



TO: Regents Governance Committee

FROM: Office of University Counsel

DATE: October 16, 2023

RE: Proposed Amendments to Regent Policy 13.G: Contractual Indemnification of Contractors

Policy 13.G was adopted by the Regents in 2016 and revised in 2020. The policy authorizes the administration to assume certain financial risks in contracts with third party vendors that provide goods and services to the university. Policy 13.G provides flexibility to negotiate contracting risk between the university and its vendors by balancing market factors such as price, governmental immunity, the availability of insurance, and indemnity.

Policy 13.G. requires the university administration, in consultation with the Office of University Counsel, to conduct a risk analysis that balances the need and value of the goods or services against the potential economic risk posed by the indemnification obligation and considering the availability of other contractual risk mitigation mechanisms.

The proposed policy revisions are based on feedback from various university business operations that regularly contract with third party entities for goods and services—e.g., procurement services, campus research grants and contracts offices, information technology services, etc. The following revisions are proposed:

1. Clarify that the policy applies to all contracts and simplify language in contract templates
2. Clarify that the risk/benefit analysis required for a waiver must be written and recommended by the business unit and endorsed by University Counsel.
3. Authorize the president/chancellor to delegate authority for certain indemnity obligations in circumstances where the risk analysis is common and consistent.
4. Remove requirements for indemnity waiver in contracts where there is a sum certain liability that has been accounted for by the business unit and is reasonably likely to be covered by the university (e.g., contract price, insurance, loss reserves, etc.).

This item went to the Governance Committee on August 24, 2023, for first discussion, and to the Board of Regents on September 8, 2023, for notice of motion. The Governance Committee will see it for its second discussion at its October 26, 2023, meeting and take action on whether to forward to the full board for approval in November.