3-806 Contract Clauses

Revision Dates
10/1/2026, 11/18/2016, 4/26/1996, 2/19/1988, 7/13/1985, 12/15/1984 (adopted)

A. General Requirements

1. The CPO may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other Contract provisions.

2. The CPO may modify clauses for inclusion in any particular Contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation in a Solicitation is stated in the Solicitation.

3. All Contract clauses shall be consistent with the provisions of Board Policy and applicable law.

B. Standard Contracts for Construction Projects

1. Standard Contracts approved by Board Counsel or University Counsel shall be used for the Procurement of Design Services, Construction, and Construction Services. To the extent possible, standard Contracts will be approved by Board Counsel for the use of all Universities; if a standard Contract has not been approved by Board Counsel for the type of Design Services, Construction or Construction Services being procured, the Procurement Officer shall use a standard Contract approved by University Counsel for that type of Procurement.

2. Variations from the terms of standard Contracts may occur when necessary to accommodate the requirements of a specific project, provided the variations do not materially or adversely affect the rights or interests of the University or Board and are approved by University Counsel.

3. Variations which in the opinion of University Counsel or Board Counsel materially or adversely change the terms and requirements of the standard Contracts require prior approval by Board Counsel.

C. Professional Liability Insurance

1. Contracts for the Procurement of Design Services shall include, in addition to any other insurance requirements, professional liability insurance

providing for errors and omissions coverage for the benefit of the Board and University in an amount which is reasonable for any project whose total cost is estimated at two million dollars ($2,000,000) or less, and in the minimum amount of one million dollars ($1,000,000) for any project whose total cost is estimated to be greater than two million dollars ($2,000,000).

2. Contracts for the Procurement of consultant services not in connection with a Construction project or concerning nonconstruction activities may be exempt from professional liability insurance requirements at the discretion of the CPO.

D. Cost Principles

1. The CPO at each University shall promulgate University Policies and Procedures that set forth cost principles which shall be used to determine the allowability and allocability of incurred costs for the purpose of reimbursing costs under Contracts which provide for the reimbursement of costs.

E. Indemnification

1. A covenant, clause or understanding in, collateral to or affecting a Construction Contract or Subcontract that purports to indemnify, to hold harmless or to defend the University of, from or against liability for loss or damage resulting from the negligence of the University or the University's agents, employees or indemnitee is against the public policy of this state and is void.

2. If a Design Professional provides work, services, studies, planning, surveys or other preparatory work in connection with a University building or improvement, the University may require that the Design Professional Services Contract or Subcontract require the Design Professional to indemnify and hold harmless the University and Board, and their officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such Design Professional or other persons employed or used by such Design Professional in the performance of the Contract or Subcontract. A Design Professional Services Subcontract entered into in connection with a University building or improvement may also require any Design Professional to indemnify and hold harmless the University or Board and the indemnified Design Professional who executed the Subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such Design Professional, or Persons employed or

used by the indemnifying Design Professional in connection with the Subcontract. Nothing in this ABOR Policy 3-806(E) shall prohibit the requirement of insurance coverage that complies with this Code.

3. A covenant, clause or understanding in, collateral to or affecting a Design Professional Services Subcontract that purports to indemnify, to hold harmless or to defend the University of, from or against liability for loss or damage resulting from the negligence of the University or the University's agents, employees or indemnitee is against the public policy of this state and is void.

4. Except as provided in this ABOR Policy section 3-806(E)(2), a Design Professional Services Contract or Subcontract entered into in connection with a University building or improvement shall not require that a Design Professional defend, indemnify, insure or hold harmless the University or Board or their employees, officers, directors, agents, Contractors or Subcontractors from any liability, damage, loss, claim, action or proceeding, and any Contract provision that is not permitted by this ABOR Policy 3-806(E)(2) is against the public policy of this state and is void.

5. Notwithstanding the provisions of ABOR Policy 3-806(E)(1), a Contractor who is responsible for the performance of a Construction Contract or Subcontract may fully indemnify a Person for whose account the Construction Contract or Subcontract is not being performed and that, as an accommodation, enters into an agreement with the Contractor that permits the Contractor to enter on or adjacent to its property to perform the Construction Contract or Subcontract for others.

6. If any provision or condition contained in this ABOR Policy 3-806(E) conflicts with any provision of a Contract between the University and the federal government, such provision of this section in conflict shall not apply to any Construction Contract or Subcontract, or Design Professional Services Contract or Subcontract to the extent such conflict exists, but all provisions of this section with which there is no such conflict, shall apply.

Policy History

12/15/1984	Approved by the Board on second reading. Originally implemented as interim policies 9-601, 9-602, and 9-603.
7/13/1985	Permanent policy 3-806 adopted by the Board.
2/19/1988	Policy revision approved by the Board on second reading.
4/26/1996	Policy revision approved by the Board on second reading.

11/18/2016 Policy revision approved by the Board on second reading.

10/1/2026 Policy revision approved by the Board on second reading.

Related Information