

## **GRANT CONTRACT OFFER AND ACCEPTANCE POLICY**

### INSTRUCTIONS TO AGENCIES

These instructions and model provisions for “one-step” grant applications/awards apply to any grant application and award that adequately define the parties agreement, scope of work, time of performance, and payment provisions. Using these procedures and model provisions, the application (the “offer”) and award (the “acceptance”) legally merge into a single document, the “contract”, without a need to write a separate document. Use of this procedure will satisfy statutory requirements that a commitment document be executed and approved by the Controller or his delegate prior to disbursement of funds.

1. Application must contain performance dates/contract term.
2. Award without amendment must conform to the terms of the “offer” (application). If specific amounts are referenced in the application or otherwise made known to the [sub]grantee, any change to the amount would be a counter offer. If agencies want to have the latitude to make unilateral awards without getting formal acceptance, something many grantees may not care about, include the “Designation or Adjustment of Award Amount” Clause.
3. In General Provisions attached to the application, include:
  - a. Payment provisions;
  - b. Financial Management and Audit provisions;
  - c. Independent Contractor and Personnel clauses;
  - d. Termination provisions;
  - e. Modification provisions;
  - f. Conflict of Interest provisions;
  - g. Other program requirements, such as compliance with federal statutes, OMB Circulars, grant administration requirements, or other state or federal requirements; and
  - h. Colorado Special Provisions.

These clauses will be the bulk of what is already included in contracts now and they will be a part of the “offer” submitted as the application.

4. Include the clauses below in the application immediately before the applicant’s signature because we want to highlight these particular clauses.
5. Complete any program-specific certifications and include them in the package. It is preferable to put the certifications immediately prior to the signature on the application.

6. After grant award, complete either the “award without amendments” or “amended award” clauses which requires written acceptance by the contractor. Include an Exhibit One to outline amendments such as deleted or changed language in the application.

**NOTE: Normal external review must be obtained until a waiver is granted for these procedures.**

## ADD TO APPLICATION OF [SUB]GRANTEE

### Designation or Adjustment of Award Amount

- The amount of the award is a material part of this application. The award of a [sub]grant in an amount higher or lower than that referenced in this application, or otherwise made known to me, shall be considered a counter offer requiring my acceptance.
- The determination of an award amount is not a material part of this offer and determination of a specific amount, or upward or downward adjustment of any tentative amount referenced in this application, or otherwise made known to me, shall not be considered a counter offer requiring my acceptance.

### Payment and Limitation of Funds

1. Upon award of the grant, the state will pay to the contractor, in consideration for the work and services to be performed, an amount not to exceed the amount awarded. The method and time of payment shall be made in accordance with the [ ] clause of this contract. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.
2. [IF APPLICABLE] Upon award, this contract is subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

### Assignment

The contractor may not assign their rights or duties under this contract without the prior written consent of the state.

### Order of Precedence

Any inconsistency or conflict in this contract shall be resolved by giving precedence in the following order: (a) Colorado Special Provisions; (b) amendments or changes to the grant application; (c) general provisions governing grants [sub]grantee information package [compliance package] [etc.]; and (d) the application.

### Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.

**NOTICE TO APPLICANT:** Your submission of this application constitutes an offer, acceptance of which shall result in a binding contract effective upon acceptance of your application and award of the grant. In the event that the terms of the agreement are changed, your acceptance of the changed terms and signature of the “Acceptance” on the signature page shall likewise constitute a binding contract. The terms of the contract include the (general provisions governing the grant) (subgrantee/grantee information package) (compliance document) (etc.) Dated \_\_\_\_\_, your application, the Colorado Special Provisions dated \_\_\_\_\_, [ \_\_\_\_\_ ], and any amendments or changes to the grant application accepted by you and incorporated by the “Acceptance” of Grant signed by you.

Certification

I certify the following:

1. I \_\_\_\_\_ am \_\_\_\_\_ am not debarred and suspended. . .
- 2.

I hereby submit this application and acknowledge that acceptance of this application and award to me, or amendment of the terms of the grant and my acceptance of those terms, constitutes a binding contract.

I swear under penalty of perjury that the foregoing certifications, representations, and statements are true, accurate, and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Contractor/[Sub]Grantee

**AWARD WITHOUT AMENDMENTS**

This Contract, made this \_\_\_\_ day of \_\_\_\_\_ 199\_\_, by and between the State of Colorado for the use and benefit of the Department of \_\_\_\_\_  
\_\_\_\_\_  
hereinafter referred to as the State, and \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as the contractor or [sub]grantee,

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, authority exists in the law and funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number \_\_\_\_\_, Appropriation Code \_\_\_\_\_, Org. Number \_\_\_\_\_, GBL Number \_\_\_\_\_, Contract Encumbrance Number \_\_\_\_\_;

Award is hereby made to \_\_\_\_\_ (*grantee/[sub]grantee*) in the amount of \_\_\_\_\_, for performance from \_\_\_\_ (*date*) /the date of contract approval (strike inapplicable language) to \_\_\_\_ (*date*) in accordance with the application dated \_\_\_\_\_, the (general provisions governing the grant) (subgrantee/grantee information package) (compliance document) (etc.) dated \_\_\_\_\_, [ \_\_\_\_\_ ], all of which are hereby incorporated by reference.

**STATE OF COLORADO**

By \_\_\_\_\_  
Executive Director  
Department of \_\_\_\_\_

**APPROVALS**

**CONTROLLER**

By \_\_\_\_\_  
Controller or Designee

**AWARD WITH AMENDMENTS AND ACCEPTANCE BY CONTRACTOR/[SUB]GRANTEE**

This Contract, made this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_, by and between the State of Colorado for the use and benefit of the Department of \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as the State, and \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as the contractor or [sub]grantee,

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, authority exists in the law and funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number \_\_\_\_\_, Appropriation Code \_\_\_\_\_, Org. Number \_\_\_\_\_, GBL Number \_\_\_\_\_, Contract Encumbrance Number \_\_\_\_\_; Award is hereby made to \_\_\_\_\_ (*grantee/[sub]grantee*) in the amount of \_\_\_\_\_, for performance from (date) /the date of contract approval (strike inapplicable language) to (date) in accordance with the application dated \_\_\_\_\_, the (general provisions governing the grant) (subgrantee/grantee information package) (compliance document) (etc.) dated \_\_\_\_\_, and the Colorado Special Provisions dated \_\_\_\_\_, [ \_\_\_\_\_ ], all of which are hereby incorporated by reference, and if the parties initials appear hereon in the space provided (initials: \_\_\_\_\_) the amendments to the [sub]grant application, attached as Exhibit One.

STATE OF COLORADO

CONTRACTOR/[SUB]GRANTEE

By \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
(Full Legal Name)

Department of \_\_\_\_\_

\_\_\_\_\_  
(Position/Title)

APPROVALS  
CONTROLLER

By \_\_\_\_\_  
Controller or Designee

**PURCHASE ORDER MODIFICATION POLICY**

TO: Purchasing Agents at State Departments and Institutions of  
Higher Education

FROM: Clifford W. Hall  
State Controller

Nanci Kadlecek  
State Purchasing Director

DATE: June 24, 1996

SUBJECT: *Purchase Order Modifications/Incorporation of Vendor Contracts*

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The purpose of this memorandum is to clarify the distinction between purchase orders, which do not require Attorney General and Controller approval under the Fiscal Rules, and State Contracts-which do (Fiscal Rule 4-1, page 3). This policy does not affect the use of the purchase order Form DP-01 for award of contracts after solicitations by competitive sealed bids or competitive negotiation.

General. Purchase orders issued on Form DP-01 (or other approved form purchase orders) may be accepted either by performance or acknowledgment. See Form DP-01 (reverse), paragraph 1. Any acknowledgment which contains additional or different terms or conditions to those on or attached to the DP-01 as issued by the purchasing agency constitutes a "counteroffer." Counteroffers are construed as a cancellation of the purchase order, but they may be accepted using a "change order" accepting the counteroffer. DP-01 (reverse), paragraph 1.

- a. Such a change order should be issued using a DP-01 (or other approved purchase order), titled a "change order" and referencing the original purchase order, and bearing the annotation, "Pursuant to paragraph 1 on the reverse, the vendor's [counteroffer] [acknowledgment], as modified by the parties, is accepted. In the event of conflict or inconsistencies between the terms and conditions of the original purchase order, the [counteroffer] [acknowledgment], and this change order, such conflicts will be resolved by reference in the following priority to the following documents: this change order, including the terms and conditions on the reverse; the vendor's [counteroffer][acknowledgment], as modified; and the original purchase order.
- b. The specific terms of the above "order of precedence" provision may be modified to identify the documents defining the transaction.

Permitted Changes to Terms and Conditions. In general, no changes may be made, or agreements reached, which change, modify, or add to the provisions on the reverse of the purchase order unless consistent with the following policies. Changes or agreements that are not consistent with this policy constitute "State Contracts" which must be approved in accordance with the Fiscal Rules.

- a. Paragraph 1 (offer and acceptance) and paragraph 2 (Safety Information): No changes to the language are permitted. Agencies may, however, add program-specific safety requirements.
- b. Paragraph 3 (Changes): No changes or additions to the language are permitted.
- c. Paragraph 4 (Delivery): No changes to the language are permitted. Agencies may add language that clarifies times, methods, and other procedural aspects of delivery.
- d. Paragraph 5 (New Products): Agencies may change or add to the language to meet program requirements.
- e. Paragraph 6 (Quality): Agencies may change or add to the language to clarify contracting party expectations concerning quality requirements under the contract.
- f. Paragraph 7 (Warranties): So long as the effect on their bargain is understood, agencies may agree to a disclaimer of implied warranties of fitness for particular purpose and merchantability in transactions in goods. §§ 4-2-314 to 316, CRS (1988). Agencies may write their own express warranty provisions. § 4-2-313, CRS (1988).
- g. Paragraph 8 (Inspection): No changes to the language are permitted. Agencies, however, may add language to clarify the timing and procedural aspects of the inspection rights and corresponding payment. Agencies may also clarify the procedural aspects of remedies granted by the Uniform Commercial Code in transactions in goods, e.g. rejection, §§ 4-2-602 to 605, CRS (1988), and revocation of acceptance, § 4-2-608, CRS (1988).
- h. Paragraph 9 (cash discount): Agencies may modify or add to the clause to define the cash discount terms.
- i. Paragraph 10 (Taxes), Paragraph 11 (Prompt Payment); Paragraph 12 (Assignment); Paragraph 13 (Indemnification); Paragraph 14 (Independent Contractor): No changes or additions are authorized:
  - (1) Agencies may not agree to indemnify, hold harmless, or defend the contractor.
  - (2) Vendor language that can alter the purchase order indemnification clause can be "hidden" in provisions such as "limitation of liability" or "exclusion of consequential damages" provisions. See the policies below with respect to those and similar provisions.



- (3) Absent clear and unequivocal language reflecting intent to agree otherwise, an indemnity provision will not be construed to include negligent conduct of indemnitee, e.g. state negligence. Public Service Co. v. United Cable Television of Jeffco, Inc., 816 P.2d 289 (Colo. App. 1991). Use this case to satisfy vendor concerns that they are being held responsible for negligence of the state or its employees.
- j. Paragraph 15 (Communication): Agencies may add to the language to clarify the addresses, telephones, and other specifics concerning notice to the agency.
- k. Paragraph 16 (Vendor Forms): No change is permitted, except for clarification as permitted in the second paragraph of this memorandum in order to issue the change order and define the "order of precedence" when terms are conflicting or inconsistent.
- l. Paragraph 17 (Compliance with laws); Paragraph 18 (Americans with Disabilities Act Requirements); Paragraph 19 (Insurance); Paragraph 20 (Venue): No changes or additions are permitted.
- m. Limitation of Liability/Remedies, and Exclusion of Consequential Damages:
- (1) Agencies may not agree to exclusion of consequential damages, i.e. § 4-2-715(2), CRS (1988)(transactions in goods), unless those damages are defined as "excluding damages or claims arising out of bodily injury (including death) or damage to tangible property."
- (2) Agencies may agree to limitation of remedies/liability provisions, i.e. § 4-2-719, CRS (1988)(transactions in goods), so long as those terms are defined as "excluding damages and claims arising out of bodily injury (including death) and damage to tangible property."
- (3) The purpose of these limitations is to preserve the right of the state to hold the contractor liable for personal injury and damages to state property. Consistent with these limitations, though, agencies may agree to limit contract damages or remedies that are available to the state in the event of breach by the contractor of its contract obligations.

Approvals. Changes or additions to the terms and conditions on the reverse of purchase orders consistent with these policies must be approved by the head of a purchasing agency, a principal representative (construction), or the state purchasing director.

Conclusion. These policies do not eliminate the need to read and understand vendor forms and acknowledgments to purchase orders. Do not rely on "order of precedence" provisions to resolve patent conflicts or inconsistencies in the language. However, these policies do permit limited negotiation of purchase orders terms and conditions, and acceptance by "change order" of counteroffers, without the requirement to treat the agreement as a State Contract for purposes of Fiscal Rule 4-1. Legal advice should be sought whenever vendor provisions, or their effect upon the state purchase order, are not understood.

Attachment: Purchase Order (DP-01) Terms and Conditions

## ***TASK ORDER - FUNDING LETTER POLICY***

### ***Policy for Processing Contract Modification Documents, Task Order Assignments and Funding Letters Included In Original Contract Provisions***

State contracts may be modified by processing an amendment to the contract, a change order, or in the case of a professional services contract a supplement. Some state contracts contain provisions that allow an agency to order additional goods and/or services by using a “task order” or “funding letter”. For purposes of this policy, a “change order” means a bilateral change order agreed to by the parties and issued consistent with State Buildings or state controller policy.

Contract amendments must be reviewed by the Attorney General’s office and approved by the state controller or his designee. Change orders and supplements, which are additions to the existing contract, are not reviewed by the Attorney General’s office but must be approved by the state controller or his designee. Task orders or funding letters, which are incorporated in the contract, are not reviewed by the Attorney General’s office after the contract has been approved, however, they must be approved by the state controller or his designee.

Without a copy of the original contract and all previous amendments, the Attorney General’s Office cannot perform a legal sufficiency review for a new amendment. Further, it is difficult for the State Controller’s Office to determine the correct performance period and the dollar amount to be encumbered. Similarly, it is very difficult for the State Controller’s Office to ensure that the task order or funding letter is being used according to the terms of the contract unless a copy of the contract is attached to the task order or funding letter. However, we understand that it is time consuming and costly for an agency to copy the contract for every task order and funding letter forwarded to the State Controller’s Office for approval. Therefore, the following policy shall apply:

- ♦ All amendments to contracts are to be forwarded for review and approval with a copy of the original contract and all previously approved amendments attached.
- ♦ Capital construction change orders, and supplements to professional contracts do not require copies of the original contract or other modifications to be attached for processing and approval.
- ♦ All non-capital construction change orders, task orders or funding letters must be forwarded with a copy of the original contract attached **or** a letter from the program manager that identifies the original contract by agency and routing number and includes a statement that the change order, task order or funding letter is being used in accordance with the contract.

## *CONTRACT MODIFICATION POLICY*

TO:            Controllers and Chief Financial Officers of State Departments and  
                  Higher Education Institutions

FROM:         Clifford W. Hall  
                  State Controller

DATE:         January 8, 1997

SUBJECT:      *Contract Modifications, Changes, Amendments, and Approval Routing*

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The purpose of this memorandum is to clarify circumstances under which I will approve contracts that contain modification provisions, i.e. change orders, that do not require review by the Attorney General in accordance with Fiscal Rule 3-1, page 7. All of the letters used to exercise options, order changes, etc. require state controller approval unless approval authority has been delegated.

Change order/modification policies for construction, controlled maintenance, and architect/engineer contracts written by the Department of Transportation (CDOT) or within the jurisdiction of the State Buildings Programs (SBP), Department of Personnel, are governed by separate policies approved by this office.

General. No disbursements may be made unless a commitment document has been approved by the controller or his designee and filed in the division of accounts and control. § 24-30-202(1) and (2), CRS (1988 and 1996 Supp.). Fiscal Rule 3-1 defines State Contract as a formal, legally binding agreement between two state agencies or one state agency and another party or an amendment to such agreement which ultimately results in the disbursement of funds. State Contracts and amendments to State Contracts (except for Interagency Agreements) require legal review by the Office of the Attorney General, as well as approval by the state controller. The general rule is that any modification to a contract that changes the scope of work or specifications, price or cost, time of performance, or other terms and conditions is an amendment requiring Attorney General review. This memorandum defines the scope of permissible modification provisions in State Contracts that may be approved by this office, use of which will not constitute "amendments" under the Fiscal Rules and will not require legal review by the Office of the Attorney General. Additionally, I will consider requests for delegation of State Controller authority to approve the option exercise, change order, task order, or other letters that are used consistent with this policy. The following subsections describe various types of contract modifications and how they may be used under this policy. The term "amendment," as used in this memorandum, refers to a contract modification requiring legal review by the Attorney General.

Options. A right in a State Contract granted the agency to continue or elect additional contract performance at a specified price or cost ceiling, exercisable during a specific period of time during contract performance, with no change to contract specifications/scope of performance and terms and conditions, is an option. The exercise of options in State Contracts consistent with this policy are not treated as amendments. Options may be exercised through the written procedure and form identified in the State Contract and previously reviewed by the Attorney General. Option exercises may not include changes in contract specifications, scope of performance, and other terms and conditions. The contract must contain a sample of the written

option exercise instrument as an attachment or exhibit, and that letter or memorandum must bear the signature block of the authorized agency official and the Controller or his designee. Modifications that purport to exercise options and simultaneously change contract terms or scope of work must be processed as amendments and receive legal review. (Model Option Provisions at Attachment A)

Change Orders. State Contracts may contain a provision allowing the State to unilaterally make "changes" to the specifications or scope/statement of work in exchange for an adjustment of price. However, unilateral or bilateral changes may only be made by contract amendment unless the conditions of this memorandum are satisfied. State Contract provisions permitting the issuance of a bilateral change order letter instead of an amendment, without the necessity of Attorney General review (and state controller approval, if delegated), are permitted under the following circumstances:

1. Changes are permitted only to specifications or scope/statement of work. Changes to terms and conditions, such as warranty, indemnification, payment and contract type, liability limitations, indemnifications, and other provisions defining the basic contractual relationship between the parties are not permitted using bilateral change order letters.
2. Unless changes will result in "no cost" to the State, as reflected on the change order, the State Contract must define the unit prices to be paid for the goods or services, incorporated by an exhibit or attachment, such as the incorporation by reference of an offeror's proposal holding unit prices firm for a specified period of time. Alternatively, change order pricing may be based on established catalog prices generally extended to the public or prices set by law or regulation (e.g. utilities rates). The contract must adequately define this pricing methodology.
3. Change orders may not be used to settle disputes, such as those arising out of claims of delay or State changes to contract requirements. Such settlements must be processed by contract amendment, contain a suitable release, and be reviewed by the office of the Attorney General.
4. Change orders may only be used for work that is "in scope"--changes to specifications and scope/statements of work that are in the general scope of the contract, i.e. reasonably anticipated by offerors who may have participated in the competition or objectively within the scope of any sole source approval.
5. The State Contract must define this change order procedure and include as an exhibit/attachment the written instrument used to issue the change order. The model written instrument must bear the signature block of the authorized agency official, the contractor, and the state controller or his designee. The change order letter shall refer to the basic contract by date, parties, and routing number and include a detailed description of the changes to the contract, the price or cost ceiling adjustment, the effective date, and (where applicable) the time within which the changed work must be done. The letters must be cumulatively numbered, indicating the number of previous such modifications to the contract.
6. Change orders may not be used to modify the contract term of performance.
7. Change orders that change the specifications or scope/statement of work in a personal services contract must be approved by the Department of Personnel.

(Model Change Order Provisions at Attachment B)

Task Order Contracts. A task order contract is a master contract negotiated by an agency that sets unit prices and rates for supplies, materials, and services for tasks that are later ordered under the contract as needed. An order placed consistent with the task order provisions is not an amendment. To be approved, task order contracts must, as a minimum, contain:

1. Fixed, negotiated rates, e.g. for labor hours, materials, supplies, indirect cost rates, overhead or "mark-up", and profit, or reference to publicly available catalog prices or prices set by law or regulation, for negotiating the price of the task;
2. A procedure that requires the contractor to submit a task proposal that details estimates of time, material, costs, etc., and a technical/cost evaluation of that task proposal by the agency prior to executing the task order;
3. Attachment of a model ordering document as an exhibit that bears the signature block of both parties, the price or cost ceiling for the work, a time for performance, a detailed description of the work or contract performance, and the signature block of the Controller or his designee;
4. Contractual description of the task order process, as well as a representation in the task order clause that, "[u]pon negotiation and acceptance of the task order, the contractor warrants that performance will be successfully completed within the time and price/cost identified in the task order."
5. A "not-to-exceed" amount for tasks ordered pursuant to the contract.
6. Cumulatively numbered documents, indicating the number of previous tasks ordered under the contract.

Adjustments to the "not-to-exceed" amount, if necessary, will be accomplished by contract amendment. (Model Task Order Provisions at Attachment C)

Funding Letters in Indefinite Delivery Contracts. An indefinite delivery contract provides for an indefinite quantity of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor.

- a. To insure that the contract is binding, a "minimum quantity" greater than a nominal amount is specified, not exceeding the amount the agency is fairly certain to order. The contract may specify maximum or minimum quantities that the government may place in subsequent orders. A "requirements contract" provides for filling all actual purchase requirements of the agency of specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor. The unit prices, statement/scope of work, and times for performance in both "minimum quantities" and "requirements" contracts are specified in the contract. The minimum encumbrance amount is either the minimum quantity (in minimum quantity contracts) or the estimated quantity (in requirements contracts) for the fiscal year. Procurement Rule R-24-106-101-04(b) says that as a minimum, the solicitation and contract should include:
  - (1) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

- (2) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;
  - (3) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and
  - (4) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids may be solicited.
- b. All State Contracts must have a maximum contract amount that can readily be determined. Fiscal Rule 3-1, page 4. Indefinite quantity contracts give agencies the flexibility to write contracts in which the contractor is obligated to perform above the minimum specified amount (estimated quantity contracts) or where the actual requirement exceeds the previous, reasonable estimates (requirements contracts). Consequently, the basic contract must specify the amount of available funds, which may initially be less than the final value of the contract as requirements are identified and satisfied. The contract must also notify contractors that the state's obligation under the contract is limited to the amount of funds identified in the contract. Letters which notify the contractor of adjustments in the level of funding in these types of contracts need not be processed as amendments.
- c. Such funding letters must reference the contract and the applicable paragraph, clearly notify the contractor of the amount available for funding, and bear the signature of the agency and the State Controller or his designee. Other than funding adjustments, the letter may not change estimates, minimum or maximum quantities, line item prices, or other terms and conditions of the contract. The letters must be cumulatively numbered, indicating the number of previous such modifications to the contract. A sample of the funding letter with signature blocks for the agency and the Controller or his designee must be attached to the contract.

(Model Indefinite Quantity/Funding Letter Provisions at Attachment D)

Grant and Subgrant Contracts. The change order letter procedure and model letter included at Attachment E may be used in State Contracts with political subdivisions and private entities who are eligible recipients of an agency's grant, subgrant, or similar program funds. That procedure is acceptable in program services contracts for health or social welfare benefits where: the volume of services being performed are directly proportional to the level of funding, e.g. "purchased services" contracts; modifications to the services are easily expressed in levels of services for eligible recipients; and contract administration is substantially accomplished through approval and monitoring of an approved budget by the contractor. The change order letter procedure at Attachment E is suitable only for contracts with political subdivisions of the State or nonprofit, public service delivery organizations; contracts that contemplate commercial services such as software programming support, consulting, or other commercial services are not appropriate for use of Attachment E. Agencies may, however, use the other modification provisions in this letter for commercial transactions to the extent that those policies are followed.

To the extent that contracts are within the scope of permissible use of this modified change order letter procedure, agencies may also modify their renewal letters to reflect modification of level of services and budgets for ensuing fiscal years. All such change order letter and renewal procedures will include substantially the language in Attachment E and will include a model change order or renewal letter as an exhibit to the contract that refers to the basic contract and specifies the effective date, funding change,

nature of any adjustment or modification of services, and amendments to the contractor's budget, if applicable. The change order/renewal notification shall bear the signature of both parties and the Controller or his designee.

(Model Grant/Subgrant Change Order Provisions at Attachment E)

Controller Authority. The policies in this memorandum only define permissible procedures in State Contracts for later modifying the contract without the necessity of legal review of an "amendment" by the Office of the Attorney General, or approval by the State Controller where authority has been delegated. All modifications described in this memorandum--except no-cost change orders described above--require approval by the Controller or his designee on the face of the document that exercises the option or renewal, orders the change, orders the work under a task order contract, or adjusts available funding in indefinite delivery contracts. All State Contract provisions and clauses that establish these streamlined modification procedures will include the following clause:

The [change order][option exercise] [renewal] [task order] [funding] letter shall not be valid until approved by the state controller or such assistant as he may designate.

Model Provisions. Model provisions for each of these modification methods are attached.

These policies do not change requirements for approval by other central approving agencies, other than the Office of the Attorney General, and the State Controller where authority has been delegated to agency fiscal officer to approve the letters described in this policy. The modification provisions described in this memorandum have two things in common: they are all defined in the basic contract and reviewed by the Attorney General; and they all either involve no change to contract price/cost, or the pricing is based on previously agreed rates and prices that are incorporated in the basic contract.

#### Attachments

- A. Options Clauses/Exercise Letters
- B. Bilateral Change Order Clauses/Letters
- C. Task Order Clause/Ordering Letters
- D. Indefinite Quantity Clauses/Funding Letters
- E. Grant/Subgrant Change Order Letters

## OPTION CLAUSES AND OPTION EXERCISE LETTERS

### General Comments

Multiyear procurements may be contracted for in several ways. A contract for one year with the option to "renew" or "extend" has the effect of renewing or extending contract performance beyond the original contract performance period, but it requires an affirmative act by the state to exercise the option and bind the contractor to performance in future years or option periods. If the state fails to follow the contract procedure for exercising the option, the state loses the right to require performance beyond the original contract term.

By contrast, a multiyear contract can be written that obligates the state to pay for contract performance, subject only to availability of funds, over consecutive fiscal years. So long as the legislature appropriates the money, the state is obligated to pay the contractor for continued performance. Theoretically, this kind of a multiyear contract does not require an option provision. However, by agreeing to multiyear contracts, which typically do not include termination for convenience provisions, the state forfeits an important right: the right to make a discretionary decision about whether to permit the contractor to continue performance for an additional period of time. The choice between an "extendable" or "renewable" contract, versus a multiyear contract subject only to appropriation of funds, must be carefully considered. For example, what is the state getting in return for waiving its rights to discontinue performance regardless of funding availability? If you choose a multiyear contract, because the state is getting something of value in return, or there is no other commercially feasible way to structure the contract, normally an annual option exercise letter would not be necessary.

These model provisions are written as "options," preserving the right of the state to decide whether to continue performance by a contractor. Further, these options can be written to permit, not only more performance time, but also more services or supplies. So long as these options are written to comply with the controller's memorandum, these letters do not have to be reviewed by the Attorney General, although they still require approval by the Controller or his designee.

Here are two model option provisions:

### Paragraph # - Option for Increased Quantity

The state may increase the quantity of supplies [services] called for in [paragraph \_\_\_] [the schedule] [Exhibit \_\_\_] at the unit price specified therein. The state may exercise the option by written notice to the contractor deposited in the mail [within \_\_\_ days of execution of the contract] [not later than 90 days prior to the expiration of the contract, including any of its extension terms,] using a form substantially equivalent to Exhibit \_\_\_. [Delivery] [performance] of the added [items] [services] shall continue at the same rate and under the same terms as the like items called for under the contract. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.



**Paragraph # - Option to Extend Services**

The state may require continued performance for a period of [one year] of any services within the limits and at the rates specified in the contract. The state may exercise the option by written notice to the contractor deposited in the mail before the end of the performance period of the contract using a form substantially equivalent to Exhibit \_\_\_\_\_. [The state shall give the contractor \_\_\_\_\_ days preliminary written notice of its intent to execute the option. Preliminary notice does not commit the state to an extension.] If the state exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**SAMPLE OPTION EXERCISE LETTER**

**Exhibit** \_\_\_\_\_

Date: \_\_\_\_\_

TO: [Contractor]  
[Address]

SUBJ: Option Exercise Letter

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, FAA ADA \_\_\_\_\_, between the State of Colorado Department of \_\_\_\_\_ (\_\_\_\_\_ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the state hereby exercises the option for

[maintenance services for three additional 486 CPUs at the prices specified in Exhibit \_\_\_\_]; or

[an additional one year's performance period at the (cost) (price) specified in paragraph \_\_\_\_.]

The maximum amount payable by the State in Paragraph \_\_\_\_ is (increased/decreased) by (\$ amount of change) to a new total of (\$\_\_\_\_\_). The first sentence in Paragraph \_\_\_\_ is hereby modified accordingly.

State of Colorado:  
Roy Romer, Governor

For the Executive Director  
Colorado Department of \_\_\_\_\_

\_\_\_\_\_  
Title

APPROVALS:

FOR THE STATE CONTROLLER  
Clifford W. Hall

By: \_\_\_\_\_  
For \_\_\_\_\_ Division

By: \_\_\_\_\_  
State Controller or Designee

## CHANGE ORDER CLAUSES AND LETTER

### General Comments

Without a "changes" clause, the right of the state to direct changes in statement/scope of work or specifications is dependent on the willingness of the contractor to agree to amend the contract. These "changes" clauses give the state a limited right to direct changes to the contract that are "within the scope of the contract." Of course, the contractor would be entitled to a price adjustment if such a change is ordered. Because the state would be committing to a payment of money by exercising this right, use of a unilateral change would require review by the Attorney General and approval by the Controller.

These sample provisions give the state the right to direct changes, and also sets up an informal "bilateral" (meaning both parties agree and sign the letter) change procedure that does not have to be treated as a formal contract amendment. So long as the bilateral change satisfies the requirements in the Controller's policy, these letters do not have to be reviewed by the Attorney General. One key restriction, one that may limit the use of this modification procedure in many commercial contracts, is a requirement that the changes be pre-priced.

Here are examples of changes clauses:

### Paragraph # - Changes Clause (Procurement Rule R-24-106-102-02).

- (a) **Changes Clause in Fixed-Price Contracts.** In fixed-price contracts, the following clause may be inserted:
- (i) **Change Order.** By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
- (A) [drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith] [description of services to be performed];
- (B) method of shipment or packing [time of performance of services];  
or
- (C) place of delivery or performance of services.
- (ii) **Adjustments of Price or Time or Performance.** If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract. [Procurement Rule R-24-106-101-05]

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

- (iii) **Time Period for Claim.** Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.
- (iv) **Claim Barred After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

#### **Paragraph # - Bilateral Change Order Letters**

Bilateral changes within the general scope of the contract, as defined in paragraph \_\_\_\_ above, may be executed using the simplified change order letter process described in this paragraph and the model letter attached as exhibit \_\_\_\_\_ for any of the following reasons:

- a. Where the agreed changes result in no adjustment to the [price] [ceiling cost], delivery schedule, or other terms and conditions of the contract. The change letter will contain a mutual release of claims for adjustment of price, cost, time for performance, or other terms and conditions, whether based on costs of changed work or direct or indirect impacts on unchanged work, as a result of the change; or
- b. Where the changes to the contract are priced based on the unit prices to be paid for the goods or services in [Exhibit \_\_\_\_] [Attachment \_\_\_\_] of the contract; or
- c. Where the changes to the contract are priced based on established catalog prices generally extended to the public.

The written change letter will be substantially in the form at Exhibit \_\_\_\_\_, must bear the signature of the authorized agency official, the contractor, and--except where the parties agree on the face of the change order that no price/cost, schedule, or other contract adjustments are due the contractor--the state controller or his designee. The change order letter shall refer to the basic contract and include a detailed description of the changes to the contract, the price or cost ceiling adjustment, the effective date, and (where applicable) the time within which the changed work must be done.

Other bilateral modifications to this contract not within the scope of this paragraph must be executed by formal amendment to the contract, approved in accordance with state law.

**SAMPLE BILATERAL CHANGE ORDER LETTER**

**Exhibit** \_\_\_\_\_

Date: \_\_\_\_\_

State Fiscal Year 1997-98

Bilateral Change Order Letter No. \_\_\_\_\_

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, FAA ADA \_\_\_\_\_, between the State of Colorado Department of \_\_\_\_\_ (\_\_\_\_\_ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Services/Supplies

Exhibit A, Schedule of Equipment for Maintenance, is amended by adding two (2) 486 Central Processing Units, serial numbers \_\_\_\_\_ and \_\_\_\_\_.

Price/Cost

The maximum amount payable by the State for \_\_\_\_\_ [service] [supply] \_\_\_\_\_ in Paragraph \_\_\_\_\_ is (increased/decreased) by (\$ amount of change) to a new total of (\$ \_\_\_\_\_), based on the unit pricing schedule at Exhibit \_\_\_\_\_. The first sentence in Paragraph \_\_\_\_\_ is hereby modified accordingly;

OR

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to [price] [cost ceiling], delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work. Controller approval of this "no cost" change is not required. \_\_\_\_\_ Contractor initials. \_\_\_\_\_ Agency initials.

This change to the contract is intended to be effective as of \_\_\_\_\_, but, except with respect to "no cost" changes identified above, in no event shall it be deemed valid until it shall have been approved by the state controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before \_\_\_\_\_ 19\_\_\_\_\_.

Contractor Name:

State of Colorado:

Roy Romer, Governor

Attachment B

Page 3

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
For the Executive Director  
Colorado Department of \_\_\_\_\_

APPROVALS:

FOR THE STATE CONTROLLER  
Clifford W. Hall

By: \_\_\_\_\_  
For \_\_\_\_\_ Division

By: \_\_\_\_\_  
State Controller or Designee

## TASK ORDER CLAUSES AND ORDERING LETTER

### General Comments

Task order contracts let parties agree to the basic terms and conditions of the contract, including the pricing methodology and rates to be used in pricing later tasks. Then, as the specific tasks are identified, the parties negotiate the basic task scope and price. These kinds of contracts are useful when the specific work has not been defined, but a requirement is certain, and the parties are trying to avoid time consuming contract negotiation every time a task is identified.

The Controller's policy allows use of these contracts and execution of specific task orders (without Attorney General review) under certain circumstances. Most notably, the basic pricing rates must be identified in the original contract. Even if your contract cannot satisfy that requirement, though, these contracts can be useful tools in managing complex contracts with changing requirements. If the Controller's policies cannot be satisfied though, tasks would have to be issued using normal amendment procedures.

The following are essential provisions in task order contracts which would not require treatment as an amendment each time a task was issued by the agency:

### Paragraph # - Task Orders

Tasks will be defined, negotiated, and ordered from time to time by agreement of the parties based on the rates in Appendix \_\_\_\_, such task orders hereinafter to as "orders". Amendments to terms and conditions, the ceiling amounts specified herein for task orders, or other provisions of the contract other than as specified in this paragraph shall be by formal amendment processed and executed in compliance with the Fiscal Rules and signed by the state controller or his designee. Orders processed in accordance with this paragraph to add work shall occur as follows:

a. If the state has need of services, and the contractor agrees to provide those services, the state will provide a definition of the requirement to the contractor. The contractor will propose a [price] [cost ceiling] for the task using the rates agreed to and attached as Appendix \_\_\_\_ [attachment \_\_\_\_ to the contractor's proposal]. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost priced by the parties in the rates attached as Appendix \_\_\_\_, as well as the proposed time for performance, in a form acceptable to the state.

b. Upon negotiation and agreement by the parties about the scope of the task, the [price] [cost ceiling], and the time for performance, the task order letter attached as Appendix \_\_\_\_ shall be prepared and signed by the parties.

c. Performance of the work, and payment for that work, shall be governed by the standards and procedures set forth in this contract. Upon negotiation and acceptance of the task order, the contractor warrants that performance will be successfully completed within the time and [price] [cost ceiling] identified in the task order. The state's financial commitment memorialized by the task order letter shall not be effective until signed by the Controller or such assistant as he may designate.

d. The cumulative "not to exceed" amount for all additive tasks under this paragraph shall be \$50,000. The state's financial obligation is limited by this amount, and the contractor shall accept no orders which result in a cumulative contract value which exceeds the "not to exceed" value. Amendments to the "not to exceed" amount, and any other modification or amendment to the terms and conditions of this contract other than as specified in this paragraph, must be in writing, executed in accordance with the State Fiscal Rules, and be approved by the Controller or his designee.



**SAMPLE TASK ORDER LETTER**

**Exhibit** \_\_\_\_\_

Date: \_\_\_\_\_

State Fiscal Year 1997-98

Task Order Letter No. \_\_\_\_\_

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, FAA ADA \_\_\_\_\_, between the State of Colorado Department of \_\_\_\_\_ (\_\_\_\_\_ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Task Order Description

The contractor shall perform the \_\_\_\_\_ task in accordance with [the following specifications/statement of work] [the contractor's task order proposal dated \_\_\_\_\_, as amended by amended task order proposal dated \_\_\_\_\_, both of which are hereby incorporated by reference].

Price/Cost

The [price] [maximum amount payable by the State] for \_\_\_\_\_ [service] [supply] \_\_\_\_\_ described above \_\_\_\_\_ is (\$ \_\_\_\_\_) for a new contract total of (\$ \_\_\_\_\_).

Performance Period.

The contractor will complete the performance in this task order by \_\_\_\_\_ [date].

This task order is executed pursuant to paragraph \_\_\_\_\_ of the original contract. The parties agree that all work shall be performed according to the standards and terms set forth in the original contract. In the event of any conflict or inconsistency between this amendment and the original contract, such conflict, inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original contract, attachments/exhibits to the original contract, this task order letter, attachments/exhibits to this task order letter.

This task order is effective as of \_\_\_\_\_. In no event shall it be deemed valid until it shall have been approved by the state controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before \_\_\_\_\_ 19\_\_\_\_.

Attachment C

Page 3

Contractor Name: \_\_\_\_\_

State of Colorado:  
Roy Romer, Governor

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
For the Executive Director  
Colorado Department of \_\_\_\_\_

APPROVALS:

FOR THE STATE CONTROLLER  
Clifford W. Hall

By: \_\_\_\_\_  
For \_\_\_\_\_ Division

By: \_\_\_\_\_  
State Controller or Designee

## INDEFINITE QUANTITY CONTRACT CLAUSES/FUNDING LETTER

### Comments

Many of these modification concepts are related. Indefinite Quantity and Requirements contracts are two types of a broad category of contracts known as "indefinite delivery" contracts. These kinds of contracts obligate the contractor to satisfy contract requirements that are not clear in terms of how much is needed.

The "requirements contract" defines the obligation in terms of all requirements for a service or supply that the state may have. In this agreement, the consideration for the contractor's promise to satisfy all state requirements is the state's promise--not only to pay at specified rates--but also the state's promise to place all of its orders to satisfy a requirement through this particular contractor. An example would be a state contract with XYZ Computer Maintenance, Inc. to order all department requirements for computer maintenance through XYZ at maintenance prices/rates set in the contract. The state would usually get better prices in this kind of contract. The "downside" is: the state would breach the contract if the department contracted with another vendor for these services during the life of the contract.

The other kind of indefinite delivery contract, and the kind that the model provisions are based on, is the "indefinite quantity" contract. This gives the department or agency flexibility to change the amount of services at a specified price or rate, without promising to satisfy all of its requirements through one vendor. In this kind of a contract, in order to make it binding on the contractor, a commercially reasonable (not nominal), minimum order is specified in the contract. Usually the contractor also has a ceiling amount that represents the maximum order. Often, the contract also contains ordering limits, such as a minimum order or maximum order that could be placed at any one time. In this kind of contract, the state has no obligation to order any quantities in excess of the minimum. In the computer maintenance example, the contract might order a minimum of 30 service calls in a fiscal year, with a maximum order available of 100 service calls, at \$50.00 per call. The contract also might provide that the contractor would not be required to honor more than 5 calls in any single day.

Sample indefinite quantity clauses follow. The purpose of the funding letter is to notify the contractor how much funding has been made available to satisfy orders within the minimum and maximum quantities specified in the contract. In the computer maintenance example, at the time of execution \$1,500 would be encumbered initially to cover the minimum quantity. Periodically during performance, more money would be encumbered to cover estimated orders.

**Paragraph # - Indefinite Quantity Contract.**

This is an indefinite quantity contract for the [services] [supplies] specified herein. Any estimates of quantities of supplies or services in the solicitation or otherwise made known to the contractor are estimates only and not purchased by this contract. The state will order, and the contractor agrees to perform, services [for maintenance of \_\_\_\_ personal computers during the contract period] [for the minimum quantity specified in the solicitation]. The per unit price for maintenance services is [\$\_\_\_\_ per machine per visit] [specified in Exhibit \_\_\_\_] plus the cost of materials, not exceeding \$\_\_\_\_ unless otherwise approved in advance by the state. The state has the right, through the representative designated in paragraph \_\_\_\_ of this contract, to order service for additional machines at [the same rate] [rate specified in Exhibit \_\_\_\_], up to a maximum quantity of \_\_\_\_ service calls, in accordance with the ordering provisions of this contract during its period of performance. [The contractor is not obligated to honor maintenance services orders in increments of less than \_\_\_\_ machines per order, greater than \_\_\_\_ machines per order, or a combination of orders within \_\_\_\_ days that exceeds \_\_\_\_ machines.] All orders are subject to the terms of this contract.

Funds are available and encumbered in the amount of \_\_\_\_\_. The contractor shall not accept any orders which create a financial obligation of the state exceeding the amount of available funds specified herein. [Additionally, the contractor shall notify the representative when state commitments, paid and unpaid, are within 10% of the amount of funds available.] The state is not liable beyond the amount of funds specified as available in this paragraph.

The state may from time to time, in a form substantially equivalent to that in Exhibit \_\_\_\_, and bearing the approval of the state controller or his designee, make more funds available on this contract. The funds availability letter shall not be deemed valid until it shall have been approved by the state controller or such assistant as he may designate.

**INDEFINITE QUANTITY CONTRACT FUNDING LETTER**

**Exhibit** \_\_\_\_\_

Date: \_\_\_\_\_

TO: [Contractor]

SUBJ: Indefinite Quantity Funding Letter No. \_\_\_\_\_

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, FAA ADA \_\_\_\_\_, between the State of Colorado Department of \_\_\_\_\_ (\_\_\_\_\_ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned commits the following funds to the contract:

The amount of funds available and specified in paragraph \_\_\_\_\_ is (increased/decreased) by (\$ amount of change) to a new total funds available of (\$\_\_\_\_\_) to satisfy orders under the contract. Paragraph \_\_\_\_\_ is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the state controller or such assistant as he may designate.

State of Colorado:  
Roy Romer, Governor

By: \_\_\_\_\_  
For the Executive Director  
Department of \_\_\_\_\_

APPROVALS:

FOR THE STATE CONTROLLER  
Clifford W. Hall

By: \_\_\_\_\_  
For \_\_\_\_\_ Division

By: \_\_\_\_\_  
State Controller or Designee

## **GRANT/SUBGRANT CHANGE ORDER CLAUSE AND LETTER**

**Comments.** This clause/change order letter procedure has been in use since 1993 for grant/subgrant contracts (e.g. programs with health or social welfare benefit contracts) with political subdivisions and nonprofit organizations. The 1993 edition of the Contract Procedures Manual described the development of the clause. The clause was approved for use to alleviate the problems of programs who historically used “blanket encumbrances,” a waiver to the individual encumbrance rule that was sometimes granted to programs having multiple contracts where factors not under the parties’ control made it impossible to estimate the encumbrance for each contract. Because blanket encumbrances were sometimes misused and prejudiced the ability of the State to keep track of its ongoing expenditures, these change order clause/letter provisions were developed to enable the program to encumber the maximum State liability but use a simplified amendment procedure/format (a “change order letter”) to adjust the contract amounts up and down. Note that service modifications are permitted in these change orders and, unlike other change order letters described in this State Controller policy, do not have to be based on agreed unit prices incorporated in the basic contract. Use of these clauses through is restricted to grant-type programs with nonprofit organizations and political subdivision; these provisions are not appropriate for personal services or supply contracts.

### **Paragraph # - Change Order Letter.**

The State may prospectively increase or decrease the amount payable under this Contract through a "Change Order Letter," approved by the state controller or his designee, in the form attached hereto as Exhibit \_\_, subject to the following conditions:

- a. The Change Order Letter ("Letter") shall include the following:
  - (1) Identification of contract by contract number and affected paragraph number(s);
  - (2) Types of services or programs increased or decreased and the new level of each service or program;
  - (3) Amount of the increase or decrease in the level of funding for each service or program and the total;
  - (4) Intended effective date of the funding change;
  - (5) A provision stating that the Change shall not be valid until approved by the state controller or such assistant as he may designate;
- b. Upon proper execution and approval, such letter shall become an amendment to this Contract and, except for the General and Special Provisions of the Contract, the letter shall supersede the Contract in the event of a conflict between the two. It is understood and agreed that the letter may be used only for increased or decreased funding, and corresponding adjustments to service levels and any budget line items.

c. If the Contractor agrees to and accepts the change, the Contractor shall execute and return the letter to the State by the date indicated in the letter. In the event the Contractor does not accept the change, or fails to timely return the executed letter, the State may, upon notice to Contractor, terminate this Contract effective at any time after twenty (20) days following the return deadline specified in the letter. Such notice shall specify the effective date of termination. In the event of termination, the parties shall not be relieved of their obligations up to the effective date of termination.

d. Increases or decreases in the level of contractual funding made through the letter process during the term of this contract may be made under the following circumstances:

(1) If necessary to fully utilize Colorado State appropriations and/or non-appropriated federal grant awards.

(2) Adjustments to reflect current year expenditures.

(3) Supplemental appropriations or non-appropriated federal funding changes resulting in an increase or decrease in the amounts originally budgeted and available for the purposes of this program.

(4) Closure of programs and/or termination of related contracts.

(5) Delay or difficulty in implementing new programs or services.

(6) Other special circumstances as deemed appropriate by the State.

**SAMPLE CHANGE ORDER LETTER IN GRANT/SUBGRANT CONTRACTS**

**Exhibit** \_\_\_\_\_

Date: \_\_\_\_\_

State Fiscal Year 1997-98

Change Order Letter No. \_\_\_\_\_

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, FAA ADA \_\_\_\_\_, between the State of Colorado Department of \_\_\_\_\_ (\_\_\_\_\_ Division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the maximum amount payable by the State for non-medicaid eligible services in Paragraph 24 is (increased/decreased) by (\$ amount of change) to a new total of (\$\_\_\_\_\_). The first sentence in Paragraph 24 is hereby modified accordingly.

The services affected by this (increased/decreased) are modified as follows:

The Budget is revised accordingly, as set forth in the Revised Budget, Attachment E (1,2,3), attached and incorporated herein by reference.

This amendment to the contract is intended to be effective as of \_\_\_\_\_, but in no event shall it be deemed valid until it shall have been approved by the state controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before \_\_\_\_\_ 19\_\_\_\_.

Contractor Name:

State of Colorado:  
Roy Romer, Governor

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
For the Executive Director  
Colorado Department of \_\_\_\_\_

APPROVALS:

FOR THE STATE CONTROLLER  
Clifford W. Hall

By: \_\_\_\_\_  
For \_\_\_\_\_ Division

By: \_\_\_\_\_  
State Controller or Designee



## *SPECIAL PROVISIONS POLICY*

State Fiscal Rule 3-1 requires all state contracts to contain Special Provisions as set forth in Appendix A of that rule. As you recall, state agencies may purchase these forms from Juniper Valley. Several state agencies have inquired whether the language of the Special Provisions can be keyed into a word processor for subsequent incorporation into state contracts. Yes, this may be accomplished however, you must be extremely careful to ensure that the exact language is correctly keyed, including comma's, periods, etc. No changes of any kind are authorized. For ease of review, the format of the Special Provisions must be as similar as possible to Appendix A. Also, the Special Provisions must continue to be the final pages of the contract.

In addition, if an agency is delegated to sign a contract on behalf of the state controller, the agency may change the signature block portion of the Special Provisions to coincide with the requirements of their delegation letter. Please refer to your delegation letter and the signature block you are required to use when signing on behalf of the state controller. Also, if a state agency has contracts where the legal review by the Attorney General has been waived by the state controller, the state agency may remove the Attorney General signature block and insert a signature block for the state agency pre-approved form contract reviewer.

## *ADVANCE PAYMENT POLICY*

1. It is the policy of the state controller that the state shall not make advance payments. Vendors of the state are expected to have adequate resources or working capital in order to provide goods and/or services to the state. An advance payment requires issuing a state warrant and accounting for the advance payment which incurs additional costs for the state. Further, an advance payment results in a loss of interest earnings for the state and the risk of loss of the funds advanced because of vendor bankruptcy. Should an advance payment be made, it potentially places the state in a difficult negotiating position with the vendor if the goods and/or services received are not adequate. This is because the state is unable to withhold payment pending resolution of the matter.
2. Notwithstanding this policy, it is accepted practice in some commercial transactions to make advance payments. In the limited instances set forth below, advance payments are authorized by the state controller. They include:
  - ♦ Purchase of services for annual maintenance of computers, copiers or other office equipment. Generally, in these instances, full payment is expected annually at the beginning of the term of the agreement.
  - ♦ Grants received by the state from the federal government that are awarded by the state to a subgrantee. Federal grants often require monthly or quarterly advances to subgrantees.
  - ♦ Services provided by entertainers, speakers or for seminars. For entertainers or speakers it is customary to advance a portion of the fee prior to the engagement date. For seminars, payment of the entire fee may be expected upon registering for the seminar.
  - ♦ Annual payments made for software license agreements. Generally, such payments are required at the beginning of the contract term.
3. While the need for an advance payment in an interagency agreement should be infrequent, there may be circumstances when it is warranted. In such an instance the risk of loss of funds to the state is practically non-existent and a process exists to resolve disputes. Therefore, advances on interagency agreements may be made if appropriate.
4. Advance payments may be appropriate in other instances based upon the specific facts of the situation. In all such instances a demonstrated need must be documented to ensure the state's interests are adequately protected. If the amount of the advance payment requested is substantial and/or for an extended period of time, financial statements may be requested from the vendor. Generally, an advance payment will not be approved if the contract was made as a result of a competitive solicitation and no mention of an advance payment was in the solicitation.
5. **Except as noted under #2 and #3 above, advance payments required by a state contract must have the prior written approval of the state controller or a delegate authorized by the state controller.**

## *CONTRACT ROUTING WAIVER POLICY*

### PURPOSE, BASIS, SCOPE AND PRIORITY OF REVIEW

#### Purpose

A significant number of contracts based on a single form do not require routing for central approvals each year (State Personnel, State Purchasing, Attorney General or State Controller). The required oversight may be performed by an analysis of the form of contract(s) used for all expenditures of a single type and how the agency uses such contracts. Through these guidelines, the Colorado Central Approval Task Force (CATF) will identify eligible contract types for streamlining and implement procedures to remove qualifying individual contracts from the external routing process. This will free additional time for central approvers and agency users to focus greater attention on more important matters in the entire state contracting process (e.g., continuing education, training, standardization, risk-benefit analysis, unique problem solving, etc.). A primary purpose of the conditions described in these Guidelines is to retain at the agency level the legislative intent for consistency in the oversight of fiscal commitments; the efficiency intended by waived central oversight does not eliminate the need for consistency in applying contract requirements. **For purposes of Personnel waiver, “contract” includes Purchase Orders.**

#### Basis

State Personnel authority is found at 24-50-509, CRS and associated rules. State Purchasing authority is at 24-102-202, CRS and associated rules. The state controller authority, which also governs the Attorney General’s contract review functions, derives from 24-30-202, CRS and associated rules.

PERSONNEL	The State Personnel Director determines whether contracts or PO’s for services are permissible under State civil service laws.
PURCHASING	The State Purchasing Director verifies that proper procedures have been followed in selecting which vendor to use.
AG	The Attorney General reviews contracts for the state controller to verify that minimum legal requirements have been met.
CONTROLLER	The state controller determines if the proposed commitment to pay money is properly documented and whether or not available funds have been properly set aside to meet the proposed commitment.

#### Scope

This document describes the procedures for removing multiple contracts of the same type from central routing and oversight. The procedures will be known as “Routing Waiver Guidelines.”

These Guidelines apply only to “grants” and “services” contracts, as defined below. These Guidelines deal only with the requirement to route each contract of the same type and do not address delegations of authority, which are treated separately by each central approval official. **Current delegations are unaltered by this waiver process; agencies may request a waiver for each contract form for those approvals not already delegated.** For example, full Controller delegation does not eliminate required legal review. That step may be waived through this process. All legal requirements for the selection and use of contractors must be met before a Routing Waiver may be obtained. All State programs presently operating under waivers will be required to re-apply for a waiver under these Guidelines.

### Priority of Review

High volume, annually recurring grants and purchased services contracts with identical fill-in-the-blank forms will be given highest priority. The greater the potential variance among individual contracts, the lower the priority. Therefore, personal services and professional services will generally be considered after grants and purchased services contracts.

## **CONTRACT TYPE DEFINITIONS**

These definitions are solely for the purpose of assisting the CATF in its efforts to prioritize requests for waiver of contract routing. They are not intended as substitutes for statutes or rules on the subject. Each approving agency will apply its own governing laws in deciding whether or not to approve a waiver. CATF members may re-classify your contract type in order to properly apply the law and prioritize the review of waiver requests. For example, if a personal service is erroneously characterized in the application as a purchased service, the State Personnel Director is required to analyze the request under the personal services statutes, not the purchased services statutes. This does not mean a waiver can not be granted. It simply means that State Personnel must apply the correct law in evaluating the waiver request, and the entire CATF may give the contract a lower priority for completion than true grants and purchased services contracts. Please call us with questions about what type of contract you have.

**Grant:** A distribution of money by the state, usually by an agency “program” set up for the purpose, where either the authorizing law (state or federal) uses the term “grant” or the intent of the program is to distribute money to encourage certain described activity benefiting the public or defined groups as a whole (e.g., Community Development Block Grant contract to build flood control improvements for a community consisting of 51% or more low and moderate income people). Funds are not spent directly on service delivery to the target group. Grant recipients are typically public entities (governments) exempt from personnel and procurement laws, but may occasionally be private parties selected either by application or proposal for specific projects, or by formula distribution specified in law. In some cases, a program may have both public and private grantees. Private grantees are typically non-profit entities.

**Purchased Services:** A distribution of money by the State, usually by an agency “program” set up for the purpose, which is intended to deliver benefits directly to a specified group of people (third parties) as defined in law, on a unit, per day or other formula basis (e.g., alcohol and drug

abuse treatment at \$ X per client hour for convicted drunk drivers). Federal use of the term “grant” is not the determining factor as to whether the contract is a grant or a purchased service. The term does not include services to persons in the legal or physical custody of the state. Purchased services contractors may be either: (1) public entities (governments); or (2) private non-profit parties licensed, certified, or otherwise authorized by law to provide such services, selected by competitive requests for proposals to serve the specified population of individuals.

**Personal Services:** A distribution of money by the state to acquire a benefit directly for the state in carrying out its operations (e.g., janitorial services or private consulting expertise to the state in implementing state programs). The term includes acquisition of services for the benefit of persons in the state's legal or physical custody (e.g., community corrections). Usually, although not always, there is no formal agency “program”; the contracted services benefit the department, division or institution as a whole. Contractors are generally private for-profit entities selected by competitive sealed bidding or competitive requests for proposals to provide something of value directly to the state. In some cases public entities may provide personal services to the state (e.g., community corrections). The benefit is primarily in the rendering of the service itself, whether or not the contract contemplates a specific deliverable or deliverables at the end. The term does not include construction services.

**Professional Services:** A distribution of money by the state to acquire directly for state use the personal services of licensed professionals, such as architects, accountants, doctors, lawyers, engineers, etc. The relationship may be pure personal services (e.g., an expert witness), or it may include both a deliverable product and personal services (e.g., a building design and the assistance to the owner in administering the construction contract to build it). Contractors are selected by requests for qualifications or proposals, pursuant to which Qualifications are, by law, given some form of preference over price.

**Construction Services:** A distribution of money by the state to demolish or construct any real property improvement. The term does not include leases involving tenant finish by the landlord. The primary purpose of the contract is to retain private expertise and equipment necessary to achieve a finished product (e.g., a new building). Contractors are selected only by competitive sealed bidding.

## GENERAL CONDITIONS OF APPROVAL

The following Conditions apply to all waivers granted:

1. All waivers granted in prior years must be renewed pursuant to these Guidelines. Once a waiver is granted under this new process it remains valid until there is a change in the facts or the law related to the program or contract. If such changes occur, you must identify them by resubmitting your application and receiving renewed authority to proceed with the next ensuing round or use of contracts or amendments. General state law or policy changes required by any or all of the central approvers and affecting large numbers of contracts will be handled on a case by case basis. It is the CATF policy to handle such changes by simply modifying the waiver conditions and redistributing them; we will minimize to the degree possible contract changes or waiver renewals.

2. **Amendments:** Approval does not cover subsequent amendments unless the form and circumstances of the amendment are approved as part of the original contract approval.
  - A. Where the need for mid-contract changes is predictable, consult the Colorado Contract Procedures and Management Manual or call the AG's Office for guidance on how to incorporate a streamlined amendment form into your contract at the outset. Advance approval of amendment forms is limited to narrow circumstances. Before wasting time drafting such a contract, call first with questions about whether or not your contract qualifies.
  - B. A standard amendment form may also be waived after the waived contracts are in place. Simply send a request memorandum briefly explaining the need and attaching both the form amendment and a copy of Part I of your approved contract waiver application. If Part II is inaccurate as a result of such changes, please submit a revised Part II as necessary.
3. The waiver covers only the named program or contract type and approved contract form. Changes to an approved contract form in future years should be handled by submitting a memorandum explaining the change and attaching both the new pages highlighting language changes and a copy of Part I of your approved contract waiver application. If Part II is inaccurate as a result of such changes, please submit a revised Part II as necessary.
4. The waiver is subject to the Special Conditions of particular approving officials.
5. Only the state controller may grant a waiver of legal review, not the Attorney General. Approval of the Attorney General is advice to the state controller and does not authorize anything independent of action by the state controller.
6. **NO ONE EXCEPT AN AUTHORIZED STATE ATTORNEY MAY SIGN A CONTRACT ON THE LINE RESERVED FOR THE ATTORNEY GENERAL'S APPROVAL.** That line must be left blank for waived contracts. Agencies may use the designated AG approval line for their own internal approval processes, or for any contract reviewer approval required by the state controller as part of the waiver, by removing the "Attorney General" reference and substituting their own heading. Remember, a legal review for the Attorney General is always required for state contracts unless the state controller himself grants a waiver of that requirement; only the state controller can waive Fiscal Rule requirements. Therefore, even if you have full Controller delegation, you must apply for a waiver of legal review in order to eliminate that step.
7. State law requires that every contract to pay money must be signed by or for the state controller. This necessarily means that the state controller's approval under this waiver procedure constitutes a limited delegation of his function to the named individual agency controller or equivalent. The state controller is waiving only two requirements: (1) that the contract have an AG legal review; and (2) that the contract be sent to the State Controller's Office for approval. The delegee must apply all other State Fiscal Rules to the

contract and, if approved, sign the contract for the state controller. The individual signing for the state controller may not also sign for the agency as a party to the contract; the person obligating the agency to pay money on a contract may not also countersign that commitment for the Controller. All requirements and liabilities applicable to the state controller are applicable to the delegee.

- 8 . It is each agency's responsibility to maintain current waiver files, including a fully signed copy of each individual contract for the retention period mandated by state law. You must file with each contract executed, pursuant to the waiver, a photocopy of the approved waiver Application form, the accompanying list of contractors to which the waiver applies, and a copy of the agency routing form showing required internal approvals. For proper record keeping and for your own protection, it is imperative that each contract file properly document required approvals. State agencies may use an internally developed form to document required internal approvals.
- 9 . "Programs" of grants, purchased services, or personal services to wards of the state (e.g., community corrections) may apply for waivers whenever they are ready. Other personal services, professional services, or construction services contracts of a general nature, which are used by an agency only when a specific need arises, must be coordinated and made consistent agency-wide before a waiver may be applied for. This means we will not entertain waivers for ten different ways of doing the same thing within one department or institution until the agency or institution as a whole demonstrates the need for each different type. Forms should be made consistent to the degree possible for similar types of services.
10. ALL CONTRACTS SHALL CONTAIN THE INDEPENDENT CONTRACTOR PROVISIONS REQUIRED BY STATE PERSONNEL DIRECTOR'S PROCEDURES. Submit with your waiver application a completed Certification of Personal Services Contracts form.

## **SPECIAL CONDITIONS**

Each waiver may pose unique concerns for one or more of the central approvers. In addition to the General Conditions of Approval applicable to all waivers, Special Conditions further define the scope or parameters within which the waiver must operate. If Special Conditions are in effect for your waiver, this will be noted in the approval returned to you and the full text of such Conditions will be attached to the approved waiver.

## **APPLICATION FORM AND INSTRUCTIONS**

The “application form” consists of two parts. Part I contains General Information and space for recording the requested and approved waivers. This is the document you will retain as evidence of all required approvals, along with the accompanying master list of all contracts covered by the waiver (see General Condition 8). Part II contains agency-supplied background information the CATF needs. Please use a separate word-processed document in order to fully respond to the items requested. Please include (repeat) the question or request at the beginning of each response. Please be thorough and complete all items in both Parts.

Send Waiver Applications To:

Contract Routing Waiver  
1525 Sherman Street, Room 250  
Denver, Colorado 80203

Attn: Phil Holtmann

**SUBMIT WAIVER APPLICATIONS THROUGH YOUR CCIT REPRESENTATIVE FOR COORDINATION.**



**APPLICATION FOR CONTRACT ROUTING WAIVER**  
**PART I**  
**GENERAL INFORMATION**

Instructions: Complete all items and submit one signed original and three copies, including four copies of the form of contract submitted for waiver. Submit one application for each contract form. Slight variations on a single basic program contract should be submitted under one application.

DEPARTMENT: \_\_\_\_\_ DIVISION OR INSTITUTION: \_\_\_\_\_ COFRS CODE (if applicable) \_  
 PROGRAM NAME: \_\_\_\_\_  
 NUMBER OF CONTRACTS TO BE WAIVED: \_\_\_\_\_ (Attach list of vendors. If variable, attach explanation, in lieu of list)  
 DATE OF REQUEST: \_\_\_\_\_ PREVIOUS WAIVER OF THIS CONTRACT? YES \_\_\_\_ NO \_\_\_\_  
 CONTRACT ADMINISTRATOR NAME (contact person): \_\_\_\_\_ PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 CONTRACT TYPE: \_\_\_\_\_  
 (Grant, Purchased Service, Personal Service, Professional Service) (See Guidelines for definitions)

**WAIVER REQUESTED**

(Mark all that apply by "X". DO NOT request a waiver for a function already fully delegated (e.g., Group II procurement agencies do not need a waiver from State Purchasing. There are no Personnel delegations.).

APPROVING OFFICER	CURRENT DELEGATIONS?	WAIVERS REQUESTED
STATE PERSONNEL	N/A	_____
STATE PURCHASING	_____	_____
ATTORNEY GENERAL	*	_____
STATE CONTROLLER	_____	_____

**AGENCY APPROVALS**

PROGRAM ADMINISTRATOR OR DIVISION DIRECTOR	DEPARTMENT OF INSTITUTION CONTROLLER OR EQUIVALENT
BY: _____ (Signature)	BY: _____ (Signature)
_____ (Print Name and Title)	_____ (Print Name and Title)

**WAIVERS GRANTED**

APPROVING OFFICIAL	WAIVER APPROVED** (YES/NO)	SPECIAL CONDITIONS*** (YES/NO)	SIGNATURE OF AUTHORIZED REPRESENTATIVE
STATE PERSONNEL	_____	_____	BY: _____
STATE PURCHASING	_____	_____	BY: _____
ATTORNEY GENERAL	_____	_____	BY: _____
STATE CONTROLLER	_____	_____	BY: _____

\* Answer "YES" if agency or institution employs a Special Assistant AG.  
 \*\* Reasons for disapproval if applicable, are set forth on a separate page.  
 \*\*\* Special conditions, if any, are attached.

**SEND TO: CONTRACT ROUTING WAIVER**  
**1525 SHERMAN ST., RM 250**  
**DENVER, CO 80203**  
**ATTN: PHIL HOLTMANN**

**APPLICATION FOR CONTRACT ROUTING WAIVER**  
**PART I**  
**PROGRAM/CONTRACT SPECIFIC INFORMATION**

Instructions: Please use a separate word-processed document to respond fully. Re-state each question before each answer. Attach a copy of the contract form(s) and highlight contract text as necessary to answer questions.

**A. Legal Authority, History & Purpose**

1. Specify the legal authority for the contract, including citations to relevant federal and state law.
2. Identify the specific procurement method and specific solicitation number (if any) used to award all such contracts. Attach a copy of the approved solicitation document. If the award is other than an RFP or Bid, attach a copy of the written methodology approved by the appropriate procurement official.
3. Identify the specific statutory section under § 24-50-501 et seq. C.R.S. (privatization statute) that permits or authorizes the contracts. Complete and submit a Certification of Personal Services form.
4. Provide a narrative description of the program (if applicable) and contract, including its history and purposes. Attach a master list of all contractors by name. For general contracts not attributable to a particular 'program' (e.g., equipment maintenance), please provide details as to how the contract is used, and any history necessary to fully understand the agency need and present use.
5. If there are form variations on the same basic contract, explain the exact differences in contract text and usage. Highlight differing contract provisions. Do not include scope of work variations.
6. State whether the scope of work or services to be provided will always be identical or precisely how it may change from one contract to the next.

**B. Fiscal**

1. Identify the source of funding (cite the law) and total dollar amount of all contracts for the applicable fiscal year.
2. Indicate Fund Number and Appropriation Code or G/L Account.
3. If the agency is requesting waiver of individual contract encumbrances, state controller approval is required. The following apply: The agency must be unable to estimate the starting encumbrance for each contract. Obtain, complete and submit the state controller's encumbrance waiver request form. Each contract must include the maximum funding provision set forth in Chapter 4, "State Contract Provisions" of the Fiscal Rules. The dollar amount used must be the maximum appropriated and budgeted amount for the particular group of contracts involved. Where the agency can estimate a starting encumbrance, but also anticipates mid-contract changes to such encumbrances, a simplified, waived amendment form should be included in the contracts to quickly amend individual contracts and encumbrances as subsequently needed. See State of Colorado Contract Procedures and Management Manual for appropriate contract language and simplified amendment form.
4. If the agency is requesting permission to make advance payments, state controller approval is required. The following apply: Describe the historical use of advance payments in such program or contracts, any applicable federal or state laws authorizing or requiring advance payments, the nature or type of entities receiving advance payments (e.g., public, private, non-profit, for-profit), a description of the standards used in determining when to authorize advance payments, and any other relevant information that may aid the state controller's decision to approve the advance payments request.

**C. Miscellaneous**

1. State whether the contract involved has been waived in previous fiscal years.  
  
If "YES", identify all previous years and include a copy of the most recent year's waived contract form. Attach an explanation of exact changes (if any) in the current form submitted for waiver and highlight changed text in the new and old forms.
2. Specify what procedures your agency follows to ensure that each contract will be properly signed by authorized representatives of each contractor, as described in the State of Colorado Contract Procedures and Management Manual.
3. Specify what procedures your agency follows to ensure consistency in the review and final execution of contracts.

## *CONTRACT DATING POLICY*

Despite informal guidance and arrangements in the past, particularly in capital construction contracts, relating to SCO completion of “made dates” on contracts, agencies should date their contracts on the date the agreement is reached between the agency and the contractor. Agencies should continue to use the term “made date” on their contracts, consistent with the prescribed contract form in Fiscal Rule 3-1. In approved capital construction contracts, agencies may fill in the “made date” or “date executed.” Completion of these dates does not change the statutory rule that contracts and other commitment documents are not valid until approved by the state controller or his designee. This statutory approval condition appears at paragraph 1 of the Special Conditions and on approved capital construction contract forms. Consequently, contractors are not contractually required to begin performance and incur costs prior to controller approval.

In capital construction contracts, agencies should use the “made date” or “executed date” for bond references to the contract. Agencies must continue, however, to await controller approval and satisfaction of other statutory requirements, e.g., receipt of acceptable bonds, before issuing the notice to proceed.

## *SETTLEMENT PAYMENT POLICY*

Settlement agreements generally arise from a settlement between the state and a claimant, often a state employee, for physical damages, property damages or for personal injury such as emotional distress or economic loss. These agreements provide for payment to a claimant in exchange for the claimant releasing the state from further liability.

It is the policy of the State Controller's Office that any payments required by a settlement agreement shall be paid within 30 days of signing the agreement by all parties. In some circumstances, claimants may ask during settlement negotiations for multiple payments to be made during one or more accounting periods which may include different calendar or state fiscal years. The State Controller's Office will only approve multiple payments on an exception basis and only when all 3 criteria set forth below are met:

- ♦ A benefit exists for the state to make multiple payments. The state must secure value in return, such as facilitating resolution of the disagreement or where necessary to expedite resignation of an employee.
- ♦ The settlement agreement must provide for payments from current appropriations available at the time of the signing the agreement. Settlement agreements which provide for payments from appropriations requested or appropriations anticipated in future years will not be approved by the State Controller's Office.
- ♦ The payments must be allowable by the Internal Revenue Service and applicable regulations.

For general direction regarding settlement agreements, please refer to the *Guide for Tax Reporting and Withholding of Settlement Awards* revised January 1997. Questions concerning this policy should be directed to Phil Holtmann at 866-3809.

