

Article 4. Required Contract Provision.

AS 36.90.300. Indemnification, defense, and hold harmless provision in certain construction-related contracts. {This new law went into effect on 26 May 2008}

(a) A public agency shall include in a construction-related professional services contract entered into by the public agency a provision under which the consultant agrees to indemnify, defend, and hold harmless the public agency from claims or liability for the negligent acts, errors, or omissions of the consultant. The provision must include an apportionment of the indemnification, defense, and hold harmless obligation on a comparative fault basis.

(b) A provision that reads substantially as follows satisfies the requirement of (a) of this section: The consultant shall indemnify, defend, and hold harmless the contracting agency from and against any claim of, or liability for, negligent acts, errors, and omissions of the consultant under this agreement. The consultant is not required to indemnify, defend, or hold harmless the contracting agency for a claim of, or liability for, the independent negligent acts, errors, and omissions of the contracting agency. If there is a claim of, or liability for, a joint negligent act, error, or omission of the consultant and the contracting agency, the indemnification, defense, and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "consultant" and "contracting agency" include the employees, agents, and contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, and omissions" means negligence other than in the contracting agency's selection, administration, monitoring, or controlling of the consultant, or in approving or accepting the consultant's work.

(c) In this section,

(1) "construction" means the process of building, altering, repairing, maintaining, improving, demolishing, planning, and designing a public highway, a structure, a building, a utility, infrastructure, or another public improvement to real property, but does not mean the routine operation of a public improvement;

(2) "consultant" means a person who contracts with a public agency to provide professional services;

(3) "professional services" has the meaning given in AS 36.30.990;

(4) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, school district, political subdivision, or other administrative unit of a municipality, of a political subdivision, or of the executive or legislative branch of state government, including the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a regional educational attendance area.