

## General Provisions

These provisions set forth the procedures and rules governing the procurement process and documents at the Prison Industry Authority (PIA). All prospective contractors should review these provisions prior to signing a contract. These provisions apply to both material and service contracts, unless otherwise indicated.

1. **AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
2. **AMENDMENT:** No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties. Change orders amending, modifying, or terminating the contract, including any modification of the compensation payable, may be issued only by the authorized PIA representative.
3. **AMERICANS WITH DISABILITIES ACT:** Contractor assures PIA that Contractor complies with the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California.
5. **APPROVAL:** This Contract has no force or effect until signed by both parties. Contractor may not commence performance until approval has been obtained.
6. **ASSIGNMENT OF ANTITRUST ACTIONS:** The Contractor by signing this contract hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
  - a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

## General Provisions

- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
7. **ASSIGNMENT:** Performance is the responsibility of the contract holder and cannot be assigned to a subcontractor unless PIA consents to the assignment of subcontractor in advance and in writing. This contract shall not be assignable by the contractor in whole or in part without the written consent of PIA in the form of a formal written amendment.
8. **AUDIT:** Contractor agrees that the PIA, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
9. **AVAILABILITY OF FUNDS:**
  - a. All financial obligations of PIA for the fiscal year(s) encompassed by the term of this contract are subject to the availability and approval of funding by the Prison Industry Board and/or the presence of sufficient funds to cover those obligations in the fund from which those obligations are to be paid; if such funds are not available or approved, said obligations are null and void, and PIA may immediately terminate this contract. If such obligations are or become contingent on funding by and/or through the PIA budget or on the availability of federal funds or on the action of any Legislative body, said obligations are contingent on the appropriation and availability of funds for the purpose of meeting those obligations. If insufficient funds are approved or appropriated or otherwise available in order to meet PIA's obligations under this contract, PIA may immediately terminate this contract.
  - b. The PIA agrees that if funding is no longer available, unpaid for goods shall be returned to the contractor in substantially the same condition in which delivered to PIA, subject to normal wear and tear. The PIA further agrees to pay for packing, crating, transportation to contractor's nearest facility and for reimbursement to the contractor for expenses incurred for their assistant in such packing and crating

## General Provisions

10. **BREACH OF CONTRACT:** Any single late or non-compliant delivery will be deemed a material breach of the contract and will entitle PIA to terminate the contract immediately. Any failure to perform its obligations under the contract by the contractor shall, in addition to any other remedies available to PIA, entitle PIA to recover from the contractor the difference between the contractor's price and an alternate supplier's higher price in the event that PIA chooses to pay an alternate supplier a higher price for goods or services that the contractor fails to provide in a timely fashion.
11. **CHILD SUPPORT COMPLIANCE ACT:** "For any Contract in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
  - a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
12. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
13. **COMPLIANCE WITH STATUTES AND REGULATIONS (Materials ONLY)**
  - a. Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify PIA against any loss, cost, damage or liability by reason of contractor's violation of this provision.
  - b. If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
14. **COMPENSATION:** The consideration to be paid to the Contractor, as provided herein, shall be compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
15. **CONDUCT ON STATE PROPERTY:** During the term of this contract, the contractor, contractor personnel and other persons acting on behalf of (or at the direction of) the contractor must comply with all provisions of the law, rules, regulations, policies and/or directions regarding conduct that must take place or that may not take place while the contractor, contractor personnel and any other person acting on behalf of (or at the direction of) the contractor is in any facility or is on any property owned or used by the State of California or by any agency, department or other subdivision of the California State government. The provisions of the law, rules, regulations, policies and directions that are the subject of this provision of this contract include those that are in effect at the inception of the contract and also those come to have effect during the term of the contract. Any violation of this provision of this contract shall constitute a material breach of the contract.

## General Provisions

16. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to PIA's operation which are designated confidential by PIA and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to PIA. The identification of all such confidential data and information as well as PIA's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by PIA in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by PIA to be adequate for the protection of PIA's confidential information, such methods and procedures may be used, with the written consent of PIA, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

17. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

18. **CONTENTS OF THIS CONTRACT:** This contract will consist of any or all or the following components; in the event of any inconsistency between the provisions of, attachments,

## General Provisions

specifications or provisions which constitute this Contract, PIA's determination as to what provision takes precedence will be final and binding:

- a. Special terms and conditions;
- b. Statement of work, including any specifications incorporated by reference herein;
- c. Award letter that specifies contract term;
- d. The attached Invitation for Bid and all attachments thereto;
- e. The Bidder Instructions;
- f. These General Provisions;
- g. Contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
- h. All other attachments incorporated in the contract by reference;
- i. The bid response documents submitted by the contractor; and
- j. Other documents specified by PIA.

19. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

20. **CONTRACT FORMATION:**

- a. If this contract results from a sealed bid offered in response to a solicitation conducted by PIA, then contractor's bid is a firm offer to PIA which is accepted by the issuance of this contract and no further action is required by either party.
- b. If this contract results from a solicitation other than a "sealed bid" solicitation, as described in paragraph a) above, contractor's quotation or proposal is deemed a firm offer, and this contract document is PIA's acceptance of that offer.
- c. If this contract resulted from a joint bid, it shall be deemed one indivisible contract. Each such joint contractor will be jointly and severally liable for the performance of the entire contract. The PIA assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

21. **CONTRACT TRAVEL LANGUAGE: (Services ONLY)** For the purposes of this contract, the contractor's headquarters while providing services for PIA is deemed to be (PIA Central Office, 560 East Natoma Street, Folsom CA). Any and all costs incurred by the contractor or the contractor's employees for subsistence, travel, or time necessary to travel to/from the PIA Central Office shall be the responsibility of the contractor and is included in the contract rate. No additional allowance will be made for travel to/from PIA Central Office.

All travel for and on behalf of PIA which originates from Central Office to other PIA locations, shall require written authorization by the PIA Contract Manager in advance. The amount for travel reimbursable under the terms of this contract are specified on the Budget and

## General Provisions

Payment Provisions, Cost Sheet, and shall be reimbursed by PIA when supported by receipts, up to the maximum amount allowed, according to the per-diem expenses set forth in Travel Expense Reimbursement Schedule. No additional funds will be available.

Authorized travel expenses must be included on contractors invoice as specified in the Budget and Payment Provisions. Prior written authorization from the PIA Contract Manager and all receipts for authorized travel must be attached to contractor's invoice for payment.

### 22. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of PIA, employees of PIA, or any other person(s) or entities other than agents or employees of the contractor, provided that the injury or damage occurred prior to, during, or subsequent to the performance of any services, either at the contractor's site or at PIA's place of business, and provided that the injury or damage was caused by the fault or negligence of the contractor.

### 23. CONTRACTOR NAME CHANGE:

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

### 24. CONTRACTOR'S POWER AND AUTHORITY:

The contractor warrants that it has full power and authority to grant the rights herein granted and will hold PIA harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party that might abridge any rights of PIA under this contract.

### 25. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

- a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

### 26. COVENANT AGAINST GRATUITIES:

The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of PIA with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, PIA shall have the right to terminate the contract immediately, either in whole or in part, and any loss or damage sustained by PIA in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and

## General Provisions

remedies of PIA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

27. DEFINITIONS: The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a. "Business entity" means any individual, business, partnership, joint venture, corporation, limited liability partnership, sole proprietorship, consortium, or other private legal entity recognized by statute.
- b. "Buyer" means PIA's authorized contracting official.
- c. "Contract" means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- d. "Contractor" means the Business Entity with whom PIA enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
- e. "Goods" (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications)

28. DELIVERY: (Materials ONLY)

- a. Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, PIA shall not be required to make any payment for the excess goods, and may return them to the contractor at contractor's expense or utilize any other rights available to PIA at law or in equity.
- b. For the purpose of this bid, only bids quoting F.O.B. Destination will be accepted. Bids quoting other than F.O.B. Destination will be rejected.
- c. **Delivery Address:** Delivery sites may be added as deemed necessary by PIA.

29. DISPUTES:

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. In the event of a dispute, Contractor shall notify the PIA, Business Services Section in writing, within ten (10) calendar days of discovery of the problem.
- b. Contractor's written demand shall be fully supported by factual information, and if such demand involves a costs adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes PIA is liable
- c. Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with PIA's instructions. Contractor's failure to diligently proceed in accordance with PIA's instructions shall be considered a material breach of this contract.
- d. Within thirty (30) calendar days of receiving written notification of a dispute from contractor, the PIA General Manager or designee shall issue a decision regarding the dispute. The decision of the PIA shall be final.

## General Provisions

30. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.
31. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requires of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the person's or organization's policy of maintaining a drug-free workplace;
    - 3) any available counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed Agreement will:
    - 1) receive a copy of the company's drug-free workplace policy statement; and,
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

32. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
33. ELECTRONIC WASTE RECYCLING ACT OF 2003: Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
34. EXTENSION OF CONTRACT TERM: (Services ONLY) With the approval of both parties, Prison Industry Authority (PIA) reserves the right at the conclusion of the contract term to amend the contract, subject to the PIA Policies and Procedures.
35. FOUR-DIGIT CODE OF CONDUCT: (Materials ONLY) Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverable and/or services to PIA. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.



## General Provisions

36. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the PIA and the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in performance of this Contract.
37. INDEPENDENT CONTRACTOR: Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of PIA.
38. INSPECTION, ACCEPTANCE AND REJECTION: (Materials ONLY)
- a. All goods may be subject to inspection and test by PIA or its authorized representatives.
  - b. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to PIA. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
  - c. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by PIA at destination, notwithstanding any payment or inspection at source.
  - d. PIA shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by PIA shall not waive any rights that PIA might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
39. INSURANCE:
- a. When Contractor submits a signed contract to the PIA, the Contractor shall furnish to the PIA a certificate of insurance, stating that there is Commercial General Liability, Worker's Compensation and any other insurance the PIA deems appropriate under the contract, (i.e. automobile liability, professional liability and environmental liability insurance) presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.
  - b. The certificate of insurance shall include the following three (3) provisions in their entirety:
    - 1) The insurer will not cancel the insured's coverage without 30 days prior written notice to the State, and will provide the State with a written 10 day notice for Contractors non-payment of premiums.
    - 2) The State of California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this contract are concerned.
    - 3) The State will not be responsible for any premiums or assessment on the policy.
  - c. Contractor agrees that insurance herein required shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to approval, and the Contractor agrees that no work or services shall be performed prior to receiving such approval. In the event the Contractor fails to keep in effect at all times insurance

## General Provisions

coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

- d. The PIA will not provide for or compensate Contractor for any insurance premiums or costs of any type or amount of insurance.

40. **INVOICES: (Materials ONLY)** Unless otherwise specified, invoices shall be sent to the address set forth on the purchase order. Invoices shall be submitted in triplicate and shall include all information contained on the purchase order. Cost on invoices shall be in accordance with units of measure shown on the order. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

- a. **Rates:** The contractor is bound to honor all rates set forth on the Price Sheet as the maximum it may charge PIA, but rate reductions during the term of the contract are permitted. The contractor must give PIA written notice of the reduced rate.

41. **LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

42. **LICENSES AND PERMITS:** During the term of the contract, the Contractor must maintain all required licenses and/or permits in full force and effect. If and when the PIA learns that the Contractor has failed to do so, the PIA may, in addition to any other remedy it may have, immediately terminate this contract without any cost or liability to the PIA. If, after bid submission, the Contractor replaces or renews a required license or permit or obtains a newly-applicable license or permit, the Contractor shall provide the PIA with a copy of the renewed or replaced or newly-obtained license or permit within 20 days following the Contractor's receipt of same.

43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION: (Materials ONLY)** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 1029

44. **NEWLY MANUFACTURED GOODS: (Materials ONLY)** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified

45. **NEWS RELEASES:** Unless otherwise exempted, news released pertaining to this contract shall not be made without prior written approval of PIA.

46. **NONDISCRIMINATION CLAUSE:**

- a. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall

## General Provisions

insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

### 47. PACKAGING AND SHIPMENT: (Materials ONLY)

- a. All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i. Show the number of the container and the total number of containers in the shipment; and
  - ii. The number of the container in which the packing sheet has been enclosed
- b. All shipments by contractor or its subcontractors must include packing sheets identifying: PIA's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets

### 48. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a. Contractor shall hold PIA harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b. Contractor may be required to furnish a bond to PIA against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright and trade secret infringement.
- c. Contractor, at its own expense, shall defend any action brought against PIA to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against PIA in any such action. Such defense and payment shall be conditioned on the following:
  - i. That the contractor shall be notified within a reasonable time in writing by PIA of any notice of such claim; and,
  - ii. That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, PIA shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States

## General Provisions

patent or copyright or a trade secret, PIA shall permit the contractor at its option and expense either to procure for PIA the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by PIA shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist PIA in procuring substitute goods or software. If, in the sole opinion of PIA, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, PIA shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums PIA has paid contractor less any reasonable amount for use or damage.

- e. The contractor shall have no liability to PIA under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,
  - ii. The operation of equipment furnished by the contractor under the control of any operation software other than, or in addition to, the current version of contractor-supplied operating software; or,
  - iii. The modification by PIA of the equipment furnished hereunder or of the software; or
  - iv. The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f. Contractor certifies that it has appropriate systems and controls in place to ensure that PIA funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of the contractor to PIA with respect to infringement of patents, copyrights or trade secrets.

49. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity

50. POTENTIAL SUBCONTRACTORS: (Services ONLY) Nothing contained in this Contract or otherwise, shall create any contractual relation between the PIA and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the PIA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the PIA's obligation to make payments to the Contractor. As a result, the PIA shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

51. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

## General Provisions

52. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
53. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. unless expressly exempted by statute.
54. **RIGHTS AND REMEDIES OF PIA FOR DEFAULT:**
- a. The Contractor will be fully responsible for ensuring that the completed work conforms to the agreed upon terms. If nonconformity is discovered prior to the Contractor's deadline, the Contractor will be given written notice and an opportunity to cure the nonconformity. If the nonconformity is discovered after the deadline for the completion of the project, Prison Industry Authority (PIA) in its sole discretion, may use any reasonable means to cure the nonconformity. The Contractor shall be responsible for reimbursing PIA for any additional expenses incurred to cure such defects, which may include the difference between Contractor's Proposal Price and the actual cost of performing work by another contractor.
  - b. In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by PIA as a result of the services the contractor agreed to supply, shall be borne and paid for by the contractor.
  - c. The PIA reserves the right to offset the reasonable cost of all damages caused to PIA against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor thereof.
55. **RESOLUTION:** A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
56. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract for PIA, contractor shall conform to any specified safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as PIA may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.
57. **SAMPLES: (Materials ONLY)**
- a. Samples of items may be required by PIA for inspection and specification testing and must be furnished free of expense to PIA. The samples furnished must be identical in all respects to the products bid and/or specified in the contract.
  - b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.

## General Provisions

58. SEVERABILITY: The contractor and PIA agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

59. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the non discrimination program requirements. (Gov. Code Section 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities)

60. STATEMENT OF ECONOMIC INTEREST-FORM 700 (Services ONLY- Consultant Contracts)

As a consultant you are included in the CDCR/PIA conflict of interest code (Title 15, section 3416) and therefore required to file a statement of economic interest (SEI) pursuant to Government Code, Section 87302. As such you must submit an assuming office SEI at the time of executing this Contract. Additionally, you must file an annual SEI by April 1<sup>st</sup> of each year thereafter, and a leaving office SEI within 30 calendar days of the end date or termination of this Contract.

Failure to comply with your filing obligation as set forth herein and in Government Code, Section 87302 will be deemed a material breach of this Contract, and may subject you to other penalties, see Government Code, Section 87300, 91000, 91003.5, 91004 and 91005.5.

61. STOP WORK:

a. PIA may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, PIA shall either:

i. Cancel the Stop Work Order; or,

ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.

b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The PIA shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:

i. The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and

ii. The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if PIA decides the facts justify the action, PIA may receive and act upon a proposal submitted at any time before final payment under this contract.

## General Provisions

- c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Option of PIA, PIA shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d. The PIA shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.
- e. Unless specified elsewhere in the contract, PIA is not obligated to acquire any certain amount of goods or services under this contract. The PIA's failure to order goods or services shall not be deemed an actual or constructive Stop Work Order.

62. **SUBSTITUTIONS:** (Materials ONLY) Substitution of goods may not be tendered without advance written consent of PIA.

63. **SWEATFREE CODE OF CONDUCT:**

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

64. **TAXES:** (Materials ONLY) Unless otherwise required by law, PIA is exempt from Federal excise taxes. PIA will only pay for any State or local sales or use taxes on the services rendered or goods supplied to PIA pursuant to this contract.

65. **TERMINATION FOR DEFAULT:**

- a. PIA may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
  - i. Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
  - ii. Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
  - iii. Perform any of the other provisions of this contract (but see subparagraph (b) below).
- b. The PIA's right to terminate this contract under subparagraph (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the PIA.

## General Provisions

- c. If PIA terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to PIA for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
  - d. All costs to the PIA shall be deducted from any sum due the Contractor under this Contract and the balance, if any, shall then be paid to the Contractor.
66. FORCE MAJEURE: Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
- a. Acts of God or of the public enemy, and
  - b. Acts of the federal or state government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from the other sources in sufficient time for the contractor to meet the required delivery schedule.
67. TERMINATION AT OPTION OF PIA: This Contract may be terminated in whole or in part at any time upon written notice by PIA to Contractor, for any reason. Upon receipt of such termination notice, Contractor shall promptly discontinue all work or performance affected by the end of the notice period, unless the notice specifies otherwise. In the event PIA terminates all or a portion of this Contract for any reason, it is understood that PIA will provide payment to Contractor for satisfactory work or performance rendered prior to the termination date, but not in excess of the maximum amount of the Contract.
68. TIMELINESS: Time is of the essence in this Contract.
69. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: (Materials ONLY) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by PIA unless expressly included and itemized in the contract.
- a. Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. PIA may permit use of an alternate carrier at no additional cost to PIA with advance written authorization of the buyer.
  - b. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved PIA.
  - c. On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by PIA in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of PIA, shall at contractor's own expense assist PIA in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.



## General Provisions

70. USE TAX COLLECTION: (Materials ONLY) In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1
71. USAGE REPORTS: (Materials ONLY) The contractor must submit a detailed usage report every three months commencing from the date of award to the Prison Industry Authority, 560 East Natoma Street, Folsom, CA 95630-2200, Attention: Business Services Section. This report is to include the total quantities per item number and the total dollar amount ordered from the contract by each using prison institution. Please note, invoice copies will not fulfill this requirement.
72. WAIVER OF RIGHTS: Any action or inaction by PIA or the failure of PIA on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by PIA of its right hereunder and shall not prevent PIA from enforcing such provision or right on any future occasion. The rights and remedies of PIA herein are cumulative and are in addition to any other rights or remedies that PIA may have at law or in equity.
73. WARRANTY: (Materials ONLY) Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.
74. GOVERNMENT AGENCY MOST FAVORED PRICE GUARANTEE: Contractor agrees that all the prices, terms, warranties and benefits offered by them are comparable to or better than the equivalent terms being offered by contractor to any present customer meeting the same qualifications or requirements as the PIA. Except as otherwise here and provided if contractor during the effective term of the contract enters into arrangements with any other customer providing greater benefits or more favorable terms this contract shall be amended to provide the same terms to PIA