

GENERAL PROVISIONS SUMMARY

This summary is intended to provide a simple description/meaning of each General Provisions clause, and a designation of whether a clause is negotiable or non-negotiable.

Clause	Neg.	Non-Neg.	Title/Description/Intent
1.	X		<p>Definitions:</p> <p>Defines certain terms and how they are used in the General Provisions.</p> <p>Note: Additional definitions may be added if a contract dictates the need. Any changes to items a-f must be approved by the PD Contracts Manager.</p>
2.		X	<p>Contract Formation:</p> <p>Describes how the contract is legally formed, how the offer and acceptance was formed.</p>
3.		X	<p>Complete Integration:</p> <p>This clause means that all documents pertaining to the subject contract are contained within, or incorporated by reference. There are no other documents affecting the contract.</p>
4.		X	<p>Severability:</p> <p>If any clause(s) of the contract are later determined to be illegal, or unenforceable, the rest of the contract remains in tact, such determination doesn't void the entire contract.</p>
5.		X	<p>Independent Contractor:</p> <p>This clause makes it clear that the contractor, their agents and employees are not employees of the state, and therefore responsible for all taxes, etc. to tax agencies such as the IRS, FTB, EDD .</p>
6.		X	<p>Applicable Law:</p> <p>Clearly establishes that California law shall be applied in case of any disputes or litigation, and shall be the site of any actions brought against the State.</p>
7.		X	<p>Compliance with Statutes and Regulations:</p> <p>Contractor warrants they are in compliance with all federal and state laws and regulations, and if they are found to be in violation of such laws or regulations, they will "indemnify", that is, to "protect, insure (pay)" the state in such actions.</p>

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8.		X	<p>Contractor's Power and Authority:</p> <p>Contractor is certifying that they have the legal right to sell the product or grant a license to the State. Again, contractor agrees to protect, insure the state if that right is challenged by another party.</p>
9.		X	<p>Assignment:</p> <p>Prohibits a contractor from transferring the contract to another contractor unless agreed to by the State; holds contractor to the performance of the contract. However, it does allow Contractor to assign the right to receive payments, but again the State has to agree in writing.</p>
10.		X	<p>Waiver of Rights:</p> <p>Essentially means that the State does not give up any rights granted in the contract, even if the state fails to pursue that right. Also makes clear that the State has any other rights provided by law available as recourse.</p>
11.		X	<p>Order of Precedence:</p> <p>Establishes "what comes first" in the event there are any conflicts between the documents that make up the contract.</p>
12.	X		<p>Packing and Shipment:</p> <p>Requires contractor to do certain things as defined. This clause is intended to avoid problems that often occur with packaging and labeling. Note in sub-paragraph a) which states that items shall be packed, "...and in accordance with applicable specifications." It is recommended that for any fragile or sensitive equipment, detailed specifications be included in the contract.</p>
13.	X		<p>Transportation Costs and Other Fees or Expenses:</p> <p>Requires contractor to adhere to shipping and transportation instructions as specified on purchase order or other document. Defines contractor's roles in any dispute with carrier. It should be noted that shipping instructions can significantly affect the total cost of shipping. Any questions should be directed to PD's Traffic Management Unit.</p>
14.		X	<p>Time is of the Essence:</p> <p>Simple means that all parties are expected to perform when and how specified in the contract. The time frames specified are vital and mandatory. Any delay, reasonable or not, may be cause for breach of contract.</p>
15.	X		<p>Delivery:</p> <p>Requires contractor to follow the delivery instructions and schedules as defined in the contract. Also defines how "days" are counted, (versus "working days"). Also, puts contractor on notice of how excess products will be handled.</p>

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16.		X	Substitutions: Prevents contractor from substituting products without buyers written consent.
17.	X		Inspection, Acceptance and Rejection: Requires contractor to maintain quality control over their products, allows the State to inspect and reject products provided by contractor. For IT, acceptance testing supersedes. This is geared more towards build to suit – doesn't really apply when there's a reseller involved.
18.		X	Samples: Allows the state to receive samples during the course of a contract, and defines how those samples will be handled. Agencies can receive samples outside the solicitation process provided samples were received prior to the solicitation. Samples may be required during the course of the contract – food, soft body armor where it is imperative supplier continues to meet spec.
19.		X	Warranty: This clause addresses warranty in a couple of ways: 1) makes it clear that any manufacturer warranty only begins after product is accepted (as opposed to when it's shipped); it also requires contractor to certify that the product performs as represented.
20.		X	Safety and Accident Prevention: Requires contractor to abide by any specific safety requirements dictated by the State, i.e. certain garments may be worn in correctional facilities; appropriate safety equipment must be used when handling chemicals, etc.
21.		X	Insurance: Requires Contractor to maintain certain types of insurance while performing the contract, requires proof of insurance, and if necessary, adding the state as an additional insured under the policy.
22.		X	Termination for Non-Appropriation of Funds Essentially allows the state to return products if funding is terminated by the Legislature.
23.		X	Termination for the Convenience of the State: Allows the state to terminate or suspend the contract on a unilateral basis. Such suspension or termination can occur if a program is temporarily suspended. The contract itself remains active for the term specified. Contractor must follow tasks in sub-paragraph b). Note that DGS is the "state" here and we should be involved if there is a "settlement" involved. If terminating maintenance, or similar, we don't need to be involved.

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24.		X	<p>Termination for Default:</p> <p>Allows the state to termination the contract, in whole or in part, for non-performance by the contractor as defined. Requires the state to place contractor on notice and provide a period of time to “cure” (correct) the problem. Provides specific remedies to the state, such as “cost to cover”, where the state can unilaterally replace the goods or services and seek reimbursement of any additional costs from the original contractor.</p>
25.		X	<p>Force Majeure:</p> <p>Essentially provides relief to contractor if non-performance is due to what is commonly referred to as “acts of god”, or causes beyond their control.</p>
26.		X	<p>Rights and Remedies of State for Default:</p> <p>Clearly defines what happens if a product supplied by Contractor fails to conform to specifications. Allows state to reject item(s), requires Contractor to reclaim item(s) at their expense, and replace such items. Also gives the state the ability to deduct any reasonable damages from any invoices owed to Contractor.</p>
27.		X	<p>Contractor’s Liability for Injury to Persons or Damage to Property:</p> <p>Contractor is liable for damages or injury to State property or employees if injury or damage was due to the fault or negligence of Contractor. Relieves Contractor of damages if damage or injury was a result of modifications made by the State.</p>
28.		X	<p>Indemnification:</p> <p>Holds Contractor responsible for any damages caused by their employees, subcontractors, etc. Contractor agrees to indemnify (protect, insure) the state from any claims or losses.</p>
29.		X	<p>Invoices:</p> <p>Clearly defines how invoices will be submitted and what information is required. Also, includes language required by Govt. Code 16645.</p>
30.		X	<p>Required Payment Date:</p> <p>Requirements agencies to make payments within 45 days of receipt of a correct invoice or acceptance of goods/services (GC 927).</p>
31.		X	<p>Taxes:</p> <p>Clearly defines what taxes the State is liable for.</p>

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32.	X		<p>Newly Manufactured Goods:</p> <p>Requires that only new products are acceptable.</p> <p>If an agency wants to consider used products, contract should specify that used goods are warranted as new. IT can accept reconditioned/ remanufactured IF products are warranted as new.</p>
33.	X		<p>Contract Modification:</p> <p>Requires that any changes be made in writing, no verbal agreements are binding.</p> <p>Can negotiate the type of written document used to affect the change (i.e. formal contract amendment; Memorandum of Understanding, etc.) If MOU is being discussed, need to put some parameters around it, i.e., equipment being added/removed and who is authorized to sign.</p>
34.	X		<p>Confidentiality of Data:</p> <p>Requires Contractor to maintain a specified level of confidentiality of the state's data.</p> <p>Can negotiate the details of what is designated as confidential, but not the language itself. Further, contractor must understand that we can only maintain confidentiality of their documents only so far as the CA Public Records Act will allow.</p>
35.		X	<p>News Releases:</p> <p>The clause is self-explanatory. The purpose of this clause is to prevent suppliers from "showcasing" their products using the State's projects. The State wants to maintain control on when and how such releases are used. Waiver can be requested (addressed to Contract Negotiations) – explain why your agency, as opposed to DGS, should have the ability to control news releases.</p>
36.		X	<p>Patents, Copyright and Trade Secret Indemnity:</p> <p>Requires Contractor to protect and defend the state in any claims of patent, copyright, or trade secret infringement. In the event a product(s) become the subject of a claim, this clause requires Contractor to procure, or assist in procuring for the State, substitute goods or software. The state also has the right to return the goods or software, including any related products that are rendered impractical, and be reimbursed, less reasonable use charges.</p>
37.		X	<p>Examination and Audit:</p> <p>This is a requirement of Government Code 8546.7. Allows the Bureau of State Audits to examine and audit records associated with contracts. Taken a step further – state or designated rep can review AND copy records and supporting docs pertaining to contract and performance.</p>

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38.		X	<p>Disputes:</p> <p>This clause spells out the steps a contractor must take to resolve a dispute. Initial resolution can be handled in an informal manner, although the issues and proposed solutions should always be in writing. If the dispute cannot be resolved informally, the clause requires a Department Director to become involved. If a Department Director cannot resolve the dispute, the Procurement Division becomes involved. If resolution is still not attained, the Contractor can take action in court.</p> <p>It is important that any dispute be thoroughly documented in writing and maintained in the procurement file.</p>
39.		X	<p>Stop Work:</p> <p>This clause allows the state to unilaterally suspend work, in whole or in part for up to 90 days from the date of notification. The suspension can be extended if agreed to by both parties. Contractor is obligated to immediately abide by the notice and minimize any costs associated with the suspended work (i.e. travel costs for Contractor's employees).</p> <p>If a Stop Work Order is cancelled or the 90 days expires, the contractor is expected to resume work in accordance with the contract. The State is expected to make an equitable adjustment in the schedule and if appropriate, the cost of the contract. Such adjustments must be made in writing.</p>
40.		X	<p>Priority Hiring Considerations:</p> <p>This language is required by Public Contract Code Section and only applies to contracts in excess of \$200,000. Requires Contractor to give priority when hiring personnel, to certain individuals who are qualified recipients of aid under certain sections of the Welfare and Institutions Code.</p>
41.		X	<p>Covenant Against Gratuities:</p> <p>Requires Contractor to warrant that they did not try to influence state employees to give that Contractor the contract. A violation of this clause can be considered a breach of contract and terminated accordingly.</p>
42.		X	<p>Nondiscrimination Clause:</p> <p>This clause is required by Government Code 12990. Requires Contractor, and their subcontractors, to not discriminate against their employees for certain reasons defined in the clause.</p>
43.		X	<p>National Labor Relations Board Certification:</p> <p>Requires Contractor to certify (swear) that they have not been found in contempt of court for failure to comply with an order from the National Labor Relations Board.</p>

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44.		X	<p>Assignment of Antitrust Actions:</p> <p>This is a good thing for vendors. If there is a legal claim of collusion, and the state (AG's Office) pursues and wins, vendor will be entitled to receive legal costs back. If we don't pursue after a year, vendor can request they be reassigned the claim so that they can pursue.</p>
45.		X	<p>Drug-Free Workplace Certification:</p> <p>Requires Contractor to take certain steps to ensure a drug-free workplace.</p>
46.		X	<p>Year 2000 Compliance:</p> <p>Requires Contractor to certify that the goods supplied will properly process date data during and after the year 2000. Applies to both information technology and non-information technology goods.</p>
47.		X	<p>Forced, Convict, Indentured and Child Labor:</p> <p>This clause is a requirement of Public Contract Code Section 6108 and applies to contracts and purchase orders of any value. Requires Contractor to guaranty that any foreign-made goods and/or services were not produced with forced labor, convict labor, indentured labor, or abusive forms of child labor or exploitation of children in sweatshop labor.</p>
48.		X	<p>Recycling:</p> <p>Contractor is required to certify that the goods supplied meet the recycling requirements of Public Contract Code 12161 and 12200.</p>
49.		X	<p>Child Support Compliance Act:</p> <p>This clause is a requirement of Public Contract Code 7110. Requires Contractor to comply with any earnings assignments that their employees may be subject to.</p>
50.		X	<p>Americans with Disabilities Act:</p> <p>Requires Contractor to comply with federal ADA requirements.</p>