

Office of the State Architect

OSA 101

Fiscal Rules

April 2023



SYLLABUS

- Introduction: History, The Basics, Delegation
- Module 1: Consultant Contracting
- Module 2a: Contractor Contracting
- Module 2b: Construction Statutes
- Module 3: All other relevant Statutes
- Module 4a: Procurement Code/Rules CRS 24-101 - 112
- Module 4b: Fiscal Rules CRS 23-30-202
- Module 5: Basic Steps Checklist



Introduction

- Some of the text is really small, you aren't expected to read the slide verbatim but they are here for reference
- Question and be curious - this is the best way to avoid statutory violations
- If a citation is a Rule, the section number will start with an "R"
- Each module does build on the next



STATE OF COLORADO FISCAL RULES

An Act

Introduction

- Currently the State Fiscal Rules are undergoing a review
- There exists both Fiscal Rule and a Fiscal Procedures Manual
- OSA 101 will only touch on the highlights of the Fiscal Rules



CHAPTER 2: DISBURSEMENT

3.1.1. Payments shall be processed in a timely manner and made within the allowable discount period to ensure the State Agency or Institution of Higher Education takes advantage of purchase discounts, if economically beneficial to the State. All payment processing timelines shall begin upon the acceptance of a correct invoice by the State Agency or the Institution of Higher Education and the delivery of goods or completion of the services provided unless specifically stated otherwise in a Commitment Voucher.

- It is critical to understand that the terms of payment are set on the acceptance of a correct invoice.



CHAPTER 3: COMMITMENT VOUCHERS

RULE 3-1: COMMITMENT VOUCHERS
RULE 3-2: PURCHASE ORDERS
RULE 3-3: STATE CONTRACTS
RULE 3-4: GRANTS
RULE 3-5: INTERAGENCY AGREEMENTS



CHAPTER 3: COMMITMENT VOUCHERS

3.1. A State Agency or Institution of Higher Education shall not disburse funds unless the disbursement is supported by a Commitment Voucher and complies with Fiscal Rule 2-1 (Propriety of Expenditures). Prior to entering into Commitment Vouchers for proposed expenditures, State Agencies and Institutions of Higher Education shall ensure the following:

- Office of the State Controller offers training specific to these types of Fiscal Rule violations.

CHAPTER 3: COMMITMENT VOUCHERS

- 5.0 DOLLAR LIMITS AND REQUIREMENTS

Capital Construction / Controlled Maintenance	\$150,000 and less	Construction PO (See Fiscal Rule 4-1)
	More than \$150,000	Construction Contract (See Fiscal Rule 4-1)
Professional Services under §24-30-1401, et seq., C.R.S., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services	Any dollar amount	State Contract
Real Property lease or license of land, buildings, or a portion thereof for term of more than 30 days	Any dollar amount	State Contract
Agreements Between State Agencies and/or Institutions of Higher Education	Any dollar amount Encumbrance required for amounts more than \$250,000	Use Interagency Agreement in accordance with Fiscal Rule 3-5

5.2. Dollar Limits – The dollar limits shown in the table in §5.1 of this Fiscal Rule apply to the total term of the Commitment Voucher. If a single Commitment Voucher will be used for a purchase that will span multiple fiscal years, then the total of all fiscal years included in that Commitment Voucher is the amount to which the dollar limit will apply. State Agencies and Institutions of Higher Education shall use a single Commitment Voucher for purchases in accordance with the State Controller Contract, Grant, and Purchase Order Policies regarding single purchases.



CHAPTER 3: COMMITMENT VOUCHERS

6. PROHIBITED TERMS AND LIMITATIONS

Within each state contract template are these prohibited terms and limitations:

- Indemnification
- Binding Arbitration
- Limitations of Liability
- Choice of Law outside of Colorado
- Inclusion of Void Terms



CHAPTER 3: Commitment Vouchers

7. COMMITMENT VOUCHER APPROVALS

7.1. Commitment Vouchers for Capital Construction and Controlled Maintenance, defined in §24-30-1301, C.R.S., require the approval of the State Architect or a delegate of the State Architect, unless otherwise exempt by statute or waived by the State Architect. See §24-30-1303(1)(d), C.R.S.

7.7. Personal services Commitment Vouchers require the approval of the State Personnel Director or a delegate of the State Personnel Director. See §24-50-501, et seq., C.R.S. This approval is not required for personal services Commitment Vouchers for services that are:

7.7.1. Exempt from the State classified personnel system under Article XII, §13 of the

7.8. Real property State Contracts, including leases where the State Agency or Institution of Higher Education is the tenant, easements, and rights-of-way agreements, require the approval of the State Architect or the Director of Real Estate Programs within the Office of the State Architect, Department of Personnel & Administration, or a delegate of either position, unless otherwise exempted by statute. See §24-30-1303, C.R.S. Real property administered by the State Board of Land Commissioners, Division of Parks and Wildlife in the Department of Natural Resources, and the Department of Transportation, are exempt from this requirement. See §24-30-1301(15)(b), C.R.S.



CHAPTER 3: COMMITMENT VOUCHERS

8. 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, Small Dollar Grant Award, Grant Agreement, or State Contract, when required under this Fiscal Rule. A Statutory Violation also occurs when liabilities are incurred or payments are made that exceed the unencumbered balance of the appropriation to which the resulting disbursement would be charged.

- 8.1. **Personal Liability** – Under §24-30-202(3), C.R.S., 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 contractor payment subject to the Statutory Violation is approved by the State Controller and the State Controller permits the State Agency or Institution of Higher Education to make payment to the contractor without recovering the amount of that payment from the person(s) who incurred, ordered or voted for an obligation or made a payment which created the Statutory Violation.

CHAPTER 3: COMMITMENT VOUCHERS

10. REQUIREMENTS FOR PERSONAL SERVICES COMMITMENT VOUCHERS

- 10.1. **Designation of Contract Manager** – In accordance with §24-106-107, C.R.S., State Agencies and Institutions of Higher Education shall designate at least one person with subject matter expertise as a contract manager to be responsible for day-to-day management of the Personal Services Commitment Voucher, including performance monitoring as required by §24-106-107(3), C.R.S. State Agencies and Institutions of Higher Education shall comply with all State Controller training requirements for designated contract managers.
- 10.2. **Monitoring** – Each State Agency and Institution of Higher Education shall monitor its Personal Services Commitment Vouchers to ensure that the work is performed in accordance with the performance measures and standards of the Personal Services Commitment Voucher and that the contractor was paid in accordance with the payment schedule in the Personal Services Commitment Voucher. State Agencies and Institutions of Higher Education shall follow the State Controller Contract, Grant, and Purchase Order Policies and the accountability standards in §24-106-107(2)(b), C.R.S.
- 10.3. **Contract Management System** – In accordance with §24-106-103(3)(d), C.R.S., State Agencies and Institutions of Higher Education subject to §24-106-103, C.R.S., shall include all Personal Services Commitment Vouchers over \$100,000.00 in the State's centralized contract management system, maintained by the Department of Personnel & Administration, within 30 days following their execution, regardless of the type of Commitment Voucher used.

CHAPTER 3-3: STATE CONTRACTS

6. APPROVED STATE CONTRACT FORMS

All Expenditure Contracts shall be in a form approved by the State Controller. The State Controller has approved the following contract forms and may approve additional forms in the State Controller's sole discretion.

- 6.1. Capital Construction Contracts – See Fiscal Rule 4-1 (Capital Construction Administration). See also approved contract forms available on the website of the Office of the State Architect.
- 6.2. Model Contracts – State Agencies and Institutions of Higher Education shall use the model contract forms as described in the State Controller Contract, Grant, and Purchase Order Policies.
- 6.3. Contract Amendments – All modifications to a State Contract shall be made by a formal written amendment signed by the State Agency or Institution of Higher Education and the other Party or Parties to the State Contract and approved by the State Controller or a delegate of the State Controller, unless an alternative modification tool has been approved by the State Controller. A State Contract cannot be amended or extended (revived) after the State Contract term has expired. A form of contract amendment and forms of alternative modification tools are set forth in the Modification Policies.
- 6.4. Alternative Modification Tools and Forms – A State Agency or Institution of Higher Education may use an approved alternate modification tool to modify a State Contract in lieu of a contract amendment only in the specific circumstances identified in the Modification Policies. A State Agency or Institution of Higher Education shall obtain written approval from the Office of the State Controller prior to making a change to the form of an alternative modification tool or using an alternative modification tool in a manner not described in the Modification Policies. A State Contract cannot be modified or extended after the expiration of the term of the State Contract. Approved alternative modification tool forms are set forth in the Modification Policies.



CHAPTER 3-3: STATE CONTRACTS

13. SPECIAL PROVISIONS

- Colorado Special Provisions are duplicated exactly as they are found in the Fiscal Rules

2. **FUND AVAILABILITY.** §24-30-202(5.5) C.R.S. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor 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 the State, and (c) be solely responsible for its acts and those of its employees and agents.**
5. **COMPLIANCE WITH LAW.** Contractor shall 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.
6. **CHOICE OF LAW, JURISDICTION, AND VENUE.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
7. **PROHIBITED TERMS.** Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.
8. **SOFTWARE PIRACY PROHIBITION.** State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any



CHAPTER 4: CAPITAL CONSTRUCTION

RULE 4-1: CAPITAL CONSTRUCTION ADMINISTRATION

3.1. Capital Construction Contracts

- 3.1.1. 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.



CHAPTER 4: CAPITAL CONSTRUCTION

RULE 4-2: CAPITAL CONSTRUCTION PROJECTS

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.



CHAPTER 4: CAPITAL CONSTRUCTION

RULE 4-2: CAPITAL CONSTRUCTION PROJECTS

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.



CHAPTER 4: CAPITAL CONSTRUCTION

RULE 4-3: CAPITAL CONSTRUCTION CARRYFORWARDS AND REVERSIONS

- 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 Financial System may be carried forward until the Encumbrance has been fully liquidated.
- 3.1.2. 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.

Questions?

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