

General Provisions

These provisions set forth the procedures and rules governing the procurement process and documents at the California Prison Industry Authority (CALPIA). 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 CALPIA representative.
3. **AMERICANS WITH DISABILITIES ACT (ADA):** Contractor assures CALPIA 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:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
 - a. In submitting a bid to the State or any of its political subdivisions or public agencies, the supplier offers and agrees that if the bid is accepted, it will assign to the State 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. 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, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b. If the State 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 State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

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- c. 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
 - i. the assignee has not been injured thereby, or
 - ii. the assignee declines to file a court action for the cause of action.
7. ASSIGNMENT: This Contract shall not be assignable by the Contractor in whole or in part without the advance written consent of CALPIA. For the purpose of this paragraph, CALPIA will not unreasonable prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for is obligations hereunder.
8. AUDIT: Contractor agrees that the CALPIA, 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. (Government Code 8546.7, Public Contract Code 10115 et seq., California Code of Regulations Title 2, Section 1896).
9. AUTHORITY – This contract is let under statutory authority pursuant to Penal Code 2808.
10. AVAILABILITY OF FUNDS:
 - a. All financial obligations of CALPIA for the fiscal year(s) encompassed by the term of this contract are subject to the availability and approval of funding by the California 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 CALPIA may immediately terminate this contract. If such obligations are or become contingent on funding by and/or through the CALPIA 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 CALPIA's obligations under this contract, CALPIA may immediately terminate this contract.
 - b. The CALPIA 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 CALPIA, subject to normal wear and tear. The CALPIA 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
11. BREACH OF CONTRACT: Any single late or non-compliant delivery will be deemed a material breach of the contract and will entitle CALPIA 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 CALPIA, entitle CALPIA to recover from the contractor the difference between the contractor's price and an alternate supplier's higher price in the event

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that CALPIA chooses to pay an alternate supplier a higher price for goods or services that the contractor fails to provide in a timely fashion.

12. 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.”
13. 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.
14. 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 CALPIA 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).
15. 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 of all responsibilities required under the Scope of Work and Payment Provisions.
16. 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.
17. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to CALPIA’s operation which are designated confidential by CALPIA 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

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procedural requirements as are applicable to CALPIA. The identification of all such confidential data and information as well as CALPIA's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by CALPIA 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 CALPIA to be adequate for the protection of CALPIA's confidential information, such methods and procedures may be used, with the written consent of CALPIA, 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.

18. **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 (Public 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 (Public 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))

19. **CONTENTS OF THIS CONTRACT:** This contract will consist of any or all or the following components; in the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a. these General Provisions;
- b. Contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
- c. Statement of work, including any specifications incorporated by reference herein;
- d. Special provisions

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- e. All other attachments incorporated in the contract by reference;
- f. Award letter that specifies contract term;
- g. The attached Invitation for Bid and all attachments thereto;
- h. The Bidder Instructions;
- i. The bid response documents submitted by the contractor; and
- j. Other documents specified by CALPIA.

20. 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.

21. CONTRACT FORMATION:

- a. If this contract results from a sealed bid offered in response to a solicitation conducted by CALPIA, then contractor's bid is a firm offer to CALPIA 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 CALPIA'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 CALPIA assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

22. CONTRACT TRAVEL LANGUAGE: (Services ONLY) For the purposes of this contract, the contractor's headquarters while providing services for CALPIA is deemed to be CALPIA 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 CALPIA 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 CALPIA Central Office.

All travel for and on behalf of CALPIA which originates from Central Office to other CALPIA locations, shall require written authorization by the CALPIA Contract Manager in advance. The amount for travel reimbursable under the terms of this contract are specified on the Scope of Work and Payment Provisions, Invoicing and Payment and shall be reimbursed by CALPIA when supported by receipts, up to the maximum amount allowed, according to the per-diem expenses set forth in the Travel Provisions REV 212. No additional funds will be available. Travel Provisions can be downloaded at www.calpia.ca.gov, click on General Info, then Doing Business with CALPIA.

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Authorized travel expenses must be supported by receipts, invoiced separately on contractor's invoice as specified in the Scope of Work and Payment Provisions, Invoicing and Payment. Prior written authorization from the CALPIA Contract Manager and all receipts for authorized travel must be attached to contractor's invoice for travel payment.

23. **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 CALPIA, employees of CALPIA, 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 CALPIA's place of business, and provided that the injury or damage was caused by the fault or negligence of the contractor.
 - The Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Goods provided by the Contractor during the Contract.
24. **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 CALPIA will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
25. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold CALPIA 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 CALPIA under this contract.
26. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**
- When agreements are to be performed in the state by corporations, the CALPIA 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.
 - "Doing business" is defined in Revenue and Taxation Code 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.
 - 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. CALPIA will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
27. **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 CALPIA 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, CALPIA shall have the right to terminate the contract immediately, either in whole or in part, and any loss or damage sustained by CALPIA in procuring on the open market any items which

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contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of CALPIA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

28. 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 CALPIA'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 CALPIA 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)
- f. "Receipts" means a document issued by a supplier of goods and/or services, which evidences the goods and/or services provided and reflects payment received. Note: Copies of credit card statements do not constitute receipts.

29. 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, CALPIA 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 CALPIA 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 CALPIA.

30. DISPUTES:

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to CALPIA, Business Services Section a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless CALPIA, on its own initiative, has already rendered such a final decision. 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 CALPIA is liable.
- b. 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 CALPIA's

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instructions. Contractor's failure to diligently proceed in accordance with CALPIA's instructions shall be considered a material breach of this contract.

- c. Within thirty (30) calendar days of receiving written notification of a dispute from contractor, the CALPIA General Manager or designee shall issue a decision regarding the dispute. The decision of the CALPIA shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

31. 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.

32. 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 CALPIA agreements if CALPIA 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. (Government Code §8350 et seq.)

33. 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.

34. 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.

35. EXTENSION OF CONTRACT TERM: (Services ONLY) With the approval of both parties, California Prison Industry Authority (CALPIA) reserves the right at the conclusion of the contract term to amend, extend or continue contracting, subject to the CALPIA Policies and Procedures.

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36. **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 CALPIA. "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.
37. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the CALPIA 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.
38. **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 CALPIA.
39. **INSPECTION, ACCEPTANCE AND REJECTION:** (Materials ONLY)
- a. All goods may be subject to inspection and test by CALPIA 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 CALPIA. 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 CALPIA at destination, notwithstanding any payment or inspection at source.
 - d. CALPIA 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 CALPIA shall not waive any rights that CALPIA might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
40. **INSURANCE:**
- a. When Contractor submits a signed contract to the CALPIA, the Contractor shall furnish to the CALPIA a certificate of insurance, stating that there is Commercial General Liability, Worker's Compensation and any other insurance the CALPIA 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.

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- 2) Under Contractor's General Liability and Automobile Liability insurance CALPIA and 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 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 CALPIA will not provide for or compensate Contractor for any insurance premiums or costs of any type or amount of insurance.
41. **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 CALPIA, but rate reductions during the term of the contract are permitted. The contractor must give CALPIA written notice of the reduced rate.
42. **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).
43. **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 CALPIA learns that the Contractor has failed to do so, the CALPIA may, in addition to any other remedy it may have, immediately terminate this contract without any cost or liability to the CALPIA. 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 CALPIA with a copy of the renewed or replaced or newly-obtained license or permit within 20 days following the Contractor's receipt of same.
44. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (Public Contract Code 10302(b)).
45. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION: (Materials ONLY)** Contractor swears under penalty of perjury that no more than one final, unappealable finding of

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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

46. **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

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

48. **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 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.

49. **NOTICES/CONTACT INFORMATION:** Written notices shall be sent to the CALPIA, 560 E. Natoma Street, Folsom, CA 95630-2200, Attention to the analyst designated on the Contract cover page or the project representative designated in the Scope of Work.

Written notices from the CALPIA to the contractor shall be sent to the name and address or fax number set forth on the Price Sheet or Cost Sheet submitted by the bidder or the project representative designated in the Scope of Work. This contact information may be changed if written notice of the change is sent to the other party; no formal contract amendment will be needed to change the contact information.

50. **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:

- 1) Show the number of the container and the total number of containers in the shipment; and
- 2) The number of the container in which the packing sheet has been enclosed

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- b. All shipments by contractor or its subcontractors must include packing sheets identifying: CALPIA'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

51. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a. Contractor shall hold CALPIA harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted 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 CALPIA 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 CALPIA 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 CALPIA in any such action. Such defense and payment shall be conditioned on the following:
 - 1) That the contractor shall be notified within a reasonable time in writing by CALPIA of any notice of such claim; and,
 - 2) 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, CALPIA 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 patent or copyright or a trade secret, CALPIA shall permit the contractor at its option and expense either to procure for CALPIA 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 CALPIA shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist CALPIA in procuring substitute goods or software. If, in the sole opinion of CALPIA, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, CALPIA 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 CALPIA has paid contractor less any reasonable amount for use or damage.
- e. The contractor shall have no liability to CALPIA under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - 1) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,

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- 2) 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,
 - 3) The modification by CALPIA of the equipment furnished hereunder or of the software; or
 - 4) 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 CALPIA 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 CALPIA with respect to infringement of patents, copyrights or trade secrets.
52. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity
53. POTENTIAL SUBCONTRACTORS: (Services ONLY) Nothing contained in this Contract or otherwise, shall create any contractual relation between the CALPIA 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 CALPIA 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 CALPIA's obligation to make payments to the Contractor. As a result, the CALPIA shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
54. 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 Public Contract Code §10353.
55. PURCHASES OUTSIDE THE CONTRACT: During the term of any contract resulting from a bid, the CALPIA, at its sole discretion, may purchase same or similar goods from a source other than the Contractor. The Contractor may be allowed to offer goods at a reduced price. In the event that the goods are purchased from the Contractor at a reduced price, such purchase shall be considered a contract purchase and all other terms and conditions of the contract shall remain in full force and effect.
56. 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 (Public Contract Code §12205).

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57. **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.
58. **RIGHTS AND REMEDIES OF CALPIA 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, California Prison Industry Authority (CALPIA) in its sole discretion may use any reasonable means to cure the nonconformity. The Contractor shall be responsible for reimbursing CALPIA 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 CALPIA as a result of the services the contractor agreed to supply, shall be borne and paid for by the contractor.
 - c. The CALPIA reserves the right to offset the reasonable cost of all damages caused to CALPIA against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor thereof.
59. **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.
60. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract for CALPIA, 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 CALPIA 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.
61. **SAMPLES: (Materials ONLY)**
- a. Samples of items may be required by CALPIA for inspection and specification testing and must be furnished free of expense to CALPIA. 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.
62. **SEVERABILITY:** The contractor and CALPIA 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.
63. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the non discrimination program requirements (Government Code Section 12990 (a-f) and California Code of Regulations, Title 2, Section 8103) (Not applicable to public entities).

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As a consultant you are included in the CDCR/CALPIA 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 1st 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.

65. STOP WORK:

a. CALPIA 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, CALPIA shall either:

- 1) Cancel the Stop Work Order; or,
- 2) 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 CALPIA shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:

- 1) 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
- 2) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if CALPIA decides the facts justify the action, CALPIA may receive and act upon a proposal submitted at any time before final payment under this contract.

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 CALPIA, CALPIA shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

d. The CALPIA 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, CALPIA is not obligated to acquire any certain amount of goods or services under this contract. The CALPIA's failure to order goods or services shall not be deemed an actual or constructive Stop Work Order.

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66. SUBSTITUTIONS: (Materials ONLY) Substitution of goods may not be tendered without advance written consent of CALPIA.

67. 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 Sweat-free Code of Conduct as set forth on the California Department of Industrial Relations website located at 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).

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

69. TERMINATION FOR DEFAULT:

- a. CALPIA 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:
 - 1) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - 2) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - 3) Perform any of the other provisions of this contract (but see subparagraph (b) below).
- b. The CALPIA's right to terminate this contract under subparagraph (a)(2) and (a)(3) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the CALPIA.
- c. If CALPIA 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 CALPIA for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d. If the Contract is terminated for default, CALPIA may require the Contractor to transfer title and deliver to CALPIA, as directed by the buyer, any:
 - i. Completed Goods, and
 - ii. Partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively referred to as

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"manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the buyer, the Contractor shall also protect and preserve property in its possession in which CALPIA has an interest.

- e. CALPIA shall pay Contract price for completed Goods delivered and accepted. The Contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. CALPIA may withhold from these amounts any sum it determines to be necessary to protect CALPIA against loss because of outstanding liens or claims of former lien holders.
- f. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CALPIA.
- g. The rights and remedies of CALPIA in this clause are in addition to any other rights and remedies provided by law or under this Contract

70. 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.

71. TERMINATION AT OPTION OF CALPIA: This Contract may be terminated in whole or in part at any time upon written notice by CALPIA 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 CALPIA terminates all or a portion of this Contract for any reason, it is understood that CALPIA 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.

72. TIMELINESS: Time is of the essence in this Contract.

73. 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 CALPIA 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. CALPIA may permit use of an alternate carrier at no additional cost to CALPIA with advance written authorization of the buyer.

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- b. If “prepay and add” is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved CALPIA.
- c. On “F.O.B. Shipping Point” transactions, should any shipments under the contract be received by CALPIA 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 CALPIA, shall at contractor’s own expense assist CALPIA 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.

74. 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 Public Contract Code Section 10295.1.

75. USAGE REPORTS: (Materials ONLY) The contractor must submit a detailed usage report every three months commencing from the date of award to the California 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.

76. WAIVER OF RIGHTS: Any action or inaction by CALPIA or the failure of CALPIA on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by CALPIA of its right hereunder and shall not prevent CALPIA from enforcing such provision or right on any future occasion. The rights and remedies of CALPIA herein are cumulative and are in addition to any other rights or remedies that CALPIA may have at law or in equity.

77. WARRANTY: (Materials ONLY) Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

78. GOVERNMENT AGENCY MOST FAVORED PRICE GUARANTEE (Materials ONLY): 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 CALPIA. Except as otherwise herein 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 CALPIA.