**Highlights of Changes**

**Information Technology General Provisions (ITGP)**

**Cloud Computing Services and Non-Cloud Goods & Services**

|  |  |
| --- | --- |
|  |  |
|  | Effective November 12, 2024, the Department of General Services (DGS) posted the State's final, updated information technology contract general provisions. The new provisions update and consolidate the prior versions of the Information Technology General Provisions (401 IT), Cloud Computing Software as a Service (SaaS) General Provisions and Cloud Computing Software as a Service, Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) Special Provisions into two new contract provisions – Information Technology General Provisions Non-Cloud Goods and Services and Information Technology General Provisions Cloud Computing Services.  Draft contract provisions were posted for public comment in March of 2024. The State accepted and incorporated various comments from the vendor community and state department users into the final versions. Below are the highlights of the significant updates to the State's Information Technology contract provisions. However, users should review each clause in the new contract provisions to ensure awareness of changes.  **Consolidated and Revised Information Technology Provisions**  Revised the Information Technology General Provisions (401IT) to include goods and services not related to cloud solutions and renamed the provisions to "Information Technology General Provisions, Non-Cloud Goods and Services."  Revised and consolidated general provisions and special provisions for Software as a Service (SaaS), Infrastructure as a Service (IaaS), and Platform as a Service (PaaS) into a single cloud related general provision renamed "Information Technology General Provisions, Cloud Computing Services."  Similar standard terms exist throughout both documents.  **Reorganization of Sections**  For clarity of similar topics and ease of review, reorganized sections with updated numbering and headings and added subheadings, where appropriate. Examples of updated sections include:   * Contractor's Power and Authority (Section 2) * Indemnification (Section 11) * Statutory & Regulatory Requirements (Section 13) * General Terms (Section 20) * Data Protection Provisions (Section 21)   **New and Updated Clauses**  Revised existing clauses and added new clauses based on feedback from the vendor community to align the provisions more closely with current industry and national standards, technological changes, and the evolving information security and privacy landscape. Examples include:   * Revised the limitation of liability related to caps for direct costs of data breaches for the various categories * Added acknowledgement and clarifications related to the reseller arrangement between a contractor and service provider * Added a new section regarding the Contractor's responsibility and liability for subcontractors' performance of work under the Contract * Updated data classification standards and security controls * Added background check requirements * Updated data breach notification and security incidents   **Common Industry Identified Challenges**  Following are similar comments identified by the vendor community and the State's response, when applicable.   * **Vendor Comments:** Contracting with the State exposes the intellectual property, data, and technologies of contractors to others, including possible competitors who contract or subcontract with the State. Contractors request reduced access by such third parties and more confidentiality requirements.   **State's Response:** The State clarified terms while retaining necessary protections such as robust confidentiality provisions, required use of non-disclosure agreements (where applicable), and included other options with respect to proprietary materials.   * **Vendor Comments:** Contractors prefer that, in the event of an audit of a contractor, the State should not require the Contractor to provide the internal audit report to the State, allow the State to run tests, or require the Contractor to make its employees available for interviews. Instead, contractors preferred to submit only a summary of the audit, to only internal tests, and to make only a manager available for an interview by the State.   **State's Response:** The State declined to make these revisions because the State is entitled to receive the Contractor's investigation report, be part of an investigation, and have access to the Contractor's personnel if there is an audit or a breach of the State's data. Receiving only the Contractor's summary report of an audit or a data breach may not allow the State to meet its statutory obligations and its obligations to other regulatory authorities.   * **Vendor Comments:** Contractors prefer generalities like "best practices" and "industry standards" over fixed standards, such as requirements that deliverables be free from malware or material defects.   **State's Response:** The State declined to remove the specific requirements related to warranties and representations, data or service availability, data protection requirements, and other standards as these specific requirements serve certain purposes, and baseline standards need to be established in the provisions. The State has included language to allow the Contractor to negotiate and modify some of these requirements in the Statement of Work (SOW) based on the scope and type of the engagement.   * **Vendor Comments:** Contractors request that state standards and contract language be brought closer in line with industry norms in several areas including pricing, stating that doing so would allow the State to enjoy the benefits of similar pricing and opportunities.   **State's Response:** The State largely declined to make these changes because the comments do not reconcile with the statutory and institutional framework within which the State operates (such as the Public Records Act (PRA), no gifting of public funds, requirements for Disabled Veteran Business Enterprises (DVBE) hiring and contracting, etc.).   * **Vendor Comments:** Contractors sought additional limits on the scope and scale of indemnification required from contractors and on the limits of liability that contractors can incur, especially in the event of a data breach. Contractors requested that their liability be limited to actual costs of harm directly caused by the Contractor's actions (rather than indirect costs or responsibility for omissions) and not to exceed the cost of the Contract.   **State's Response:** The State generally declined to expose itself to further liability arising from the acts or omissions of contractors while permitting some limitations included in the ITGPs with respect to direct costs of data breach and additional limitations to be set forth in a SOW based on the contractual scope and engagement.   * **Vendor Comments:** Contractors requested that pre-approval of publicity and media should be reciprocal. For example, just as contractors must submit materials to the State for pre-approval before publication, the State Agency should also obtain Contractor's approval before the Agency publishes materials related to the Contract.   **State's Response:** The State addressed this concern by allowing for a deviation from the standard publicity terms to be set forth in a SOW.   * **Vendor Comments:** Contractors requested that confidentiality be defined more broadly to protect more information from disclosure and that Contractors not be required to designate material as confidential or proprietary.   **State's Response:** The State declined to incorporate these proposals because State Agencies must comply with the terms and procedures of the PRA.   * **Vendor Comments:** Contractors preferred more flexibility and scope-by-scope variation in contracting.   **State's Response:** The State accommodated this request of scope-by-scope variation by, in more instances, allowing for alternative terms to be set forth in a SOW or if pre-approved by a State Director or designee.   * **Vendor Comments:** Contractors requested that they receive more time to report security incidents and data breaches upon discovery and there be fewer requirements regarding the type of information about the breach or incident that must be provided to the State.   **State's Response:** The State generally declined to lessen these obligations. However, the State included clarifying language such as contractors could report only information that they know or should know at that point in time.   * **Vendor Comments:** Contractors requested that the requirement that data centers be located in the continental U.S. be modified to take into account collaboration, travel, and the presence of contractors' personnel outside the U.S. A Contractor requested that before specifying the publisher, the State Agency itself should verify that the publisher's data center is located in the U.S.   **State's Response:** To the extent possible, the State accommodated these concerns by allowing for exceptions to be set forth in a SOW.   * **Vendor Comments:** Contractors requested that certain warranty provisions be modified. For example, reduce the scope of the standard warranties set forth in the ITGPs and instead require warranty provisions to be negotiated and set forth in the SOW. One Contractor requested that the State replace the warranty and indemnity provisions with covenants, while other contractors requested more precise delineations between the warranties for goods versus services. One Contractor also recommended that the cost to cover be determined only through the dispute resolution process.   **State's Response:** The State addressed more precise delineations between warranties for goods versus services. The State declined to determine costs through the dispute resolution process as this would tend to disfavor speedy and informal resolution of warranty disputes. The State also declined to shift the standard warranty obligations to the SOW.   * **Vendor Comments:** Some Contractors requested that procedures be changed so that there is more communication with and participation by original equipment Manufacturers (as opposed to Resellers) who do not now have privity with the State. Contractors stated that doing so will benefit the State. Contractors also expressed concern about the legality of assurances made by some other Resellers regarding the Software and services they provide to the State.   **State's Response:** The State included certain clarifications, obligations, and warranties related to the Reseller arrangement between Contractors and Service Providers. |
|  | **END OF DOCUMENT** |