

STATE CONTROLLER POLICY

FEDERAL GOVERNMENT CONTRACTS

1) Definitions

- a. **Federal Government Contract.** Agreements with an agency or branch of the Federal Government relating to the goods and/or services they provide or which require a contribution by the State.
- b. **Impermissible Provisions.** The following are impermissible provisions and shall be stricken from the Federal Government agreement unless approved in advance as set forth below:
 - i. **Price Increase.** All provisions putting the State at risk for payment of more than the agreed price for the goods or services or other performance. However, Federal Government agreements may specify reasonable cancellation provisions or other commercially reasonable terms, including but not limited to liquidated damages, rights, or obligations because of breach or termination (unless terminated for cause) of the agreement.
 - ii. **State's Indemnity – Hold Harmless.** Any provision the effect of which is to require the State to indemnify or hold harmless the Federal Government from or against third party claims regardless of how it is phrased; e.g., stating “the State shall be responsible for” in place of the “the State shall indemnify”, does not change the meaning. Also, adding the phrase “to the extent provided by law” does not make an indemnity permissible.

- 2) **Review-** All intergovernmental contracts with agencies of the Federal Government shall be approved by the Office of the State Controller or a Reviewing Attorney.

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State Controller