

Title	General Provisions – Information Technology
Sponsoring Organization(s)	California Department of General Services
Publication Date	11/2013
Synopsis	<p>The document was developed by the California Department of General Services (DGS) to serve as a template for terms and conditions in state contracts for information technology products. The document was produced with input from the supplier community as well as from the agencies within the state of California who would be using the template.</p> <p>While some sections clearly relate to the provisions, of California law most sections offer significant changes from what have been common practices in state and local contracts for technology projects. Overall, this work is a major step toward a more balanced approach to risk sharing between the Buyer and the Seller and should be of particular interest to the Seller community. There are four sections in particular that deserve special attention.</p> <p>Section 18 Warranty This section requires the supplier to warrant that the work or product supplied meets the terms of the work statement or product specifications. It specifically eliminates warranties of fitness for a particular purpose. The remedies for a warranty breach are reasonable limiting it to repair or replacement of the work product or reimbursement of the state for money already received by the supplier if the warranted product cannot be repaired or replaced.</p> <p>Section 26 Limitations of Liability The liability of the provider in cases not involving negligence or willful misconduct is limited to the total value of the contract. This section also provides that in no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages. This is a significant change from the traditional agreement that seeks to have the supplier assume an unlimited liability including special or punitive damages.</p> <p>Section 37 Rights in Work Products This section provides that all inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to the Contract remain the property of the Contractor. The state retains “Government Purpose Rights” defined as unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. This has long been a major point of contention between the Buyer and Seller and this offers a compromise that both parties can accept.</p> <p>Section 39 Protection of Proprietary Software and other Proprietary Data The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State’s exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. Still subject to FOIA, this does remove a contentious</p>

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	<p>point that the Buyer must automatically release all information contained in a proposal.</p> <p>Overall, this document is a significant step toward a more balanced assumption of risk in the legal requirements that govern the contract performance and deserves to be considered as a base for further refinements in technology contracts.</p>
Topic Areas	Legal and Contracting Issues
Web Reference	http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT13_1127.pdf