund)

§24-91-103, C.R.S. (Retainage)

Title 24, Article 92, C.R.S. (Construction Bidding)

§38-26-106, C.R.S. (Contractor Bonds)

§38-26-107, C.R.S. (Supplier Claims)

### **2. DEFINITIONS:**

**2.1.** Capital Construction Fund – See Fiscal Rule 4-1

**2.2.** Capital Construction Project – A project for Capital Construction as described in §24-30-1301(2), C.R.S.

**2.3.** Controlled Maintenance Project – A project for Controlled Maintenance, as described in §24-30-1301(4), C.R.S.

### **3. RULE:**

**3.1.** Capital Construction Projects

**3.1.1.** Use of Funding – All funds for Capital Construction Projects shall be used for their intended purpose. A State Agency or Institution of Higher Education shall not use the Capital Construction Fund to pay or reimburse State employees for construction management, administrative activities, direct labor performed, or any other expense of the Capital Construction Project or Controlled Maintenance Project. Capital Construction funding may be used for personal services payments to independent contractors for activities within the scope of the Capital Construction Project or Controlled Maintenance Project, including design or construction services. The State Controller may create additional restrictions on the use of Capital Construction Funds in policy or the Fiscal Procedures Manual.

**3.1.2.** Six Month Rule – State Contracts for Capital Construction Projects shall be executed and the funds encumbered within the time limits established by and in accordance with the requirements of §24-30-1404(7), C.R.S. If a State Agency or Institution of Higher Education determines that the deadlines imposed by the statute cannot be met, the State Agency or Institution of Higher Education may request the General Assembly's Capital Development Committee to recommend to the State Controller that the deadline be waived. The State Controller may, but is not required to, grant the waiver. This Fiscal Rule does not apply to projects at Institutions of Higher Education that are funded solely from cash funds held by the Institution or other exemptions provided in statute.

**3.1.3.** Availability of Capital Construction Funds – Appropriated Capital Construction Funds are available immediately upon signature of the Governor, as current year

appropriations. Appropriated Capital Construction Projects must be initiated by the end of the fiscal year following the original appropriation and will remain available for a period of three years or, if encumbered, will remain available until completion of the project.

**3.2. Capital Construction Project Retainage**

- 3.2.1.** A State Agency shall withhold retainage for all construction and Controlled Maintenance Projects where the total amount of the Capital Construction Contract exceeds the limit established by §24-91-103, C.R.S. Institutions of Higher Education shall withhold this retainage for all projects that are not cash funded. The retainage shall be in the form of monies withheld from the contractor or in any other form authorized by statute and acceptable to the State Agency or Institution of Higher Education.
- 3.2.2.** Partial retainage may be released as discrete portions of work are completed, accepted, and advertised for partial settlement. Final retainage shall be released by the State Agency or Institution of Higher Education only when the Capital Construction Contract has been satisfactorily completed and accepted, the State Agency or Institution of Higher Education has proof of publication of "Notice of Final Settlement", in accordance with §38-26-107, C.R.S., and there are no outstanding claims against the project.
- 3.2.3.** The retainage requirement does not apply to Professional Services Contracts.

## **RULE 4-3: CAPITAL CONSTRUCTION CARRYFORWARDS AND REVERSIONS**

### **1. AUTHORITY:**

§24-30-1301, C.R.S. (State Buildings)

Title 24, Article 75 Part 3, C.R.S. (Capital Construction Fund)

Title 24, Article 91, C.R.S. (Construction Contracts)

### **2. DEFINITIONS:**

**2.1.** Capital Construction – See Fiscal Rule 4-1.

**2.2.** Capital Construction Project – See Fiscal Rule 4-2.

**2.3.** Encumbrance – See Fiscal Rule 3-1.

### **3. RULE:**

**3.1.** Carryforward of Capital Construction appropriations – Any unexpended Capital Construction budget is automatically carried forward for three fiscal years (the initial fiscal year of appropriation and the subsequent two fiscal years). If any amount of the available appropriation is restricted, the restricted amount must be carried forward as restricted.

**3.1.1.** At the end of the third fiscal year of a Capital Construction appropriation, the amount of a valid Encumbrance recorded on the State Financial System or on an approved State Agency or Institution of Higher Education accounting system may be carried forward until the Encumbrance has been fully liquidated.

**3.2.** Reversion of Capital Construction Appropriations – Upon completion of a Capital Construction Project or the end of a Project's three-year lifecycle, whichever comes first, the amount of any unexpended/unencumbered appropriation must be reverted.