



REAL PROPERTY MANAGEMENT DIVISION POLICY BULLETIN NUMBER 3

May 25, 2005

January 31, 2007 revision 2 (in bold)

Subject: Hold Harmless Clause

Category: Contract Clauses for All Lease Types

The National Oceanic and Atmospheric Administration (NOAA), as a federal agency, is prohibited by the Anti-Deficiency Act, 31 U.S.C. 1341, from assuming contingent and indeterminate liability in the absence of Congressional appropriations for that specific purpose. Agreements to indemnify, or "hold harmless", non-government entities are viewed as such contingent liabilities, on the grounds that they constitute the obligation of funds yet appropriated.

However, since the Government is self-insured, an agency can agree to submit any alleged liability for adjudication to the extent provided for in the Federal Torts Claim Act, 28 U.S.C. 2671 et seq. To accomplish this, include the following clause:

NOAA agrees to promptly consider and adjudicate any and all claims which may arise out of use of the permitor's premises by NOAA or duly authorized representatives or contractors of NOAA and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Torts Claim Act, 28 U.S.C. 2671 et seq. or other such legal authority as may be pertinent. NOAA also agrees to consider and adjudicate any claims for damage or injury sustained by NOAA personnel in the performance of their official duties while on permitor's premises. Such adjudication will be made pursuant to the Federal Compensation Act, 5 U.S.C. **8101** et seq., or other such legal authority as may be pertinent.

