



Understanding and Using the Bidders Instructions and General Provisions Forms



Mariel D'Eustachio, PD

Kathleen Yates, OLS

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Objectives

- Discuss the purpose of the Bidder Instructions (BI) and General Provisions (GP) generally and how they are used and modified.
- Discuss the impact of recent changes.
- Highlight key provisions of the BI and GP.
- Some negotiation strategy and policy concerns will be shared.
- Questions will be taken any time.





Introduction

- Forms Revised March 2000. Have new form numbers and revision dates.
- Old forms still valid for procurements in which they were incorporated.
- New and old will be maintained on PD Web site. www.dgs.ca.gov/pd
- Use only new forms in new solicitations and contracts.



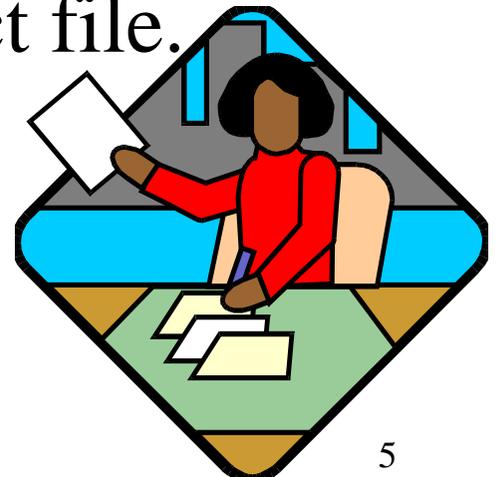
General Information

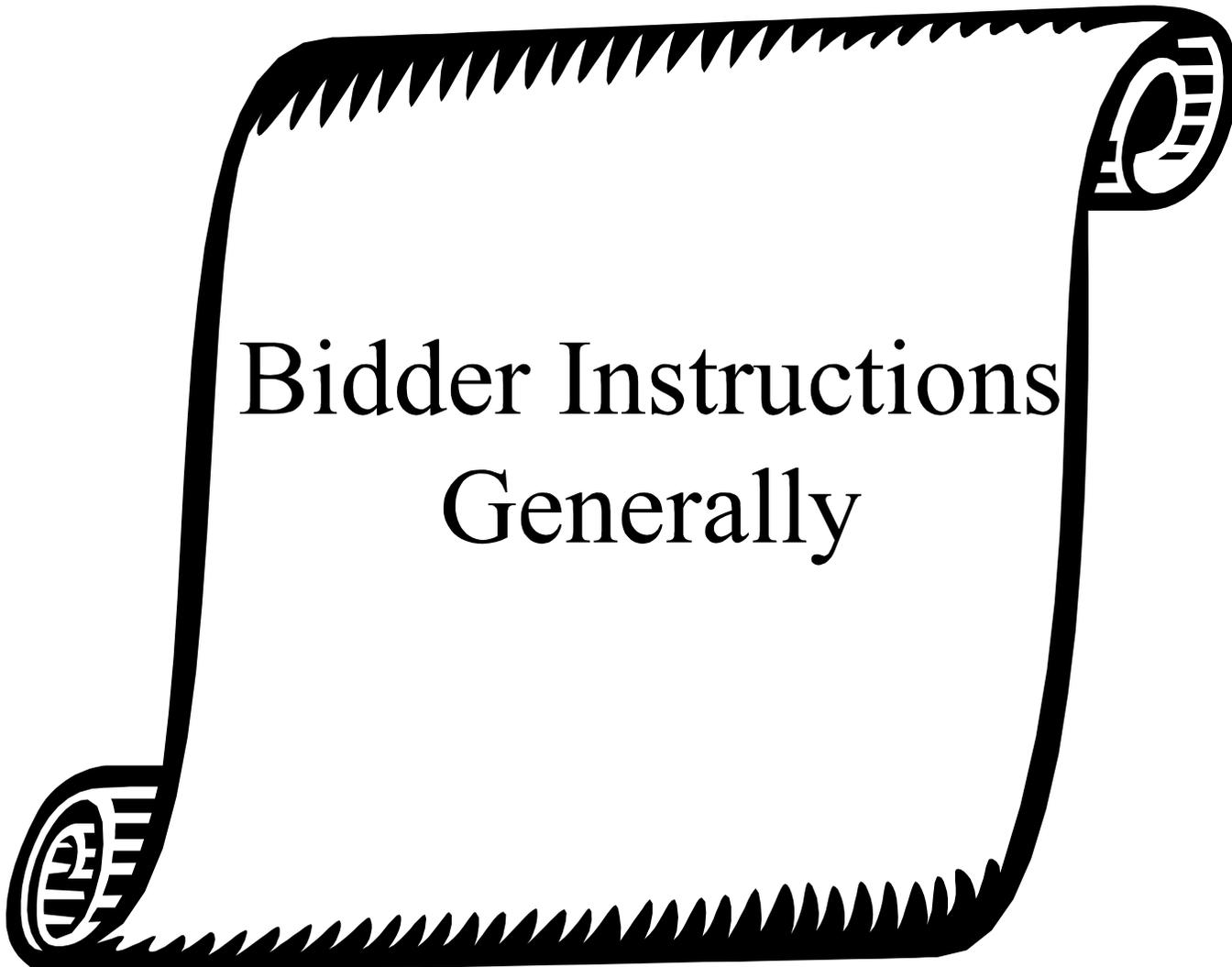
- Forms are used in written solicitations and PO/contracts for goods (a.k.a. “materials supplies and equipment”, sometimes called “commodities”) and information technology goods and services (IT).
- Not applicable to CAL-Card transactions **unless** a written contract is used.
- Modified versions in Master Agreements, Statewide Contracts and CMAS agreements.



General Information, Cont'd.

- Forms can be incorporated into solicitations and/or contracts by reference to web or physically attached.
- If incorporated by reference to web site, buyer will furnish a copy to suppliers on request.
- Always keep a hard copy in contract file.



A large, stylized black outline of a scroll is centered on the page. The scroll is unrolled, with its ends curling upwards. The text "Bidder Instructions Generally" is written in a black serif font across the center of the scroll.

Bidder Instructions Generally



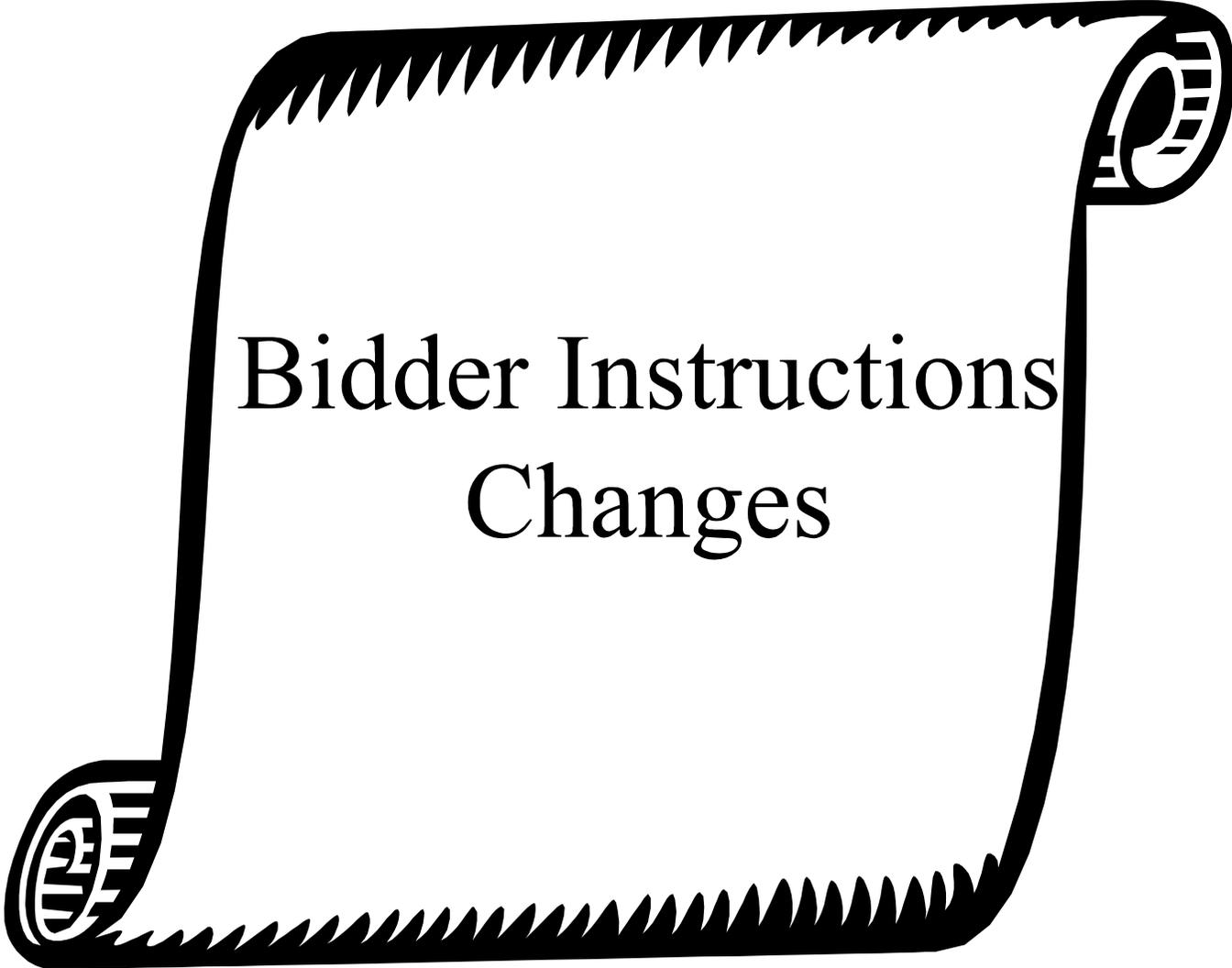
Bidder Instructions, Generally

- Bidders Instructions only apply to the solicitation phase to instruct bidders **HOW** to provide a responsive bid/quotation.
- BI must not include any language which must be in the contract to be “enforceable” (i.e., “who, what, why, where, when”, etc.).
- BI should not be redundant to the contract (including Statement of Work) language.



BI, Generally, Cont'd.

- Bidders Instructions are optional but helpful as they reflect many years of experience.
- They can be modified to fit the solicitation effort without PD approval.
- To do so, don't alter the form but attach "additional bidder instructions". Then "delete" and "substitute in lieu thereof" or "add" provisions as necessary. (See later slides for example of verbiage.)



Bidder Instructions Changes



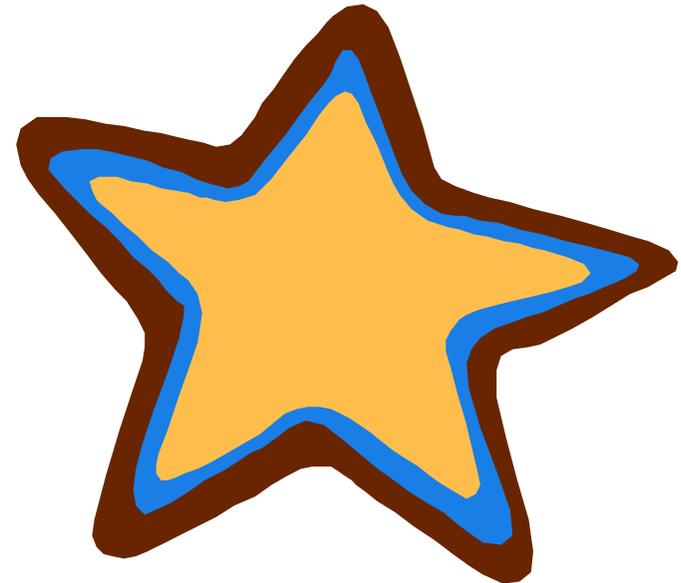
March 2000 Changes

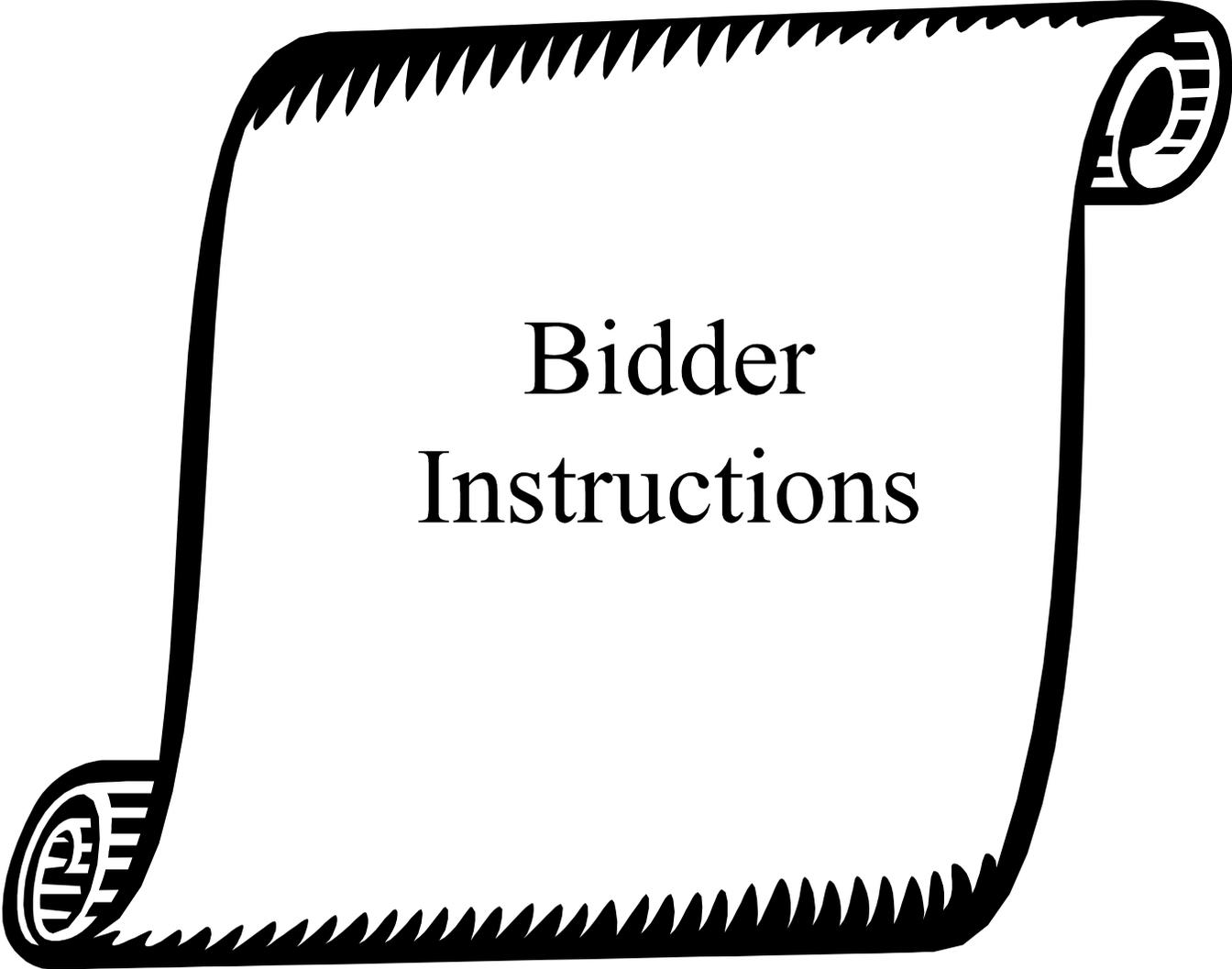
- Article 4, Prices, revised for errors and erasures and unit pricing.
- Moved the cash discount provision up.
- Added Conflict of Interest (from GP).
- Deleted Alternate Bids.
- Deleted Cost or Pricing Data (may use as Special T/C).



Changes, Cont'd.

- Art. 16, State's Rights, deleted subparagraphs (d) and (e) re removal of a bidder for "non-responsibility" or failure to bid.





Bidder Instructions



1. Definitions

- Defines “bid”, to be any response to a solicitation, whether or not considered a “sealed bid”.
- Defines “bidder” as anyone who submits a bid.
- Defines “solicitation” as a process.
- Defines “supplier”.



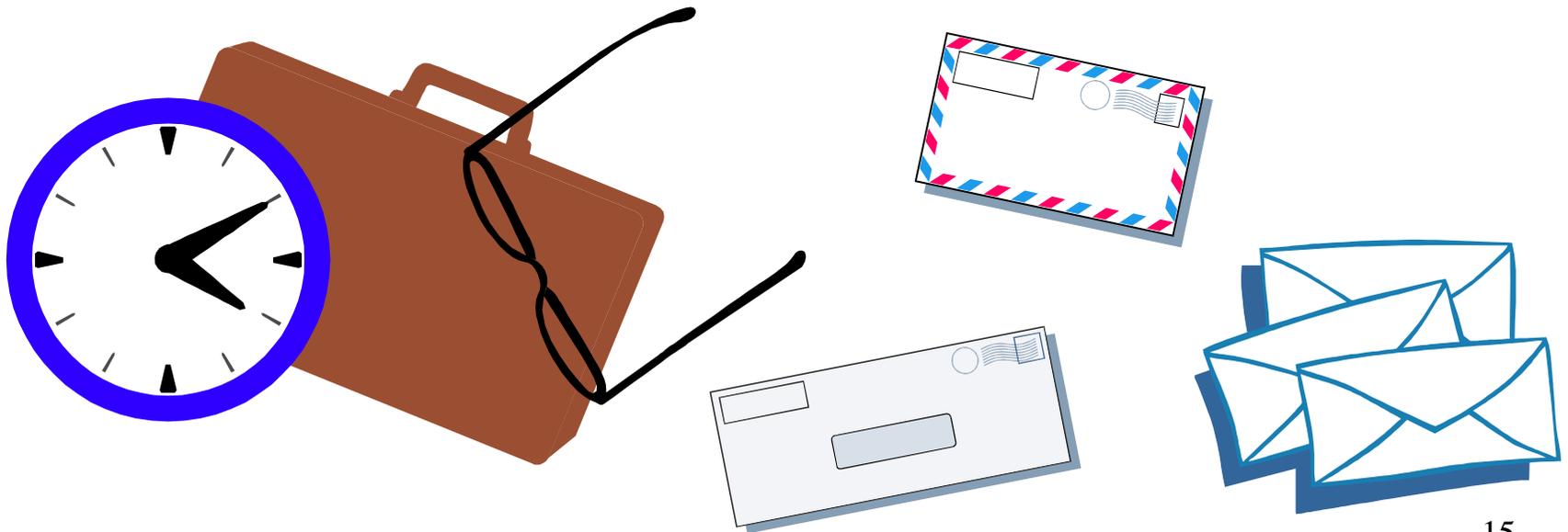
2. Submission of Bids

- Faxes must be specifically authorized.
- Establishes how “sealed” bids are sealed.
- Bidder solely responsible to get bid in on time.
- Fax bids only considered by what is rec’d.
- Bids due at time stated or close of business if no time stated.



2. Cont'd.

- Bid opening after due date/time, unless otherwise stated.
- Late bids are non-responsive.





3. Solicitation Addendum (Addenda)

- Suppliers not on the pre-qualified bid list have to notify the buyer so they receive any addenda.
- Buyers should include in the addenda the instructions for whether it must be submitted with the bid.
- Bid prices must reflect all addenda or the State will interpret that it does.



4. Prices

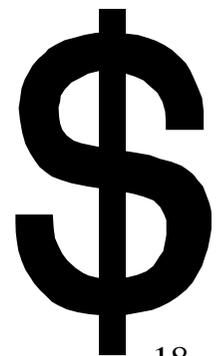
- This article instructs the bidder how to show the prices and how any errors will be handled; and if we correct an error, how we will do it.





5. Cash Discounts

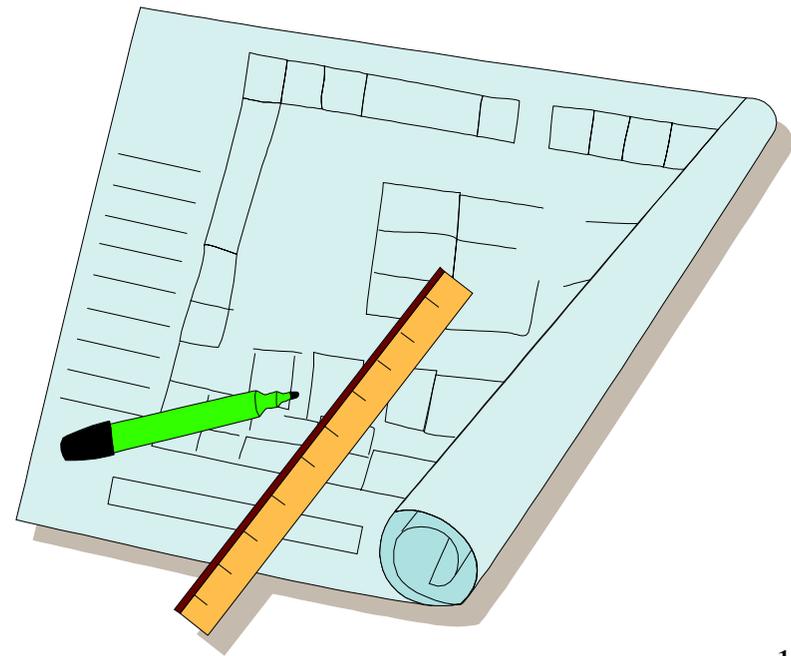
- While discounts are encouraged, discounts are not considered in the determination of the low bidder as a result of a 1997 policy change.
- To consider cash discounts in determining the low bid, a written policy exemption from PD is required and the solicitation must expressly permit it in “Additional BI”





6. Inspection of Solicitation Documents

- The supplier has the duty to inspect and failure to do so is at the supplier's risk.





7. Brand Names

- Use of brand names/numbers is descriptive and not restrictive (unless so stated).
- Equivalent items will be accepted (unless specifically prohibited).
- The bid must specify any differences.
- The State reserves the right to determine if a substitute item is of acceptable quality and may require submission of samples.



8. Evaluation of Bids

- State may consider multi-line bids by line item or groups as specified in the solicitation, or on a total award basis, unless otherwise stated.
- Bidders may limit their bid to “all or none”, but it may render them non-responsive if they are not the low bidder overall.
- The solicitation will specify other criteria.



9. Conflict of Interest

- PCC 10410 prohibits current employees from benefiting from or contracting with the State.
- PCC 10411 prohibits prior employees for 2 years after leaving State service from participating in a contract with the State in which they had a decision making role while employed by the State.





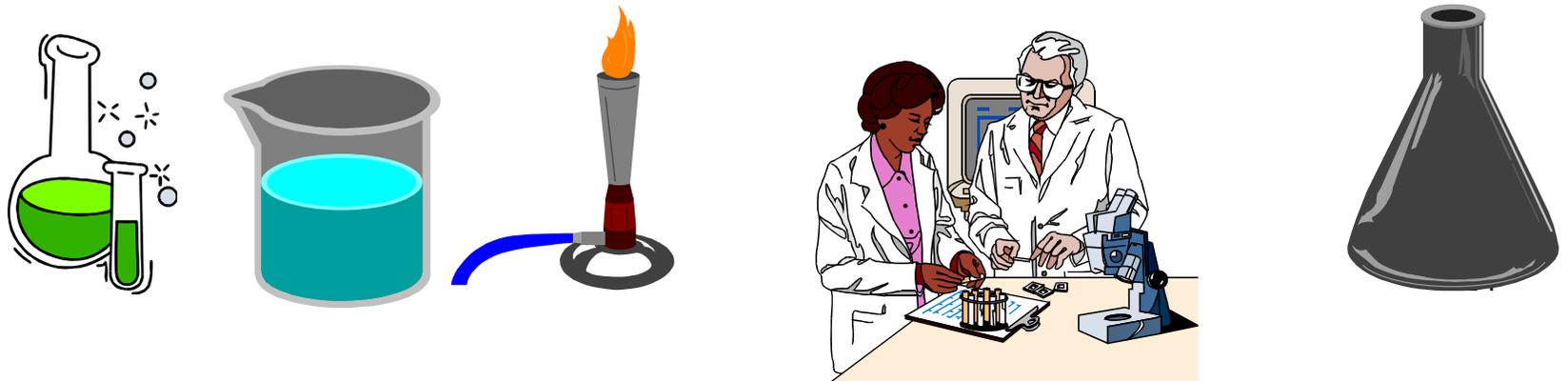
10. Joint Bids

- If two or more bidders jointly submit a bid, they must sign the bid and any resulting contract will bind all parties who will be jointly and severally liable for contract performance. One party must be designated to represent all of the suppliers.
- The State is not responsible for dividing the orders.



11. Samples ...

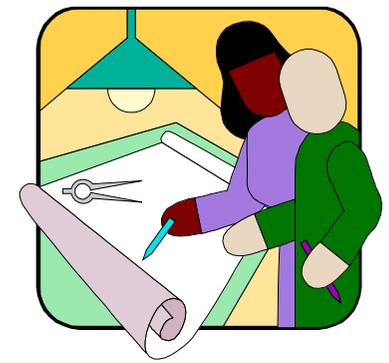
- Samples, if required, are furnished free, unless otherwise specified.
- Samples must be identical to what is offered (unless otherwise specified).
- Equivalent items may require samples.
- Samples may be returned to bidder upon request, at their expense (if not destroyed).





12. Specification Concerns

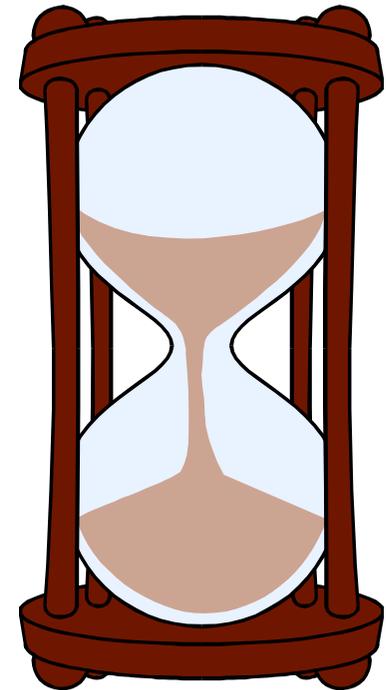
- If unfairly restrictive, ambiguous, conflicting, contains mistakes or is commercially impractical, the supplier has a duty to inform the State before bids are due.
- If the supplier fails to notify before bids are due, the supplier has waived the ability to claim the solicitation defect in a protest.





13. Validity of Bid

- Bids must remain effective for 45 days after the bid due date, unless otherwise stated.





14. Mistake in Bid

- The bidder may request to withdraw a bid with a mistake discovered prior to award. The State decides whether to permit withdrawal.
- If an “all or none” bid, the withdrawal must be of the whole bid. Otherwise, withdrawal may be considered by line item/group.



15. State's Rights

- May modify or cancel a solicitation in whole or in part any time before award.
- May reject a bid that is non-responsive or waive informalities/ minor irregularities.
- May reject a bid from a supplier that is deemed not responsible (see 2 CCR 1890(d)).



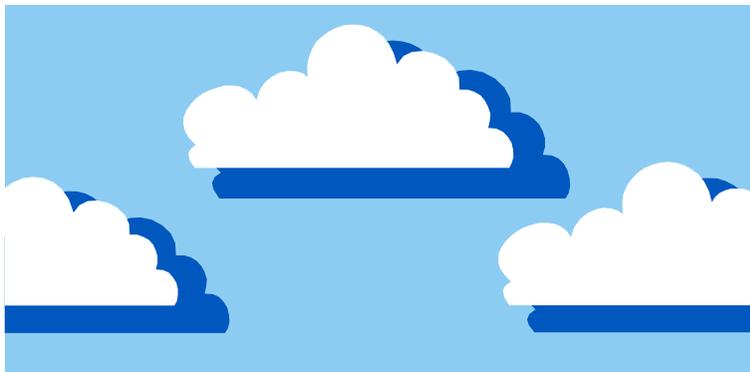
16. Unfair Practices Act and Other Laws

- The supplier warrants that its bid complies with:
 - The Unfair Practices Act and
 - All applicable State and Federal laws and regulations.



17. Violation of Air or Water Pollution Laws

- Applies to competitive contracts of \$10,000 or more.
- Prohibits award to a violator of State or Federal air or water pollution laws.
- Buyer has a duty to determine bidder status prior to award (ask Boards if unsure).





18. Independence of Bid

- Bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of anti-trust laws.
- Does not apply to joint bid.



19. Bid Evaluation Preferences

- State will give consideration per law for bids which claim:
 - Certified CA Small Business preference;
 - Enterprise Zone Act (EZA);
 - Target Area Contract Preference Act (TACPA);
 - Local Agency Military Base Recovery Area (LAMBRA) Act; and/or
 - Recycling



19. Cont'd.

- Multiple preferences will be verified, and applied in accordance with law and procedures.
- The DGS Office of Small Business Certification and Resources offers classes on the preference programs.
- Applying multiple preferences is complex. See the California Acquisition Manual for guidance.



20. Protests

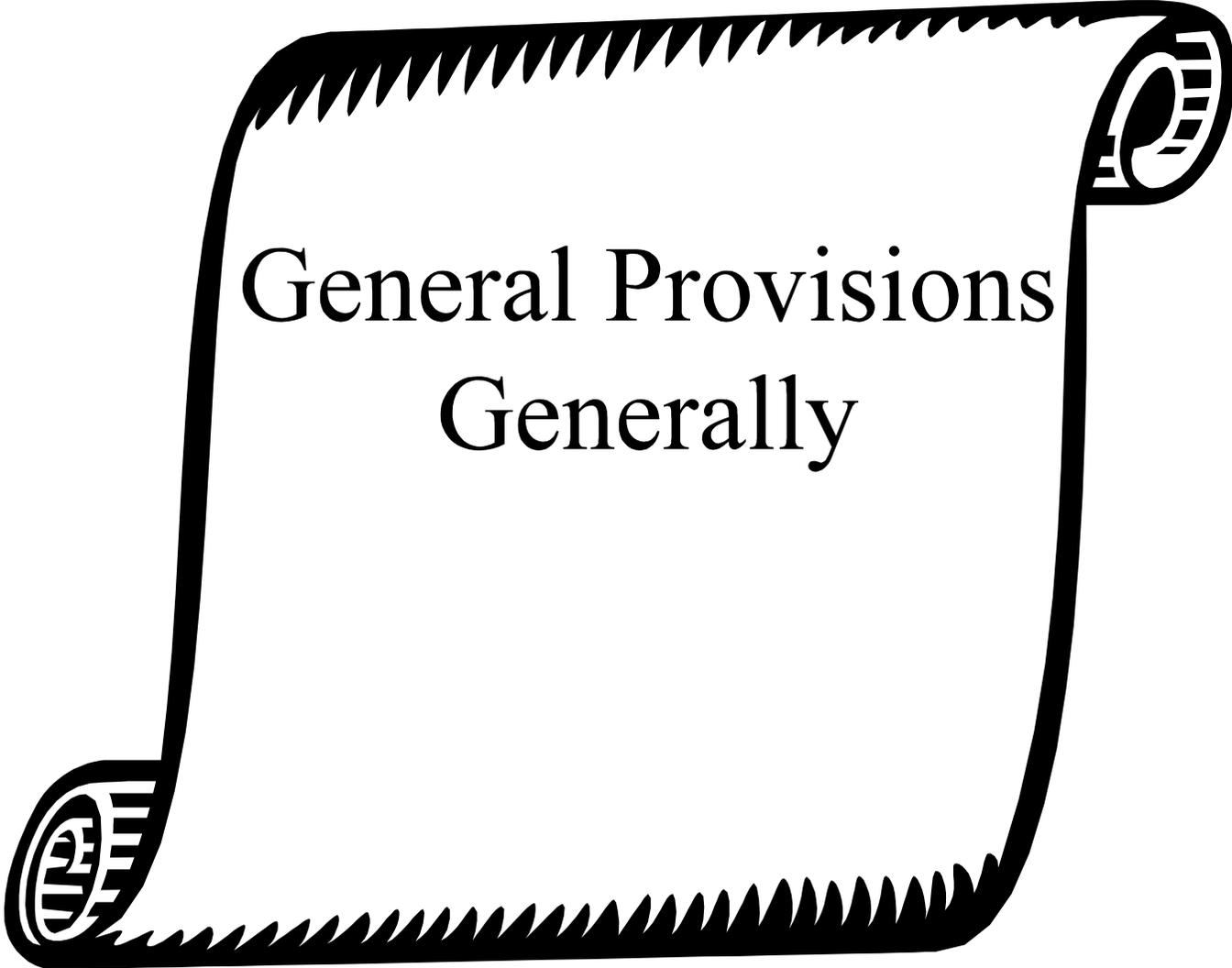
- Protest Advocate/Protest Coordinator
- Protest Grounds:
 - Goods - protestant must prove it was the “lowest responsible bidder meeting specs”.
 - IT - bidder “should have been selected in accordance with solicitation criteria”.
- Alternative Protest Pilot Program has special rules/forms.



21. Americans with Disability Act (ADA)

- Agency buyers must help disabled bidders participate in the process:
 - Solicitation must provide TTY/TDD numbers (if non-PD agency issuing solicitation)
 - PD contact numbers are on the form.
- 10 day notice requested.
- Department of Rehabilitation can assist with technology needs, interpreters, etc.





General Provisions Generally



General Provisions, Generally

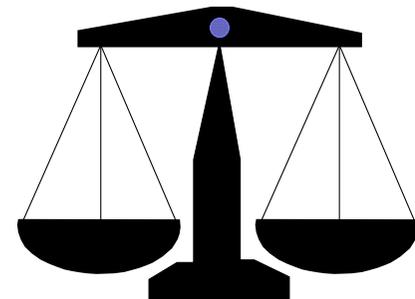
- General Provisions are **required** in every written PO/contract of \$2,500 or above for goods or IT. Optional below \$2,500 but recommended if a written PO/contract is used. Not applicable to CAL-Card transactions **unless** a written contract is used.
- GP must not be modified without advance Procurement Division (PD) approval.





GP, Generally, Cont'd.

- GP have balanced provisions for rights and obligations of both buyers and sellers. Consistent with the Uniform Commercial Code (UCC) and CA Commercial Code.
- GP represent DGS policy on contract requirements not established by law.
- GP comply with legal requirements for “flow downs”.





GP, Generally, Cont'd.

- GP were created with standard language common to **most** goods/IT procurements.
- Additional “special terms and conditions” may be created for agency unique requirements or to tailor the contract to the specific requirements of the transaction.
- Can also use the Statement of Work (SOW) for transaction-specific requirements.



GP, Generally, Cont'd.

- If you must modify the GP, don't alter the form but use an attachment called "special terms and conditions". This will have a higher order of precedence than the general provisions.





GP, Generally, Cont'd.

- To **completely replace** a provision with a new one, use verbiage as follows:
 - “In the Form GSPD-401, General Provisions, revised March 2000, delete Article ___ in its entirety and substitute the following in lieu thereof: (insert new Article, complete with number and title).”



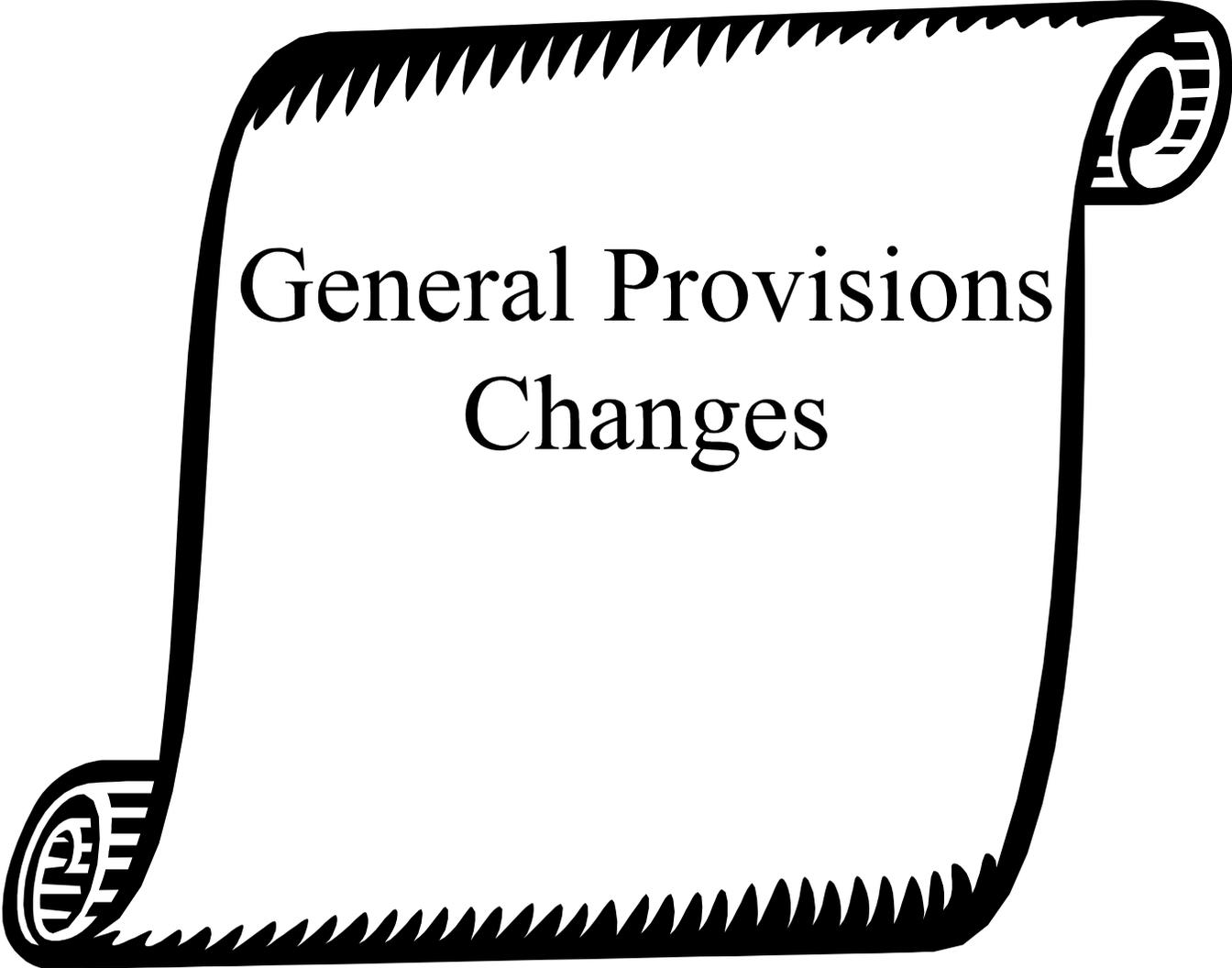
GP, Generally, Cont'd.

- To **modify** a provision:
 - Identify the form by number, title and date.
 - Specify the article by number/title.
 - Identify the location (i.e., reference the subparagraph, sentence no. or line no. and/or word) to be deleted or where text is to be inserted (before / following existing text).
 - Identify the text to be substituted in lieu thereof or added.



GP, Generally, Cont'd.

- To **add** a new provision:
 - Specify where the provision will be inserted (before or after existing text).
 - Provide new text, with article number and title.
 - Remember to indicate that following paragraphs are renumbered if the addition was not at the end.



General Provisions Changes



March 2000 Changes

- Deleted definition of “Cost or Pricing Data” -- now can be a special provision.
- Moved “Joint Bid” article to “Contract Formation”.
- Added World Trade Organization Government Procurement Agreement (WTO GPA) to “Statutes and Regulations” article.



Changes, Cont'd.

- Clarified “Assignments” to permit assignment of payment.
- Deleted “Interpretation of Clause Headings”.
- Clarified “Order of Precedence”.
- Clarified “Inspection” clause applies to subcontractors; deleted requirement for 3 day notice to buyer of potential/actual non-conformance.



Changes, Cont'd.

- Moved three Terminations clauses together.
- Clarified that PD Deputy Director is the one who decides and issues the notice of “Termination for Convenience”; shortened the clause (now details are in the procedure).
- Modified “Termination for Default” to delete requirement for 10 day cure notice; moved the Force Majeure exception to new clause.
- Deleted “Discounts” - now in BI.



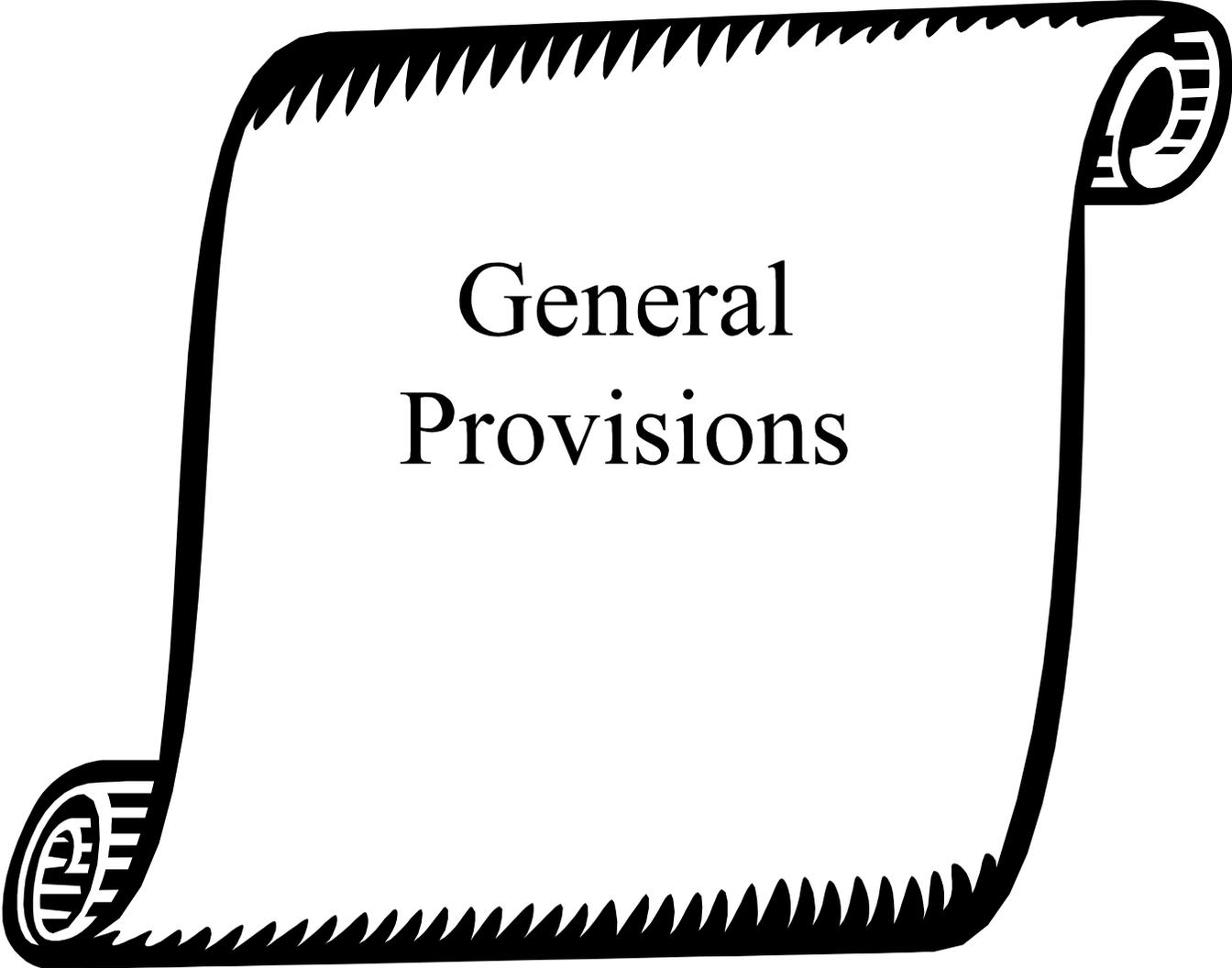
Changes, Cont'd.

- Modified “Taxes” regarding exemption status of the State.
- “Contract Modification” changed to match language on reverse of Std. 2 form.
- Deleted “Unilateral Changes” - can be special provision (if not competitive bid).
- Added new “Compliance with Software Copyrights” per new legislation



Changes, Cont'd.

- Deleted “Cost or Pricing Data” clause - can be special provision.
- Modified “Stop Work” to clarify the State is not liable for loss of profits; deleted requirement for equitable adjustment in related contracts.
- Deleted “Conflict of Interest” -- moved to BI.
- Corrected code reference in “Recycling”.



General Provisions



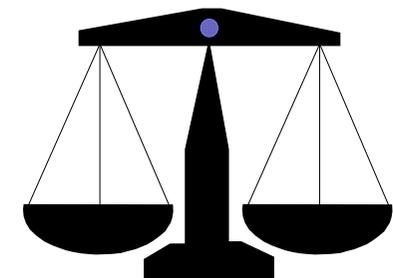
1. Definitions

- Defines “business entity”, “buyer”, “contract”, “contractor”, “goods” and “State”.
- Deleted the definition of “cost or pricing data”.



2. Contract Formation

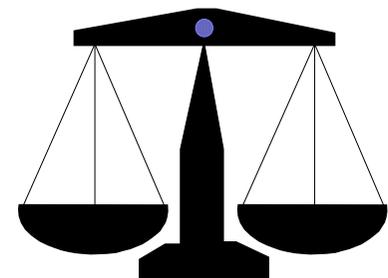
- Important “legal” provision that determines the point of “offer” and “acceptance” to create a valid contract. Other elements are:
 - consideration (buyer promises to buy/pay and seller promises to sell/deliver per contract)
 - competent parties (State and contractor are “merchants” per UCC); now incl. “joint bid”.
 - legal purpose (usually presumed)
- Exceptions never happen.
- Do not change.





3. Complete Integration

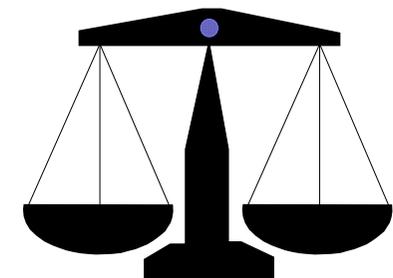
- Standard “legal boilerplate” that the contract is the entire agreement and there are no prior or side agreements.
- Exceptions very unusual.
- Do not change.





4. Severability

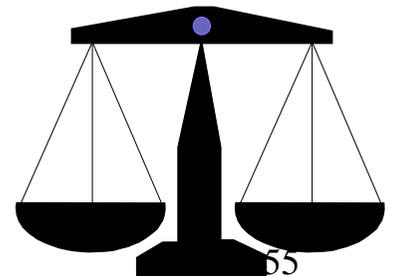
- Standard “legal boilerplate” to help court interpret contract so that any provision found invalid will not invalidate the rest of the contract. Has notice requirement.
- Exceptions rare.
- Do not change.





5. Independent Contractor

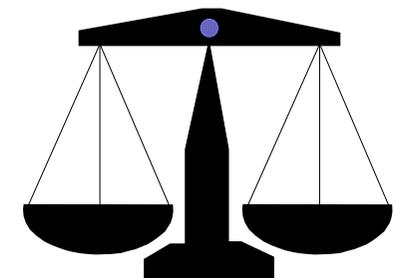
- Legal boilerplate with important tax consequences to State; provides that the contractor is not an agent/employee of the State.
- Exceptions rare.
- Do not change.





6. Applicable Law

- Standard boilerplate. Laws of California will apply; suits must be brought in Sacramento.
- Exclusion of UN Convention on Contracts for the International Sale of Goods important for contract interpretation as Convention has different balance of rights than UCC.





6. Cont'd.

- Suppliers in other states will often want their laws to apply.
- State policy is to decline such requests (although in rare cases we may have to accept). Consult legal counsel.



7. Compliance with Statutes and Regulations

- Warranty of compliance with State and Federal laws and regulations.
- Contractor indemnifies the state if they fail to comply.
- Added WTO GPA (\$500,000+)
- No one objects to this (would cast doubt on their responsibility). Do not change.



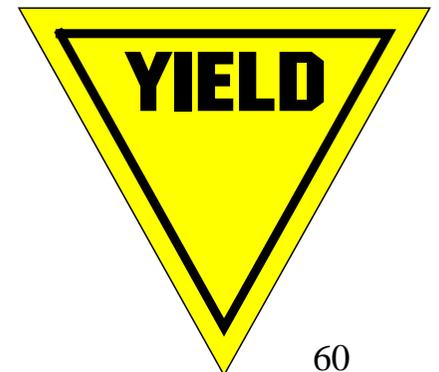
8. Contractor's Power and Authority

- Another warranty and indemnification provision, plus contractor agrees not to enter into 3rd party contracts that would impact the State under this contract.
- No one ever objects so do not change it.



9. Assignment

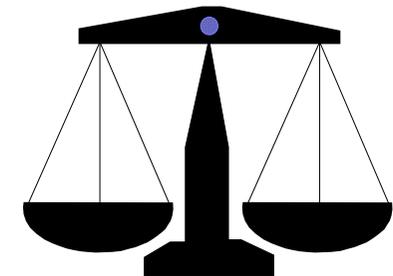
- State must consent to assignment. **Be careful that performance is not lessened.**
- State will grant assignment of payments, **contractor remains responsible for performance.**
- Almost never a problem.
- Do not change.





10. Waiver of Rights

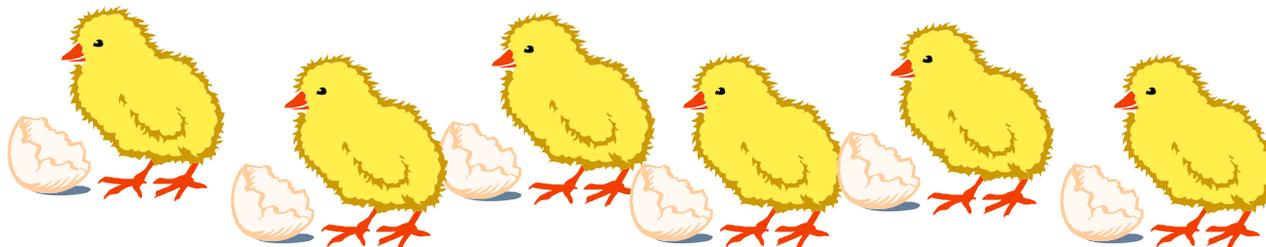
- Extremely important contract administration clause for State to retain right to strict performance per the contract terms. If we do not enforce our rights, all it takes is notice that we will do so.
- Rights & remedies are cumulative.
- Standard boilerplate - no one objects. Do not change.





11. Order of Precedence

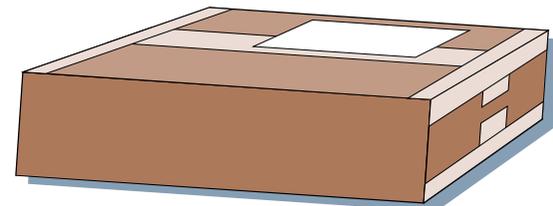
- Modified as follows:
 - PO/contract “form”
 - special terms and conditions
 - Statement of work/specifications
 - general terms and conditions (incl. GP)
 - all other attachments
- May need to modify in “special t/cs” to fit structure of contract -- consult legal counsel.





12. Packing and Shipment

- General information on packaging, identification and transportation is here. If you need special instructions, include them in SOW/specification. Consult DGS PD Transportation Management for help and special shipping options. Call Dave Wallace at 916-928-5842.
- No one ever objects to this, so don't change it.





13. Transportation Costs and Other Fees or Expenses

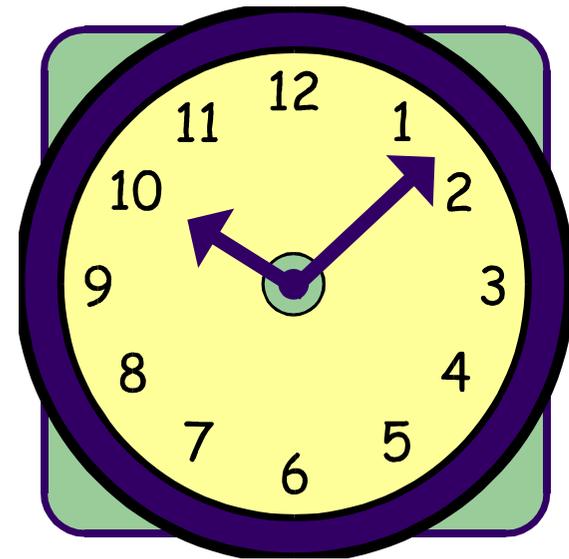
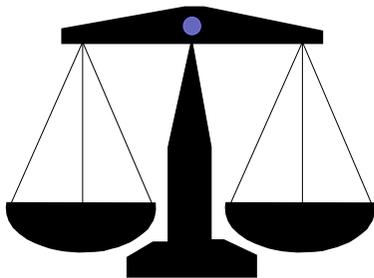
- Important cost controlling provision and includes how claims will be handled.
- Contractor must follow instructions regarding F.O.B. point and method of shipment or we won't pay.
- No one objects so don't change it. Any unique provisions can be in the SOW/spec.





14. Time is of the Essence

- Standard boilerplate (from reverse of Std. 2).
- Never an issue.
- Do not change.





15. Delivery

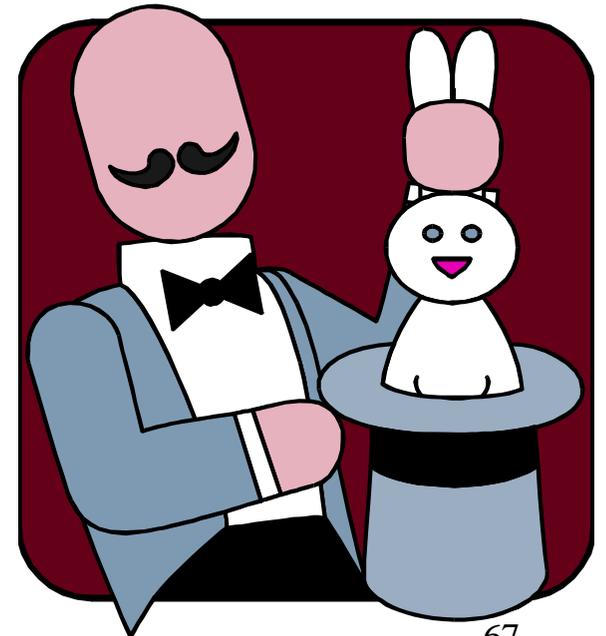
- Important provision for contract performance. Changes may be needed to make contract reflect what is happening and to preserve the State's rights.
- If buyer wants to permit over/under shipments, must be specified in order or only quantities stated are authorized. State doesn't have to pay for extras.
- Objections rare. Do not change.





16. Substitutions

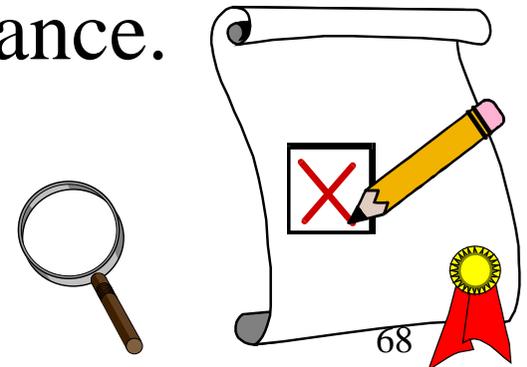
- No substitutions unless expressly authorized (usually in specification).
- Exceptions rare.
- Do not change.





17. Inspection, Acceptance and Rejection

- Important quality clause. Modified slightly.
- I/A/R must be timely and reasonable (if long period needed, be sure to include in contract).
- Note requirement to give notice of rejection. Any causes for rejection not stated can not be used later -- so be thorough in inspecting.
- UCC also requires notice of acceptance.





18. Samples

- Samples, if required, are furnished free and may be returned upon request at seller expense.
- Exceptions rare. Do not change.

Note: For items that are being designed and developed, the State may choose to pay for the “first article” or “prototype” before production begins. Consult legal counsel if this seems appropriate.



19. Warranty

- Different rights under UCC for “acceptance” vs. “warranty”. After acceptance, then “warranty” applies.
- Warranty here has unlimited time period and suppliers may object. Do not change the GPs. Instead, include specific warranty period(s) in “special terms and conditions” or SOW.



19. Cont'd.

- Be sure you understand the difference between what you are getting with “maintenance” and “warranty” -- don't pay twice for the same benefit.
- Warranties add cost so be sure you want to pay for what you get. Often, their standard commercial warranty is good enough.
- CAM Procedure has detailed guidelines.



20. Safety and Accident Prevention

- Contractor shall follow contract safety requirements (or those required by law or regulation). Contractor shall take additional safety precautions to be sure work is done safely. Violation is grounds for termination.
- Exceptions rare. Do not change.





21. Insurance

- Applies when work done on State premises.
- Contractor must have adequate insurance.
- Note: DGS Office of Risk and Insurance Management can determine types of insurance coverage necessary in special risk situations, whether insurance carrier is responsible and whether insurance amounts are adequate.



21. Cont'd.

- ORIM can advise when State must be shown as “additional insured”
- If special insurance requirements are needed, incorporate them in the SOW/ specifications or special t’s & c’s.
- Do not modify clause.
- See CAM procedure for guidance.



22. Termination for Non-Appropriation of Funds

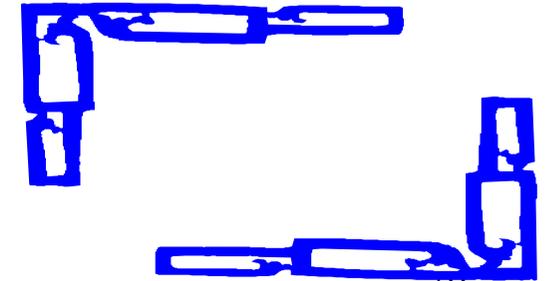
- Permits State to terminate if the Legislature denies funding.
- Standard clause from Std. 2, Contract.
- Exceptions Rare. Do not change.





23. Termination for the Convenience of the State

- Clause is based on Federal Acquisition Regulations.
- Permits State to terminate for reasons other than default or no funding. Decision to terminate and notice comes from PD.
- Requires contractor to stop work and sub-contracts and mitigate costs/protect goods.
- CAM Procedure provides details.





23. Cont'd.

- Suppliers may take exception, but should accept it because they do not lose. As consideration for the State's right to terminate, the supplier gets profit on all un-terminated work. Supplier also entitled to other costs for preparing the claim.
- Costs to terminate could exceed contract cost -- so don't terminate unnecessarily.



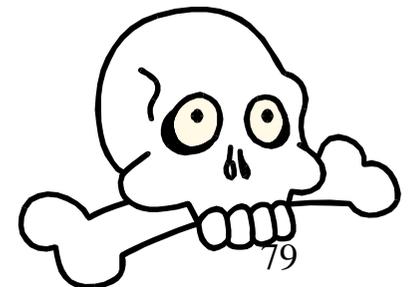
23. Cont'd.

- Clause not applicable to financed transactions since all goods are delivered and accepted before financing begins.
- Some suppliers may want us not to be able to terminate (e.g., unless we're terminated by the Federal Government) but that is not recommended.
- Do not make “mutual”.



24. Termination for Default

- Clause is based on Federal Acquisition Regulations.
- Default is failure to:
 - Deliver goods or perform services
 - Make progress so as to endanger performance
 - Perform any other requirement of the contract
- Cure notice period now changed from 10 days to whatever buyer specifies.





24. Cont'd.

- State reserves right to re-procure or “cover” and the Contractor is liable for the difference over the cost of the terminated contract.
- State may require delivery of any finished goods (we pay contract price) and “manufacturing materials” (negotiate price).
- State may offset damages.



24. Cont'd.

- If State improperly terminates, WE would be in breach. So clause allows us to convert to a termination for convenience. Therefore, T for C clause should NEVER be eliminated.
- State reserves all rights at law and under contract.



24. Cont'd.

- Some suppliers want termination clause to be mutual. However, do not change. Each party to a contract has a common law right to terminate for the material breach of the other party whether stated in the contract or not.



25. Force Majeure

- Formerly part of T for D clause.
- Breach excused when the fault is due to circumstances outside the control of the contractor or subcontractor. The State may not use these as grounds for default.
- Buyer should change the contract to provide schedule relief (normally additional costs are not appropriate)





25. Cont'd.

- Some suppliers want to modify clause to add “laundry list” of examples, but not necessary.
- Clause should NOT be deleted.





26. Rights & Remedies of State for Default

- State may reject non-conforming goods and supplier shall remove and replace goods/correct services at no extra charge (UCC remedy).
- State may require expedited shipment to meet contract delivery schedule at no extra cost if delivery compromised (due to supplier fault). Otherwise we pay.



26. Cont'd.

- Supplier shall pay cost of “cover”.
- State may offset cost of damages.
- UCC has a variety of buyer remedies and the GPs allow us to use all of them.
- Good contract administration requires the buyer to know our rights and enforce them.



26. Cont'd.

- Since we use UCC remedies, the rights and obligations are balanced fairly between buyers and sellers. Suppliers who take exception usually want to skew the contract inappropriately.
- Do not change.



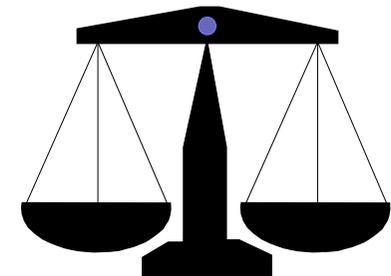
27. Contractor's Liability ...

- Contractor liable for injuries it causes.
- Contractor not liable for alterations made by the State or others.
- This clause is balanced so that the contractor is not liable for things that are out of its control so exceptions are rarely taken.
- Do not change. Seek legal counsel if supplier takes exception.



28. Indemnification

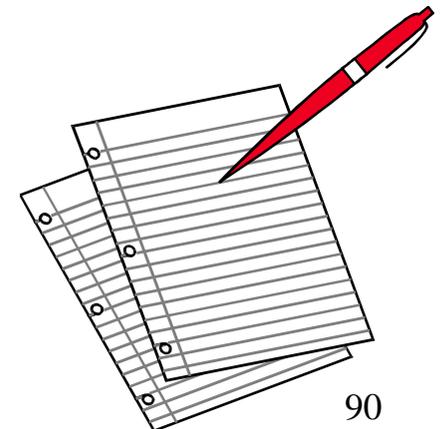
- Very important legal “boilerplate”. Makes the contractor liable for any injuries it causes.
- Some suppliers will want to delete it, but the clause should not be modified or deleted. It is appropriate for suppliers to be liable for their actions.





29. Invoices

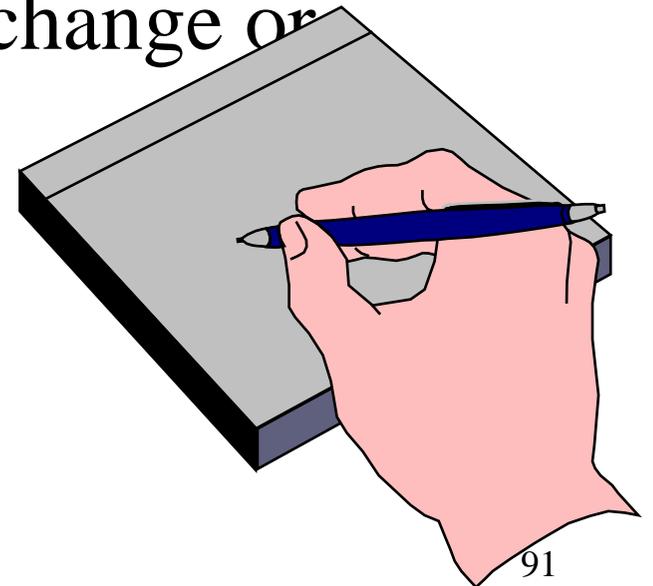
- Specifies invoice content to allow proper payment. If you have special invoice/ payment requirements, add them to special t's & c's, or SOW.
- Exceptions almost never happen. Do not change.





30. Required Payment Date

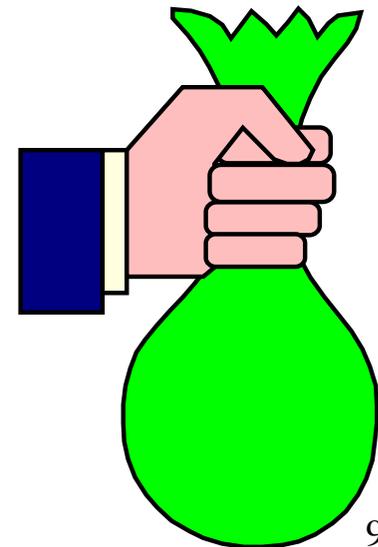
- Time for payment starts on later of:
 - date of acceptance of goods; or
 - receipt of an accurate invoice
- This clause incorporates the statutory payment provisions. Do not change or delete.





31. Taxes

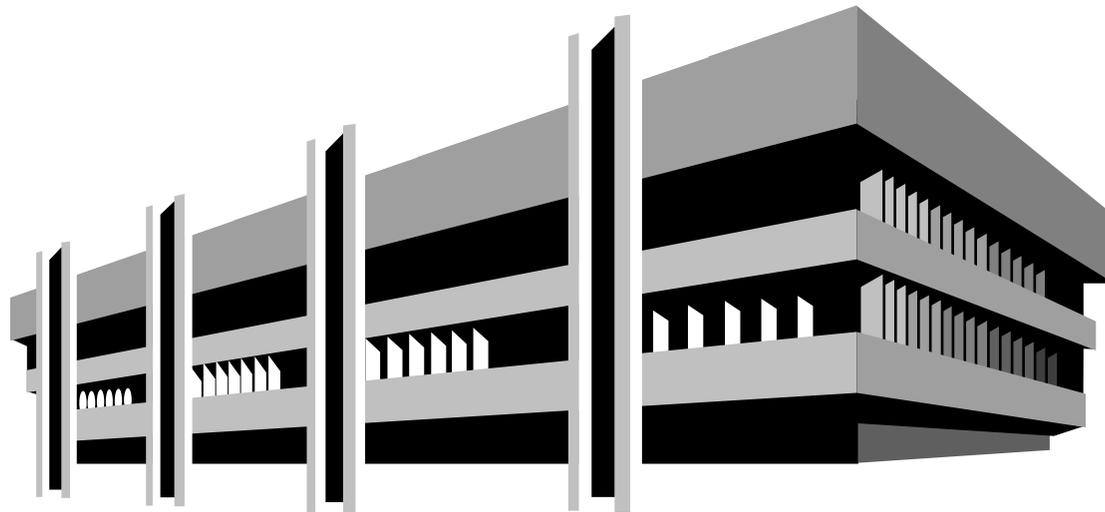
- Taxes are paid if required by law.
- Clause rarely an issue. Do not change.
- If there are special tax considerations, include them in special terms and conditions.





32. Newly Manufactured Goods

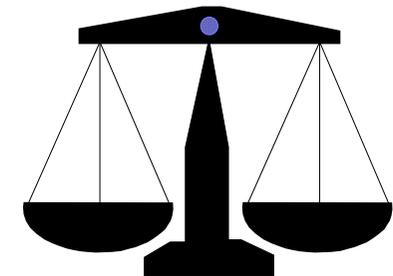
- Only newly manufactured goods are authorized unless the contract (usually the specifications/SOW) permit otherwise.
- Rarely an issue so do not change.





33. Contract Modification

- Language modified to match Std. 2.
- Requires all contract changes to be in writing and signed by BOTH parties.
- Any oral agreements must be reduced to writing and incorporated in the contract to be valid.
- Exceptions rare. Do not change.





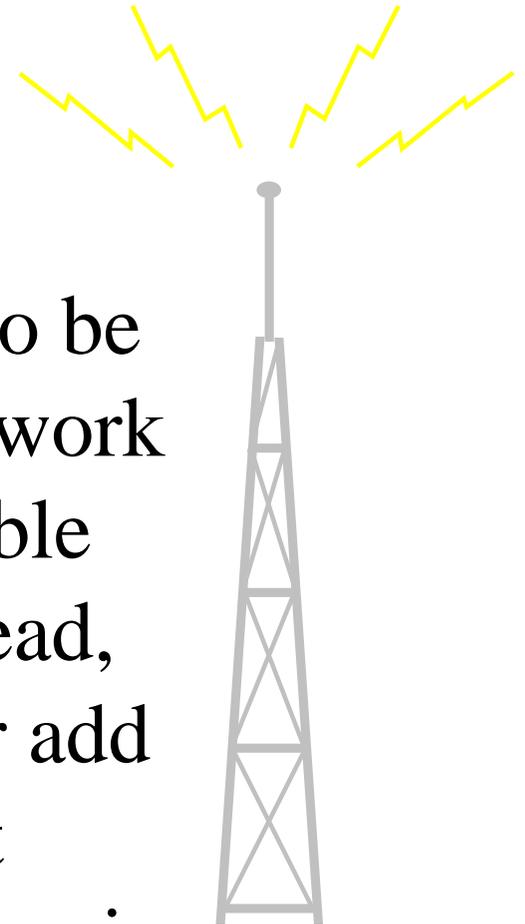
34. Confidentiality of Data

- Supplier must keep State business matters confidential. Except if data is publicly available, supplier already has the data, developed independently by the supplier or rightfully available from others.
- Because clause is balanced, rarely are exceptions taken. Do not change.



35. News Releases

- State approval required for news releases about contract.
- Occasionally the supplier wants to be able to disclose the nature of the work they do for us so this is a negotiable matter. Do not change form, instead, incorporate a special provision or add to SOW if known before contract award. Otherwise grant permission in writing..





36. Patent, Copyright and Trade Secret Indemnity

- If supplier violates third party's intellectual property rights, and that third party sues the State, the supplier indemnifies us if we suffer any damages. A bond may be required. Contractor will defend the suit (State may elect to participate).



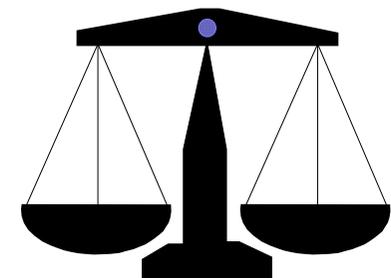
36. Cont'd.

- Contractor may pay to continue to use the intellectual property. Or may have to replace or modify IP so it is non-infringing. Otherwise, contractor has to take back IP and help State obtain substitute IP.
- This is a standard provision and is balanced but some suppliers will request modification. Consult legal counsel.



37. Compliance with Software Copyrights

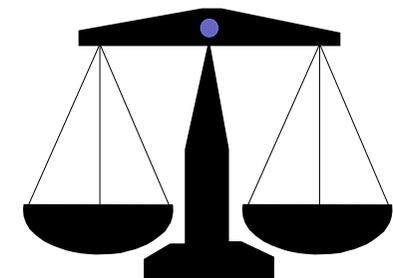
- New provision as result of 1999 legislation.
- Since clause is required by law, do not change.
- If a supplier takes exception due to unusual nature of software business requirements, consult legal counsel.





38. Examination and Audit

- Clause allows State to audit supplier records for minimum of three years.
- Suppliers may object to the state auditing, but this clause is a legal requirement so do not change.





39. Disputes

- Based on Federal Acquisition Regulations.
- First, attempt to resolve disputes informally then escalate it. Supplier at some point needs to formally request in writing a “final decision” and supply supporting documentation. If contractor not satisfied, may appeal to PD Deputy Director.
- IT contracts may use Executive Committee.





39. Cont'd.

- Supplier may NOT stop work pending resolution or is in breach of contract.
- State's final decision must be identified as such and is binding (unless we get sued).
- If no decision is rendered in 90 days, the supplier is deemed to "lose".
- Supplier has 90 days from decision or one year from cause of action to sue us.



39. Cont'd.

- Suppliers don't like that they have to perform while the dispute is pending, but since we provide an administrative remedy, they don't lose by it.
- Recommend clause be retained without change or consult legal counsel.



40. Stop Work

- Based on Federal Acquisition Regulations.
- Call a halt (90 days or as agreed) while we figure out what to do. Then supplier may resume work as originally planned, we may change contract, or terminate (convenience or default depending on circumstances).
- Supplier gets compensated for delay and disruption (claim to be negotiated).



40. Cont'd.

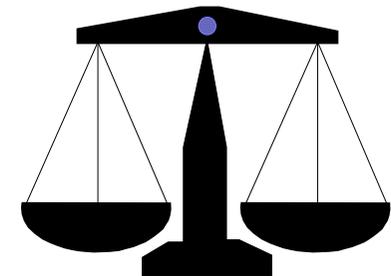
- This clause grants the State rights but provides for a remedy for the supplier so they don't lose by it.
- Rarely will a supplier take exception.
- Do not change.





41. Priority Hiring Considerations

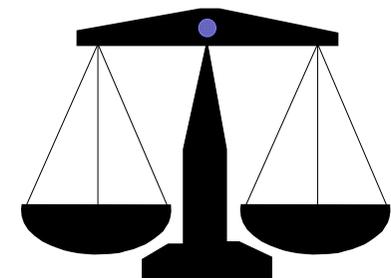
- Only applies if contract includes services of \$200,000+
- Supplier must give priority hiring consideration to recipients of aid.
- Statutory Requirement. No one takes exception. Do not change.





42. Covenant Against Gratuities

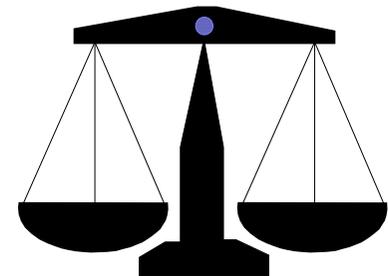
- Contractor warranty against gratuities to State employees to win contract or favorable treatment. State may terminate for non-compliance.
- Statutory requirement. Exceptions never taken (would be a red flag for non-responsibility). Do not change.





43. Non-Discrimination Clause

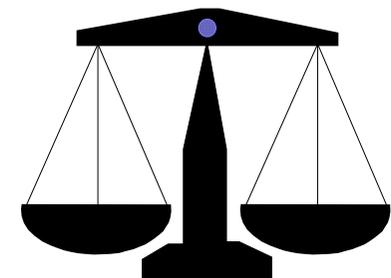
- Changed to add “sexual orientation” to discrimination categories as result of new law effective January 2000.
- Requires clause be “flowed down” to sub-contractors at all tiers.
- No one takes exception to law. Do not change.





44. National Labor Relations Board Certification

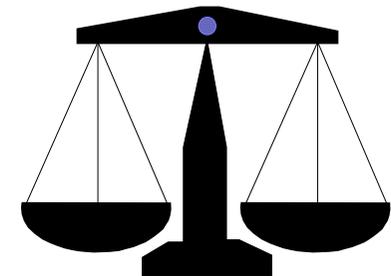
- Legal Requirement.
- No one takes exception.
- Do not change.





45. Assignment of Anti-Trust Actions

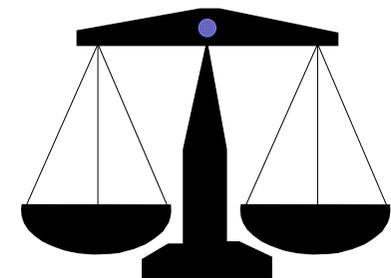
- Statutory requirement.
- No one takes exception.
- Do not change.





46. Drug-Free Workplace Certification

- Statutory requirement.
- Exceptions rarely taken. May raise responsibility questions if supplier won't agree.
- Do not change.





47. Year 2000 Compliance

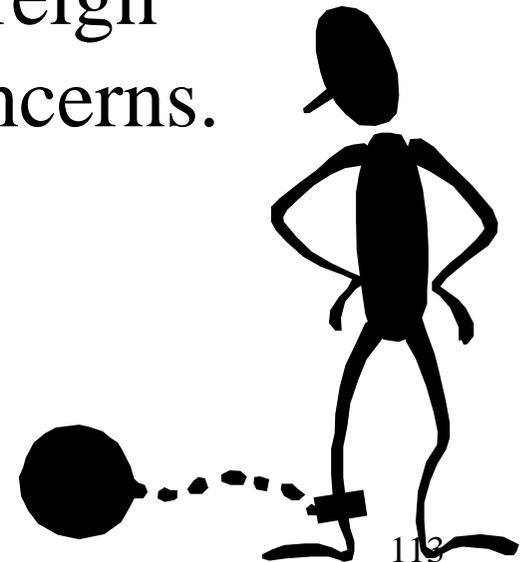
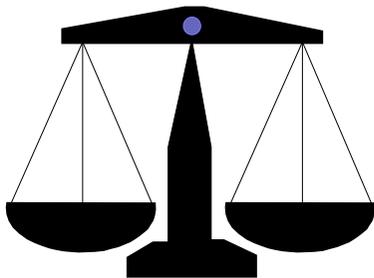
- Required by Dept. of Information Technology policy.
- Some suppliers have successfully negotiated modifications to this clause.
- Get legal counsel, PD review and DOIT approval of any changes.





48. Forced, Convict and Indentured Labor

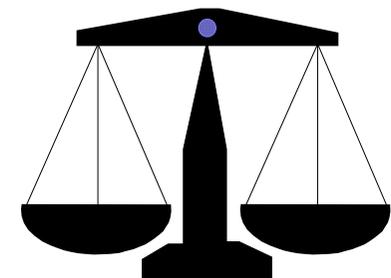
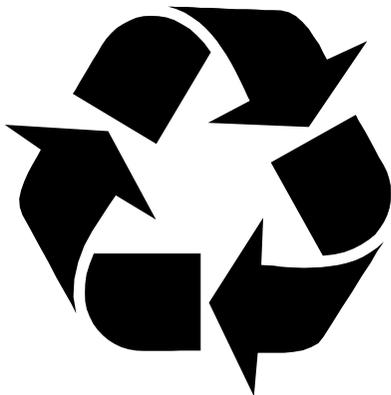
- Statutory requirement in “all contracts”.
- Supplier exceptions tend to indicate it is inapplicable (rather than they won’t comply).
Explanation of how clause applies (in commodities statute; intent for foreign procurement) usually resolves concerns.
- Do not change.





49. Recycling

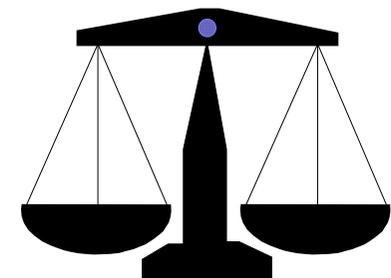
- Certification under penalty of perjury that meets statutory requirements for recycled content.
- Exceptions rarely taken (may state is not applicable).
- Do not change.





50. Child Support Compliance Act

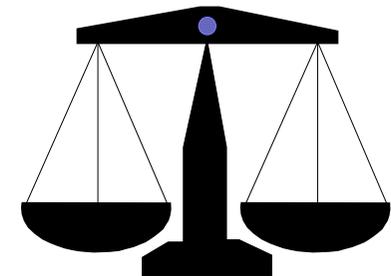
- Statutory requirement applies to contracts of \$100,000+.
- Contractor will comply with court orders for support and disclose information, as required.
- Exceptions rare. Do not change.





51. Americans With Disabilities Act

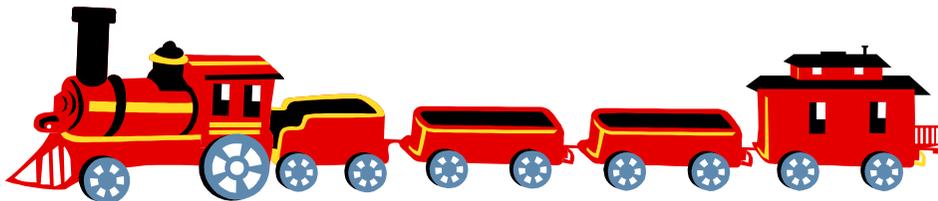
- Statutory requirement.
- Suppliers don't take exception.
- Do not change.





Summary

- Discussed the purpose of the Bidder Instructions and General Provisions and how they are used and modified.
- Discussed the impact of recent changes.
- Highlighted key provisions of BI and GP.
- Some negotiation strategy and policy concerns were shared.





Thanks for coming!

- Please remember to fill out your **Evaluations!**
- Enjoy the rest of CalPro 2000!

