

The Office of General Services (OGS) is pleased to announce that it has updated its general terms and conditions (i.e. "Appendix B") for state contracts for commodities and services, including technology, that are done by the OGS Procurement Services Group (PSG).

The new version, dated May 2006, is available on the OGS web site and will be included in future OGS competitive bids. This all-inclusive document incorporates reserved technology clauses on an as needed basis and eliminates the need for other Appendix B versions. This new Appendix B replaces Appendix B dated January 2004 as well as versions Appendix B-1, B-2 and B-3. **This updated Appendix B will not affect existing contract terms and conditions.**

Appendix B, May 2006 addresses vendor issues and Sarbanes-Oxley considerations that have caused concern to the vendor community over the past few years and better reflects the current business and economic environment than the 2004 version. While changes were made throughout the document, major highlights are outlined herein. This information is provided only as an abbreviated summary of the many changes; however, all bids and contracts subject to provisions of Appendix B, May 2006 will be made on the basis of the official document and not on the basis of this summary.

Authorized Users of OGS contracts have also been sent this notice and are also encouraged to use Appendix B, May 2006 in lieu of the January 2004 version.

Clause	Description	Change
4	Conflict of Terms	New order of precedence. The order of precedence of various contract documents is simplified and clarified.
5	Definitions	Added new definitions (affiliate, subcontractor, etc.); expanded Responsible Bidder Definition; expanded Bid Specifications definition to include negotiated contracts. These definitions address commonly used statutory definitions.
14	Confidential/Trade Secret Materials	Addresses Freedom of Information Law requirements and expands the clause to include mutuality between both the bidder and State to keep information confidential.
16	Freedom of Information Law	Includes provision for a bidder to designate trade secret, proprietary and confidential information contained in a bid and the reasons for a request to the Commissioner to not disclose such information in accordance with the Freedom of Information Law.
24	Pricing	Updated clause with expanded definition of Best Pricing Offer to reflect GSA changes, commercial price list reductions, special offers, etc.
34 and 35	Performance Qualifications and Disqualification for Past Performance	Updated clauses to include vendor responsibility requirements and disqualification pursuant to non-responsibility.
39	Participation in Centralized Contracts	Added Contract Migration paragraph that authorizes migration to a Centralized Contract when a contractor enters into a contract for the same products or services covered under an Authorized User contract.
43	Emergency Contracts	New clause that outlines the Commissioner's statutory authority in times of emergency.
57	Subcontractors and Suppliers	New clause to detail the State's right to reject proposed subcontractors or suppliers for bona fide business reasons.
60	Termination	Added termination for violation of Executive Order 127, Procurement Lobbying (SFL 139 j & k) and Revised Tax Law 5a.
61	Savings/Force Majeure	Expanded clause defines force majeure and states neither the Contractor nor the Commissioner shall be liable for any delay in or failure of performance due to a force majeure occurrence.
65	Remedies for Breach	Includes breach provisions for a Contractor who files a petition under the U.S. Bankruptcy code.
72	Additional Warranties	Formerly Warranties clause. Clause provides that Contractor's failure to comply or failure to provide proof of legal compliance may constitute grounds for contract cancellation or suspension.
73	Legal Compliance	New clause to address contractor requirements to comply with all laws, ordinances, rules, regulations, etc. in conjunction with contract obligations prior to and during a contract.
74	Indemnification	Contractor is fully liable for personal injury liability and damage without limitation caused by contractor negligence or intentional act. Formerly a provision of the Warranties clause.
75	Indemnification relating to Third Party Rights	Adds the obligation for the contractor to indemnify and hold harmless Authorized Users for all damages, expenses, etc. assessed in actions for infringement of US Patent, copyright, trademark, trade secret or other third party proprietary rights except due to Authorized User's negligence.
76	Limitation of Liability	Limits contractor's liability for other claims, loss or liability, etc., not to exceed direct damages (i) in the amount equal to two times purchase order charges (as designated) or (ii) one million dollars, whichever is greater.
77	Insurance	New clause that outlines contractor's obligation to meet Insurance requirements specified in Bid documents.
	Index	Includes index of clauses listed alphabetically