

STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION

Contractual Indemnification

BP 8-170

EFFECTIVE: February 13, 2013
APPROVED: February 13, 2013
REPEALED: November 8, 2023

REFERENCES: C.R.S. 23-5-106

APPROVED:

Landon Mascareñaz, Chair

Policy Statement

Neither the Colorado Community College System (System), nor any college 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.

Scope

This policy applies to all contracts entered into by the state system community colleges and the central System. This policy shall not otherwise modify or amend prior delegations of authority from the Board to the System President and the college Presidents regarding the authority to approve and execute contracts, agreements and other binding legal instruments.

Procedures

The System President shall promulgate procedures necessary to implement this policy.

Limitations on Authority to Contract to Indemnify

In accordance with Colorado law, C.R.S. § 23-5-106, the Board authorizes the System and the colleges to contract to indemnify and hold harmless certain contractors only if the agreement is specifically identified and approved in accordance with this policy and System President procedures for such indemnification have been satisfied.

I. Approved Categorical Contracts

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

- (1) The contract falls into one of the following types:
 - a. License of intellectual property;

- b. Lease, license, sale, purchase or donation of information technology goods and services;
- c. Lease, license, sale, purchase, donation 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 System or college because it is an approved sole source procurement or donation, 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, and

(2) The contract is necessary and appropriate to the normal operation of the college or System, and

(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 System, and

(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:

- a. Expenditure Agreement: Where the contract is one in which the System or colleges 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 is valued at no more than \$200,000.*
- 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 is valued at no more than the greater of \$200,000 or the amount to be received by the System or its colleges 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, or other such source of funds.

The Board hereby finds that Approved Categorical Contracts serve a valid public purpose and the risks to the System and the institutions are outweighed by the benefits

*Where this valuation is not clear, the CFO of the System or college 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.

of such contracts, provided that System President procedures for approving such contracts have been followed.

II. Non-categorical Contracts

If the System or a college 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 Categorical Contract, such agreement may not be entered into without the prior written approval of the System President. In order to authorize execution of the agreement, the System President must make a prior written determination that the contract serves a valid public purpose and that any risks to the college 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 System President is unwilling to approve any contract within the scope of the System President's approval authority under this policy, the System President may choose to submit the contract to the Board for its consideration at its next regularly scheduled meeting.

RECOMMENDATION:

Staff recommends that the Board approve the proposed indemnification policy.