

Financial Policy & Procedure Instructions Manual

FPI B-2 Contracts

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I. PURPOSE

To set forth the responsibility and procedures for processing University contracts in accordance with State Board of Agriculture requirements, Colorado Revised Statute Section 24-30-202 and State Fiscal Rules.

II. DEFINITIONS

- A. **Expenditure Contract** - A written binding agreement between the State Board of Agriculture, by and through Colorado State University, for the use and benefit of the department, and another party that ultimately results in the disbursement of funds by the University. A contract can be distinguished from a purchase order by the fact that a contract will contain the signatures of both an authorized representative of the University and the outside party providing service or goods (Vendor), while the purchase order will contain only the signature of a University representative. State Contracts include agreements and memoranda of understanding between the University and other State agencies; personal service

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contracts; contracts for services for a third party; grants and subgrants; and other forms of agreement.

- B. **Revenue Contract** - A written binding agreement between the State Board of Agriculture, by and through Colorado State University, for the use and benefit of the department and another party that defines the terms under which the University will receive revenue. A contract can be distinguished from a customer purchase order by the fact that a contract will contain the signatures of both an authorized representative of the University and the customer receiving the service or goods, while a purchase order will contain only the signature of the customer.
- C. **Associate Legal Counsel** - The Associate Legal Counsel has been designated by the Vice-President for Administrative Services to coordinate and assist individuals and University departments with the preparation and handling of contracts. The Associate Legal Counsel along with the Purchasing Department is responsible for coordinating the review and approval of University contracts. For more information, please visit the web site of the Office of the General Counsel - <http://www.admin.colostate.edu/cs/index.html>.
- D. **Legal Sufficiency Review** - A review of a state contract by an attorney designated by the State Controller and the State Attorney General as having the requisite authority to provide such reviews. Legal sufficiency review and approval does not include a review of the sufficiency or availability of funding. Pursuant to the State Fiscal Rules, legal sufficiency review assures that the contract is in compliance with the constitution, statutes, regulations, and executive orders; verifies that the University has the authority to enter into the agreement; and verifies that contract language is sufficient to create a legally binding obligation and that the document is otherwise legally sufficient.
- E. **Tax Accountant Review** - Some contracts may result in the need to pay unrelated business income tax (UBIT). The University Contracts Manager will refer potential UBIT contracts to the University Tax Accountant for review.
- F. **Primary Delegate** - The Director of Business and Financial Services (University Controller) who is personally authorized in writing by the State Controller to sign contracts for the State Controller. A second Primary Delegate in Business and Financial Services is authorized to sign in the Director's absence. The Primary Delegate's review will include, but is not limited to, the following:
 - 1. Review all comments and/or deficiencies noted by the designated attorney;
 - 2. Ensure that sufficient funds are available to satisfy the terms of the contract; and,
 - 3. Maintain a log of all contractual agreements.
- G. **Sub-Delegate** - A University employee designated by the Director of Business and Financial Services and approved by the State Controller to sign contracts for the State Controller. The Sub-Delegate's review will include, but is not limited to, the following:
 - 1. Review all comments and/or deficiencies noted by the designated attorney;
 - 2. Ensure that sufficient funds are available to satisfy the terms of the contract; and,
 - 3. Maintain a log of all contractual agreements.

It is important to note the distinction between the delegations granted by the State Controller and those granted by the State Board of Agriculture. The SBA delegates authority to sign contracts binding the Board and the University, while

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the Controller delegates the authority to approve expenditures of state funds. Contracts must be signed by persons having proper authority derived from both the SBA and the State Controller. The SBA's delegation is to the University President, who has sub-delegated that authority in many respects; these sub-delegations are contained in the University Signature Delegation Chart.

III. POLICY

A. **General Requirements** - All original contracts, contract change orders, contract amendments, and supplements must have:

1. **Original Signature** - Original signatures of individuals authorized to sign contracts for each of the parties. Unauthorized signers may be held personally liable for the obligations incurred under the terms of the contract. Original signatures must be authorized by the Signature Delegation Chart, and must be in ink (unless electronic or other alternative form of signature is authorized for the transaction in advance).
2. **Legal Sufficiency Review** - Legal sufficiency review and approval is required for expenditure contracts. Legal review is recommended for revenue contracts, and some authorized signatories require legal review before approving revenue contracts. All required external and internal approvals must be present prior to submitting a contract for legal sufficiency review and approval by the Controller or the Controller's delegate. Depending on the nature of the contract, required approvals may include: State Legislature, State Board of Agriculture, State Buildings Program, and/or the Colorado Commission on Higher Education (CCHE). For more information on signature authority and required approvals, contact the Office of the Contracts Manager or see the signature delegation chart in Section 8 of the Colorado State University Purchasing Manual or on the web at the following address: <http://www.colostate.edu/Admin/cs/sigauth/sig-menu.html>
 - a. **Standard State Contracts** that have already been reviewed for legal sufficiency may not require additional legal sufficiency review if the following conditions have been met: used for the intended purpose, filled out accurately and completely, not substantively modified, and clear indication that the form has been approved to be used without further legal review.

For more information, contact the University Contracts Manager for Standard State Contracts or see the following web address:

<http://www.colostate.edu/Admin/cs/cmanual/index.html>

- b. **Non-Standard State Contracts** or vendor contracts will normally require legal sufficiency review. These contracts should be referred to either the Purchasing Department or the University Contracts Manager.

B. **Specific Requirements** - Requirements by type of contract include:

1. **Expenditure Contracts** - Expenditure contracts require the approval and signature by the Primary Delegate or a Sub-Delegate approved by the State Controller. Note: The Controller's delegate or sub-delegate must always be the final approving authority. All other approval

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signatures should be secured prior to submitting the contract to the Primary Delegate. Expenditure contracts must have a properly recorded encumbrance transaction in the Financial Record System.

2. **Capital Construction Contracts** - All original capital construction contracts, contract change orders, contract amendments, and supplements requiring a disbursement of funds must be approved by the Director of State Buildings or delegate at the University and the University Controller.
3. **Automatic Data Processing Contracts and Collection Agency Contracts** - Automatic financial systems data processing contracts for the major modification of existing financial systems or the development or acquisition of new or replacement financial system hardware or software must be approved by the State Controller. The State Fiscal Rules define a financial system as "All data processing software systems applied to general ledgers and subsidiary ledgers, debt collection, accounts payable, accounts receivable, cost distribution, fixed assets, inventory, payroll, purchasing, and time collection."

All contracts with collection agencies must be approved by the State Controller.

- C.
- D. **Contract Deficiencies** - Any contract that is not legally sufficient will be returned to the office submitting the contract with the deficiencies noted. Upon correction of noted deficiencies, resubmit the contract for legal sufficiency review as directed by the reviewing attorney.

IV. **PROCEDURES** - (NOTE: The following procedures do not negate the requirements of Section 8 of the CSU Purchasing Manual - <http://www.purchasing.colostate.edu/pmanual.html> and Attachment #1 thereto.)

- A. **Contract Proposal** - University employees authorized by their department may submit a contract proposal. Proposals should include a brief statement regarding the nature of the contract, expenditures required, revenue expected, and any other important issues. The proposal should be submitted to the appropriate dean, director or department chair for initial approval. Contracts that are approved by the department or college should be referred to either the Purchasing Department or the University Contracts Manager as described in Section D below. Only individuals authorized by the University may enter into and sign contracts. Unauthorized individuals may be held personally liable for the obligations incurred under the terms of the contract. Those individuals authorized to sign contracts are as shown in Attachment #1 to Section 8 of the CSU Purchasing Manual - <http://www.purchasing.colostate.edu/pmanual.html> or on the web at the following address:

<http://www.colostate.edu/Admin/cs/sigauth/sig-menu.html> .

State regulations prohibit approval of an expenditure contract for services already performed. Plan well in advance to have a contract reviewed and approved to ensure that the contract is in place before performance begins. Contracts on a standard form and properly filled out generally are approved in less than a week. Contracts on a vendor-provided form or requiring negotiation may require additional time for processing.

- B. **Contract Review and Approval** - Before entering into an expenditure contract, the contract should be routed to the Purchasing Department, University

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Contracts Manager or the Office of Sponsored Programs, depending upon the type of contract. Please refer to Section D below for specific directions. These offices will ensure that legal sufficiency review occurs as necessary.

- C. **Director of Business and Financial Services' Review and Approval** - The Controller's Primary Delegate or Sub-Delegate must review and sign all expenditure contracts. Revenue contracts will be reviewed by the 22 Fund Manager in Business and Financial Services. All contracts involving prepayment for goods or services, regardless of amount, must be approved by the Controller's Primary Delegate or the Purchasing Department. If the contract involves prepayment, include another signature block stating "Prepayment Approved".
- D. **Specific Contract Processing**
1. **Contracts Involving the Lease or Purchase of Land and Buildings** - Contracts involving the lease or purchase of land or buildings must be sent to the Director of Facilities Management, who will coordinate review and approval.
 2. **Sponsored Contracts and Grants** - All sponsored contracts and grants must be routed through the Office of Sponsored Programs for processing.
 3. **Automatic Data Processing Contracts** - All expenditure contracts of \$25,000 or more for the purchase of automatic data processing hardware or software must first be approved by either the Director of Academic Computing or the Director of Information Systems, depending on the nature of the purchase. Once approved by the appropriate Director, such contracts must be sent to the University Purchasing Department, who will ensure that contracts are routed for required reviews and approvals. State Controller approval is required if the contract is for major financial systems described in Section III. B. 3 above. When a vendor's contract form is used, a standard Contract Acceptance form should be attached by the requesting department or the Purchasing Department. Only the Contract Acceptance form may be signed by University representatives. Those individuals authorized to sign contracts are as shown in Attachment #1 to Section 8 of the CSU Purchasing Manual - <http://www.purchasing.colostate.edu/pmanual.html> or on the web at the following address:

<http://www.colostate.edu/Admin/cs/sig-menu.html>
- The vendor contract must not be signed unless it has first been approved by the Purchasing Department or the Contracts Manager. Disputes with the vendor regarding a contract should be referred to the University Contracts Manager.
4. **Capital Construction Contracts** - All standard State Contracts for capital construction must be routed to the Director of Facilities Management for processing. Modified standard State Contracts and other contracts for capital construction should be sent to the University Contracts Manager, who will coordinate required reviews and approvals.
 5. **All Other Expenditure Contracts** - All other expenditure contracts must be initiated with a Purchase Requisition and routed through the Purchasing Department. Contracts of \$25,000 or more will be sent by Purchasing to the University Contracts Manager, who will ensure that contracts are processed for legal sufficiency review and all other required approvals. When a vendor's contract form is used, a standard Contract

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Acceptance form should be attached by the requesting department or the Purchasing Department. Only the Contract Acceptance form may be signed by University representatives. Those individuals authorized to sign contracts are as shown in Attachment #1 to Section 8 of the CSU Purchasing Manual - <http://www.purchasing.colostate.edu/pmanual.html> or on the web at the following address:

<http://www.colostate.edu/Admin/cs/sig-menu.html>

The vendor contract must not be signed unless it has first been approved by the Purchasing Department or the Contracts Manager. Disputes with the vendor regarding a contract should be referred to the University Contracts Manager. The Purchasing Department will make an entry to encumber the contract amount in the Financial Record System (FRS).

6. **Revenue Contracts** - Revenue Contracts for \$25,000 or less should be sent to Purchasing for review and approval. Contracts which are expected to produce over \$50,000 in annual revenue to the University must be approved in advance by the Executive Budget Committee (EBC) before being sent to the University Contracts Manager for review and processing. For more information regarding the EBC approval process, contact the office of the Vice President for Administrative Services - <http://www.colostate.edu/Admin/vpa/index.html>. Revenue contracts will be reviewed to ensure that all requirements are met. Those individuals authorized to sign contracts by contract type are as shown in Attachment #1 to Section 8 of the CSU Purchasing Manual - <http://www.purchasing.colostate.edu/pmanual.html> or on the web at the following address:

<http://www.colostate.edu/Admin/cs/sig-menu.html>

Revenue contracts may also require expenditure of funds, or may indirectly require the use of University resources (such as facilities, staff time, or supplies) and therefore must be approved as expenditure contracts. It is important to have an adequate business plan and/or budget statement to support a revenue contract before seeking EBC or VPAS approval. For assistance with such agreements, please review the guide to revenue contracts on the Contracts web site - <http://www.colostate.edu/Admin/cs/RSandR.html> or contact the University Contracts Manager.

7. **Retroactive Contracts** - State regulations require special approval for an expenditure for services already performed. In addition, University policy prohibits performing under an agreement prior to proper approvals. Plan well in advance to have a contract reviewed and approved to ensure that the contract is in place before performance by any party is scheduled to begin. If performance begins before the contract is fully signed, approval of the contract must be obtained from the Contracts Manager; and, for expenditure contracts, the Contracts Manager must request approval by the State Controller. Prepare a letter to the University Contracts Manager stating why performance began before the contract was fully signed; whether or not payment by the University has been requested or remitted; what steps are being taken to

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ensure that this will not happen in the future; and how the University's interests are best served by approval. Submit the letter and a copy of the contract to the University Contracts Manager who will route the request to the State Controller, as appropriate. Please do not initiate communications directly with the State Controller's Office under any circumstances.

8. **Prepayment Contracts** - If the contract involves prepayment of State funds for services not yet rendered or goods to be delivered in the future, your contract must include an additional signature block for the University Controller (Primary Delegate) stating "Prepayment Approved" and an explanation of the reasons why prepayment of an obligation is required. The Controller or subdelegate will review the reasons stated, and if appropriate, approve the prepayment based on the authorization otherwise provided. All such contracts should be sent to the Purchasing Department and then to the University Contracts Manager for processing.

- E. **Contract Logs** - The Purchasing system will maintain a log of all contracts that result in a Purchase Order. Contract logs must include the following data:

1. Log number (Purchase Order number if applicable);
2. University Fund Group Code (13, 22. etc.);
3. Vendor name;
4. Amount of contract;
5. Legal review date;
6. Controller review date; and,
7. Contract type identifier (see list below).

<u>Contract Type</u>	<u>Identifier</u>
Personal Services	A
Goods & Service	B
Sponsored Contracts/Grants	C
Student Loans	D
Inter-Agency	E
Lease of Equipment	G
Lease of Land & Buildings	H
Real Estate Purchases	I
State Capital Construction	J
Other Capital Construction	K
Automatic Data Processing	L