

Contracting with State Entities

The following provisions are applicable to State offices, agencies, departments boards, bureaus, commissions, institutions, agencies, boards, commissions, and mn Please be advised that State Entities are unable to agree to certain revisions to the standard would provide an unfair competitive advantage, including but not limited to those that materially change the terms or the requirements of the solicitation, will be rejected by the State. Please note that this guidance is not all-inclusive, and State Entities reserve the right to negotiate all terms and conditions. If a supplier and a State Entity are unable to come to mutually agreeable terms, the supplier will not be awarded a contract.

1. Indemnification and/or hold harmless.

As provided under O.C.G.A. § 50-5-64.1(a)(2)(A), contracts shall not contain such term. Moreover, State Entities are prohibited by the Georgia Constitution from agreeing to any such provision as they have been determined to violate the prohibition against gratuities, pledges of the State's credit, and an unauthorized waiver of sovereign immunity. (Ga. Const. Art. VII, § IV, ¶ VIII; Ga. Const. Art. III. Sec. VI, Par. VI; 1980 Op. Att'y Gen. 80-67; 1974 Op. Att'y Gen. 74-115; 1980 Op. Att'y Gen. 80-67.)

2. The Georgia Attorney General Represents the State of Georgia.

Pursuant to Ga. Const Art. V, § III, ¶ IV and O.C.G.A. § 45-15-3, the Attorney General represents the state of Georgia. Additionally, O.C.G.A § 50-5-64.1(a)(2)(A) provides that contracts shall not contain a term that provides for a person other than the Attorney General to serve as legal counsel for the state or for any agency, authority, board, bureau, commission, department, institution, or any entity thereof. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term.

3. Warranty/Guarantee.

Any provision that requires a State Entity to unconditionally assure or promise a certain result or outcome. The Attorney General has advised that warranty provisions requiring State Entities to provide a warranty violate the prohibition against pledges of the State's credit and the prohibition against gratuities by the State. The reason is that resources may have to be expended to satisfy such warranty or guarantee.

4. Venue.

As provided under O.C.G.A § 50-5-64.1(a)(2)(B), contracts shall not contain a term that provides for a venue for any

6. Requirements that the Department pay taxes, interest, penalty fees or cancellation charges, litigation costs, or attorney's fees.

- **ATTORNEY'S FEES/COSTS.** State Entities will not agree to pay attorney's fees or costs. The rationale is that such a payment would pledge the credit of the state in violation of Ga. Const. Art. VII, § IV, ¶ VIII and would be a violation of the gratuities clause of the Georgia Constitution. [See Ga. Const. Art. III, § VI, ¶ VI.](#)
- **DAMAGES.** The inclusion of indirect, consequential, or incidental damages payable by a State Entity are generally not acceptable.
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11. Contractual clauses that require a State Entity to purchase insurance policies.

State law provides for the Department of Administrative Services to procure insurance for State entities. State Entities are covered by the Tort Claims Act and the State of Georgia Broad Form Insurance that is administered by the De

