

**Information Technology Contracting Terms and Conditions (Systems Integration)**  
**Department of General Services, Industry Leaders, AeA and ITAA**

Work group #3 proposes the following recommendations in the category of “Pre-existing Software Licensing” (dated 11/8/07)

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**Recommendations:**

- A. The State’s information technology contracting terms and conditions must be published in a manner that allows for flexibility in an ever-changing technology environment. This is a dynamic market and contracts need to be flexible enough to allow for competition in the marketplace.
- B. There are many different types of applications and software products available today, and not surprising, the market changes frequently (at least every six months there is a major breakthrough or development in the products). The terms and conditions must allow for this. For example, there are applications for mainframes, mid-ranges, desktops, pocket PC’s, etc., and each application or software product comes with its own particular nuances.
- C. Contracting language needs to acknowledge that there may be a commercial-off-the-shelf (COTS) product selected to resolve a particular business issue. If the product is used in-tact, that is one scenario. However, often the products are modified, perhaps as little as 10%, for example, but modified none-the-less. Contracts must be flexible enough to allow for these types of changes. Also, consideration must be given to who will make the changes; who will maintain them; which hardware will be used; who is responsible for warranty issues, and how are warranty issues defined once a modification has been made to an application or software product, etc.
- D. Application Services: This area of technology is also continually changing. Terms and conditions need to remain flexible to allow for the possibility that a vendor will supply the programmers and the hardware for development or testing of software, and perhaps even the hardware where the final product resides. This could be a remote site, or it could be at the customer site. Some of the questions that will need to be answered are: How will the payments be structured? Is there a long-term lease or another arrangement? Many of these questions cannot be answered until contract negotiations. It is not possible to state definitively that one term and/or condition is a must. There are few or no more “one size fits all” scenarios.

- E. Virtualization: The same can be said for this category as has been stated previously in letter “D”. There are new issues that must be considered, such as being environmentally sensitive (green) or cost effective in the solutions that are brought forward. Flexibility in contracting is the key.
- F. Resources: Competitive pricing is paramount in the information technology proposal paradigm. In order to be competitive and to offer the best pricing to the State, it is not always feasible to provide resources solely in the United States and/or California. The State needs to acknowledge this and be flexible.

In summary, the terms and conditions cannot be hard and fast rules. There must be flexibility in contracting while still allowing for, and in fact, demanding consistency. These findings are consistent with the recommendations presented by Workgroup #1.