

MANAGEMENT MEMO

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EXPIRES: When rescinded
ISSUING AGENCY: Department of General Services and Department of Information Technology

SUBJECT: Information Technology Contract Clauses and Documentation Requirements
REFERENCES: California Public Contract Code Section 12101, et. Seq. California Government Code Section 11700, et. Seq.

To help ensure that agency information technology (IT) projects are successfully implemented and provide adequate protection to the State, the Department of General Services (DGS) requires that **all major IT acquisitions resulting from Department of Information Technology (DOIT) approved IT projects** follow the guidelines established herein. For purposes of this Management Memo, information technology is defined pursuant to subdivision (e) of Section 11702 of the Government Code.

In addition to the provisions currently established in the model IT contracts, generally, ALL major IT acquisitions shall include the full text of the contract clauses named below. A brief description of each clause is also provided.

- ◆ **Changes.** This clause defines certain limited conditions when the State may unilaterally direct a change to a contract. The contractor may then request cost and/or schedule relief caused by the change.
- ◆ **Termination for Convenience.** This clause replaces the mutual termination provision and provides a unilateral right for the State to terminate contracts, in whole or in part, without fault (breach) of the contractor. The contractor may then request cost and/or schedule relief caused by the termination. Note that this clause may not be appropriate in alternative procurements or where financing is included. The DGS Procurement Division personnel can provide guidance on contract language modification.
- ◆ **Stop Work.** This clause provides the State a mechanism to halt performance for up to 90 days (or longer if both parties agree) when a problem arises in order to determine the best course of action to pursue. The contractor may then request cost and/or schedule relief caused by the stop work action.
- ◆ **Disputes.** This new version requires internal resolution of disputes and an appeal process before a dispute can be escalated to court action. This clause prevents the contractor from stopping work while the disputed matter is being resolved.

The text of the above clauses has been incorporated into model IT contracts available on the DGS Internet site (www.pd.dgs.ca.gov) or by contacting the Major Acquisitions unit of the DGS Procurement Division (PD) at (916) 445-2249.

The Director of the DOIT has the statutory authority to terminate and/or suspend IT projects. In such an event, the DGS-PD, or the agency acting under delegated purchasing authority, would

then issue a contract change under the Stop Work and/or Termination for Convenience provisions.

Significant advance project planning is required before any solicitation for a major IT acquisition is issued. Project management techniques must be employed to monitor IT projects before contract award and during contract performance. Contracts should include specific requirements for contractors to conduct periodic design reviews and to provide regular progress reports to aid in successful project management. As a condition of approving an IT project, the DOIT may also require (1) approval of the solicitation document prior to release and (2) approval of the contract file documentation prior to contract award.

Many aspects of IT contracting present special risks to the State. Some of these are described below. How contract risks are evaluated and what actions are taken must be documented in the contract file.

The following considerations apply to **all major IT acquisitions** (shown as “all contracts”):

◆ **Payment schedule contingent upon execution of deliverables**

All contracts should contain a Project Plan enumerating specific deliverables or completion of defined tasks and corresponding delivery schedules. All payment schedules should coincide with that plan and be contingent upon the successful execution of those defined deliverables or tasks. Consider specifying that a designated percentage will be withheld from incremental payments pending completion of the entire project/integration and/or acceptance. Note that Public Contract Code Section 12112 may also require the withholding of 10 percent.

◆ **Executive Committee**

All contracts should contain provisions creating an “Executive Committee,” a designated group with the authority to resolve potential disputes and approve resulting contract changes in an expedited manner. Executive Committees include representation from, at a minimum, the contractor, agency program management, agency contracting personnel, technical or quality assurance personnel, and those State oversight agencies which have indicated a desire to be included.

Notes: Executive Committee decisions to resolve disputes frequently require a written amendment to the contract in order to be effective. An alternate version of the standard Disputes clause authorizing Executive Committee action is included in the model contract.

◆ **Warranty provisions**

All contracts should contain warranty provisions which provide, among other things, that all work is in accordance with the contract requirements. When considering whether additional extended warranties justify the cost to procure them, consideration should be given to

industry standards and maintenance requirements which may make extended warranties unnecessary. Conditions for acceptance and when acceptance will be deemed to occur should be carefully defined. This is particularly important when there are incremental deliveries of subcomponents or phased delivery of hardware and systems integration.

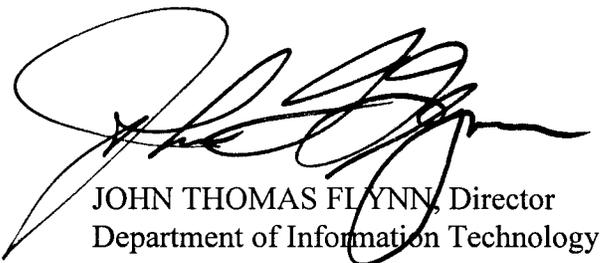
◆ **Year 2000 compliance**

All contracts must contain provisions ensuring that contractor products address Year 2000 solutions. For new IT projects, it is the responsibility of contractors to ensure their products are Year 2000 compliant, with no additional resources provided by the State. If the parties contemplate that the contractor will resolve Year 2000 problems in State "legacy" systems in addition to any new work or modifications for which the State is contracting, the extent of this responsibility must be clearly defined and priced in the contract. The model IT contracts contain a clause for this purpose.

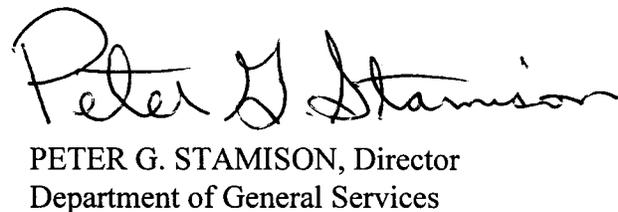
◆ **Specification of State intellectual property rights**

All contracts should provide that the State owns all works of authorship created by or provided by the contractor and related to the project, regardless of form, whether complete or incomplete. The State retains all rights within the general scope of copyright, both legal and equitable. Intellectual property rights can be very complicated and specialized legal assistance may be necessary to determine that the State's and contractor's rights in intellectual property are properly defined and protected.

The DOIT and the DGS-PD are partners with agencies in ensuring the success of IT projects. The DOIT is available to answer questions relating to IT project policies. The DGS-PD Major Acquisitions Unit is available to answer questions relating to the contracting process and specific contract terms and conditions.



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