



University of Colorado Denver

Fiscal Policy

Title: Expenditure Contracts and/or Sub-agreements under Sponsored Awards

Effective Date: August 20, 2002

Replaces: N/A

Applies: Anschutz Medical Campus

A. Introduction

This policy establishes rules and guidelines for University of Colorado Denver (UCD) contracting. It is the responsibility of every individual involved in the performance and administration of UCD contracts to assure that no violation of this policy occurs.

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C. Reference

1. State of Colorado Fiscal Rules 3-1 and 4-1.
2. The Board of Regents shall supervise the University and control and direct all funds and appropriations to the University (23-20-111, CRS 1973).
3. The Board of Regents shall enact laws for the government of the University; appoint the requisite number of professors, tutors, and all other officers (23-20-112, CRS 1973).
4. University of Colorado Administrative Policy Statement, Contracting Authority (<http://www.cusys.edu/~policies/General/>).
5. University of Colorado Administrative Policy Statement, Delegation of Authority to Chancellors to Execute Certain Contracts.

D. Applicability

Excluded from processing under this Fiscal Policy (but not exempt from appropriate institutional signature) are the agreements identified below. For additional information on contracts signatures see Exhibit A:

1. Contracts that do not provide for the disbursement of funds, with the exception of outsource contracts.
2. Contracts for personal services exempted from the State Personnel System by the Colorado constitution and paid through the authorized payroll system. Examples include members of boards or commissions, faculty members of educational institutions, and attorneys at law serving as assistant attorneys general. These contracts are considered to be advises of employment and, therefore, are not covered by this fiscal rule.
3. Revenue contracts in which UCD is the recipient of funds.
4. Purchases formulated and executed pursuant to the Colorado Procurement Code, the rules and regulations pertaining to the State of Colorado Purchasing Department, and UCD Fiscal Policy, "Authorization to Purchase."
5. Employment agreements formulated and executed pursuant to the Rules and Regulations of the Colorado State Personnel System.
6. Faculty or educator agreements formulated and executed pursuant to the Regents constitutional authority.
7. Acquisition of personal services costing \$25,000 or less.
8. Capital construction and controlled maintenance cost less than the threshold defined in "Use of Contracts" (see III.C.4 of this policy).
9. Contracts that do not involve the expenditure of funds, examples include affiliation agreements processed through the Chancellor's Office, student rotation agreements, time extensions, material transfer agreements, etc.
10. Any other contract involving laws or regulations specifically or legally mandated to supersede this policy in whole or in part.

E. Definitions

1. Commitment Voucher is a purchase order, a contract, an approved travel authorization, an advice of employment, or any other document appropriate to the transaction, which creates a financial obligation to UCD that ultimately results in a disbursement of funds.
2. Employee/Employer is a relationship that exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also the details and means by which that result is accomplished. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient that the employer has the right to do so. The right to discharge is also an important factor, indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and equipment, and a place to work to the individual who performs the services.

3. Independent Contractor is a relationship that exists when the firm or individual is responsible to UCD for the results of certain work but is not subject to UCD control as to the means and methods of accomplishing those results. Further, an independent contractor generally:
 - a. Has a place of business and a business listing in a directory when the services are offered to the public.
 - b. Selects the clients and is free to work for one or more during any given period of time.
 - c. Determines the time and place where work shall be performed.
 - d. Provides the tools and materials needed to perform the work.
 - e. Does not participate directly or indirectly in benefit programs of UCD. For example, the individual is not covered by UCD for Workers' Compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation.
 - f. May agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.
4. Interagency Contracts are formal legally binding agreements between two principal state agencies (sometimes referred to as "Interagency Agreements," "Memoranda of Understanding," or "Memoranda of Agreement") are UCD contracts as defined in this policy and are subject to the provisions and requirements of this policy.
5. Outsource Contracts are formal legally binding agreements between UCD and another party or an amendment to such agreement whereby UCD agrees to allow the contracting party to perform a function, normally performed by UCD. Outsource contracts usually do not require a disbursement of funds. An example of an outsource contract is UCD contracting with another party to provide credit card services.
6. Personal Service Contracts are services or benefits purchased by UCD where the University is to receive direct benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of UCD.
7. Purchase Order is a mechanism for encumbering funds and securing goods or services from a vendor. For the purposes of this fiscal policy, a purchase order is not considered a UCD contract.
8. Purchased Service Contracts are services or benefits purchased by UCD for a third party. An example is medical services received by an employee through a UCD contract between a medical care provider and UCD. Individuals or firms performing these services are considered independent contractors and are not considered employees.
9. Settlement Agreement is a formal legally binding contract between UCD and another party for the purpose of ratifying decisions reached concerning employment or contractual disputes.

10. Sub-agreement is an agreement between UCD as the prime grantee/contractor and a separate legal entity as a subrecipient under UCD prime award, whereby a substantial and/or significant portion of a project is carried out the by the subrecipient.
11. The UCD contract is a formal legally binding agreement between UCD and another party or an amendment to such agreement which ultimately results in the disbursement of funds. For the purpose of this policy, UCD contracts include, but are not limited to outsource contracts, personal service contracts, purchased service contracts, and settlement agreements.

F. Policy

1. General

UCD is responsible for assuring that all contracts initiated are within the intent of the appropriation, are necessary, and are the most economical and efficient means for accomplishing the identified tasks.

UCD is responsible for ensuring that all constitutional and statutory requirements have been met prior to signing a contract.

2. Advance Payments

Accepted business practices generally do not allow for any advance payments of financial obligations. UCD contracts and other commitment vouchers shall not provide for advance payment for goods and or services, unless it is an established industry standard or unless the non- UCD party to the contract can demonstrate a hardship and justify a need. Any advance payment requires the written approval of the State Controller, or a delegate authorized by the State Controller, to approve advance payments.

3. Use of Contracts

UCD shall negotiate and process a contract when:

- a. Acquiring personal services costing over \$25,000, including maintenance and service agreements.
- b. Leasing land, buildings, or other office or meeting space when the rental is for more than thirty days.
- c. Acquiring architectural services, engineering services, land surveying, and landscape architectural services.
- d. Expending capital construction or controlled maintenance project funds in excess of \$25,000, unless the plans and specifications for the expenditure have been prepared by or reviewed and approved by a licensed architect or registered engineer. If plans and specifications have been prepared by or reviewed and approved by a licensed

architect or registered engineer a purchase order may be used in lieu of a contract, unless the project costs exceed \$50,000.

4. Protecting the interest of UCD can only be accomplished by using a contract because other commitment vouchers are not considered sufficient to adequately protect UCD. When questions arise in this area the UCD Controller or the Legal Office should be contacted for assistance.

5. Contract Form

UCD contracts shall conform to the following conventions:

- a. All UCD contracts, including leases, shall be prepared on standard letter size paper, 8 1/2" X 11".
- b. All UCD contracts shall be in a form approved by the State Controller or designee.
- c. All UCD leases of real property shall be in a form approved by the State Controller or designee. All leases shall contain both a fiscal year restriction and the State Controller's approval condition and shall contain clauses specifying lease cancellation requirements where the leased premises are destroyed by fire and where the leased premises are subject to eminent domain.

6. Contract Provisions

UCD contracts should contain the following provisions:

- a. All UCD contracts, except leases and interagency agreements, shall contain the special provisions set forth in Appendix A of the State Fiscal Rules.
- b. All contracts for purchased services or those contracts where a maximum contract amount cannot be readily determined, shall contain the following provisions:

"Payment pursuant to this contract shall be made as earned, in whole or in part, from available UCD funds in an amount not to exceed \$_____ for the purchase of_____.

It is further understood and agreed that the maximum amount of UCD funds available for fiscal year _____ for the purchase of _____ is \$_____. The liability of UCD funds, at any time, for such payments shall be limited to the unexpended amount remaining of such funds." In addition, state agencies using this provision shall also request an encumbrance waiver from the State Controller or designee.

- c. All contracts involving federal funds shall include the following provision:

"This contract is subject to and contingent upon the continuing availability of federal funds for the purposes hereof."

- d. All contracts for the lease, easement, right-of-way or disposal of State property located in a flood plain to any non-State, public or private party, shall reference in the conveyance: those uses that are restricted under identified federal, State or local flood plain regulations; those appropriate restrictions to the use of properties by the grantee or purchaser and any successors, except where prohibited by law; or withhold such properties from conveyance.
- e. All contracts shall contain a specific termination date, an event from which such date can be determined, or a provision for termination when determined by UCD to be in its best interest.

7. Contract Approvals

Only a properly authorized official of UCD shall sign contracts on behalf of the University. It shall be the responsibility of UCD to obtain all required approvals. Approvals of certain State agencies are required by statute, executive order, or fiscal rule depending on the subject matter of the contract. Proof of all required signatures indicating the approval of State agencies shall be retained by UCD. Exhibit A reflects various types of agreements, including sponsored programs, and who has the authority to sign on behalf of UCD and who has been delegated responsibility to sign for other State officials. Contracts requiring approvals include:

- a. All UCD contracts shall be signed by the State Controller or by an individual delegated to execute contracts by the State Controller. If an attempt is made to execute a contract without the approval of the State Controller, or a delegate, the contract shall be null and void and not binding against UCD. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.
- b. Service contracts require the approval of the State Personnel Director.
- c. Construction contracts and controlled maintenance contracts require the approval of the State Buildings Division Director, or a delegate, unless otherwise exempted by statute.
- d. Real property contracts, including leases, easements, and rights-of-way contracts require the approval of the State Building Division Director, or a delegate, unless otherwise exempted by statute. Excluded from this requirement are those real properties administered by the State Board of Land Commissioners and the Department of Transportation. Additionally, easements and rights of way require the approval of the Governor, the State Purchasing Director, and the chief executive officer of the State agency whose premises are affected.
- e. Communication system contracts involving telephone, radio, microwave, teletype, closed circuit television, automated data processing communications systems require the approval of the State Communications Coordinator, or a delegate.
- f. Legal and paralegal service contracts require the approval of the Attorney General's Office.

- g. Centralized service contracts require the approval of the Director of the Division of Central Services, or a delegate, for all State agencies within the counties of Adams, Arapahoe, and Jefferson and the city and county of Denver. Examples include State contracts for the acquisition of the following: motor pool operation, motor vehicle maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of management forms.
- h. Debt collection service contracts require the approval of the State Controller, or a delegate.
- i. State agency financial systems used to record their financial transactions and financial information and to develop their financial reports and prepare their financial statements shall be approved by the State Controller, or a delegate.
- j. A subcontract commitment of more than \$1,000,000, whether as a single contract, or an amendment to an agreement that causes the total commitment to be more than \$1,000,000, requires the approval of the President of the University. The Anschutz Medical Campus Grants and Contracts Office will coordinate the approval process with the Office of the President.

8. Contract Legal Review

All UCD contracts shall be reviewed by the UCD Legal Office except for interagency contracts. If UCD legal review raises a question concerning the legality of the contract, the question shall be referred to the Attorney General's Office. Review by the UCD Legal Office shall include the following:

- a. Compliance with the State constitution, State statutes, regulations, and executive orders.
- b. Authority of the Regents and UCD.
- c. Legal sufficiency.

If during the course of the legal review a question should arise as to contract language that cannot be resolved, it shall be referred to the State Controller together with a memorandum detailing the unresolved issue for resolution.

Outsource contracts shall be reviewed by the State Attorney General, or a delegate, but need not be signed and executed by the State Controller, or a delegate, unless the contract requires an expenditure of funds.

9. Review and Approval by the UCD Controller

Upon receipt of a contract, the UCD Controller shall review the contract for completeness and ensure that funds are available to cover the contracted liability. Upon approval, the contract shall be executed by affixing the signature of the UCD Controller, or a delegate.

State law requires that all subcontracts be approved by the State Controller or designee prior to work being started. In many cases sponsored awards do not contain enough lead time for that to be feasible and we are often required by those agreements to flow through dollars to a sub-recipient. Every effort should be made to process agreements executed prior to the start date of the sub-award. When that is not possible, no commitment is to be made that an agreement will be executed by Anschutz Medical Campus; however, if the prime sponsor policies allow, subrecipient may, at its own risk incur obligations and expenditures to cover costs if such costs are: A) within: 1) Anschutz Medical Campus' planned period of performance for the subrecipient, and 2) the prime award's period of performance (or within the prime sponsor's allowable preaward period); B) are necessary to conduct the project; and C) would be allowable under a potential award without prior approval. Failure to comply with this policy may render an agreement illegal and necessitate action by the State Controller's Office.

10. Interagency Contracts

Interagency contracts require approval of the UCD Controller and shall, at a minimum, include the following provisions:

- a. Identification of parties to the contract;
- b. Appropriation authority, including fund, appropriation code, and/or encumbrance number;
- c. Scope of work;
- d. Statement of consideration;
- e. Payment and other performance; and
- f. Definition of breach and remedies.

11. Employee/Employer or Independent Contractor

Careful distinction must be made between work which should be accomplished by persons who are employees of UCD and work which may be accomplished by individuals or firms on a personal services contract. The responsibilities and obligations of UCD differ between employee/employer arrangements and agreements with independent contractors. UCD has a third party liability for the acts of its employees, whereas an independent contractor is liable for his own actions. The status should be carefully considered and cases of doubt generally resolved in favor of the employee classification. An erroneous classification as an independent contractor can result in serious penalty to UCD for failure to deduct applicable taxes.

12. Subcontract Cancellation and Subsequent Rebudgeting into Other Cost Categories

Some sponsors award Facilities and Administrative (F&A) costs to a project on only a portion of total subcontract proposal costs; e.g. Federal sponsors award F&A on the first

\$25,000 of subcontracts to each collaborating organization during a project period, regardless of the total amounts awarded for subcontracts to those organizations during the entire project period. In the event that a subcontract to a collaborating organization is cancelled during a project period, rebudgeting of unspent funds into other Direct Cost budget categories is generally allowable without prior approval from the sponsor. However, funds that have been rebudgeted for this purpose will be subject to F&A costs when appropriate, and F&A will be charged at the appropriate rate as these funds are spent. The project budgets for total Direct Costs and total F&A Costs will be adjusted accordingly.

Note – NIH allows grantees to rebudget between Direct and F&A costs (in either direction) without NIH prior approval, provided there is no change in the scope of the approved project. A few non-Federal sponsors do not allow rebudgeting amounts greater than 5% between approved budget categories without prior written approval from the sponsor. It is always a good idea to review sponsor guidelines and/or award terms and conditions in order to verify that prior approval by the sponsor is, or is not, required before rebudgeting can occur.

	Subcontracts
Performed By:	Action:
Grants and Contracts, Preaward Administration	1. Review award document and budget for approved subcontracting activity and indicate if there are any subcontracts on the Grants and Contracts "Award Routing Slip".
Grants and Contracts, Subcontract Administration	2. Review "Award Routing Slip" for awards having subcontract activity and notify department of the need for subcontracting.
PI Department	3. Prepare subcontract using UCD Grants and Contracts standard subcontract template. <ul style="list-style-type: none"> a. For departments with a high volume of subcontracts, departments must use the standard subagreement template. Grants and Contracts can provide appropriate guidance on subcontract preparation upon request. Upon preparation, send subcontract to Grants and Contracts for review and approval. b. For departments with a low volume of subcontracts, the department should complete the "Request for Subcontract Agreement" (see Exhibit B). Grants and Contracts will prepare a standard agreement using the departmentally provided information.
Grants and Contracts, Subcontract Administration	4. Review and approve subcontract prior to department's transmittal to subcontractor. <ul style="list-style-type: none"> a. Ensure that objectives are to be met within a specified time frame and that costs incurred correspond to subcontract budget. b. Verify that the prime UCD grant or contract has approved subcontracting activity and that funds are available; follow any conditions specified by the sponsor (e.g., subcontract documents specifically approved). c. Advise department as appropriate on planning and administration of the subcontract.
PI Department	5. Send reviewed/approved subcontract to PI's department. 6. Transmit two (2) copies of the subcontract to the subcontractor for review, signature, and subcontract return to Grants and Contracts.
Subcontractor	7. Review original subcontract.

	Subcontracts
	<p>a. Contact Anschutz Medical Campus Grants and Contracts, Subcontract Administration if there is a need to discuss/negotiate terms and conditions.</p> <p>b. Grants and Contracts, Subcontract Administration, will negotiate with the subcontractor contractual terms and conditions contractor as necessary and contact the UCD Legal Office for guidance on issues that cannot be negotiated at the Grants and Contracts level.</p> <p>8. Sign and return subcontracts to PI's department.</p>
PI Department	<p>9. Receive signed subcontract from subcontractor.</p> <p>10. Prepare a "Standing Purchase Order" form (required for all subcontracts) and sole source justification, if necessary.</p> <p>11. Forward subcontract, "Standing Purchase Order" (and sole source justification if necessary) to Grants and Contracts, Subcontract Administration.</p>
Grants and Contracts, Subcontract Administration	<p>12. Obtain appropriate UCD institutional signatures on subcontract</p> <p>13. Forward one original fully executed subcontract to the PI's department with instructions for the department to make one photocopy for departmental files and mail the fully executed original to the subcontractor.</p> <p>14. Forward to Postaward Administration the following: one original fully executed subcontract and a copy of the "Standing Purchase Order" for the grant/contract award file; one copy of the fully executed subcontract and the original "Standing Purchase Order."</p>
Grants and Contracts, Postaward Administration	<p>15. Review/approve and the original "Standing Purchase Order" form.</p> <p>16. Forward the photocopy of the subcontract and the original "Standing Purchase Order" to the Procurement Service Center.</p> <p>a. Procurement Service Center will encumber (system permitting) subcontract amount in the CU financial system.</p> <p>17. File the original fully executed subcontract and the photocopy of the "Standing Purchase Order" in the Grants and Contracts grant/contract award file.</p>

	Subcontracts
PI Department	<p>18. Notify Grants and Contracts, Subcontract Administration, of any required modifications to the agreement.</p> <p>19. Review and approve invoices as appropriate for processing/payment of subcontractor-billed charges.</p>
Grants and Contracts, Subcontract Administration	20. Assist the department in the preparation of any subcontract modification following steps 3 through 18 above.