



**COLORADO OFFICE  
OF THE STATE  
AUDITOR**

**A REQUEST FOR PROPOSAL**

**FOR AN EVALUATION OF THE DEPARTMENT OF  
PERSONNEL & ADMINISTRATION'S ANNUAL  
COMPENSATION SURVEY**

**August 5, 2016**

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## SECTION I

### ADMINISTRATIVE INFORMATION

#### A. ISSUING OFFICE

This request for proposal (RFP) is issued by the Office of the Colorado State Auditor (OSA). The terms State Auditor, OSA, State, and State of Colorado are used interchangeably. As an agency within the Legislative Branch, the OSA and this solicitation are exempt from the State Procurement Code and State Procurement Rules. *All communications regarding this RFP should take place directly with the OSA's assigned contract monitor listed in this RFP.*

#### B. BACKGROUND INFORMATION

The OSA is soliciting proposals to conduct an evaluation of the State of Colorado's annual compensation survey process.

Section 24-50-104, Colorado Revised Statutes (C.R.S.) establishes Colorado's total compensation philosophy which is to "provide prevailing total compensation to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent work force." According to statute, "total compensation" includes, but is not limited to salary, group benefit plans, retirement benefits, merit pay, incentives, premium pay practices, and leave.

The Department of Personnel & Administration (Department) is required by statute [Section 24-50-104(1)(a)(II), C.R.S.] to annually review the results of appropriate surveys conducted by other organizations or conduct its own surveys to assess prevailing total compensation practices, levels, and costs. The purpose of this survey process is to determine if the State's salaries, employer contributions to benefit plans, and merit pay are comparable with other public and private employers.

To conduct this survey work, the Department hires a contractor biennially to (1) develop and implement a technically sound methodology for collecting and analyzing market data for pay, benefits, and performance management increases, and (2) provide a methodology for Department staff to maintain equity with the market in the off year. The Fiscal Year 2016-17 survey was conducted by the Department's contractor, Milliman, Inc., and the Fiscal Year 2017-18 survey was conducted in-house by Department staff.

Since Fiscal Year 2013-14, the State of Colorado has been transitioning to a merit-based pay system, as authorized by House Bill 12-1321. The purpose of this approach is to provide salary increases to employees based on performance evaluations and salary placement within the appropriate salary range.

Statute [Sections 24-50-104(4)(b) and (c), C.R.S.] requires the Department to report its survey findings and recommendations annually to the Governor and the Joint Budget Committee of the General Assembly. The purpose of the report is to reflect all adjustments necessary to maintain the competitiveness of the salary structure, state contributions for group benefit plans, and merit pay for the upcoming fiscal year. The report is also required to include the State Personnel Director's recommendations and estimated costs for state employee compensation for the next fiscal year. According to statute, the recommendations shall consider the results of the annual compensation survey, fiscal constraints, the ability to recruit and retain state employees, and appropriate adjustments with respect to state employee compensation.

*Prospective bidders should review the Fiscal Year 2016-17 and Fiscal Year 2017-18 Annual Compensation Reports in order to gain an understanding of the Department's approach to each year's compensation survey. See links to these documents in Section IV, Supplemental Information.*

**C. SERVICES REQUIRED – DELIVERABLES AND TIMELINES**

The OSA is seeking proposals from qualified organizations to conduct the planned evaluation work to gain sufficient, appropriate evidence necessary to conclude on the evaluation's objectives and to develop related findings and recommendations. The OSA will provide the engaged organization general guidance and oversight; however, the engaged organization will be responsible for planning and conducting the work, developing complete written findings, and writing the report. Specific details regarding the project scope, evaluation objectives, and planned work are described later in this section.

**Work for this project is expected to commence approximately the week of October 31, 2016. Note: This is an estimated start date. Work could begin sooner or later depending on how long it takes to route and execute the contract. No work can begin until the contract is approved and signed by the State Auditor or her designee.**

**Planning and Fieldwork**

The planning and fieldwork phases of this project are expected to take place approximately the week of October 31, 2016 through December 31, 2016. The engaged organization will be required to complete the following tasks in the planning and fieldwork stages:

<b>Planning and Fieldwork</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Hold Planning Meeting with OSA Staff	Hold a planning meeting with OSA staff prior to the entrance conference. This meeting could be in person or by conference call.	Prior to the Entrance Conference
Hold Entrance Conference with OSA and Department Staff	Hold an in-person entrance conference with the appropriate OSA and Department staff to discuss the project, timeline, and logistics. The engaged organization is responsible for scheduling this meeting. The OSA contract monitor can assist the engaged organization in contacting the Department, identifying appropriate staff, and coordinating schedules for OSA staff with respect to this meeting.	Week of October 31, 2016
Begin Fieldwork	Begin collecting data from the Department, interviewing Department staff, and conducting analysis. This should include conducting ongoing communications with the Department throughout fieldwork to (1) gain a clear understanding of program operations, requirements, and criteria; (2) discuss preliminary conclusions; and (3) clear exceptions and preliminary findings.	Beginning immediately after the Entrance Conference and through completion of the contract
Provide Updates to OSA Contract Monitor	Provide routine updates regarding the status of the engaged organization's work, noted problems, preliminary findings, etc. to the OSA contract monitor throughout the duration of the engagement. The engaged organization should notify the OSA contract monitor immediately of any problems or delays in gathering information, completing the analyses, or communicating with the Department. Updates may include conference calls and/or written progress updates. The update format and schedule will be determined by the contract monitor and the engaged organization.	Week of October 31, 2016 through completion of the contract
Complete Fieldwork	Complete the work required to conclude on the scope of work. This includes test work and discussing conclusions and clearing exceptions with Department staff.	December 31, 2016

## **Findings and Reporting**

The OSA has a very rigorous findings and report review process, which includes review and revisions at multiple levels of the organization. Prospective bidders should take this into consideration when preparing a proposed calendar and budget. The findings and final report should adhere to the OSA's standards as described in "Exhibit G – Developing and Presenting Findings" and "Exhibit H – Reporting Requirements and Format for Separately Issued Reports" of the OSA's standard contract, which is included in Section IV - Supplemental Information of this RFP. In addition, we have included a link in Section IV of this RFP to a recent report issued by the OSA. Prospective bidders should review that report to gain an understanding of the OSA's expectations for written reports.

The findings and reporting phases of the project are expected to take place approximately January 1, 2017 through June 7, 2017. The engaged organization will be required to complete the following tasks in the findings and reporting phases:

<b>Findings and Reporting</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Submit Written Draft Findings to OSA Contract Monitor	Prepare and submit detailed written findings reflecting completion of all the work required in the scope of work to the OSA contract monitor. The findings should adhere to the format outlined in “Exhibit G – Developing and Presenting Findings” of the OSA’s standard contract. The engaged organization should allow approximately 6 weeks for review by the OSA contract monitor, the Deputy State Auditor, and State Auditor, and for the engaged organization to make revisions in response to each of those reviews.	Week of January 9, 2017
Meet with OSA Staff to Discuss the Findings	Following the State Auditor’s review of the findings, the engaged organization should plan to meet with OSA staff to discuss the findings. The engaged organization could attend this meeting via conference call.	Week of February 20, 2017
Submit Written Findings to the Department	Once the written findings are approved by the State Auditor, coordinate with the OSA contract monitor to submit the findings to the Department for review prior to the findings clearing meeting. The findings should be provided to the Department at least one week prior to the findings clearing meeting.	Week of February 27, 2017
Hold Findings Clearing Meeting with OSA and Department Staff	Hold an in-person findings clearing meeting with the appropriate OSA and Department staff to discuss the Department’s feedback on the findings. The engaged organization is responsible for scheduling this meeting. The OSA contract monitor can assist the engaged organization in contacting the Department, identifying appropriate staff, and coordinating schedules for OSA staff with respect to this meeting.	Week of March 6, 2017
Submit Draft Report to OSA Contract Monitor	Prepare a draft report using the written findings and the requirements outlined in “Exhibit H – Reporting Requirements and Format for Separately Issued Reports” of the OSA’s standard contract. Submit the draft report to the OSA contract monitor for review. Allow approximately 3 weeks for the OSA contract monitor, Deputy State Auditor, and State Auditor to review the report, and for the engaged organization to make revisions in response to those reviews.	Week of March 13, 2017
Submit Draft Report to the Department	Once the draft report is approved by the State Auditor, coordinate with the OSA contract monitor to submit the draft report to the Department for review prior to the exit conference. The draft report should be provided to the Department at least one week prior to the exit conference.	Week of April 3, 2017
Hold Exit Conference with OSA and Department Staff	Hold an exit conference with the appropriate OSA and Department staff to discuss the draft report and make revisions, as appropriate, to address comments or concerns raised by the Department. The engaged organization is responsible for scheduling this meeting. The OSA contract monitor can assist the engaged organization in contacting the Department, identifying appropriate staff, and coordinating schedules for OSA staff with respect to this meeting. The engaged organization could attend this meeting in person or via conference call. The engaged organization is responsible for making any required revisions to the report and obtaining the approval for any changes from OSA staff before submitting changes by the Department.	Week of April 10, 2017

<b>Findings and Reporting</b>		
<b>Tasks</b>	<b>Details</b>	<b>Completed No Later Than</b>
Obtain Responses from the Department	Work with the Department to obtain written responses to recommendations and work with the OSA contract monitor to ensure OSA approval of the responses.	Week of April 24, 2017
Submit Final Report to OSA Contract Monitor	Prepare the final report. Review the report and ensure the accuracy of all information contained in the report. Submit the report to the contract monitor for OSA staff's final review and approval. Once the State Auditor has approved the final report, provide the OSA contract monitor with the following: <ul style="list-style-type: none"> <li>o An electronic copy of the final print-ready version of the report (in unprotected PDF format) prior to printing.</li> <li>o Up to 100 hard copies of the bound printed report. The exact number of copies will be determined by the OSA at the time of report finalization. Acceptable binding formats are limited to spiral, comb, and glued bindings; 3-ring bindings are not acceptable.</li> </ul> The OSA will be responsible for distributing the report to the Legislative Audit Committee and to the Department.	Week of May 1, 2017
Conduct Dry Run of Oral Presentation with OSA Staff	Coordinate with the OSA contract monitor regarding the format and content of the Legislative Audit Committee presentation. This may include providing a written script of the engaged organization's presentation and/or conducting a preliminary dry run and incorporating revisions requested by the contract monitor. Conduct a dry run of the engaged organization's presentation with the OSA contract monitor and Deputy State Auditor and incorporate suggested revisions. The engaged organization could attend this meeting in person or via conference call.	Week of May 22, 2017
Provide Oral Presentation at the Legislative Audit Committee Hearing	Provide in-person oral testimony to the Legislative Audit Committee (tentatively scheduled for June 5 or 6, 2017). The engaged organization will be required to testify for about 1½ to 2 hours, providing an oral summary of the report and answering questions from Committee members.	June 5 or 6, 2017

### **Project Scope**

The performance evaluation will be conducted pursuant to Section 24-50-104(4)(b)(I), C.R.S., to analyze the Department of Personnel & Administration's procedures and application of data with respect to salary and benefit surveys. Considering the Department's primary objective of keeping the State, as an employer, competitive in the labor market, the evaluation should assess whether the Department's survey approach, conclusions, and recommendations are reasonable and consistent with sound professional practice and statutory criteria in the following respects:

- **Review of the Fiscal Year 2016-17 survey and Annual Compensation Report** - Did the Department's contractor (Milliman, Inc.) employ procedures and apply data in a reasonable manner that is consistent with sound professional practice and requirements outlined in statutes and rules [Section 24-50-104, C.R.S. and 4 C.C.R. 801-1, Chapter 3]for the Fiscal Year 2016-17 compensation survey? Are the conclusions and survey findings contained in the Fiscal Year 2016-17 Annual

Compensation Report, published August 25, 2015, a reasonable representation of, and supported by, the data as a whole?

- **Review of the Fiscal Year 2017-18 survey and Annual Compensation Report** - Did the Department employ procedures and apply data for the Fiscal Year 2017-18 survey in a reasonable manner that is consistent with the framework established by its contractor for the previous survey (Fiscal Year 2016-17) and in a manner that is consistent with sound professional practice and requirements outlined in statutes and rules [Section 24-50-104, C.R.S. and 4 C.C.R. 801-1, Chapter 3]? Are the conclusions and survey findings contained in the Fiscal Year 2017-18 Annual Compensation Report, published August 1, 2016, a reasonable representation of, and supported by, the data as a whole?

The review of the surveys and annual compensation reports should include consideration of the following:

- Whether the surveys used enough, reliable comparative data to be useful for all the compensation elements being assessed;
- Whether better data were available; and
- Whether the contractor's and/or Department's definition of the labor market includes a fair sample of public and private sector employers and jobs, including areas outside the Denver metropolitan area, as required by Section 24-50-104(4)(a), C.R.S.

The evaluation should also include:

- **Work to determine the implementation status of recommendations** contained in the previous evaluation contracted by the Colorado Office of the State Auditor (*Evaluation of the Department of Personnel & Administration's Annual Compensation Survey for Fiscal Year 2014*). This should include conducting work needed to draw sound and supportable conclusions about the implementation status, as well as work that would allow the engaged organization to develop and write comprehensive findings on any outstanding recommendations that are still valid and that would add value to the survey process if implemented.
- **Identifying any best practices that exist in other state or large public employers** that would help the State of Colorado's process be more effective or cost efficient and/or better align with industry standards for compensation surveys. This should include, but not be limited to:
  - Best practices for transitioning from providing pay increases via a tenure pay system to one where merit is the prevailing basis for salary increases.
  - Best practices for adjusting data for regional/geographic differences.
  - Best practices for using private sector comparison data for public sector positions.



- The identification of best practices should include consideration of the following:
- Whether the best practices would be good models for Colorado given the State’s structure, needs, and unique challenges;
  - Whether the best practices exist in systems that are similar to Colorado’s;
  - What policy changes or statutory changes would need to be considered in order to implement the best practices in Colorado; and
  - What benefits the State could expect to gain by implementing the best practices.

**D. INQUIRIES**

Prospective bidders may make written inquiries concerning this RFP to obtain clarification of requirements. Please address all inquiries to Nina Frant, Contract Monitor, nina.frant@state.co.us. No inquiries will be accepted after **5:00 p.m. MDT on August 26, 2016**.

**E. SUBMISSION**

All proposals become the property of the State Auditor upon receipt and will not be returned to the bidder. The State Auditor shall have the right to use all ideas, or adaptations of these ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

**F. ACCEPTANCE OF PROPOSAL**

This RFP does not commit the State Auditor to award a contract, to pay any costs incurred in the preparation of a bid submitted in response to this request, or to procure or contract for services or supplies. The State Auditor reserves the right to accept or reject, in part or in its entirety, any or all bids received as a result of this RFP if, in the opinion of the State Auditor, it is in the best interest of the State to do so. The lowest cost proposal will not necessarily be selected. Final scope and price may be negotiated after selection of the engaged organization.

**G. PROPOSALS - SCHEDULE**

The following schedule will be followed:

- |           |   |                           |
|-----------|---|---------------------------|
| 1.        | RFP available to prospective bidders                  | August 5, 2016            |
| 2.        | Prospective bidder’s inquiry deadline (5:00 p.m. MDT) | August 26, 2016           |
| 3.        | OSA response to inquiry deadline                      | September 7, 2016         |
| <b>4.</b> | <b>Proposal submission deadline (5:00 p.m. MDT)</b>   | <b>September 16, 2016</b> |
| 5.        | Approximate bid selection date                        | September 23, 2016        |
| 6.        | Approximate contract date                             | October 21, 2016          |

Any proposal received after **5:00 p.m. MDT on September 16, 2016** will not be

considered. The proposal must be submitted via email to **Nina Frant, Contract Monitor, [nina.frant@state.co.us](mailto:nina.frant@state.co.us)**. The proposal must be signed by a person legally authorized to bind the bidder.

**H. ADDENDUM OR SUPPLEMENT TO REQUEST FOR PROPOSAL**

The State Auditor reserves the right to issue amendments to this RFP prior to the closing date for submission of proposals. In the event that it becomes necessary to revise any part of this RFP, an addendum to this RFP will be provided to each prospective bidder.

**I. AWARD WITHOUT DISCUSSION**

The State Auditor reserves the right to make an award without further discussion of proposals received. Therefore, it is important that the proposal be submitted in the most complete terms possible from both the technical and cost standpoint.

**J. AWARD INFORMATION TO UNSUCCESSFUL FIRMS**

The State Auditor will notify all unsuccessful bidders after the award. No information will be released after the proposal submission deadline until an award has been made.

**K. JOINT VENTURES**

No joint venture proposals will be accepted. However, this requirement does not preclude the use of outside special consultants if deemed necessary by the engaged organization.

**L. STATE AUDITOR LIAISON**

The OSA's assigned contract monitor will be the liaison to the engaged organization throughout the evaluation. This individual will attend entrance/exit conferences and assist the engaged organization in understanding State Auditor requirements and reporting guidelines.

**M. AWARD OF BID**

The contract will be awarded to the bidder whose proposal will be most advantageous to the State of Colorado, price and other factors considered. The successful bidder will be awarded a contract for the scope detailed in this RFP or the scope negotiated through further discussion. *The successful bidder is expected to execute and adhere to the terms and conditions in the OSA's standard contract and its related exhibits. A copy of the OSA's standard contract and its related exhibits is included in Section IV - Supplemental Information of this RFP.*

**N. SUBMISSION OF INVOICES**

The engaged organization should submit monthly invoices for work completed. The State Auditor will withhold 10 percent of the total contract amount pending satisfactory completion of the evaluation.

## SECTION II

### INFORMATION THAT MUST BE INCLUDED IN PROPOSAL

All proposals *must* include the information requested in this section and be organized in the same manner as this section.

All proposals submitted to the OSA in response to this RFP are subject to the Colorado Open Records Act (CORA). *Any proprietary information your firm includes in the proposal should be clearly and specifically designated in the proposal.* Such information will be redacted from the proposal pursuant to 24-72-204(3)(a)(IV), C.R.S., allowing for the denial of inspection of records including trade secrets, before providing the proposal in response to a CORA request.

#### A. TITLE PAGE

The proposal will identify the RFP subject, organization's name, address, telephone number, name of contact person, and date.

#### B. TABLE OF CONTENTS

The proposal will include a clear identification of the material included in the bid proposal by section and page number.

#### C. TRANSMITTAL LETTER

Please limit the transmittal letter to two or three pages. Provide the names of individuals authorized to make representations for the organization and their titles, addresses, and telephone numbers.

#### D. PROFILE OF THE ORGANIZATION

The proposal must:

1. State whether the organization is local, national, or international.
2. Give the location of the office from which the work would be done and number of partners, shareholders, and managers and other professional staff employed at that office.
3. Describe the range of activities performed by the office from which the work would be done.
4. Describe the proposed evaluation team's experience with similar jobs and capabilities, including the number and classifications of personnel who will

work on the evaluation.

5. Affirm that the organization is independent for this evaluation engagement.
6. Describe any work performed for the Department of Personnel & Administration, the State of Colorado, or Milliman, Inc., within the past 2 years (September 2014 through August 2016), and any work planned for the Department of Personnel & Administration, the State of Colorado, or Milliman, Inc., and explain why this work would not impair the organization's independence in performing this evaluation of the Department of Personnel & Administration and work conducted by its contractor during the review period (Milliman, Inc).
7. Affirm that the organization does not have any past history of substandard work (e.g., a prior engagement has been terminated for poor performance).
8. Provide information on any past, current, or anticipated claims (i.e., knowledge of pending claims) on respondent contracts; explain the litigation, the issue, and its outcome or anticipated outcome.
9. Provide three references for similar work performed.

**E. QUALIFICATIONS OF ASSIGNED PERSONNEL**

The proposal must identify the principal staff (i.e., principals, managers, and supervisors/in-charges) who will work on the evaluation, including any specialists or subcontractors to be used. The proposal must include a resume of all principal staff highlighting their professional qualifications and similar evaluation work that they have performed. Resumes must be included in an appendix.

**F. ORGANIZATION'S APPROACH TO THE EVALUATION**

The proposal must include a description of the methodology, approach, tools, and resources to be used to conduct the evaluation. The proposal should set forth the steps that the organization will take to achieve each of the specific objectives outlined in this RFP as well as to develop all parts of a finding (as described in "Exhibit G – Developing and Presenting Findings" of the OSA's standard contract) for each problem identified.

**G. COMPENSATION**

1. The proposal must state the number of professional staff hours estimated to complete the work by staff level, the hourly rate, and the resulting total cost. The prospective bidder is advised that travel costs incurred in the performance of evaluations are reimbursable only as a part of the hourly rate and must be covered under said rate and will not be separately reimbursed.

2. The proposal should break out total hours estimated to: (1) complete each issue/objective/question and (2) write and revise findings and the final report.
3. The proposal must state the total inclusive maximum fee for which the work requested will be done.
4. The proposal should affirm that all prices, terms, and conditions will be held firm for at least 90 days after the bid opening.

**H. DELIVERY SCHEDULE**

The proposal must include a detailed proposed schedule of the work to be performed and deliverable due dates for the project milestones discussed in Section I, Part C of this RFP.

**I. ADDITIONAL DATA**

Since the preceding sections are to contain information that is specifically requested, the organization may include any additional information considered essential to the proposal in this section. The organization should not include general information publications, such as directories or client lists.

## **SECTION III**

### **PROPOSAL EVALUATION PROCESS**

#### **A. GENERAL**

An OSA evaluation team will judge the merits of proposals received in accordance with the general criteria defined below. The bidder is responsible for providing all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The evaluation team will select the bidder whose proposal is most responsive to the State Auditor's needs while being within available resources. The specifications within this RFP represent the minimum performance necessary for response.

During the evaluation process, the evaluation committee may, at its discretion, request any one or all bidders to make oral presentations or answer questions about their proposals. Not all bidders may be asked to make such oral presentations.

#### **B. MANDATORY CRITERIA**

1. The organization is independent for the evaluation engagement.

#### **C. GENERAL CRITERIA**

1. Adequacy and completeness of the proposal with regard to the information specified in Section II of this RFP.
2. Experience and stability of the organization.
3. Qualifications and experience of staff, including subcontractors, specialists, and consultants to be assigned to the evaluation.
4. Comprehensiveness and appropriateness of the proposed work plan.
5. Proposed costs (number of hours and hourly rate).
6. Proposed time frame for meeting project milestones and completing the evaluation.

#### **D. TOTAL SCORE**

The evaluation team will assign scores to the proposals based on the established criteria. The State Auditor will make the final decision on the contract award.

## SECTION IV

### SUPPLEMENTAL INFORMATION

Enclosed with this RFP are the following:

1. Standard OSA contract and related exhibits. *The successful bidder is expected to execute and adhere to the terms and conditions in the OSA's standard contract and its related exhibits.*
2. Section 24-50-104 of the Colorado Revised Statutes, which outlines the State's philosophy for total compensation, requirements for completing the annual compensation survey, and the authority for the Office of the State Auditor to contract for an evaluation of the compensation survey.

The following website links provide additional information to aid the bidder in preparing the proposal:

- **Fiscal Year 2016-17 Annual Compensation Report**  
<https://www.colorado.gov/pacific/sites/default/files/FY%202016-17%20State%20of%20Colorado%20Total%20Compensation%20Report%20Final%20V.1.5.pdf>
- **State of Colorado Annual Compensation Report FY 2016-17 Frequently Asked Questions**  
<https://www.colorado.gov/pacific/sites/default/files/FY%202016-17%20Annual%20Total%20Compensation%20Report%20FAQ.pdf>
- **Fiscal Year 2017-18 Annual Compensation Report**  
<https://drive.google.com/file/d/0B4vhvf15kXBvMm93NmV5aWlJa0U/view>
- *Evaluation of the Department of Personnel & Administration's Annual Compensation Survey for Fiscal Year 2014*, the previous evaluation contracted by the Colorado Office of the State Auditor  
[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/BF34709D606F20B587257B74006681E6/\\$FILE/2199%20DPA%20Comp%20Survey%2005%2020%2013%20Final.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/BF34709D606F20B587257B74006681E6/$FILE/2199%20DPA%20Comp%20Survey%2005%2020%2013%20Final.pdf)
- **Modernization of the State Personnel System Act (House Bill 12-1321)**, which provides for the State of Colorado's merit-based pay system  
[http://tornado.state.co.us/gov\\_dir/leg\\_dir/olls/sl2012a/sl\\_260.pdf](http://tornado.state.co.us/gov_dir/leg_dir/olls/sl2012a/sl_260.pdf)



- **Colorado Code of Regulations, 4 C.C.R. 801-1**, which outlines the rules governing the employee benefits program (see Chapter 3)  
<http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6078&fileName=4 CCR 801-1>
- **Recent report issued by the OSA** for prospective bidders to gain an understanding of the OSA's expectations for written reports  
[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/93135D9A2A36A24087257F3F0063599D/\\$FILE/1417P%20Immunization%20Program-Use%20of%20Tobacco%20Settlement%20Funds,%20Performance%20Audit,%20January%202016,%20Department%20of%20Public%20Health%20and%20Environment.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/93135D9A2A36A24087257F3F0063599D/$FILE/1417P%20Immunization%20Program-Use%20of%20Tobacco%20Settlement%20Funds,%20Performance%20Audit,%20January%202016,%20Department%20of%20Public%20Health%20and%20Environment.pdf)

COLORADO REVISED STATUTES

\*\*\* Titles 1 through 11, 13, 14, 16, 17, 19 through 21, 26 through 37, and 40 through 43 of the Colorado Statutes have been updated and are current through all laws passed during the 2016 Legislative Session, subject to final review by the Colorado Office of Legislative Legal Services. The remainder of the titles are current through all laws passed during the 2015 Legislative Session and are in the process of being updated. \*\*\*

TITLE 24. GOVERNMENT - STATE  
STATE PERSONNEL SYSTEM AND STATE EMPLOYEES  
ARTICLE 50.STATE PERSONNEL SYSTEM - DEPARTMENT OF PERSONNEL  
PART 1. DEPARTMENT OF PERSONNEL

C.R.S. 24-50-104 (2016)

**Legislative Alert:**

[LEXSEE 2016 Colo. SB 215](#) -- See section 1.

24-50-104. Job evaluation and compensation - state employee reserve fund - created - definitions - repeal

(1) Total compensation philosophy. (a) (I) It is the policy of the state to provide prevailing total compensation to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent work force. For purposes of this section, "total compensation" includes, but is not limited to, salary, group benefit plans, retirement benefits, merit pay, incentives, premium pay practices, and leave. For purposes of this section, "group benefit plans" means group benefit coverages as described in [section 24-50-603 \(9\)](#).

(II) The state personnel director shall establish technically and professionally sound survey methodologies to assess prevailing total compensation practices, levels, and costs. Except as provided in subparagraph (III) of this paragraph (a), for purposes of this paragraph (a), to determine and maintain salaries, state contributions for group benefit plans, and merit pay that are comparable to public and private employment, the state personnel director shall annually review the results of appropriate surveys by public or private organizations, including surveys by the state personnel director. Any surveys provided on a confidential basis shall not be revealed except to the state auditor's office and the private firm conducting the audit required in paragraph (b) of subsection (4) of this section. The state personnel director shall adopt appropriate procedures to determine and maintain other elements of total compensation, including the payment of incentive awards to employees in the state personnel system. The state personnel director's review and determination of total compensation practices shall not be subject to appeal except as otherwise authorized by law or state personnel director procedures.

(III) (A) The methodologies used for purposes of determining and maintaining prevailing compensation for state law enforcement officers employed by the Colorado state patrol shall be the same as the methodologies established pursuant to subparagraph (II) of this paragraph (a); except that the amount of salary shall be at least ninety-nine percent of the actual average salary provided to the top three law enforcement agencies within the state that have both more than one hundred commissioned officers and the highest actual average salary.

(B) As used in this subparagraph (III), "state law enforcement officer" means the chief and any commissioned or noncommissioned officer and trooper of the Colorado state patrol.

(b) The state personnel director shall use a systematic approach to objectively determine classes of positions and the uniform alignment of classes and occupational groups for all jobs in the state personnel system. The state personnel director shall conduct timely, ongoing, and technically sound evaluation and analyses of jobs in order to group similar duties and responsibilities into clearly distinguished classes and occupational groups that relate to the compensation structure through the assignment of appropriate pay grades. If the state personnel director proposes or the department of personnel recommends any changes to classes or occupational groups or to the pay grades for such classes or groups as a result of the evaluation and analyses required under this paragraph (b), the director shall notify all affected employees and employee organizations of such changes. Upon request of any affected employee or employee organization, the state personnel director shall meet and confer in good faith with such employee or organization regarding the proposed or recommended changes prior to finalizing and implementing any such change.

(c) (I) The state personnel director shall establish a merit pay system in order to provide periodic salary increases for employees in the state personnel system. The purpose of the merit pay system is to provide salary increases for employees based on performance evaluations and salary placement within the appropriate salary range. The state personnel director shall develop the merit pay system so that a merit pay increase is based on the relationship of performance rating distribution and salary range distribution. The merit pay system must include the following characteristics:

(A) Salary range is divided into quartiles, except as set forth in subparagraph (I.1) of this paragraph (c);

(B) The lowest quartile or distribution zone in relation to the midpoint has the highest rate of merit pay, and the rate for each successive quartile or distribution zone is less than the preceding quartile or distribution zone, except as provided in sub-subparagraph (E) of this subparagraph (I);

(C) Performance evaluations are divided into three performance categories, except as set forth in subparagraph (I.1) of this paragraph (c);

(D) The highest performance category has the highest rate of merit pay, and the rate for each lower performance category is less than the preceding category, except as provided in

sub-subparagraph (E) of this subparagraph (I); and

(E) Employees who receive an unsatisfactory performance evaluation are not eligible for merit pay.

(I.1) On or after September 1, 2015, the state personnel director shall review the effectiveness of the use of quartiles for salary range and three performance categories in the merit pay system. Based on the review, the state personnel director may adjust the number of distribution zones or performance categories to be used in the system. Thereafter, the state personnel director shall conduct a biennial review of the distribution zones and performance categories and may adjust the number of distribution zones or performance categories based on the review. The minimum number of distribution zones the state personnel director may establish is three, and the maximum number is six.

(I.2) If a state department or institution of higher education has a performance review system that has a different number of performance categories than the number used by the state personnel director in the merit pay system, the state personnel director shall establish a method for converting the departmental or institutional categories into the categories used in the merit pay system.

(I.3) Based on professionally sound survey methodologies, the state personnel director shall establish annually one or more priority groups of employees that have priority to receive merit pay based on available moneys. The priority groups must be based on length of service, relation to the salary range midpoint, performance, recruitment, retention needs, and other factors established by the director. The amount of merit pay that an employee in the state personnel system may receive depends first on the employee's priority group and then on the amount of merit pay, if any, associated with the employee's performance category and salary range.

(I.5) (A) Except as set forth in sub-subparagraph (B) of this subparagraph (I.5), the merit pay system applies uniformly across state departments and institutions of higher education subject to the provisions of subparagraph (I.9) of this paragraph (c). For each state fiscal year the state personnel director shall determine the appropriate merit pay rates that apply to all state departments and institutions and the priority group or groups that receive merit pay.

(B) Notwithstanding any provision of this section to the contrary, an institution of higher education may enact its own merit pay system, so long as the system is consistent with the provisions of this subsection (1).

(I.7) An employee who is at or above the maximum amount for his or her salary range is not eligible for a merit pay salary increase, but is eligible for a merit pay payment that is nonbase building.

(I.9) Merit pay is subject to available appropriations. Except as set forth in subparagraph (II) of paragraph (j) of this subsection (1), the general assembly shall appropriate any

moneys for merit pay in the annual general appropriation act in suitable personal services line items or other line items that include salary appropriations.

(II) In addition to any other requirements set forth in this paragraph (c), the department of personnel shall develop the merit pay system so that it:

(A) Is simple and understandable to employees in the state personnel system;

(B) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(C) Is developed with input from employees in the state personnel system, managers, and other affected parties;

(D) Emphasizes planning, management, and evaluation of employee performance; and

(E) Repealed.

(F) Prohibits a forced distribution of performance ratings.

(G) Repealed.

(III) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(IV) Each state department and institution of higher education shall ensure that it has a performance review system that can be used to implement a merit pay system. The state personnel director shall encourage state departments and institutions of higher education to implement performance evaluations of employees that are as objective as possible and that, as soon as possible and wherever feasible, include an assessment from multiple sources of each employee's performance. Such sources shall include, where applicable, the employee's self-assessment; the employee's superiors, subordinates, and peers; and any other applicable sources of an employee's performance. The state personnel director shall adopt procedures to establish a process to resolve employee disputes related to performance evaluations that do not result in corrective or disciplinary action against the employee. Each program established by a state department or institution of higher education pursuant to this subparagraph (IV) shall be subject to the director's approval.

(c.5) (I) The state personnel director shall provide for the evaluation of employee performance. Each employee shall be evaluated at least once a year. The evaluation of performance shall be used as a factor in compensation, promotions, demotions, removals, reduction of force, and all other transactions as determined by the state personnel director in which considerations of quality of service are properly a factor.

(II) A supervisor, including a supervisory state employee not within the state personnel system, who does not evaluate subordinate employees in the state personnel system as required by this paragraph (c.5) on at least an annual basis shall be suspended from work without pay for a period of not less than one workday. The provisions of this subparagraph

(II) shall only apply to supervisors who are state employees.

(III) The head of each principal department and each state-supported institution of higher education, respectively, shall determine annually on May 1 whether each supervisor in the department or institution has completed the mandatory performance evaluation required for each employee in the state personnel system during the preceding twelve months. If any evaluations have still not been completed by July 1, the supervisor may be subject to demotion. If a supervisor has not timely completed annual performance evaluations for two consecutive years, the supervisor shall be demoted to a nonsupervisory position.

(IV) The state personnel director shall adopt procedures for the implementation of the provisions of this paragraph (c.5). Nothing in this paragraph (c.5) shall be construed to limit the ability of the state personnel director to provide for additional sanctions for noncompliance with the provisions of this paragraph (c.5).

(V) The state personnel director shall monitor compliance with the requirements of this paragraph (c.5) and paragraph (c) of this subsection (1) and shall annually report the director's findings pertaining to the prior fiscal year no later than January 1 of the following fiscal year to the joint budget committee of the general assembly. The report shall include, by department or institution, the number of supervisors who were suspended or demoted, the percentage of all supervisors who complied with the requirements of this paragraph (c.5), the total amount of dollars that were awarded to employees for merit pay, the total amount of those dollars awarded for each priority group and each salary range and performance category, any reversion amounts that were transferred for the prior state fiscal year pursuant to subparagraph (IV) of paragraph (j) of this subsection (1), the line item appropriation related to each reversion amount, and the balance in the department's account within the state employee reserve fund as of the date of the report.

(c.7) In addition to the periodic salary increases authorized by paragraph (c) of this subsection (1), the performance review component of the merit pay system established pursuant to subparagraph (IV) of paragraph (c) of this subsection (1) shall be used for the purpose of determining eligibility for a performance-based award permitted pursuant to [section 24-38-103 \(1.5\)](#). The award shall be in addition to any other compensation authorized by law, and it shall not affect the compensation that the employee is entitled to receive in subsequent years.

(d) (Deleted by amendment, L. 2000, p. 1117, § 1, effective May 26, 2000.)

(e) The state personnel director shall sustain an employee's base salary in the event such employee's position is placed in a lower pay range due to an allocation of such employee's position, a system maintenance study of all positions in a class, a general job evaluation study of the state personnel system, or the annual compensation survey for a period not to exceed three years from the effective date of such placement.

(f) Initial hiring shall typically be at the minimum rate in the pay grade. On a showing of recruiting difficulty or other unusual condition, the appointing authority may authorize the

appointment of a person at a higher base salary within the pay grade.

(g) Benefits shall include insurance, retirement, and leaves of absence with or without pay and may include jury duty, military duty, or educational leaves. The state personnel director shall prescribe procedures for the types, amounts, and conditions for all leave benefits that are typically consistent with prevailing practices, subject to the provisions governing the benefits provided in subsection (7) of this section. The general assembly shall approve any changes to leave benefits granted by statute before such changes are implemented. The state personnel director shall prescribe by procedure any nonstatutory benefits.

(h) The state personnel director may, following consultation with the state auditor and consistent with article III and [sections 13, 14, and 15 of article XII of the state constitution](#), establish special procedures for classifying those employees of the state auditor's office who are within the state personnel system in order to take into consideration the special situations, circumstances, and duties unique to such employees. Such special procedures shall incorporate the directives, requirements, and elements of [sections 13, 14, and 15 of article XII of the state constitution](#), including, but not limited to, the grading and compensation of persons in the state personnel system according to standards of efficient service that are the same for all persons having like duties.

(i) (Deleted by amendment, L. 2003, p. 1926, § 1, effective May 22, 2003.)

(j) (I) As used in this paragraph (j), unless the context otherwise requires:

(A) "Department" means a principal department of the executive branch of state government specified in [section 24-1-110](#).

(B) "Eligible department" means a department that received an appropriation for which there is a reversion amount.

(C) "Fund" means the state employee reserve fund created in subparagraph (II) of this paragraph (j).

(D) "Personal services-related line item" means a line item entitled "personal services", "group health, life, and dental insurance", "short-term disability insurance", "amortization equalization disbursements", "supplemental amortization equalization disbursements", "salary survey", or "shift differential".

(E) "Qualifying cash fund" means a cash fund for which there is express authorization for a reversion pursuant to this paragraph (j) from the cash fund to the state employee reserve fund.

(F) "Reversion amount" means the final, adjusted amount of state moneys appropriated from the general fund or a qualifying cash fund for a state fiscal year in a personal services-related line item, a line item entitled "operating expenses", or any successor line item designated by the joint budget committee for the same purposes in the annual general

appropriation act to a department that is unexpended and unencumbered as of the date the state controller publishes the comprehensive annual financial report of the state for the state fiscal year. The joint budget committee shall notify the state controller and state treasurer of a successor line item from which there may be a reversion amount. There is no "reversion amount" related to any line item that moneys are transferred from or to pursuant to [section 24-75-108](#).

(II) (A) The state employee reserve fund is hereby created in the state treasury. Within the fund there is an account dedicated to each department. A department's account consists of moneys transferred pursuant to subparagraph (IV) of this paragraph (j) and any transfers directed by the governor pursuant to subparagraph (VI) of this paragraph (j). Moneys within a department's account are continuously appropriated to such department for the purpose of providing merit pay to certified employees as provided in this subsection (1). A department may not expend any moneys from its account without the approval of the director of the office of state planning and budgeting.

(B) Notwithstanding any provision of this section to the contrary, on April 1, 2015, the state treasurer shall transfer to the general fund six million three hundred fifty-one thousand two dollars from the department of public safety's account in the state employee reserve fund. This sub-subparagraph (B) is repealed, effective July 1, 2016.

(III) Any moneys in the fund not expended as provided in subparagraph (II) of this paragraph (j) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in a department's account shall be credited to the same account. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(IV) On the date the state controller publishes the comprehensive annual financial report of the state, the state controller and state treasurer shall transfer an amount of moneys equal to a reversion amount from the general fund or a qualifying cash fund to the state employee reserve fund to be allocated to the eligible department's account.

(V) Notwithstanding any provision of this section to the contrary, the state treasurer shall not transfer any moneys from a qualifying fund if:

(A) The reversion is required pursuant to [section 24-37.5-112 \(2\)](#); or

(B) There are insufficient moneys in the fund for the full transfer. In such case, the state treasurer shall transfer as much as is available.

(VI) In order to provide moneys to a department that is unable to generate substantial reversion amounts because of the manner in which moneys are appropriated to the department or other factors, the governor may direct the state treasurer to reallocate moneys among department accounts in the fund. The total amount reallocated pursuant to this subparagraph (VI) during a state fiscal year shall not exceed two million dollars. No



other reallocation of moneys among accounts is permitted.

(2) Records. To facilitate the reporting of estimated costs required of the state personnel director pursuant to paragraph (c) of subsection (4) of this section, the records of all positions in the state personnel system shall be current and included in the state personnel data system by January 1 of each year.

(3) Repealed.

(4) Annual compensation process. (a) The purpose of the annual compensation process is to determine any necessary adjustments to state employee salaries, state contributions for group benefit plans, and merit pay. The annual compensation survey, based on an analysis of surveys by public or private organizations, including surveys by the state personnel director, shall include a fair sample of public and private sector employers and jobs, including areas outside the Denver metropolitan area. In order to establish confidence in the selection of surveys, the state personnel director shall meet and confer in good faith with management and state employee representatives.

(b) (I) The state personnel director shall prepare an annual compensation report based on the analysis of surveys conducted pursuant to paragraph (a) of this subsection (4). The purpose of the annual compensation report shall be to reflect all adjustments necessary to maintain the salary structure, state contributions for group benefit plans, and merit pay for the upcoming fiscal year. For the merit pay component, the state personnel director shall include a description of the amount necessary for merit pay for all eligible state employees, as well as the amount necessary for each priority group of state employees. The state personnel director shall also include a detailed analysis of salary ranges for all employees in the state personnel system and how employees' salaries are distributed within these ranges. Each department may provide the state personnel director with a recommendation regarding the amount of moneys that should be appropriated to the department for merit pay for the upcoming fiscal year. The state personnel director shall establish deadlines for the recommendations and shall include a summary of all the recommendations he or she receives in the annual compensation report. The state auditor is responsible for contracting with a private firm to conduct a performance audit of the procedures and application of data, including any survey conducted by the state personnel director. Beginning January 1, 2005, the audits shall be conducted every four years. A report shall be submitted to the governor and the general assembly by the June 30 immediately following the completion of the audit.

(II) The general assembly reviewed the reporting requirements to the general assembly in subparagraph (I) of this paragraph (b) during the 2008 regular session and continued the requirements.

(c) By August 1, 2003, and by August 1 of each year thereafter, the state personnel director shall submit the annual compensation report and recommendations and estimated costs for state employee compensation for the next fiscal year, covering salaries, state contributions for group benefit plans, and merit pay, to the governor and the joint budget committee of

the general assembly. The recommendations shall reflect a consideration of the results of the annual compensation survey, fiscal constraints, the ability to recruit and retain state employees, appropriate adjustments with respect to state employee compensation, and those costs resulting from implementation of [section 24-50-110 \(1\) \(a\)](#). The recommendations for state contributions for group benefit plans shall specify the annual group benefit plan year established pursuant to [section 24-50-604 \(1\) \(m\)](#). The annual compensation report shall include the results of the surveys of public or private employers and jobs for prevailing total compensation and the reasons for any deviation from prevailing total compensation in the recommendations submitted to the governor and the joint budget committee. The state personnel director shall also publish such report. This paragraph (c) is exempt from the provisions of [section 24-1-136 \(11\)](#), and the periodic reporting requirements of this section are effective until changed by the general assembly acting by bill.

(d) (I) For fiscal years commencing prior to the 2003-04 fiscal year and after the 2003-04 fiscal year, the recommended changes to salaries and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act shall be effective on July 1 of the ensuing fiscal year unless the general assembly, acting by bill, establishes a different effective date for that fiscal year or the governor orders otherwise pursuant to [section 24-50-109.5](#) and such order is adopted by the general assembly through a joint resolution declaring a fiscal emergency and approved by the governor in accordance with [section 39 of article V of the Colorado constitution](#).

(II) For the 2003-04 and 2004-05 budget years, to the extent such changes are funded, the recommended changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective January 1 of the next fiscal year. For the 2005-06 fiscal year and each fiscal year thereafter, to the extent such changes are funded, the recommended changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective on the first day of the annual group benefit plan year established pursuant to [section 24-50-604 \(1\) \(m\)](#).

(III) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(IV) (Deleted by amendment, L. 2010, [\(HB 10-1181\)](#), [ch. 351](#), [p. 1624](#), [§ 13](#), effective June 7, 2010.)

(e) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(f) Any moneys appropriated pursuant to this subsection (4) shall not be used to achieve parity for employees outside the state personnel system.

(5) Pay plans. (a) The state personnel director shall establish pay plans as technically and professionally necessary and shall establish any procedures and directives required to implement the state's prevailing total compensation philosophy as defined in subsection (1)

of this section.

(b) No employee in any pay plan may exceed an established maximum salary amount for such plan, except as provided in paragraph (e) of subsection (1) of this section. The maximum monthly salary for any employee whose position is assigned to a nonmedical pay plan in effect prior to July 1, 1991, shall be calculated based on the 1991 maximum of five thousand seven hundred ninety-four dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991; except that classes in the medical pay plan requiring licensure as a physician or dentist shall be subject to a maximum monthly salary calculated on the basis of the 1991 maximum of seven thousand eight hundred twelve dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991. Effective July 1, 2010, the maximum monthly salary in the medical pay plan shall be seventeen thousand nine hundred twenty-seven dollars, plus any subsequent adjustments made under this paragraph (b). Such amounts shall be adjusted by the state personnel director in accordance with the change in the employment cost index for the preceding calendar year or the percentage increase in state general fund appropriations in relation to such appropriations for the preceding fiscal year, whichever is greater. In no event shall such amounts exceed the maximum found in the market as determined by the annual compensation survey. The maximum monthly salary for the senior executive service plan shall not exceed the maximum monthly salary of any nonmedical pay plan by more than twenty-five percent.

(c) The senior executive service is limited to one hundred twenty-five positions. The state personnel director shall establish criteria for inclusion in the senior executive service and shall review each nominated position before it is placed in the pay plan for the senior executive service. The head of the department or agency or state auditor for employees of the state auditor's office shall make appointments to the senior executive service based on competitive selection and is responsible for the management of the employees in such plan. Any person in the senior executive service has no right to any position within the state.

(d) In the medical pay plans, there are no anniversary-based merit increases. The salaries in such pay plans are based on the negotiation of an annual contract between the employee and the department head or the state auditor, when appropriate, and the amount of such salaries may increase, decrease, or remain unchanged from year to year. Any employee dismissed for failure to perform under such contract may only appeal directly to the state personnel board.

(e) In the pay plans for the senior executive service and those positions specified in [section 13 \(2\) \(a\) \(XI\) of article XII of the state constitution](#), there are no anniversary-based merit increases. The salaries in such pay plans are based on policies set forth by the state personnel director. The amount of such salaries may increase, decrease, or remain unchanged from year to year.

(6) Job evaluation. (a) System maintenance studies involving the assignment of classes to increased pay grades shall be incorporated into the annual total compensation request reported to the general assembly and shall be effective on July 1 of each year unless

otherwise ordered by the governor acting pursuant to [section 24-50-109.5](#).

(b) (I) The state personnel director shall allocate individual positions to the proper classes based on an objective evaluation of the job assignment.

(II) Any employee directly affected by the allocation of the employee's position to a class in a lower pay grade under subparagraph (I) of this paragraph (b) may file a written appeal with the state personnel director within ten days after receiving the notice of allocation of positions. The state personnel director, or the director's designee, shall review the appeal in summary fashion on the basis of written material that may be supplemented by oral argument at the sole discretion of the director or designee. At the director's discretion, an advisory panel of qualified job evaluators may be convened to assist the director in making a decision. Except as otherwise provided in subparagraph (III) of this paragraph (b), the director shall issue a written decision within ninety calendar days after the receipt of a timely appeal. If the director does not issue a decision within ninety calendar days after receipt of a timely appeal, the original allocation decision shall be final. An allocation decision may be overturned only if the director finds it to have been arbitrary, capricious, or contrary to rule or law. The state personnel director shall establish a process for timely resolving appeals within the ninety-day period and the criteria for selection of and method of service upon an advisory panel. Any decision shall be subject to judicial review pursuant to [section 24-4-106](#).

(III) When an employee who has filed an appeal with the state personnel director pursuant to subparagraph (II) of this paragraph (b) also files an appeal with the state personnel board pursuant to [section 24-50-123](#) or the Colorado civil rights division pursuant to [section 24-50-125.3](#), the ninety-day period specified in subparagraph (II) of this paragraph (b) shall be tolled until there is a final agency action by the board only if the appeal filed with the board or the civil rights division arises out of the same incident as the appeal filed with the director, is filed before the expiration of the ninety-day period, and is filed before the director has issued a written decision.

(7) Leaves. (a) No employee shall earn more than ten days of sick leave per fiscal year. No employee may retain accumulated sick leave in excess of forty-five days at the end of any fiscal year; except that any employee who had accumulated sick leave prior to July 1, 1988, shall retain such leave and may accumulate a maximum of forty-five additional days. Any excess accumulation may be converted to annual leave at the rate of five days of sick leave to one day of annual leave up to a total of two days per fiscal year. A medical certificate form from a health care provider shall be required for absences of more than three full consecutive working days, or the use of sick leave shall be denied.

(b) The procedures of the state personnel director shall provide that no more than two days of paid leave per fiscal year shall be granted for organ, tissue, or bone marrow donation for transplants. Such leave may not be accumulated.

(c) The state personnel director may establish procedures to allow the transfer of annual leave between employees when one employee, or an immediate family member of the

employee, experiences an unforeseeable life-altering event beyond the employee's control. The recipient of any annual leave shall have a minimum of one year of state service and exhausted all applicable paid leave, including any compensatory time.

(d) An employee certified as a disaster service volunteer of the American red cross may be granted paid leave for specialized disaster relief services. Such leave shall not exceed five days for a local disaster or fifteen days for a national disaster in a twelve-month period. Such leave may not be accumulated. During this period of leave, an employee shall not be deemed to be an employee for purposes of the "Workers' Compensation Act of Colorado", as provided in articles 40 to 47 of title 8, C.R.S. The leave authorized by this paragraph (d) shall run concurrent with and shall not be in addition to any paid leave of absence required by law for service by a member in a Colorado civil air patrol mission as provided in [section 28-1-104, C.R.S.](#), or for qualified volunteer service in a disaster as provided in [section 24-33.5-825](#).

(7.5) Repealed.

(8) Payroll. (a) For pay periods beginning before July 1, 2017, salaries for positions in the state personnel system paid on a monthly basis shall be paid as of the last working day of the month; except that:

(I) Salaries for the month of June shall be paid on the first working day of July; and

(II) For state personnel employees in the department of transportation hired before August 5, 1998, as amended, salaries for the month of December shall be paid on the first working day in January, unless any such employee informs the controller of the department of transportation of the employee's desire to be paid in the same manner as other employees in the state personnel system as provided in this subsection (8), in which case, the employee shall be paid in such manner.

(a.5) For pay periods beginning before July 1, 2017, for state employment positions that are not in the state personnel system and that are not otherwise covered by paragraph (a) of this subsection (8), salaries paid on a monthly basis for the month of June shall be paid on the first working day of July.

(a.6) For pay periods beginning before July 1, 2017, for state employment positions that are not otherwise covered by paragraph (a) or (a.5) of this subsection (8), whether or not the positions are in the state personnel system:

(I) and (II) (Deleted by amendment, L. 2015.)

(III) Effective July 1, 2012, and for pay periods beginning before July 1, 2017, salaries paid on a biweekly basis shall be paid fourteen days after the last day of the fourteen-day pay period.

(b) For pay periods beginning on or after July 1, 2017, salaries for employees paid through

the state's payroll system shall be paid twice a month as follows:

(I) For work performed from July 1, 2017, to July 15, 2017, employees shall be paid on July 31, 2017. For work performed from July 16, 2017, to July 31, 2017, employees shall be paid on August 15, 2017.

(II) Except as otherwise specified in subparagraph (III) of this paragraph (b), for all pay periods after the pay periods specified in subparagraph (I) of this paragraph (b), for work performed from the first day of the month to the fifteenth day of the same month, employees shall be paid on the last day of that month. For work performed from the sixteenth day of the month to the end of the same month, employees shall be paid on the fifteenth day of the following month.

(III) For work performed from June 1, 2018, to June 15, 2018, employees shall be paid on July 1, 2018, and for work performed from June 1 to June 15 each year thereafter, employees shall be paid on July 1 of the applicable year.

(c) (I) Any state employee may apply to the department of personnel for a one-time loan to assist the employee in covering expenses in July 2017. The amount of the loan shall not be more than an amount equal to the employee's net pay for a one-half month pay period.

(II) An employee who receives a loan from the state pursuant to this paragraph (c) shall repay the loan using one of the payment options specified in this subparagraph (II). An employee may repay the loan early with no prepayment penalty. If an employee separates from state employment prior to the full loan repayment, the balance of the loan shall be deducted from the employee's last paycheck. An employee shall choose one of the following repayment options:

(A) The employee may repay the loan over a three-year period with annual leave. The exact amount of annual leave needed to repay the loan shall be calculated by the department in which the employee is employed pursuant to guidelines issued by the office of the state controller.

(B) The employee may repay the loan over a three-year period with an after-tax deduction in each paycheck equal to one seventy-second of the loan amount plus simple interest at the state treasury's incremental borrowing rate.

(d) Monthly salaries shall be converted to annual salary as the basis for calculating amounts due for periods other than monthly.

(e) The state personnel director or the director's designee shall regulate, approve, and review all payroll deductions other than those expressly authorized by statute or state-sponsored for all state employees. The state personnel director may assess a charge to the organization that receives the benefit from such a payroll deduction to offset the cost to the state for this service.

(f) No payroll deduction shall be made on behalf of a state employee without prior written authorization from the state personnel director or the director's designee. The state personnel director or the director's designee may authorize a payroll deduction only after receiving a written request for such payroll deduction from the employee, a department or agency representative, or an organization.

(9) Liability. (a) Except for gross negligence or fraud, no state employee responsible for calculating pay shall be in any manner liable for overpayment or underpayment of salaries.

(b) No employee whose salary may be increased by an allocation of the employee's position to a class in a higher pay grade shall have any claim against the state unless the final allocation decision is made effective more than one year from the time the written allocation request was received by the appropriate personnel office. In such case, the employee is entitled to the difference between the salary of the old grade and the new salary for such period over twelve months.

(10) Total compensation study including retirement benefits. (a) By January 15, 2015, and by January 15 every eighth year thereafter, the state personnel director shall submit to the governor and the joint budget committee, along with the annual compensation report required pursuant to paragraph (b) of subsection (4) of this section, an addendum with a total compensation study that includes retirement benefits.

(b) The state personnel director shall contract with a third-party compensation consulting firm with actuarial expertise and national standing to perform the total compensation study that includes retirement benefits required pursuant to paragraph (a) of this subsection (10). The study must compare total and component costs and values of the state's total compensation against similar workforce structures, including private companies and other states.

(c) For purposes of the addendum to the annual compensation report required pursuant to this subsection (10), the public employees' retirement association created in article 51 of this title shall provide access to official association member information and data under a confidentiality agreement with the third-party compensation consulting firm.

(d) The state personnel director shall notify the joint budget committee of the general assembly if he or she determines that the amount appropriated by the general assembly for the purpose of the study required pursuant to this subsection (10) is insufficient to procure a vendor to complete the scope of the work required.

**HISTORY:** Source: L. 72: R&RE, p. 161, § 1. C.R.S. 1963: § 26-1-4.L. 73: pp. 420, 421-423, 426, § § 1, 1-5, 17.L. 75: (5)(e) and (5)(f) amended, p. 823, § 1, effective January 31; (5)(e) amended, p. 825, § 1, effective July 1.L. 79: (1)(a) amended, p. 944 § 1, effective June 21; (5)(e) amended, p. 945, § 1, effective June 29.L. 80: (5)(e) amended, p. 598, § 1, effective February 14; (6) amended, p. 600, § 1, effective July 1.L. 81: (2), (4)(a), (5)(a), (5)(b), (5)(e), and (5)(f) amended, (3)(g) and (8)(c) added, and (5)(c) R&RE, pp. 1196-1199, § § 4, 7, 5, 8, 6, effective July 1; (5)(e) amended, p. 887, § 2,

effective January 1, 1982.L. 83: (4)(d) R&RE, (4)(e) added, (5)(a), (5)(b), (5)(c)(II), (5)(e), (6), and (8)(a) amended, and (8)(b) and (8)(c) repealed, pp. 848, 849, 852, § 2, 3, 4, 7, effective May 31; (5)(e)(I) amended, p. 2055, § 33, effective October 14.L. 84: (2)(a), (5)(a), (5)(b), and (6) amended, (3), (4), and (5)(c) to (5)(f) R&RE, and (5)(g) added, pp. 705, 710, 707,709, § 3, 6, 4, 5, effective July 1.L. 85: (5)(g)(III) R&RE, p. 841, § 1, effective June 8; (3)(g), (4)(d)(I), (5)(f), (5)(g)(I), and (6) amended, p. 836, § 1, effective July 1.L. 86: (5)(b)(I) amended and (5)(b)(I.1) added, p. 418, § 38, effective March 26; (1)(a) amended, p. 1219, § 24, effective May 30; (5)(g)(IV) added, p. 591, § 2, effective July 1.L. 87: (4)(d)(II), (5)(a), (5)(b)(I)(A), (5)(b)(I.1)(A), (5)(b)(II), (5)(c), (5)(e), and (5)(g)(I) amended, p. 1032, § 1, effective July 1.L. 88: (5)(g)(I) and (9) amended and (5)(g)(V) added, pp. 953, 954, § 1, 2, effective May 24.L. 89: (5)(g)(VI) added, p. 1064 § 1, effective June 1; (2)(a), (5)(b)(I)(A), (8)(a), (9)(a), and IP (9)(b) amended, (2)(c) added, and (5)(b)(I)(B) repealed, pp. 487, 491, § 17, 23, effective July 1; (4)(d)(II) and (5)(g)(I) amended, p. 1062, § 1, effective July 1; (5)(b)(I.1) repealed and (9)(c) amended, p. 1646, § 23, 24, effective July 1; (9)(c) added, p. 664, § 4, effective July 1.L. 91: (9)(d) added, p. 903, § 1, effective March 11; (4)(d)(II) added, p. 842, § 1, effective April 17; (1)(a) amended, p. 1063, § 26, effective July 1; (5)(g)(VII) and (5)(g)(VIII) added and (6) amended, pp. 853, 854, § 1, 2, effective July 1.L. 92: (5)(g)(VII), (5)(g)(VIII), (6)(d), (6)(e)(I), and (6)(e)(V) amended and (5)(g)(IX) added, p. 1129, § 1, effective April 29; (5)(a), (5)(b)(I)(A), and (5)(e) amended, p. 1078, § 1, effective July 1; (8)(a) amended, p. 1046, § 1, effective July 1.L. 93: (3)(a), (3)(b), (3)(g), and (4) amended and (3)(h) added, pp. 299, 296, § 1, 2, effective April 7; (5)(g)(VII), (6)(e)(I), (6)(e)(V), and (8)(a) amended, (5)(g)(X) added, and (8)(a)(II) repealed, p. 2118, § 1, effective July 1.L. 94: (2) (c) (II) amended, p. 1136, § 2, effective May 19; (4)(d)(II), (5)(g)(I), and (8)(a)(I) amended and (8)(d) added, p. 1684, § 1, effective July 1.L. 96: (1)(b) and (1)(c) repealed, p. 1507, § 26, effective June 1; (8)(a)(I) and (8)(a)(III) amended and (8)(a)(IV) and (8)(a)(V) added, p. 1304, § 1, effective August 7.L. 98: Entire section R&RE, p. 668, § 1, effective August 5.L. 99: (1)(c) amended, p. 594, § 1, effective August 4.L. 2000: (1)(c), (1)(d), (1)(f), and (1)(i) amended, p. 1117, § 1, effective May 26; (7.5) added, p. 778, § 1, effective July 1; (1)(a)(II) amended and (1)(a)(III) added, p. 1982, § 2, effective August 2.L. 2001: (4)(c) amended, p. 701, § 1, effective May 31.L. 2002: (1)(a)(III)(A) amended, p. 1091, § 1, effective August 7.L. 2003: (8)(a) amended and (8)(a.5) and (8)(a.6) added, p. 52, § 1, effective March 5; (4)(c) amended and (4)(d) and (4)(e) added, p. 1494, § 1, effective May 1; (1)(a)(I), (1)(a)(II), (1)(a)(III)(A), (1)(c)(I), IP(1)(c)(II), (1)(c)(II)(B), (1)(c)(II)(D), (1)(c)(II)(E), (1)(c)(III), (1)(c)(IV), (1)(e), (1)(i), (3), (4)(a), (4)(b), (4)(c), and (4)(d)(II) amended, (1)(c)(II)(F), (1)(c)(II)(G), and (4)(f) added, and (1)(c.5) added with relocated provisions, pp. 1926, 1931, 1929, 1930, § 1, 5, 2, 3, 4, effective May 22.L. 2004: (1)(c.7) added, p. 1240, § 2, effective August 4; (4)(c), (4)(d), and (4)(e) amended, p. 1557, § 1, effective August 4.L. 2006: (4)(d)(I), (4)(d)(III), and (4)(e) amended and (4)(d)(IV) added, p. 543, § 1, effective July 1; (1)(c.5)(II) amended, p. 279, § 1, effective August 7.L. 2007: (3)(a.5) added, p. 184, § 18, effective March 22; (5)(b) amended, p. 1898, § 1, effective July 1, 2008.L. 2008: (4)(b) amended, p. 1269, § 6, effective August 5.L. 2009: (7)(c) amended, (HB 09-1008), ch. 78, p. 286, § 1, effective April 2; (7)(d) amended, (HB 09-1315), ch. 312, p. 1693, § 2, effective August 5.L. 2010: (5)(b) amended, (SB 10-167), ch. 296, p. 1377, § 4, effective May 26; (1)(a)(I) amended, (HB 10-1427), ch. 408, p. 2019, § 1,



effective June 10; (3) repealed, (4)(a), (4)(d)(IV), and (6)(b)(II) amended, and (6)(b)(III) added, (HB 10-1181), ch. 351, pp. 1623, 1624, § § 12, 13, effective June 7.L. 2012: (8)(a.6) amended, (HB12-1246), ch. 123, p. 417, § 1, effective April 16; (1)(a)(I), (I)(a)(II), (1)(c)(I), IP(1)(c)(II), (1)(c)(II)(D), (1)(c)(II)(F), (1)(c)(IV), (1)(c.5)(V), (1)(c.7), (4)(a), (4)(b)(I), and (4)(c) amended, (1)(c)(I.1), (1)(c)(I.2), (1)(c)(I.3), (1)(c)(I.5), (1)(c)(I.7), (1)(c)(I.9), and (1)(j) added, and (1)(c)(II)(E) and (1)(c)(II)(G) repealed, (HB 12-1321), ch. 260, p. 1342, § 6, effective September 1.L. 2013: (5)(c) and (5)(d) amended and (5)(e) added, (HB 13-1298), ch. 315, p. 1659, § 1, effective May 28; (1)(a)(III) and (7)(d) amended, (HB 13-1300), ch. 316, p. 1684, § 63, effective August 7.L. 2014: (10) added, (SB 14-214), ch. 322, p. 1404, § 1, effective June 4.L. 2015: (1)(j)(II) amended, (SB 15-169), ch. 17, p. 41, § 1, effective March 13; (8) amended, (HB 15-1392), ch. 320, p. 1302, § 1, effective June 5.

Editor's note: (1) Amendments to subsection (5)(e) by House Bill 75-1160 and House Bill 75-1751 were harmonized. Amendments to subsection (5)(e) by Senate Bill 81-308 and House Bill 81-1365 were harmonized.

(2) (a) Subsection (5)(g)(IX) provided for the repeal of subsection (5)(g)(IX), effective July 1, 1993. (See L. 92, p. 1129.)

(b) Subsection (5)(g)(X) provided for the repeal of subsection (5)(g)(X), effective July 1, 1994. (See L. 93, p. 2118.)

(c) Subsection (8)(d)(V) provided for the repeal of subsection (8)(d), effective July 1, 1994. (See L. 94, p. 1684.)

(d) Subsection (7.5)(h) provided for the repeal of subsection (7.5), effective July 1, 2005. (See L. 2000, p. 778.)

(3) Subsection (1)(c.5) is similar to former § 24-50-118 as it existed prior to 2003.

Cross references: (1) For the legislative declaration in the 2010 act amending subsection (5)(b), see section 1 of chapter 296, Session Laws of Colorado 2010.

(2) In 2012, subsections (1)(a)(I), (I)(a)(II), (1)(c)(I), IP(1)(c)(II), (1)(c)(II)(D), (1)(c)(II)(F), (1)(c)(IV), (1)(c.5)(V), (1)(c.7), (4)(a), (4)(b)(I), and (4)(c) were amended, (1)(c)(I.1), (1)(c)(I.2), (1)(c)(I.3), (1)(c)(I.5), (1)(c)(I.7), (1)(c)(I.9), and (1)(j) were added, and (1)(c)(II)(E) and (1)(c)(II)(G) were repealed by the "Modernization of the State Personnel System Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 260, Session Laws of Colorado 2012.

## ANNOTATION

Law reviews. For article, "The Fair Labor Standards Act: Criminal and Civil Liability", see 14 Colo. Law. 1802 (1985).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1998 repeal and reenactment.

Former subsection (3)(g) unconstitutional under § 13(1) of art. XII, Colo. Const. because the statute's wording of "upward allocation of a position" read together with "movement of the incumbent employee with his position" is nothing but a euphemistic description of a promotion and as such must comply with the requirements of § 13(1) of art. XII, Colo. Const. for competitive tests. *Colo. Ass'n of Pub. Employees v. Lamm*, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 repeal and reenactment of subsection (3)).

Subparagraph (1)(a)(II) allows the state personnel director to supplement independent third party salary and benefits surveys, but does not allow the director to determine prevailing practices without using such independent third party surveys. *Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers.*, 991 P.2d 827 (Colo. App. 1999).

Former subparagraph (2)(c)(I) language that the "state personnel director shall be responsible for the development, implementation, and administration of a total compensation program" did not grant the state personnel director any specific authority, but merely outlined general responsibilities, and did not relieve the director of the duty to comply with former subsection (5)(a) of this section. *Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers.*, 991 P.2d 827 (Colo. App. 1999).

Subparagraph (5)(b)(I)(A) of this section requires the state personnel director to meet and confer with both the total compensation advisory council and state employee representatives. *Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers.*, 991 P.2d 827 (Colo. App. 1999).

Challenges to salary survey results. Summary procedure employed by the department of personnel in processing state employees' challenge to salary and fringe benefits survey did not violate due process. *Anderson v. State Dept. of Pers.*, 756 P.2d 969 (Colo. 1988) (decided under law in effect prior to 1984 amendment to subsection (5)(g) making salary recommendations not appealable).

Study conducted by the department pursuant to the department's responsibility to revise and maintain the classification system was not conducted as a salary survey, the department was not required to comply with the specific procedures applicable to salary and fringe benefit surveys under subsection (5), and plaintiffs' due process rights were not violated. The data used was sufficiently current, and reliance on it was not arbitrary and capricious nor contrary to law. *Blake v. Dept. of Pers.*, 876 P.2d 90 (Colo. App. 1994).

Out-of-state employee compensation data is not prohibited by the constitution from being used to determine appropriate salary levels for state employees. *Blake v. Dept. of Pers.*, 876 P.2d 90 (Colo. App. 1994).

Director's authority under paragraphs (f) and (g) of subsection (3) of this section, regarding allocation of individual positions, derives from director's duty under section 14 of article XII

of the state constitution to administer day-to-day activities of state personnel system and is distinctly separate from personnel board's authority under section 13 of the said article to hear appeals from disciplinary decisions. Therefore, paragraph (g) does not intrude upon the board's exclusive jurisdiction. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Director's decisions are vested with a presumption of validity. *Bernstein v. Livingston*, 633 P.2d 519 (Colo. App. 1981).

Burden of proof is on employee in appeal under subsection (3)(g) of this section to show that decision was arbitrary, capricious, or contrary to rule or law. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Failure to provide employee with performance evaluations pursuant to § 24-50-118 does not furnish basis on which to invalidate reallocation decision. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Personnel analyst's alleged lack of authority to make preliminary reallocation decision does not furnish basis on which to invalidate decision. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

A 1991 amendment to subsection (6) does not render moot a claim by state employees that former version of the subsection was unconstitutional. *Dempsy v. Romer*, 825 P.2d 44 (Colo. 1992); *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Authority granted under subsection (6) to state personnel director to establish pay plans justified by salary survey does not prevent the general assembly from establishing maximum monthly salary levels. *Dempsy v. Romer*, 825 P.2d 44 (Colo. 1992).

The statutory scheme set forth in this section does not unconstitutionally transfer legislative authority of appropriation to the state personnel director. The state constitution grants to the general assembly primary responsibility for determining the amount of revenue to be expended in the state. To construe this section as authorizing the state personnel director to control the appropriation process as it is impacted by classification and reclassification of state employees would alter the check and balance system of governmental fiscal responsibility. *Dempsy v. Romer*, 825 P.2d 44 (Colo. 1992).

This section does not authorize the state personnel director to establish specific levels of compensation for state employees. The authority in subsection (6) granted the state personnel director to develop pay plans is limited by subsections (3), (4), and (5). When construed as a whole, this section clearly prohibits the director from developing pay plans compensating state employees in excess of levels established by the legislature. *Dempsy v. Romer*, 825 P.2d 44 (Colo. 1992).

State personnel department required to follow the statutory mandates of former subsection (4)(d)(II), where a downward adjustment in personnel salaries was a reorganization with a

"fiscal impact" in that it reduced the funds expended on revenue department salaries. *Alexander v. Colo. Dept. of Pers.*, 952 P.2d 814 (Colo. App. 1997), rev'd on other grounds, 970 P.2d 459 (Colo. 1998). (decided under law in effect prior to 1998 repeal and reenactment).

Governor, by communicating his or her approval of reorganization of statewide system of pay grades and salary rates in a letter to the joint budget committee and by submitting with the letter the annual salary and fringe benefits survey for implementing the reorganization, satisfied statutory requirements for indicating governor's approval of reorganization. *Colo. Dept. of Pers. v. Alexander*, 970 P.2d 459 (Colo. 1998) (decided under law in effect prior to 1998 repeal and reenactment).

This section does not prohibit the general assembly from establishing specific monthly salary levels for specific grades of employees. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

This section does not violate equal protection standards. The monthly maximum salary level limit set forth in subsection (6) represents a reasonable exercise of the legislature's responsibility for maintaining the fiscal integrity of the state personnel system and does not discriminate between members of specific classes or grades of employees. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

Challenge to occupational grouping of port of entry officers under subsection (3)(d). Where personnel director, by process of elimination, placed port of entry officers in the Office Support Related Services grouping, which did not typify the primary duties performed by the officers, the director failed to comply with the statutory mandate included in subsections (3) and (5) and was ordered to modify or create an occupational grouping to accommodate the officers. *Bostron v. Colo. Dept. of Pers.*, 860 P.2d 595 (Colo. App. 1993).

The classifications authorized in subsections (4) and (5) of this section bear a rational relationship to the state's interest in maintaining the fiscal integrity of the personnel system. Plaintiffs are not deprived of their right to equal protection of the law. *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Subsection (5)'s requirement that the director of the department of personnel use wage surveys conducted by nonstate public or private agencies does not violate the doctrine of separation of powers by interfering with the department of personnel's power as established in the constitution. *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Subsection (5)(c) does not provide that entry into senior executive service alone waives all future rights to return to a position outside the senior executive service. Subsection (5)(c) prohibits an employee's return to an outside position only while the employee serves in the senior executive service. *Kirkmeyer v. Dept. of Local Affairs*, 313 P.3d 562 (Colo. App. 2011).

Plaintiff whose senior executive service contract has expired lacks standing to attack subsection (5)(c) on its face because the statutory preclusion of an outside position applies

to employees only while in the senior executive service, not to an employee whose senior executive service contract has expired, and plaintiff neither seeks relief for any injury suffered while she was in the senior executive service nor any longer holds a senior executive service position. *Kirkmeyer v. Dept. of Local Affairs*, 313 P.3d 562 (Colo. App. 2011).

Department of corrections does not have to verify the qualifications of all certified employees before implementing layoff. *Halverstadt v. Dept. of Corr.*, 911 P.2d 654 (Colo. App. 1995).

For longevity salary increments under previous statutory provision, see *Colo. Ass'n of Pub. Employees, v. Colo. Civil Serv. Comm'n*, 31 Colo. App. 369, 505 P.2d 54 (1972).

Subsection (8)(c) gives the state personnel director discretion to grant or deny automatic payroll deductions. State employees and their labor organizations who alleged that an executive order and resulting personnel policy deprived them of the right to even be considered for automatic payroll deductions of union dues and that the employees had unsuccessfully requested such deductions, therefore, asserted both a legally protected right and injury in fact and had standing to sue the governor. *Ainscough v. Owens*, 90 P.3d 851 (Colo. 2004).

Applied in *Spahn v. State Dept. of Pers.*, 44 Colo. App. 446, 615 P.2d 66 (1980); *Eliopoulos v. State Pers. Bd.*, 705 P.2d 1035 (Colo. App. 1985) (decided under law in effect prior to 1984 repeal and reenactment).

**STATE OF COLORADO**  
**State Auditor and**  
**Legislative Audit Committee**  
**Performance Evaluation Contract for the**  
**Audit of the INSERT NAME OF ENTITY**  
**With**  
**INSERT NAME OF CONTRACTOR**

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## 1. PARTIES

This Contract (“Contract”) is entered into by and between [REDACTED] (“Contractor”), and the STATE OF COLORADO acting by and through and for the use and benefit of the State Auditor and the Legislative Audit Committee ( the “State”). Contractor and the State hereby agree to the following terms and conditions.

## 2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Contract shall be effective and enforceable once it is approved and signed by the State Auditor or designee (the “Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## 3. RECITALS

### A. Authority, Appropriation, And Approval

Authority to enter into this Contract exists in CRS §2-3-103(1) and funds have been budgeted, appropriated and otherwise made available pursuant to Fund 1000, Appropriation Code MGFCC4010, Contract Encumbrance Number 20[REDACTED]-[REDACTED], and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

### B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

### C. Purpose

The State desires to engage Contractor to render certain professional evaluation services.

### D. References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

## 4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

### A. Evaluation Report

“Evaluation Report” means [REDACTED].

### B. Agency

“Agency” means [REDACTED], hereinafter referred to as “[REDACTED]”, which is/are subject to evaluation under this Contract.

### C. Contract

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law.

### D. Contract Funds

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Contract as set forth in §7(A) (Maximum Amount).

### E. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Request for Proposal), **Exhibit C** (Modifications to Contractor’s Proposal), **Exhibit D** (Contractor’s Proposal), **Exhibit E** (Information Security Policy for Contractors), **Exhibit F** (Compensation and Procedures for Billing),

**Exhibit G** (Developing and Presenting Findings), and **Exhibit H** (Reporting Requirements and Format for Separately Issued Reports).

**F. Modifications to Proposal**

“Modifications to Proposal” means the modifications to Contractor’s Proposal, dated [REDACTED].

**G. Party or Parties**

“Party” means the State or Contractor and “Parties” means both the State and Contractor.

**H. Proposal**

“Proposal” means Contractor’s Proposal dated [REDACTED].

**I. Request for Proposal or RFP**

“Request for Proposal” or “RFP” means the State’s Request for Proposal, issued [REDACTED], including the supplement to the RFP, dated [REDACTED].

**J. Services**

“Services” means the required performance evaluation services to be performed by Contractor pursuant to this Contract.

**K. State Auditor**

“State Auditor” means the Colorado State Auditor. The Office of the State Auditor may be referred to as “OSA.”

**L. Subcontractor**

“Subcontractor” means a third-party, if any, engaged by Contractor to aid in performance of its obligations.

**M. Work**

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract and the **Exhibits**, including the performance of the Services and delivery of the Work Product.

**N. Work Product**

“Work Product” means the tangible or intangible results of Contractor’s Work, including the Evaluation Report, work papers subject to §18 herein, and reports, which are specified in Exhibit H.

**5. TERM AND EARLY TERMINATION**

**A. Term-Work Commencement**

The Parties’ respective performances under this Contract shall commence on the Effective Date. This Contract shall terminate thirty (30) days after the Evaluation Report has been released by the Legislative Audit Committee, but in no event later than [REDACTED], unless sooner terminated as specified herein. The State may terminate this Contract for any reason, without penalty to the State, upon thirty (30) days prior written notice to Contractor.

**B. Early Termination**

Upon early termination, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding subcontracts with third parties. Contractor shall complete and deliver to the State all Work, Services, and Work Product to the extent completed as of the date of termination. Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. The State shall reimburse Contractor for accepted performance up to the date of termination.

**6. STATEMENT OF WORK**

**A. Completion**



Contractor shall complete the Work and its other obligations as described herein and in the **Exhibits** on or before \_\_\_\_\_.

**B. Services and Work Product**

Contractor shall provide the Services and deliver the Work Product necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

**C. Employees**

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or Subcontractors' personnel for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

**7. PAYMENTS TO CONTRACTOR**

The State, in accordance with the provisions of this §7, shall pay Contractor in the amounts and using the methods set forth below:

**A. Maximum Amount**

The maximum amount payable under this Contract to Contractor by the State is \$\_\_\_\_\_, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract set forth in **Exhibit F** (Compensation and Procedures for Billing). The maximum amount payable by the State to Contractor during State Fiscal Year 20\_\_-20\_\_ shall be \$\_\_\_\_\_. The maximum payable by the State to Contractor during State Fiscal Year 20\_\_-20\_\_ shall be \$\_\_\_\_\_.

**B. Payment**

**i. Interim and Final Payments**

Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner approved by the State.

**ii. Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the interest rate.

**iii. Erroneous Payments**

At the State's sole discretion, payments made to Contractor in error for any reason, including overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**C. Use of Funds**

Contract Funds shall be used only for costs identified herein and in the **Exhibits**.

**8. REPORTING - NOTIFICATION**

Reports required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State.

**A. Performance, Progress, Personnel, and Funds**

Contractor shall comply with all reporting requirements, if any, set forth in the **Exhibits**.

**B. Litigation Reporting**

To the extent permitted by law, within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the State Auditor.

**C. Noncompliance**

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds, termination, or both, as provided under this Contract.

**D. Subcontracts**

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

**9. CONTRACTOR RECORDS**

**A. Maintenance**

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all work papers and reports pertaining in any manner to the Work or the delivery of Services or Work Product hereunder. Unless Contractor receives written notice of an extension from the State, the federal government or another duly authorized agent of a governmental agency, Contractor shall maintain such records for a period of at least five (5) years after (i) the date the Evaluation Report is accepted by the State or (ii) the sooner expiration or termination of this Contract (collectively, the "Record Retention Period").

**B. Inspection**

Contractor, at no additional charge, shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Contractor's work papers and reports related to this Contract during the Record Retention Period to assure compliance with the terms hereof, to evaluate performance hereunder, or for any other purpose required by the State. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals.

**C. Monitoring**

Contractor shall permit the State, in its sole discretion, to monitor all activities and Work conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure.

**10. WORK PRODUCT-CONFIDENTIAL INFORMATION-STATE RECORDS**

The Work Product developed by Contractor during the performance of the Services shall be confidential to Contractor and the State; except as otherwise may be required by law, regulation, judicial, or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining hereto, Contractor shall not provide the Work Product to parties other than the State without the written approval of the State as provided by CRS §2-3-103(3). Contractor shall forward immediately to the State any requests for Work Product the Contractor receives pursuant to CRS §24-70-201, et seq. (the Colorado Open Records Act).

**11. CONFLICTS OF INTEREST**

**A. Agency**

Contractor shall not discuss, arrange for, or accept auditing (financial or performance) or non-auditing work not identified in this Contract with the Agency during the term of this Contract, without the express written approval of the State.

**B. Other State Agencies**

Contractor shall provide written notice to the State, in accordance with §17 (Notices and Representatives) of this Contract, before entering into a contract or engagement with another State agency, department, or division subject to audit or evaluation by the State.

**12. REPRESENTATIONS AND WARRANTIES**

Each Party has relied on the representations and warranties of the other Party set forth below in entering into this Contract.

**A. Qualifications, Standards and Manner of Performance**

Contractor warrants that it is qualified to perform the Services and the Work Product.

**B. Legal Authority – Contractor Signatory**

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor’s authority to enter into this Contract within fifteen (15) days of receiving such request.

**C. Licenses, Permits, Etc.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

**D. Contractor Independence**

Contractor should be independent in performing the evaluation engagement. The State represents and warrants that it shall not request or require Contractor to surrender Contractor’s “independence” as such term is professionally understood.

**E. Disclaimer**

Except for the representations and warranties expressly stated in this Contract, the Parties disclaim all representations and warranties, written or oral, express or implied.

**13. INSURANCE**

Contractor and its Subcontractors shall obtain and maintain, at all times during the term of this Contract, insurance policies issued by insurance companies satisfactory to Contractor and the State, in form and amount reasonably acceptable to the State, providing coverage for Worker’s Compensation Insurance as required by State statute, Employer’s Liability Insurance covering all of their respective employees acting within the course and scope of

their employment, Commercial General Liability Insurance, and Professional Liability/Errors & Omissions. Upon request of the State, Contractor and all Subcontractors shall provide to the State certificates showing insurance coverage required hereunder.

#### **14. DISPUTE RESOLUTION**

Disputes concerning the performance of this Contract, which cannot be resolved by the designated Contract representatives, shall be referred in writing to the State Auditor and the Contractor's [corresponding executive level (i.e. "managing partner at the xx office")] for resolution. The State Auditor and the Contractor's [corresponding executive level (i.e. "managing partner at the xx office")] shall discuss the problem without the necessity of a formal proceeding and attempt to resolve the matter in dispute. In the event the State Auditor and the Contractor's [corresponding executive level (i.e. "managing partner at the xx office")] are able to agree to a mutual resolution of the dispute, such resolution will be formalized in writing in accordance with this Contract. Either Party may find, at any time, that the attempted resolution of the dispute has failed, at which time each Party shall be free to pursue any and all remedies available to such Party, including without limitation, those available under this Contract, at law or in equity.

#### **15. BREACH**

##### **A. Defined**

In addition to any breaches specified in other sections of this Contract, the following shall constitute a breach of this Contract:

##### **i. Material Obligations**

The failure of Contractor to perform any of its material obligations hereunder, to the satisfaction of the State, in whole or in part or in a timely or satisfactory manner; or

##### **ii. Satisfactory Performance**

The State, in its reasonable discretion, determines that satisfactory performance of Contractor's obligations under this Contract is substantially endangered; or

##### **iii. Bankruptcy**

The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof; or

##### **iv. Material Misrepresentation**

Any statement, representation, or certification furnished by Contractor in connection with the RFP, Contractor's Proposal, Modifications to Contractor's Proposal or this Contract is false, deceptive, incorrect or incomplete in any material respects; or

##### **v. Failure to Timely Deliver Reports**

Failure by Contractor to complete and deliver the Evaluation Report or Work Product by the date specified in §6(A) (Statement of Work), unless Contractor can show that the delinquency resulted from causes beyond its control such as failure of the Agency to provide, by the date specified in a written request from Contractor: requested documentation, records, or information; records that are in a reviewable format; or responses to Contractor's findings and recommendations. Contractor shall allow a reasonable amount of time for the Agency to provide the requested information and responses.

##### **B. Notice and Cure Period**

In the event of a breach, notice specifying the nature of such breach shall be given in writing by the aggrieved Party to the other Party in the manner provided in §17 (Notices and Representatives). If such breach is not cured within twenty (20) days of receipt of written notice, or if a cure cannot be completed within twenty (20) days and such cure has

not begun within twenty (20) days and pursued with due diligence, the State may exercise any of the remedies set forth in §16 (Remedies). Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice of a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**16. REMEDIES**

If Contractor fails to cure a breach under any provision of this Contract in accordance with §15(B) (Breach), the State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Breach**

The State may terminate this Contract upon written notice to Contractor. Exercise by the State of this right shall not be a breach of its obligations hereunder.

**B. Liquidated Damages**

Failure by Contractor to complete and deliver the Evaluation Report by the date specified in Exhibit A (Statement of Work) shall result in liquidated damages of \$100 per day for each day delinquent. To the extent Contractor’s failure is excused under §15(A)(v) (Breach), liquidated damages shall not be due to the State. The Parties agree that the damages from Contractor’s failure to timely deliver the Evaluation Report is difficult to provide or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance. Assessment of liquidated damages shall not be exclusive or in any way limit the remedies available to the State, at law or in equity, for other breaches by Contractor under this Contract.

**C. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor’s performance are satisfactorily made and completed.

**D. Deny Payment**

Deny payment for obligations not performed, that due to Contractor’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**17. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Kerri Hunter Deputy State Auditor
Office of the State Auditor
1525 Sherman St., 7 <sup>th</sup> Floor
Denver, Colorado 80203-1700
kerri.hunter@state.co.us

**B. Contractor:**

Name
------

Address
City, State Zip
Email

**C. Media**

The State shall be the official spokesperson to the news media pertaining to the engagement, Work Product, and Evaluation Report. Contractor shall forward immediately to the State any inquiries from the news media pertaining to the engagement, Work Product, or Evaluation Report.

**18. RIGHTS IN DATA AND DOCUMENTS**

The work papers developed by Contractor during the performance of the Services shall be the exclusive property of Contractor. The State shall have the right to copy the work papers. Except as provided in §9B and §10, Contractor shall not provide the work papers to third-parties or permit third parties to review, access or use the work papers, without the prior written consent of the State as provided by CRS §2-3-103(3). Contractor shall forward immediately to the State any requests for work papers the Contractor receives pursuant to CRS §24-70-201, et seq. (the Colorado Open Records Act).

**19. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq., and the risk management statutes, CRS §24-30-1501, et seq., as amended.

**20. GENERAL PROVISIONS**

**A. Assignment and Subcontracts**

Contractor’s rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any subcontract entered into subsequent to the Effective Date must be approved by the State in writing before it is reimbursable. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance, including compliance with all applicable federal and state laws.

**B. Binding Effect**

Except as otherwise provided in §20(A) (Assignment and Subcontracts), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

**C. Captions**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**D. Counterparts**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

**F. Jurisdiction and Venue**

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. Modification**

**i. By the Parties**

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both Parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law.

**ii. By Operation of Law**

This Contract is subject to such modifications as may be required by changes in federal or Colorado state law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein. If any such modification materially and adversely affects Contractor, Contractor may terminate this Contract upon 30 days prior notice without incurring liability, penalty, or recourse related thereto.

**H. Order of Precedence**

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The remaining provisions of the main body of this Contract,
- iii.** Exhibit A (Statement of Work),
- iv.** Exhibit B (Request for Proposal),
- v.** Exhibit C (Modifications to Contractor's Proposal),
- vi.** Exhibit D (Contractor's Proposal),
- vii.** Exhibit E (Information Security Policy for Contractors),
- viii.** Exhibit F (Compensation and Procedures for Billing),
- ix.** Exhibit G (Developing and Presenting Findings),
- x.** Exhibit H (Reporting Requirements and Format for Separately Issued Reports).

**I. Severability**

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

**J. Survival of Certain Contract Terms**

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

**K. Taxes**

- i.** The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

- ii. Contractor shall be responsible for all withholding taxes, social security, unemployment, workers' compensation, or other taxes incidental to its employees, and shall hold the State harmless for any claims for the same.

**L. Third Party Beneficiaries**

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**M. Waiver**

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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## **21. COLORADO SPECIAL PROVISIONS**

### **A. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **B. GOVERNMENTAL IMMUNITY.**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

### **C. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### **D. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **E. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

### **F. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

### **G. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the

State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**H. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**I. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**J. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**K. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

**22.SIGNATURE PAGE**

Contract Routing Number 20XX-XX

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;"><b>CONTRACTOR</b></p> <p style="text-align: center;">_____</p> <p>By: _____ Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> <i>Colorado Office of the State Auditor</i> Dianne E. Ray, State Auditor</p> <p>_____</p> <p style="text-align: center;">By: Dianne E. Ray, State Auditor</p> <p style="text-align: center;">Signatory avers that Contractor has not begun performance or that a Statutory Violation waiver has been requested</p> <p>Date: _____</p> <p>_____</p> <p style="text-align: center;">Legislative Audit Committee Chair</p> <p style="text-align: center;"><b>LEGAL REVIEW</b> Dan L. Cartin, Director Office of Legislative Legal Services</p> <p>By: _____</p> <p style="text-align: center;">Signature – Deputy State Auditor</p> <p>Date: _____</p>
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## **23. EXHIBIT A – STATEMENT OF WORK**

### **1. GENERAL DESCRIPTION**

Contractor shall conduct a performance evaluation of the Agency in a manner consistent with the terms and conditions of the Contract and the Exhibits.

### **2. CONTRACTOR’S OBLIGATIONS**

The Work to be performed by Contractor shall include the following:

#### **A. Scope**

Contractor’s evaluation of the Agency shall include the following, as provided herein and in the Contract:

1. [ADD detailed description of work to be completed.]
2. Contractor shall maintain an awareness of any areas outside of the Services in which the Agency may not be carrying out the Agency’s programs in an effective and efficient manner. Contractor shall discuss any such areas with the State to determine whether the State desires Contractor to undertake additional performance evaluation services that are outside the scope of this Contract. The cost of such performance evaluation services are not included within the scope of this Contract, and any additional performance evaluation services shall be subject to negotiation and set forth in a separate agreement among Contractor, the State Auditor, and the Legislative Audit Committee.

#### **B. Review by State**

The State shall have access to and the right to review Contractor’s Evaluation Report, findings and recommendations, and work papers during the drafting stage of the Evaluation Report and prior to completion of the Evaluation Report in final form. Contractor may not submit the Evaluation Report to the Agency until the Evaluation Report is deemed acceptable and approved by the State.

#### **C. Availability**

Contractor, upon the request of the State, shall furnish copies of Contractor’s work programs developed pursuant to this Contract and make all other work papers available to the State for review or use in future evaluations or audits, at no additional charge to the State.

#### **D. Reports**

Contractor shall prepare and deliver the Evaluation Report to the State no later than (Month) (Day), (Year), unless an extension of time has been approved by the State. In the event Contractor becomes aware that the due date for the Evaluation Report cannot be met, for any reason, Contractor shall notify the State Auditor in writing of the reasons therefor and a specific date when the Evaluation Report will be delivered. For a separately issued Evaluation Report, Contractor shall deliver to the State up to 100 copies of the bound report. The exact number of copies will be determined by the State at the time of report finalization. Acceptable binding formats are limited to spiral, comb, or glued bindings; 3-ring bindings are not acceptable. Contractor shall also deliver to the State an electronic copy of the Evaluation Report in unprotected Adobe PDF format or other format prescribed by the State.

#### **E. Oral Presentations**

The Contractor shall make an oral presentation of Evaluation Report findings and recommendations to the Legislative Audit Committee and, if applicable, one other legislative committee selected by the State.

#### **F. Entrance/Exit Conferences**

The State shall participate in all entrance and exit conferences between the Agency and Contractor, as well as all major conferences dealing with evaluation work results, findings, and recommendations.

**G. Fraud**

Should Contractor become aware of fraud or indications of fraud affecting the Agency, Contractor shall notify the State Auditor immediately for consultation regarding further action.

**3. PERSONNEL**

**A. Contract Monitor**

Contractor's performance hereunder shall be monitored by [REDACTED], an employee or agent of the State, who is hereby designated as the contract monitor(s) of this Contract.

**B. Other Key Personnel**

The key personnel identified by Contractor in the Contractor's Proposal are deemed to be essential to the Work being performed under the Contract.

**C. Replacement**

Contractor shall immediately notify the State if any key personnel cease to be employed by Contractor. Prior to diverting any key personnel to other programs, Contractor shall give to the State fifteen (15) days advance notice and shall submit to the State justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the evaluation by the State. No diversion shall be made by Contractor without consent of the State, which shall not be unreasonably withheld. Replacement of any key personnel shall be with personnel of substantially equal ability and qualifications to perform work under this Contract.

**4. ACCEPTANCE CRITERIA**

If the State determines that the Evaluation Report is unacceptable (either before or after a draft or a final Report is issued) for failure to comply with any of the requirements included in the Contract, Contractor, at the State's direction, shall be required to re-perform the evaluation work at its own expense and submit a revised report. The State's right to reject Contractor's drafts or final report because of the failure to comply and Contractor's obligation to re-perform or revise shall extend throughout the term of this Contract and continue for one (1) full year after the termination of this Contract.

**5. PAYMENTS**

Payments shall be made in accordance with the provisions set forth in the Contract and **Exhibit F** (Compensation and Procedures for Billing).

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**24. EXHIBIT B – REQUEST FOR PROPOSAL**

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**25. EXHIBIT C – MODIFICATIONS TO CONTRACTOR’S PROPOSAL**

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**26. EXHIBIT D –CONTRACTOR’S PROPOSAL**

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## **27. EXHIBIT E - INFORMATION SECURITY POLICY FOR CONTRACTORS**

### **Applicability**

This policy applies to all OSA Contractors at all locations who are conducting audits or professional services on behalf of the OSA using State of Colorado information, electronic or otherwise.

### **Definitions**

**Confidential information assets** – are defined in paragraph 5. below.

**OSA Contractor(s) or Contractor(s)** – any business, company, corporation, partnership, or individual conducting business on behalf of or in cooperation with the OSA, whether via contract, purchase order, or other purchasing agreement. OSA Contractors include sub-contractors and their employees.

**Protected information assets** - are defined in paragraph 4. below.

**State of Colorado information, information or audit information** – any information, whether in electronic or hard copy form, obtained, utilized, or generated by an OSA Contractor while performing work on behalf of the OSA.

### **State Auditor Authority and Responsibility**

The State Auditor's authority and responsibility for accessing and handling confidential information is set forth in the Colorado Revised Statutes. §2-3-107 (2) (a), C.R.S., provides that the State Auditor or his or her designated representative "shall have access at all times . . . to all of the books, accounts, reports, vouchers, or other records or information in any department, institution, or agency, including records or information required to be kept confidential or exempt from public disclosure upon subpoena, search warrant, discovery proceedings, or otherwise." Additionally, §2-3-103 (3), C.R.S., provides that "work papers of the office of the State Auditor shall be open to public inspection only upon approval of the majority of the members of the audit committee" and that "work papers that have not been specifically approved for disclosure by a majority vote of the committee shall remain confidential." Finally, §2-3-103.7 and §2-3-107 (2) (b), C.R.S., prescribe penalties for willful or unlawful release of confidential information and prohibit the release of information required to be kept confidential pursuant to any law. The volume and availability of confidential information in electronic and hardcopy format, along with the risk to the OSA should confidential information be inadvertently released or breached, heightens the need for rigorous procedures governing the receipt, storage, and destruction of confidential data.

### **Policy Compliance**

1. All OSA Contractors and their personnel who are performing the Services or the Work are required to understand and abide by this policy.
2. By signing an OSA contract or purchase order, OSA Contractors agree to abide by this policy and require its personnel performing the Services or the Work under such OSA contract, including sub-contractors and their employees, understand and abide by this policy.

### **Data Classification**

3. All State of Colorado information assets whether in hardcopy or electronic form (e.g., data, databases, reports, communications, manuals, documentation for systems, procedures, and plans) and used in the course of an audit on behalf of the OSA is considered either “Protected” or “Confidential,” unless expressly stated otherwise in writing by the State Auditor.
4. Protected information assets are defined as information that is required by federal, state, or local laws and statutes to be protected, or in the event of a breach of confidentiality, loss of integrity, or lack of availability, would have serious impact to the OSA or the State up to and including physical harm to individuals, or that which would cause significant hardship to the OSA, the State, or commercial entities that have entrusted this data to the OSA.
5. All OSA Contractor audit information assets not categorized as “Protected” are automatically classified as “Confidential”.

### **Use and Protection of Information Assets**

6. Contractors are responsible for taking reasonable and prudent measures in the protection of all OSA audit information and the systems which process, store, and transmit such information from unauthorized disclosure and modification regardless of location.
7. All State of Colorado information systems (e.g., networks, intranets, internet connections, telephones, fax, etc.) are the property of the State of Colorado and are for State of Colorado business use only. Contractors must never use them to knowingly access, store, or distribute offensive material, such as pornography. Contractors may not use State of Colorado systems to knowingly compromise other systems, networks or safeguards.
8. Any unauthorized attempt to access information that is outside Contractor’s “need-to-know” for his/her operational purposes is prohibited.
9. Contractors must encrypt all “Protected” and “Confidential” information when stored on portable computers or removable media (e.g., laptops, external hard drives, CDs, USB drives.)
10. Contractors must, at all times, physically secure portable computers used in storing and processing audit information on behalf of the OSA through the use of cable locks or other security measures.
11. Contractors shall not leave any portable computers, removable media (e.g., laptops, external hard drives, CDs, USB drives), or hard copy information containing “Protected” and “Confidential” information unattended, such as in vehicles or in checked airport luggage.

### **Viruses and Malicious Code**

12. Contractors must effectively deploy personal firewall security and up-to-date malicious code/virus protection software for all systems and devices used in carrying out official OSA business.

### **Telecommunications Security and Information Transmission**

13. Contractors are responsible for being aware of and protecting against current and potential telecommunications (e.g., telephones, voice mail, mobile phones, conference calls, instant messaging, and facsimile machines) security risks in their given environment.

14. Contractors are prohibited from connecting to any state networks in connection with the Services hereunder without prior authorization from the OSA and the information security officer of the Audited Agency. In the case of executive branch agencies, Contractors should submit a request with their agency liaison to obtain permission through the Governor's Office of Information Technology access management team.
15. Contractors shall make every effort to ensure that all State of Colorado information is protected from inadvertent disclosure when being sent over the Internet or other non-State of Colorado networks.
16. Contractors shall not connect portable computers containing "Protected" or "Confidential" data to any public WiFi networks (e.g., internet cafes) without adequately protecting such information through the use of hard drive encryption and the use of an encrypted VPN tunnel.
17. Contractors must always consider information sensitivity and transmission security issues when selecting a transmission medium. "Protected" and "Confidential" data must only be transported or transmitted over a public network when protected by encryption.
18. When data is stored on electronic media or a mobile computing device, the data must be encrypted at all times during physical transport.
19. Transmission of Protected or Confidential data over a public network by unencrypted email is prohibited.

### **Information Storage and Disposal**

20. Media or hard copy documents containing Protected or Confidential information are to be appropriately labeled and protected in accordance with this **Exhibit E**.
21. Contractors must maintain physical media security by using locking filing cabinets or drawers and locking them when left unattended. Media security may also be achieved through locking the door of a private office.
22. Personal computers, laptops, USB drives, mobile phones, personal digital assistants (PDAs), and other devices and media containing State of Colorado information must be secured by their users from loss, theft, and unauthorized use.
23. Contractors shall not leave unattended any device containing State of Colorado information unless a password-engaged screensaver is used. The screen saver must engage after 2 minutes of inactivity.
24. Contractors must ensure that once portable storage devices (e.g., external hard drives, CDs, USB drives) are no longer under their direct control all Protected or Confidential data will be cleaned and sanitized (i.e., cleared, purged, and destroyed) in conformance with NIST Special Publication 800-88 and/or other standard procedures and requirements set by the U.S. Department of Defense, such as DoD 5220.22-M.
25. Hard copy documents containing Protected or Confidential information must be shredded prior to disposal.
26. Data storage devices (CDs, DVDs, and floppy disks) containing Protected data must be physically destroyed at the end of the audit. For thumb drives and portable hard drives Contractor must either use an electronic shredding program to destroy the data or destroy the device at the end of the audit.

A record of disposal is to be maintained in the workpapers by the OSA Contractors. A record of disposal must contain the name of the individual disposing of the data, the method used to dispose of the data, identifying qualities of the data (such as the serial number of the media on which it was stored, if applicable), and the date of disposal.

### **Incident Reporting**

27. All suspected loss or compromise of OSA audit information as a result of the loss of a desktop, portable, or mobile computing device or removable storage device by any means (e.g., theft, loss) used to store State of Colorado data shall be reported to the OSA Contract Manager within 24 hours of discovery.
28. In the event of the suspected loss or compromise of OSA audit information under control of Contractor, Contractor is responsible for working with the State Auditor and the Audited Agency with respect to recovery and remediation. Contractor is also responsible for working with the OSA and the Audited Agency to notify all Colorado residents and other affected parties whose sensitive data may have been compromised as a result of the breach. Contractor will bear all reasonable associated costs.

### **Personnel Security**

29. Contractor is responsible for performing background checks consistent with Contractor's standard employment practices for Contractor personnel completing work on behalf of the OSA.

### **Policy Enforcement**

30. If Contractor is deemed to be in noncompliance of this policy by the State Auditor, the State Auditor shall have the unilateral right to terminate the Contract.
31. Upon request by the State Auditor, Contractor agrees that it shall make available qualified individuals and a member of senior management responsible for security and data protection, for the purposes of discussing information technology controls, including those policies, procedures, and controls relevant to the provision of services and security obligations under this Contract.

**28. EXHIBIT F - COMPENSATION AND PROCEDURES FOR BILLING**

1. Contractor shall submit all invoices for services to the OSA. Payment will be made from the State Auditor’s appropriation.
2. Contractor may render monthly interim bills to the State until completion of the Work; provided that the aggregate amount of all bill shall not exceed the maximum compensation set forth in Section 3 below. The interim bills shall be promptly paid by the State except that the State reserves the right to withhold 10 percent of the total Contract amount until delivery and acceptance of the Evaluation Report. Release of the Evaluation Report by the Legislative Audit Committee constitutes acceptance of the Evaluation Report.
3. Maximum compensation for the Work shall be:

	<u>Total</u>	<u>Paid From State’s Budget Period</u>	
		<u>XXXX-XXXX</u>	<u>XXXX-XXXX</u>
<u>Contractor</u>	<u>XXX,XXX.XX</u>	<u>XXX,XXX.XX</u>	<u>XXX,XXX.XX</u>
<u>Total Fee Not to Exceed</u>	<u>XXX,XXX.XX</u>	<u>XXX,XXX.XX</u>	<u>XXX,XXX.XX</u>

4. The OSA shall not be required to provide staff time in connection with the evaluation of the Agency, except that OSA shall assign one (1) or more member(s) of the OSA staff to serve as a contract monitor and coordinator between the OSA and Contractor. The OSA contract monitor shall attend entrance and exit conferences and act as a liaison to Contractor for purposes of monitoring the contract and coordinating the evaluation engagement. In accordance with §10, §17C, and §18 of the Contract, all requests for Work Product or work papers pursuant to the Colorado Open Records Act or news media inquiries pertaining to the engagement shall be forwarded immediately to the OSA contract monitor.

## 29. EXHIBIT G - DEVELOPING AND PRESENTING FINDINGS

### Title of Finding

Provide brief background information about the program in one or two paragraphs. Do not include criteria, condition, cause, or effect in this background section.

### What work was performed and what was the purpose?

Briefly describe the work that was performed using bullets and/or one to two paragraphs. (i.e., describe the data and documents reviewed, individuals interviewed, and the sample selected and sample methodology).

Describe the purpose of the evaluation work in one sentence. (i.e., “The purpose of the evaluation work was to XXXX.”)

### How were the results of the work measured? (*Criteria*)

The criteria are the standards against which the condition is measured. They are standards used to evaluate a particular event or process and describe “what should be.” Some examples of criteria include:

- Colorado Constitution
- Colorado Revised Statutes
- Colorado state agency rules and regulations
- federal laws and regulations
- State Fiscal Rules and Fiscal Procedures Manual
- Generally Accepted Accounting Principles
- program-specific written policies and procedures
- program-specific written goals and objectives
- good business practices
- unwritten policies, procedures, goals, and objectives as explained by the Agency’s personnel

If the criteria are not already set forth in writing, it may be necessary to find information to serve as evidence of criteria. When common sense or expert opinion is used as criteria, the development of the finding must be logical and convincing to the reader, who may not possess the same level of expertise. This is also important because such criteria are less authoritative than other types of criteria.

This section should briefly describe the criteria of the finding. Strive to provide the essential information in one or two short paragraphs, bullets, or in a table.

## **What problem did the evaluation identify? (*Condition*)**

The first step in developing a finding is to identify the statement of condition. This occurs during the “fact-finding” process when the Contractor compares “what is” with “what should be.” When there is a difference between “what is happening” with “what should be happening,” the first element (condition) of a finding is identified. The condition should be a factual statement of what was found and be free of value judgments.

This section should describe the overall problem (the condition of the finding) in one or two sentences. Then provide specific examples that support the condition (e.g., exceptions identified during the evaluation work). Use bullets and tables to describe the types of exceptions identified.

## **Why did the problem occur? (*Cause*)**

The cause is the element of the finding which explains why the “condition” exists. The cause represents what must be corrected to prevent the recurrence of the existing condition. As such, the Contractor must correctly identify the cause before a proper course of action can be devised. Developing the cause frequently requires a fairly extensive analysis of the problem. Often, there are multiple factors causing the problem. The human behavior aspect, which increases the difficulty in identifying the proper cause, is always present. Nevertheless, Contractors should make a reasonable effort to determine as closely as possible the real cause of the problem. Examples of cause include:

- negligence
- inadequate resources
- inadequate training
- poor communication
- inadequate guidelines or standards
- absence of good management techniques
- failure to follow established policies and procedures

This section should describe the cause of the finding in one or two paragraphs or in bullets that correspond to the bullets used in the condition section above.

## **Why does this problem matter? (*Effect*)**

The effect represents the end result of the activity being measured. It is the impact of the difference between the statement of condition and the criteria. The attention given to a finding depends largely upon its significance, and significance is judged by effect. What is the result if nothing is done about the problem identified? The effect of an adverse finding is what motivates management to take needed action to correct the condition. When the effect is insignificant, the Contractor should consider eliminating the finding from the report or grouping it with other minor findings. Some examples of effect include:

- violation of law or regulation
- noncompliance with legislative intent
- loss of potential income
- program goals and objectives not being met
- increased costs
- poor service quality
- inefficient service delivery
- increased risk of fraud and abuse
- reduced effectiveness

When determining the effect of a finding, the Contractor should look at outcomes such as impacts on citizens, services, or public safety. In addition, the fiscal impact of the finding (e.g., increase or decrease in revenue or costs) should be quantified where possible. The estimated fiscal impact should be discussed with the Agency and reported as an estimate (e.g., we estimate this change will eliminate one administrative support position with an estimated annual cost of \$26,000).

This section should describe the effect of the finding in one or two paragraphs or bullets. Quantify the effect to the extent possible.

## **Recommendation No. X:**

The recommendation is the action believed necessary to correct the adverse situation. Generally, each finding will result in one or more recommendations. The following are guidelines for developing recommendations:

- Write recommendations that address or solve the “cause” of the problem.
- Write recommendations as realistically and specifically as possible so they are more likely to be understood by and prove useful to the Agency.
- Present recommendations in a constructive tone and emphasize improvement rather than criticism of past activities. The Contractor should keep in mind that its objective is to motivate the Agency to take action. This can best be done by avoiding language that unnecessarily generates defensiveness and opposition.
- Write your recommendation so that it can be understood by itself (e.g., the reader will not have to refer to the finding to understand the recommendation).
- Avoid introducing new information in the recommendation that was not presented in the body of the finding. The recommendation should follow logically from what was presented in the finding.
- Avoid extreme language such as “immediately,” “without delay,” or “as soon as possible.” These phrases do not add to the substance of the recommendation. In situations where there is an urgency to correct a problem, include in the recommendation the consequence of delay (e.g., continued loss or waste of money).

The Department of XXXX should XXXX by:

- a.



b.

The written Evaluation Report, which contains all findings and recommendations, is issued to legislators and other state and federal officials who have limited time to read reports. Therefore, the Contractor should present findings as concisely as possible, but with enough clarity to be understood by the reader. In addition to being clear and concise, findings should be logical, convincing, and constructive. The findings should be presented in a way that will convince the reader of their significance and motivate the Agency to take action. This is accomplished by clearly presenting the five elements of a finding—condition, criteria, effect, cause, and recommendation.

For additional guidance regarding developing findings, please consult the current revision of *Government Auditing Standards* issued by the U.S. Comptroller General, which is available online at <http://www.gao.gov/>. Although this evaluation engagement is not being performed in accordance with *Government Auditing Standards*, these standards provide a best practices framework that the OSA will use when assessing and evaluating the Contractor's work and related findings.

### **30. EXHIBIT H - REPORTING REQUIREMENTS AND FORMAT FOR SEPARATELY ISSUED REPORTS**

The final written Evaluation Report is required at the completion of the evaluation work. This Report will contain findings, conclusions, and results from the evaluation. It will also provide recommendations for changes or modifications to improve the efficiency and effectiveness of the Agency. Contractor shall deliver to the State up to 100 copies of the bound report. The exact number of copies will be determined by the State at the time of report finalization. Contractor shall also deliver to the State an electronic copy of the Report in unprotected Adobe PDF format or other format prescribed by the State.

The final Evaluation Report is due (Month) (Day), (Year) and will be prepared in the format delineated below.

#### **REQUIRED REPORTING FORMAT**

1. Addressee of Report

Each Evaluation Report should be addressed to “Members of the Legislative Audit Committee.”

2. Report Format

Contractor’s Evaluation Report will include all of the following sections bound together as a single report and shall be prepared using the OSA format to the extent possible. Acceptable binding formats are limited to spiral, comb, or glued bindings; 3-ring bindings are not acceptable.

Major sections of the Evaluation Report and their required order within the report are:

Report Cover  
LAC, Staff, and Distribution Page  
Report Transmittal Letter  
Table of Contents  
Report Highlights  
Description of the Agency  
Findings and Recommendations (Including Agency Responses)

a. Report Cover

The report cover should contain the title and date of the Evaluation Report, including the name of the Contractor conducting the evaluation.

b. LAC, Staff, and Distribution Page

The reverse side of the report cover should contain a listing of the current members of the Legislative Audit Committee, OSA staff, and Contractor staff conducting the evaluation. The list of current Legislative Audit Committee members will be provided by the OSA. This page also contains information on how to obtain both electronic and bound versions of the report. The distribution information should include the Evaluation Report number. Contractor must contact the OSA for specific requirements of the distribution information before printing the report.

c. Report Transmittal Letter

A letter to the Legislative Audit Committee signifying transmission of the Evaluation Report and signed by the Contractor.

d. Table of Contents

This page is an index to the report, by topic and page number.

e. Report Highlights

The highlight sheet is a one-page overview of the important comments in the report. A template will be provided by the OSA.

g. Description of the Agency

A section of the Evaluation Report, typically presented as a separate chapter, intended to familiarize the reader with the Agency, including its statutory authority and purpose, key functions, organization, descriptive financial and non-financial statistics, etc. This section does not necessarily contain the specific background information necessary to establish the evaluation's findings, conclusions, and recommendations.

h. Findings and Recommendations

The report must contain this section reporting the Contractor's findings and recommendations relative to the Scope of Work (Exhibit A). The findings and recommendations are typically presented as one or more separate chapters.

The findings and recommendations included in the report should contain sufficient background to inform a lay reader of the facts and circumstances surrounding the finding. In addition, the finding should identify and emphasize the business effects resulting from the deficiency or instance of non-compliance. Finally, recommendations should focus on workable solutions which the Agency can effectively implement.

Recommendations are presented after the development section for each finding. Recommendations must be separately stated from the discussion of the finding. Recommendations are consecutively numbered in the report (i.e., 1, 2, 3, 4, etc).

i. Agency Responses

The Agency's officials will be given the opportunity to include the Agency's position regarding audit findings and recommendations in the report text. The OSA will provide the parameters for the Agency's responses; this could include a limit on the number of words or characters, which the Contractor will communicate to the Agency when requesting their responses. The Agency's responses will be included in the report after each recommendation. The Contractor is responsible for reviewing the Agency's responses for accuracy, responsiveness to the recommendations, and adherence to the OSA's established parameters. This review should include working with the Agency and the OSA to ensure the responses meet established requirements and are approved for inclusion in the Evaluation Report. Any "Partially Agree" or "Disagree" responses must include an Addendum, which is a rebuttal to the Agency's response. The language for all Addenda must be reviewed and approved by the OSA.