

## RFP Drafting: Interrogating Contract Indemnities



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Indemnity clauses are used in contracts to allocate risk. Although normally such clauses are drafted by legal counsel and included in your templates, as procurement professionals you need to understand the implications of the variations on this type of provision. You must be able to recognize the need to adjust indemnity provisions in select circumstances, during procurement planning and/or negotiations, and be able to discuss the topic intelligently with your own legal counsel.

Generally speaking, organizations tend to use one-sided indemnities to impose all conceivable risks on the contractor, including risks that may be beyond the contractor's control. Over allocating risk to a contractor can be a risky move in itself, causing downstream contract management and relationship management issues. Perhaps worse, over allocating risk can cause the best vendors to shy away from your projects or encourage them to build extraordinary 'risk premiums' into their pricing to account for the heavy risk burden they must carry.

On the other hand, you need to ensure that you protect your organization by including indemnities in your contracts that protect against the most likely and serious risks that might be encountered, particularly where those risks are under primarily the contractor's control. This eSeminar will look at how to strike an appropriate risk balance using specific examples and corresponding indemnity clauses. By the end of this course, you should be well-equipped to have a meaningful discussion with your own legal counsel about this tricky balancing act.

### Learning Objectives

- Analyze sample indemnity clauses and their implications on the contract.
- Realize how to effectively use indemnities to protect your organization while striking a workable balance of risk allocation with the contractor.
- Explore and discuss recent relevant case examples involving indemnities.
- Recognize areas for discussion with your legal counsel surrounding indemnities.

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