SECTION 7:
16A.15 / 16C.05 VIOLATION MEMO

According to Minn. Stat. § 16A.15, subd. 3(a) (emphasis added), “A payment may not be made without prior obligation... [A] payment made in violation of this chapter is illegal. An employee authorizing or making the payment, or taking part in it, and a person receiving any part of the payment, are jointly and severally liable to the state for the amount paid or received.”

The 2003 and 2004 Legislatures amended Minn. Stat. § 16C.05, subd. 2 to place greater emphasis on the encumbrance requirement. The statute was amended, in part, as follows:

Subd. 2. Creation and validity of contracts. (a) A contract is not valid and the state is not bound by it unless:

- (3) the accounting system shows an encumbrance for the amount of the contract liability, except as allowed by policy approved by the commissioner and commissioner of finance for routine, low-dollar procurements.

Read as a whole, Minn. Stat. § 16C.05, subd. 2 (a) provides that a contract is not valid and the state is not bound by it until: 1) it has first been executed by the agency; 2) it has been approved by the commissioner of Administration; and 3) the money has been encumbered in CFMS.

Unless an agency has received prior approval from the Commissioner of Administration as the result of an emergency as defined in Minn. Stat. § 16C.02, subd. 6b, an agency may not authorize work to begin on a contract unless the above requirements are met.

The Violation Form
The 16A.15/16C.05 Violation Memo is divided into three sections and each serves a distinct function. A description of each section and how to use the form follows.

Processing: This form should contain original signatures, not photocopies, and is sent to the Department of Administration, in duplicate, when the contract is processed. MMD will keep one for its file and return the other.

Content and Purpose:

Box 1 (See Link to Updated Form Below)

Usual situation where this box would be used: The start date on the contract indicates it begins on January 1, 2000, however the contract is not sent to the Department of Administration until January 31, 2000 -- and NO work under the contract has begun.
Purpose of box 1: The problem with the above situation is that Minn. Stat. § 16C.05, subd. 2, states that all statutorily required signatures must be on the contract before it becomes effective. There is a question about whether or not work started between these two dates. By signing this box the responsible person is indicating to Department of Administration that no work on the contract has started and notice to the contractor to begin work will not be given until the contract is fully signed. This situation is not a violation of statute. This box is for Department of Administration informational purposes only.

Box 2 (See Link to Updated Form Below)

Usual situation where this box would be used: The agency gives the contractor notice to proceed on work without encumbering money or getting a contract fully executed.

There are two problems with the above situation: 1) under Minn. Stat. § 16A.15, the state cannot make an obligation to pay money to anyone unless money is first encumbered in the state’s accounting system. This is a SERIOUS violation of the statute, which states, “If an employee knowingly incurs an obligation or authorizes or makes an expenditure in violation of this chapter (or takes part in the violation) the violation is just cause for the employee’s removal.” 2) Minn. Stat. § 16C.05, subd. 2, states that all statutorily required signatures must be on the contract before it becomes effective.

Purpose of box 2: This box gives Department of Administration information about who violated the statute and why it was done. There must be a reasonable explanation for the expenditure and a reasonable explanation of the corrective action that will be taken, or the contract will be returned unapproved.

Even though Chapter 16A of the statutes is governed by the Department of Finance, the Legislative Auditor has determined that the Department of Administration is responsible for ensuring that this requirement is met if there is a violation.

Box 3 (See Link to Updated Form Below)

Usual situation where this box would be used: The money for the contract is encumbered, work under the contract has started, but as of the date the work started the Department of Administration has not yet signed the contract to make it effective.

Purpose of box 1: The problem with the above situation is that Minn. Stat. § 16C.05, subd. 2, states that all statutorily required signatures must be on the contract before it becomes effective. You must provide a reasonable explanation of why this was done and what corrective action will be taken, or the contract will be returned unapproved.
Attached Page of Statutory Cites

The second page of the 16A.15/16C.05 Violation Memo provides the text of the applicable statutes. The statutory references are meant to provide information to those people who will be completing the form.

16A.15/16C.05 Violation Memo
The 16A.15/16C.05 Violation Memo form is available on the MMD website at:

http://www.mmd.admin.state.mn.us/pdf/16a16cmemo.pdf
http://www.mmd.admin.state.mn.us/Doc/16a16cmemo.doc