Indemnity Clauses
State of Colorado Perspective

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State of Colorado Contracting

• Decentralized
• Institutions of Higher Education may adopt their own fiscal procedures
• Agency contracting
  – Fiscal Rules 2-2 and 3-1
  – Office of the State Controller
    • All State expenditure contracts require approval by State Controller or delegate
    • State contract templates – general and special provisions

Indemnity by State

• Prohibited by Constitution of Colorado
  – Art. V, Section 33 (Disbursement of public money)
  – Art. XI, Section 1 (Pledging Credit)
  – Art. XI, Section 2 (No aid to corporations)

Indemnity by State

• Prohibited by Fiscal Rule 3-1
  – Unless specifically authorized by statute, the State shall not indemnify and/or hold harmless another party against any liability incurred as a result of the acts or omissions of the State
  – Statute CRS 24-30-1510(3)(e) authorizes limited indemnification of an owner of property leased to the State for State purposes

Indemnity by State

• Two Step Process:
  1. The State pledges the credit of the State, and
  2. A disbursement is made without an appropriation
• General Assembly
  – Only the General Assembly can appropriate funds, and funds are appropriated on an annual basis
  – Executive branch agencies implement the annual budget approved by the General Assembly

Indemnity by State

• “To the extent permitted by law”
• Not advisable to add
• Indemnification by State is illegal and so it is never “permitted by law”
Indemnity by Contracting Entities to the State

- The State’s personal services contract template includes a provision for indemnification of the contracting entity to the State
- Two situations
  - Local Governments (Type A)
  - Other Entities (Type B)

Indemnification by Contracting Entities

- Type A - Contracts with a Colorado city or county, or the Federal government:
  - provisions calling for indemnification of the State may be removed without further approval of the Office of the State Controller
- “Colorado city or county” means a city, a county, a city and county (e.g., the City and County of Denver) or a town

Indemnification by Contracting Entities

- The Type A exception does not apply to:
  - quasi-governmental or other public entities in Colorado, such as public school districts; or
  - to other states or their cities and counties; or
  - to any non-profit corporations or associations

Indemnification by Contracting Entities

- Type B – For these entities (other than Type A), indemnification provisions of the State may be removed only if all the following 4 requirements on the next slide are met:

Indemnification by Contracting Entities

Requirements to remove indemnification by contracting party to State:
1. The contractor/grantee requests the provisions be removed
2. An analysis is performed and a determination made by the contracting agency that the benefits of removing the provisions outweigh the risks to the State
3. The finding and the basis for removal are documented in the contract file
4. The documentation must be included with any contract sent to the Office of the State Controller for review

Indemnification by Contracting Entities

- For both Type A and Type B contracts, removing these provisions is an option, not a requirement.
Questions?

• Office of the State Controller website for contracts:
  – http://www.colorado.gov/dpa/dfp/sco/contracts.htm

THANK YOU!