

## PURCHASE ORDER: JUDICIAL BRANCH CONTRACT LAW ATTACHMENT

*The terms and conditions in this Attachment are incorporated by reference into all JBE Purchase Orders that make reference to them. These terms and conditions are in addition to all other terms and conditions printed on, or attached to, the Purchase Order. If there is any conflict between a provision in this Attachment and any other provision of the Purchase Order, whether or not it is incorporated into the Purchase Order or set forth on its face, the provision contained in this Attachment shall prevail. No additional or different terms or conditions imposed by the vendor/seller, for example by attachment to the Purchase Order or in a Bill of Lading, have any force or effect unless the JBE and vendor/seller have agreed to them in a mutually signed writing that makes specific reference to each of (i) the Purchase Order, including the date the subject Purchase Order is issued and the number of the Purchase Order, and (ii) this Attachment JBE 401-A1 separately.*

### 1. Seller Certification Clauses

**1.1 Representations and Warranties.** Seller or vendor (Seller) certifies that the following representations and warranties are true:

(A) *Authority.* Seller has authority to enter into and perform its obligations under this purchase order (PO). Seller is qualified to do business and in good standing in the State of California.

(B) *Not an Expatriate Corporation.* Seller is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the purchaser under this PO (JBE).

(C) *Sales and Use Tax Collection.* Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

(D) *No Gratuities.* Seller has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any member, justice, judicial officer, judge, officer, employee, or agent of the Judicial Council of California, California appellate or trial court, the Administrative Office of the Courts, or the Habeas Corpus Resource Center (Judicial Branch Entity) with a view toward securing this PO or securing favorable treatment with respect to any determinations concerning its performance under this PO.

(E) *No Conflict of Interest.* Seller has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with certain Judicial Branch Entities.

(F) *No Interference with Other Contracts.* To the best of Seller's knowledge, this PO does not create a material conflict of interest or default under any of Seller's other contracts.

(G) *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Seller's knowledge, threatened against or affecting Seller or Seller's business, financial condition, or ability to perform under this PO, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse affect on Seller's business, the validity or enforceability of this PO, or Seller's ability to perform under this PO.

(H) *Compliance with Laws Generally.* Seller complies in all material respects with all laws, rules, and regulations applicable to Seller's business and services, and pays all undisputed debts when they come due.

(I) *Work Eligibility.* All personnel assigned to perform work under this PO are able to work legally in the United States and possess valid proof of work eligibility.

(J) *Drug Free Workplace.* Seller provides a drug-free workplace as required by California Government Code sections 8355 through 8357.

(K) *No Harassment.* Seller does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Seller may interact in the performance of this PO, and Seller takes all reasonable steps to prevent harassment from occurring.

(L) *Non-discrimination.* Seller complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Seller does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Seller has notified in writing each labor organization with which Seller has a collective bargaining or other agreement of Seller's obligations of non-discrimination.

(M) *Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.* If this PO provides for total compensation of more than \$100,000, Seller is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(N) *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this PO provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Seller (but not to exceed in the aggregate \$7,500 per year from the Seller), no more than one, final

unappealable finding of contempt of court by a federal court has been issued against Seller within the immediately preceding two-year period because of Seller's failure to comply with an order of a federal court requiring Seller to comply with an order of the National Labor Relations Board. Seller swears under penalty of perjury that this representation is true.

(O) *Special Provisions regarding Compliance with the Sweatfree Code of Conduct.* If this PO provides for furnishing equipment, materials, or supplies, or for the laundering of apparel, garments or corresponding accessories:

- No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this PO 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. Seller further declares under penalty of perjury that it adheres 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. This certification is made under penalty of perjury.

- Seller cooperates fully in providing reasonable access to Seller's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Seller's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

(P) *Special Provisions regarding Compliance with the Child Support Compliance Act.* If this PO provides for compensation of \$100,000 or more:

- Seller recognizes the importance of child and family support obligations and fully complies 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 Family Code section 5200 et seq.; and

- Seller provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

(Q) *Special Provisions regarding Discharge Violations.* Seller is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued under Water Code section 13301 for violation of waste discharge requirements or discharge prohibitions. Seller has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

(R) *Special Provisions regarding the Electronic Waste Recycling Act.* If this PO provides for the purchase or lease of covered electronic devices under Public Resources Code section 42460 et seq., Seller complies with the requirements of the Electronic Waste Recycling

Act of 2003, and Seller maintains documentation and provides reasonable access to its records and documents that evidence compliance.

(S) *Special Provisions regarding the Use of Postconsumer Material.* If this PO provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of Seller's postconsumer material in these goods can not be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or Seller website:

- Seller has delivered a declaration to the JBE specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in goods offered or sold to the JBE, regardless of whether the goods meet the requirements of Public Contract Code section 12209.1;
- Under penalty of perjury, the declaration is true and correct and will remain so until Seller delivers any amendment of the current declaration to the JBE, in which case the current declaration as amended will be true and correct; and
- If Seller sells under this PO any printer or duplication cartridges that comply with Public Contract Code section 12209, Seller has so specified in the declaration required under this section.

1.2. **Covenant as to Representations and Warranties.** If this Attachment is to a Blanket PO, Seller shall cause its representations and warranties to remain true during the term of this PO, and Seller shall promptly notify the JBE if any representation and warranty becomes untrue.

## **2. Special Provisions for POs Providing for the Sale of Recyclable Goods**

If this PO provides for the sale of goods, regardless of whether the goods are specified in PCC 12207, the JBE shall purchase and Seller shall sell under this PO only recycled products if fitness and quality are equal to non-recycled products and recycled products are available to the JBE at the same or lesser total cost as non-recycled products. In addition, if this PO provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), with respect to these goods, Seller shall use recycled products in the performance of this PO to the maximum extent doing so is economically feasible.

### **3. Special Provisions for Mined Minerals POs**

If this PO involves purchasing mined minerals, Seller shall not supply through this PO any sand, gravel, aggregates, or other minerals a JBE may not purchase under Public Contract Code section 10295.5.

### **4. Special Provisions for POs for Printed Documents**

If this PO involves printing documents, Seller shall use only recycled paper, unless the proposed printing job cannot be done on recycled paper. Seller shall certify in writing under penalty of perjury, upon completion of performance of this PO, the minimum percentage of post-consumer and secondary materials provided or used in the Services.

### **5. Special Provisions for Rental POs**

If this PO provides for rental of personal property, the JBE shall have no responsibility for loss or damage to the rented equipment arising from causes beyond the JBE's control. The JBE is responsible for repairs and liability for damage or loss *only* to the extent they become necessary and result from a negligent act or omission of the JBE or any JBE Personnel. If this PO provides for the rental of equipment or other personal property and the JBE has not expressly elected through this PO to maintain the equipment or other personal property, Seller shall keep the equipment in good working order and make all necessary or appropriate repairs and adjustments without qualification. Unless this PO expressly provide otherwise, the JBE shall not reimburse Seller for any personal property taxes assessed on the rented personal property.

### **6. Special Provisions for POs for Equipment, Materials, or Supplies; Loss Leader Prohibition**

If this PO involves the furnishing of equipment, materials, or supplies, Seller shall not sell or use any article or product as a "loss leader" as defined in Business and Professions Code section 17030.

### **7. Special Provisions for POs Providing for Progress Payments**

If this PO provides for the making of progress payments to Seller (e.g., in connection with the purchase and sale of any customizable goods), the JBE shall make the progress payments in arrears not more frequently than monthly and only following successful completion of any clearly identifiable project milestones set forth in this PO and that Seller has successfully achieved on the date indicated. The JBE shall withhold an amount of not less than 10 percent from each installment payment pending final completion of all work.

### **8. Special Provisions for POs Providing for Compensation of \$50,000 or more; Union Activities Certification Requirement**

As required under Government Code sections 16645-16649, if this PO provides for total compensation in excess of \$50,000 to Seller:

**8.1** Seller shall include with any request for cost reimbursement from the JBE's funds a certification that the Seller is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing; and

**8.2** Seller shall not:

A. Assist, promote, or deter union organizing by employees performing work under state or judicial branch POs;

B. Use the state's or JBE's funds received under this PO to assist, promote, or deter union organizing; or

C. For any business conducted under this PO, use any property of the state or JBE to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

If Seller incurs costs, or makes expenditures to assist, promote, or deter union organizing, Seller shall maintain records sufficient to show that no reimbursement from the state's and JBE's funds has been sought for these costs, and provide those records to the California Attorney General upon request.

## **9. Special Provisions for Federally-funded POs**

If this PO is funded in whole or in part by the federal government, then:

- It is mutually understood between the parties that this PO may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the PO were executed after that determination was made;
- This PO is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this PO is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this PO in any manner;
- The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this PO is intended to be paid, this PO shall be deemed amended without any further action of the parties to reflect any reduction in funds.
- The parties may invalidate this PO under the termination for convenience or cancellation clause (providing for no more than 30 days' notice of termination or cancellation), or amend the PO to reflect any reduction in funds.
- Exemptions from the above requirements may be granted if the JBE can certify in writing that federal funds are available for the acquisition or, in the case of a Blanket PO, the Term of this PO.

## **10. Special Provisions regarding DVBE Participation Certification**

If Seller made a commitment to achieve disabled veterans business enterprise participation, Seller shall within 60 days of receiving final payment under this PO (or within such other time period as may be specified elsewhere in this PO) certify in a report to the JBE: (1) the total amount the prime Seller received under the PO; (2) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of this PO; (3) the amount each DVBE received from the Seller; (4) that all payments under this PO have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

## **11. Special Provisions Applicable to Competitively Bid POs; Antitrust Claims**

If goods or services under this PO were obtained by means of a competitive bid, Seller shall comply with the requirements of Government Code sections set out below.

- Seller shall assign to the JBE 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 Seller for sale to the JBE pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Seller. (GC 4552)
- If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Seller shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Seller but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- Upon demand in writing by the Seller, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Seller has been or may have been injured by the violation of law for which the cause of action arose and (1) the JBE has not been injured thereby, or (2) the JBE declines to file a court action for the cause of action. (GC 4554)

## **12. Special Provisions regarding Ownership of Results**

**12.1 Special Provisions Applicable to POs funded with Grant Funds.** If this PO provides compensation to Seller under a project funded through a grant, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with

JBE funds shall vest automatically and without further action of the parties with the JBE, effective at the conclusion of the project. If Seller provides written certification to the JBE that the property will continue to be used for grant-related purposes and the JBE approves such certification in writing, the JBE may permit title to all such property to remain with Seller in accordance with the JBE's written instructions. Seller must await specific written instructions from the project manager regarding any transfer of title or disposition.

**12.2 Special Provisions Applicable to POs for Certain JBE-funded Equipment.** If compensation under this PO is not through grant funding and this PO provides for the provision of equipment purchased or built with JBE funds, title to any equipment purchased or built with JBE funds shall vest in the JBE immediately upon payment of the purchase price. Before delivery to the JBE, Seller is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Seller or its directors, officers, employees, or agents, and Seller shall make all necessary or appropriate repairs and adjustments.

### **13. Audit and Records**

**13.1 Audit.** Seller shall allow the JBE's designees and the JBE to review and audit Seller's documents and records relating to this PO, subject only to a lawyer's duty of confidentiality owed to a represented party. Seller shall correct errors and deficiencies by the 20th day of the month following the review or audit.

**13.2 Ownership.** The JBE is the exclusive owner of all materials collected and produced in connection with the Services. Upon request at any time, subject only to the duty of confidentiality owed to a represented party, Seller shall give original materials to the JBE or to another party at the JBE's direction. Seller shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:

- Seller's receipt of final payment under this PO; and
- The JBE's resolution with Seller of the findings of any final audit.

**13.3 Copies.** Seller may retain copies of any original documents Seller provides to the JBE.

### **14. Choice of Law and Jurisdiction**

California law, without regard to its choice-of-law provisions, governs this PO. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.