

# 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. Funding Obligation 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
  - j. Special Provisions
  - 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 should 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 an agency or institution of higher education of the State of Colorado is the "State", unless the contract has provisions whereby there needs to be a clear distinction made between the agency/institution and the State of Colorado. In the latter instance, use an acronym or other name for the Agency. 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 (if applicable) (hereinafter called the "Department").
    - d. The preferred term of reference for the other contracting Party is "Contractor." Leases are a common exception where the terms "Lessee" and "Lessor" and "Landlord" and "Tenant" are commonly used. Other names for the State are often used in Contractors' agreements. This is acceptable if it is made clear that such names, for example "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. Enter into contracts with public entities 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 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:

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## 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 its designee (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) **Funding Obligation Authority** (Not applicable to institutions of higher education) – Agencies shall either cite the section of the Colorado Revised Statutes (CRS) that provides funding authority or 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 institutions of higher education) – Agencies shall cite the section of the Colorado Revised Statutes (CRS) that provides authority for the agency to enter into this contract.

6) **Statement of Work (SOW).** The agency and institution of higher education shall include a SOW in every State contract that includes sufficient detail regarding the goods or services the Contractor is to provide and/or other obligations the Contractor is to perform that the agency or institution of higher education 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 art used in the contract,
- c. Deliverables (What the Contractor is to do, i.e., Goods/Services provided,
- d. Obligations to perform, and Responsibilities),
- e. State's Obligations and Responsibilities,
- f. Performance Schedule, Location of Performance (if location is material),
- g. Personnel, Testing and Acceptance criteria (if relevant)

## 7) Payments

a. **Terms.** Payment terms shall identify the amount of money to be paid to the Contractor, when payments are to be made, where they are to be made, to whom they are payable, and any contingencies regarding payment. Payment terms shall reflect the total amount to be paid in each fiscal year for Multi-year contracts.

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 the OSC's Policy on Advance Payments.

c. **Payment Types.** There are four common payment types used in State Contracts:

- i. firm, fixed price, or lump sum;
- ii. cost reimbursement;
- iii. time and material, or labor hours; and
- iv. indefinite delivery. See Contract Manual for further information.

8) **Maximum Dollar Amount.** State contracts shall contain a maximum dollar amount for which the State is liable during each fiscal year. If a maximum contract amount cannot be determined, use one of the following provisions shall be used unless a waiver is obtained from the State Controller, to-wit:

a. **Single Fiscal Years.** Multiple fiscal year contracts shall contain the following provision: *Payment pursuant to this Contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for the purchase of \_\_\_\_\_.* The funds that are available may be used to pay multiple Contractor s for the services that are described in this contract. The liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.

b. **Multiple Fiscal Years.** Multiple fiscal year contracts shall contain the following provision: *Payment pursuant to this contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for each fiscal year this contract is in effect for the purchase of \_\_\_\_\_.* The funds that are available for each fiscal year may be used to pay multiple Contractor s for the services that are described in this contract. The liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.

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- 9) **Performance Period.** All State Contracts shall include a beginning date and 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, it is possible to have contracts crossing one or more fiscal years. For contracts governed by the State Procurement Code, performance periods (including term extensions) cannot 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 any certain 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 institutions of higher education 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 in most circumstances.
- 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 SSNs or FEINs.

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