

Policy and Procedures Manual

SUBJECT: GOVERNANCE

Policy 121: CSUS Board Indemnification Policy

Board Policy

Neither the Colorado State University System (System), nor any institution of the System, shall contract to indemnify or hold harmless any other person or party, except as authorized in this policy or otherwise expressly provided by law, without express approval by or on behalf of the Board. This Board policy shall not otherwise modify or amend prior delegations of authority from the Board to the System and the Institution Presidents regarding the authority to approve and execute contracts, agreements and other binding legal instruments.

In accordance with Colorado law, CRS § 23-5-106, the Board authorizes the System and the institutions, Colorado State University, Colorado State University-Pueblo and Colorado State University-Global Campus, to contract to indemnify and hold harmless certain contractors only if the agreement is specifically identified and approved in accordance with this policy and the procedures listed herein for such indemnification have been satisfied. The Chancellor may modify the System Fiscal Rules to be consistent with the directives and approvals contained in this policy.

A. Approved Contracts

The institutions and the System may contract to indemnify and hold harmless a contractor only when the contract meets criteria 1, 2, 3, 4 and 5:

1. The contract falls into one of the following categories (“Contract Type”):
 - a. License of intellectual property;
 - b. Lease, license, sale or purchase of information technology goods and services;
 - c. Lease, license, sale, purchase or like agreement for specialized equipment, tools, services and/or supplies predominantly for research activities;
 - d. License, permit or other similar agreement to enter upon or utilize land or other facilities or space;
 - e. Agreement where only the chosen product, equipment, or service will meet the needs of the institution because it is an approved sole source procurement or , after reasonable due diligence, it has specifications that others lack and there has been a determination, after reasonable due diligence, that the product, equipment or service is not reasonably

available from another contractor and the indemnification clause is not negotiable; or

- f. Agreement where the party seeking indemnification is the federal government or a state or local government or agency thereof, and the responsible agency or entity has declined a request to remove or nullify the indemnity clause.
2. The contract is necessary and appropriate to the normal operation of the institution or System;
 3. The contract clause requiring indemnification is considered standard in the industry, or, if no standard exists, is reasonable under the circumstances and is non-negotiable, as determined by the Office of the General Counsel or a designated reviewing attorney for the institution;
 4. The maximum amount of liability to which the institution or the System is agreeing to be exposed under the indemnification or hold harmless clause of the contract does not exceed the following (“Liability Cap”):
 - a. Expenditure Agreement: Where the contract is one in which the System and its institutions are expending funds or receiving goods, services or other benefits, the maximum amount of tort or other liability under the indemnification clause of the contract does not exceed \$200,000¹.
 - b. Revenue Agreement: Where the contract is one in which the System and its institutions are receiving funds or providing goods, services or other benefits, the maximum amount of tort or other liability under the indemnification clause of the contract does not exceed the greater of \$200,000 or the amount to be received by the System and its institutions under the contract.
 5. The potential liability attributable to the indemnification or hold harmless clause in the contract is reasonably likely to be covered by insurance, bonds, surety instruments, loss reserves, a risk management fund, or other such source of funds.

The Board hereby finds that Approved Contracts serve a valid public purpose and the risks to the System and the institutions are outweighed by the benefits of such contracts, provided that the procedures listed herein for approving such contracts have been followed.

B. Procedure for Approved Contracts

If the System or an institution desires to enter into an Approved Contract, the following procedure will be followed:

1. The Office of the General Counsel's designated reviewing attorney shall make a prior written determination that the contract clause requiring indemnification is considered standard in the industry, or, if no standard exists, is reasonable and non-negotiable, and the contract is otherwise consistent with the System Fiscal Rules and this Policy;
2. The Risk Manager for the respective institution or the CFO of the System shall make a prior written determination that the potential liability attributable to the indemnification or hold harmless clause in the contract is reasonably likely to be covered by insurance, bonds, Surety instruments, loss reserves, a risk management fund, or other such source of funds; and
3. The President of the institution or the CFO of the System shall make a prior written determination that (i) the contract meets the requirements of Part I to be characterized as an Approved Contract, including, where applicable, that the condition of Part I, Section (1) e. has been met, (ii) the contract serves a valid public purpose of the respective institution or System Office, and (iii) any risks arising from the contract are sufficiently limited, reasonable, and warranted under the particular circumstances that they are outweighed by the benefits of the contract.

C. Procedure for Approval of Other Contracts

If the System or an institution desires to enter into an agreement that contains an indemnification or hold harmless clause but that does not satisfy the requirements to be an Approved Contract, such agreement may not be entered into without the prior written approval of the Chancellor of the System. In order to authorize execution of the agreement, the Chancellor of the System must make a prior written determination that the contract serves a valid public purpose and that any risks to the institution or System that may arise from entering into the contract are sufficiently limited and outweighed by the benefits of the contract so as to warrant approval on behalf of the Board.

In the event the Chancellor is unwilling to approve any contract within the scope of the Chancellor's approval authority under this policy, the Chancellor may choose to submit the contract to the Board for its consideration at its next regularly scheduled meeting.

History: Approved August 10, 2011 by Board Resolution

¹ Where this valuation is not clear, the CFO of the institution or designee shall reasonably determine the value to assign and the basis for such determination will be noted as part of the approval process of the contract.