



CONSTRUCTING INFORMATION TECHNOLOGY CONTRACTS USING THE NEW MODELS

DIANA LA BONTE
DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION/ACQUISITIONS BRANCH
(916) 327-8055

Diana.Labonte@dgs.ca.gov



STATE OF CALIFORNIA

DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION



ABOUT THE NEW INFORMATION TECHNOLOGY (IT) CONTRACTS

- There are all kinds of contracts, not just Information Technology
- How did we go about developing the new models?
- What do the new models look like?
- What are the benefits of the new models?
- How to construct an IT contract using the new modules
- Where you can go for assistance



THERE ARE ALL KINDS OF CONTRACTS, NOT JUST INFORMATION TECHNOLOGY

- Public Works
- Services (non-Information Technology)
- Commodities
- Information Technology goods and services
- ALL contracts include some form or another of terms and conditions



HOW DID WE GO ABOUT DEVELOPING THE NEW MODELS?

- Formed a team – Procurement Division
- Identified our approach – modular – use only those modules you need
- Identified provisions to standardize and use in either a commodity or IT solicitation



Continued

- Moved standardized provisions to the General Provisions
- Shared the initial “DRAFT” with state agencies, supplier community, including attorneys and the American Bar Association, received input, and continued to refine the IT models for today
- Brought our Office of Legal Services in to assist in the continued refinement



WHAT DO THE NEW MODELS LOOK LIKE?

- General Provisions
- Statement of Work
- IT General Terms and Conditions
- Purchase Special Provisions
- Software License Special Provisions
- Personal Services Special Provisions
- Maintenance Special Provisions
- Agency Special Provisions



WHAT ARE THE BENEFITS OF THE NEW MODELS?

- Standardized General Provisions provide a baseline for all IT goods/services, regardless of value
- Modular approach eliminates conflict and redundancy
- You build your statement of work specifically for the transaction at hand
- You use only those modules you need
- No change is necessary to these standard provisions (But they're not carved in stone – call me if you need assistance with a modification)



HOW TO CONSTRUCT AN IT CONTRACT USING THE NEW MODULES

- Determine the needs of your acquisition
- Select the modules appropriate for your acquisition
- Incorporate the General Provisions (by hardcopy or point to our web site)
- Develop a Statement of Work (override General Provisions as appropriate)
- Review your contract to ensure your work is complete
- Contact Procurement Division for assistance



WHERE YOU CAN GO FOR ASSISTANCE

- Technology Acquisitions (contract, Statement of Work, other questions)
- Procurement Engineering Team (Statement of Work, development of specifications)
- Web Site:
- Procurement Division Home Page

www.dgs.ca.gov/pd



TALKED ABOUT ALL KINDS OF CONTRACTS

- Public Works
- Non-information technology services
- Commodities
- Information Technology goods and services



TALKED ABOUT HOW WE DEVELOPED THE NEW MODELS

- Formed a team – DGS/PD
- Identified a modular approach – use what you need
- Standardized and then moved clauses into the General Provisions
- Shared with and received input from agencies, suppliers, attorneys, American Bar Association, and continued to refine
- Brought OLS in to assist with the refinement



TALKED ABOUT WHAT THE NEW MODELS LOOK LIKE

- General Provisions
- Statement of Work
- IT General Terms and Conditions
- Purchase Special Provisions
- Software License Special Provisions
- Personal Services Special Provisions
- Maintenance Special Provisions
- Agency Special Provisions



TALKED ABOUT THE BENEFITS OF THE NEW MODELS

- Standardized General Provisions
 - a baseline for all IT goods/services
- Modular approach
 - eliminates conflict and redundancy
- You build your statement of work
- You use the modules you need



TALKED ABOUT HOW TO CONSTRUCT AN IT CONTRACT USING THE NEW MODULES

- What are your needs?
- Select the modules you need
- Incorporate the General Provisions (by hardcopy or point to our web site)
- Develop a Statement of Work (expand General Provisions as appropriate)
- Review for completeness and quality
- Contact Procurement Division for assistance



AND FINALLY, WE TALKED ABOUT WHERE TO GO FOR ASSISTANCE AND PROVIDED OUR WEB SITE

- Technology Acquisitions (contract, Statement of Work, other questions)
- Procurement Engineering Team (Statement of Work, development of specifications)
- Web Site:



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Cynthia Curry

Office of Legal Services



Warranty

- “An assurance by one party to agreement of existence of fact upon which other party may rely. It is intended precisely to relieve promisee (buyer) of any duty to ascertain facts for himself, and amounts to a promise to indemnify promisee for any loss if the fact warranted proves untrue.”
- Contract law acknowledges three types of warranties:
 - constructive,
 - implied, and
 - express



Warranty, cont.

- Constructive and implied warranties arise under Uniform Commercial Code (UCC) Article 2 and apply primarily to sales of goods; they are also in the California Commercial Code.
- Express warranties are created by the parties in various contractual transactions and are specifically recognized and protected under Article 2.



Contractor's

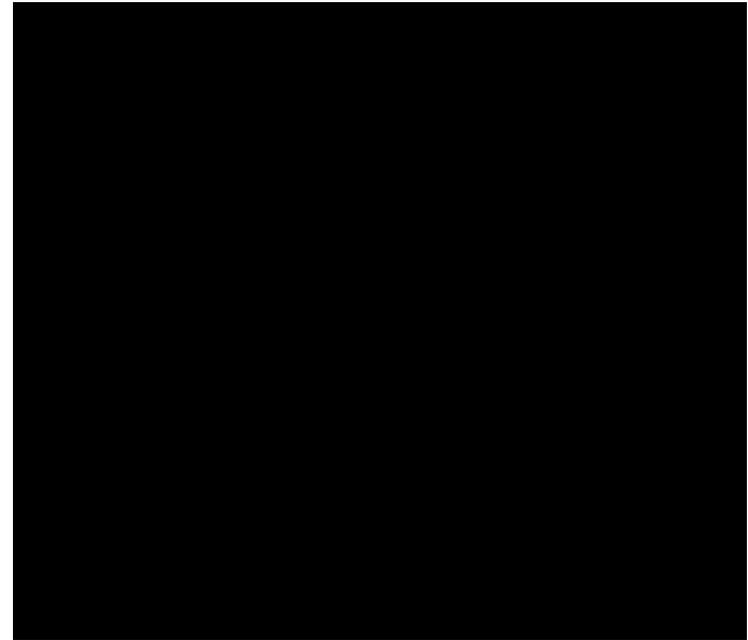
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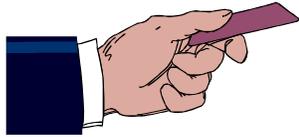
and

Authority



Warranty





Covenant

Against

Gratuities



Year 2000

Compliance



Constructive Warranty

- These warranties are imposed by law under UCC Section 2-312 and address the quality of ownership of the goods being sold.
 - Title - Under Article 2, every seller warrants that he/she owns the goods being sold and has the right to transfer the title.
 - Against Infringement – requires that the goods be free of any third-party claims of copyright, trademark, or patent infringement.



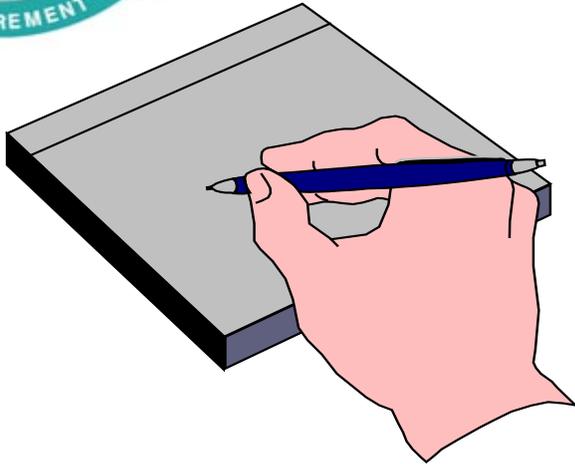
Implied Warranty

- These warranties exist automatically as part of the contractual relationship even if the parties never mention them. The only time they do not apply is when they are overcome by an effective disclaimer.
 - a) Merchantability – Assures that goods will be fit for ordinary purposes. The goods purchased do the job they are required to do, without defects.
 - b) Fitness for Particular Purpose – Assures that the goods will meet specific job requirements of the buyer, which are known to the seller at the time of contracting.



Express Warranty

- Express warranties may be created in a number of ways.
- Any sample or model that forms the basis for the contract creates an express warranty that the goods delivered will be the same.
- Any description of goods that is part of the contract establishes an express warranty that the goods delivered will be as described.



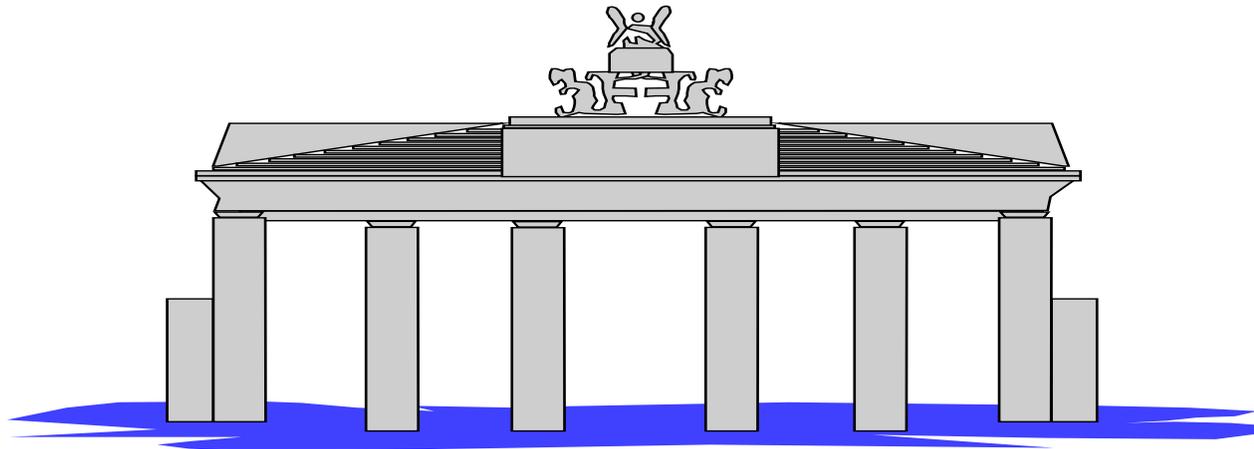
Order

of

Precedence



Unilateral Changes





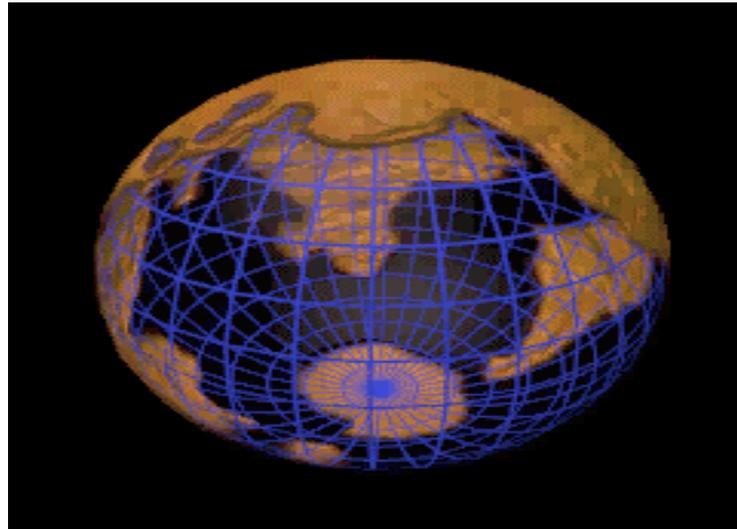
Indemnification





Liquidated Damages

- A formula must be developed based on each specific transaction. The formula must explain how the State is damaged, and how the formula has been developed. The formula must be reasonable and justifiable. Liquidated Damages may be used for late delivery on not only equipment, but also on services, such as maintenance response times and personal services deliverables, etc.
- Need statutory language
- Although formula must be reasonable, if damages are easily determined, they cannot be liquidated.
- Cannot be interpreted to be a penalty.



**Thank
you**