COMMONWEALTH OF VIRGINIA

DEPARTMENT OF INFORMATION TECHNOLOGY

REQUEST FOR PROPOSALS

FOR

DB2 Toolset Software

RFP 2003-39

Issued	**March 31, 2003**
Due	**April 30, 2003**

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Acquisition Services Division

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SECTION 1: Executive Summary

1.1 Summary:

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals to establish one or more optional use contracts through competitive negotiations for DB2 tools to monitor performance, develop DB2 applications, administer and manage DB2 objects and provide an archiving capability for DB2 data.

Any resulting contract(s) from this solicitation will permit the specific IT services and products to be procured by DIT for other state agencies or state institutions of higher education, localities and other Public Bodies as defined in the *Code of Virginia, § 2.2-4301,* hereinafter referred to as "Authorized Users".

The benefits will be one or more optional use contracts that provide DB2 tools to increase productivity for Authorized Users across the Commonwealth.

1.2 Contents of this Request for Proposals:

This document contains the instructions governing the proposal to be submitted; the format in which proposals are to be submitted, and the material to be submitted therein; project requirements; evaluation criteria; and contractual terms and conditions.

1.3 Contact Information:

It is the vendor's responsibility to inquire about and clarify any requirement of this RFP that is not clearly understood by the vendor. All verbal questions are discouraged. The Commonwealth will not be bound by verbal responses to questions. **All inquiries concerning this RFP should be submitted in writing to (Mark envelopes "Questions on RFP 2003-39):**

Mr. R.F. (Bob) Crawford
Department of Information Technology
110 South 7th Street – East Lobby Level
Richmond, Virginia 23219
Fax: (804) 371-5990

All written inquiries must be received by the Issuing Office on or before the close of business April 11, 2003. Facsimiles are acceptable at (804) 371-5969 or email to rcrawford@dit.state.va.us. **No further written inquiries will be accepted after that date.**

1.4 Closing Date and Time:

The **original** hardcopy (both technical and cost) and **six (6) copies on CD-ROM** of the technical proposal must be submitted under separate cover and **must** contain the full name and address of every company bearing an interest in the proposal. The original technical proposal and cost proposal **(only one copy of the cost proposal is required) must** be signed by the vendor's contractually binding authority. The cost proposal **must** be submitted in a separate clearly marked and sealed package. All proposals must be received not later that 4:00 p.m. local time, **April 30, 2003**.

1.5 Mandatory Pre-Proposal Conference

There is no mandatory pre-proposal conference for this procurement.

1.6 Acquisition Services Division Web Site:

The Acquisition Services Division (ASD) of the Department of Information Technology maintains a web site with a URL of http://asd.state.va.us . This web site provides information about ASD and acquisitions conducted by ASD for Information Technology related items. Vendors are invited to check this site regularly. The original document, plus all changes or amendments will be found on this web site.

1.7 Rules Regarding Late Proposals and Modifications:

No proposal or modifications to a proposal will be accepted after the closing date and time. Vendors may use any means of delivery but it is the responsibility of the vendor to allow adequate time for delivery to the appropriate office. Proposals and modifications received after closing will be returned unopened.

1.8 News Releases:

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of the Issuing Office. **FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN THE OFFEROR BEING DISQUALIFIED.**

1.9 Registered Vendors:

PROPOSALS WILL NOT RESULT IN AWARD IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY. A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than award date. Call (804) 371-5900 to request a registration form. Vendors may also download a Vendor Application form from ASD's web site with a URL of http://asd.state.va.us if you need assistance, call (804) 371-5900.

1.10 Rejection of Proposals:

The Commonwealth of Virginia reserves the right to reject any and all proposals, in whole or in part, received in response to this request. DIT shall not cancel a Request for Proposals or reject any proposal solely to avoid awarding a contract to a particular responsive and responsible Offeror. In addition, DIT reserves the right to waive informalities and to delete items prior to award.

The term Offeror as referenced in this solicitation refers to the firm preparing and submitting a proposal in response to this Request for Proposals (RFP). The term Contractor refers to the firm who when awarded the contract will be responsible for services as required as a result of this solicitation.

1.11 Procurement Policies and Procedures:

Information Technology and Telecommunications procurement activity conducted by the Commonwealth of Virginia is governed by provisions of the Virginia Public Procurement Act and guided by provisions of the Vendor's Manual, December 1998, Commonwealth of Virginia (As Amended). The provisions of this RFP are intended to conform to applicable policies and procedures contained in the aforementioned MANUAL. In the event that a vendor should perceive a provision of this RFP to be at variance with a provision of the MANUAL, VENDORS ARE DIRECTED TO REGARD THE RFP PROVISION AS PREVAILING.

1.12 Cost of Proposals:

The Vendor is responsible for all costs of proposal preparation. The Commonwealth is not liable for any costs incurred by a vendor in response to this RFP.

1.13 Identification of Proposals:

All proposals submitted for consideration shall be clearly marked on the outside cover of all envelopes, boxes or packages:

From: Name of Vendor
Street or P.O. Box Number
City, State, Zip Code
Due Date: April 30, 2003 Time: NLT 4:00 p.m. (Local time)
RFP Number 2003-39

Note: The technical and cost proposals must be submitted in separate, sealed packages with the appropriate label, i.e., "Technical Proposal" or "Cost Proposal".

1.14 Definition of "Mandatory" Requirements and "Desirable" Features:

1.14.1 Mandatory Requirements:

The use of "shall", "must", or "will" in this RFP or its official amendments indicates a requirement or condition that is mandatory (mandatory requirement), and shall not be construed in any way as allowing deviation from any requirement. Deviation from mandatory requirements will not be accepted by the Commonwealth. The Commonwealth of Virginia reserves the right to reject any and all proposals and to waive minor informalities. All mandatory requirements must be met in order for any proposal to be considered. The vendor must respond to the mandatories identifying if he or she can fulfill the requirements identified herein and how the vendor proposes to meet the requirements. Substantiation to responses must be provided. The Commonwealth has established guidelines for Offerors governing the interpretation of RFP requirements.

FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE VENDOR'S PROPOSAL NON-RESPONSIVE AND THE VENDOR SHALL NOT BE CONSIDERED FURTHER. THE VENDOR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS VERBATIM, LISTED IN SECTION 8 OF THIS RFP.

1.14.2 Desirable Features:

There are a number of features that are considered desirable by the Commonwealth. Those services which will enhance the overall system and performance are not considered mandatory will be considered "desirable". Words such as "desirable", "should", "is requested", "is urged to", are important to the user in selecting a vendor, but in order to permit vendors to meet the requirements creatively, they are not specified as strictly mandatory requirements. Vendor responses to desirable services should meet stated goals, objectives, or enhance performance and identify how the proposed system meets the stated requirement. However, failure of a proposal to meet desirable requirements is not disqualifying. Vendors should document the extent to which they can meet the desirable or optional services. Proposals that provide more of the desirable features or that meet them more effectively than another proposal will be given stronger consideration in vendor selection.

1.15 Oral Presentation:

An oral presentation by the vendor may be required. If an oral presentation is required to clarify or substantiate any area contained in the vendor's response, the Issuing Office will schedule a time and place for the presentation. This provides an opportunity for the

Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and normally does not include negotiation. The response must be complete in all respects, as oral presentations and demonstrations MAY or MAY NOT be scheduled. All costs incurred by vendor to provide oral presentations are the responsibility of the vendor.

1.16 Proprietary Information:

SECTION 11-52d, Virginia Public Procurement Act, states "Trade secrets or proprietary information submitted by a bidder, Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, Offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the bid or proposal.**

The vendor must provide "Appendix C" which provides a list of all pages in the proposal that contains proprietary information along with the reason. Only pages contained in that list will be treated as proprietary. The vendor may be requested to provide a fully redacted copy of their proposal on CD-ROM and hardcopy to be utilized in those circumstances where public proposal review is needed.

FAILURE TO MARK THE DATA OR OTHER MATERIALS AS STATED WILL RESULT IN THE DATA OR OTHER MATERIALS BEING RELEASED TO VENDORS OR THE PUBLIC AS PROVIDED IN THE VIRGINIA FREEDOM OF INFORMATION ACT.

1.17 Proposal Format:

The proposals should be organized in the exact order in which the requirements are presented in the RFP and should be page numbered. The proposal should contain a table of contents which cross references the RFP requirement and the specific page of the response in your proposal. Each paragraph in the proposal must correspond to and reference the paragraph number in the corresponding section of the RFP. The vendor must repeat the paragraph number, sub-letter, and text of the requirement as it is presented in the RFP. If a response covers more than one page, the vendor must repeat the paragraph number and sub-letter at the top of the subsequent page.

Proposals that are not organized in this manner may be eliminated from consideration for failing to specifically address the technical and contractual requirements. Vendors must

document that they can meet mandatory requirement of the RFP and should document the extent to which they can meet the desirable or optional features.

Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal preparation and subsequent evaluation process:

a. The response should be complete and comprehensive, with a corresponding emphasis on being concise and clear.
b. All proposed items should be identified as to whether they are in response to mandatory or desirable requirements. Each response to a mandatory item in the proposal must contain, as a minimum, a statement such as "XYZ Fully Complies".
c. Regardless of whether or not a desirable is being proposed, all desirables should be identified as to their availability and associated costs **(to appear in the "Cost Proposal" ONLY).**
d. Elaborate bindings or literature are not necessary, but all documents should be clear and legible. Poor quality copies of materials may be rejected.
e. In addition to the original signed copy of the Technical Proposal, Offerors must submit technical information on a CD-ROM in a MS Word or PDF format identical to the original copy. Any other format other than MS Word or PDF must be approved prior to submission.

1.18 Multiple Proposals:

A vendor may submit one or more proposals. All proposals must be complete and must comply with all of the instructions of this RFP.

1.19 Submission of Cost Information:

All cost information must be signed, sealed and provided in a separate envelope. No cost information shall be included in the technical proposal. The cost forms in Section 6 must be completed and returned in a separate envelope.

The Offeror's cost proposal must include all costs associated with the initial purchase, installation, training, customization and conversion to the proposed system, as well as any ongoing maintenance, operation, vendor support, user fees or charges or reimbursements and the "IFA". This includes all license fees, royalties, "third party" fees, and computer resources, as well as all labor costs, overhead and expenses.

The vendor must be willing and able to successfully deliver all products and services proposed and to complete the project on a firm fixed-price basis. If the vendor desires to propose additional products and/or services which it believes would benefit the COV (but are not required to successfully complete the project as proposed), such items should be included and clearly identified as optional.

1.20 Nondisclosure:

All proposal information will be treated as confidential and will not be disclosed except as required for the purpose of evaluation. In accordance with the Virginia Public Procurement Act (VPPA) Section 11-52C1, proposals will be available for public inspection after negotiations and selection.

1.21 Sub-Contractor Identification:

The primary (prime) vendor must identify a contact person, by name, organization, telephone number and email address of who will be responsible for coordinating the efforts and personnel of all parties and/or subcontractors involved in the response. This includes, but is not limited to, responses to requests for interviews, oral presentations and clarifications of responses to the RFP.

1.22 Evaluation Criteria:

All proposals received will be reviewed and evaluated by the Selection Committee using the following criteria, the order of which is not indicative of their weight or importance:

a. Vendor's qualifications, including experience in similar sized installations, with similar solutions.
b. Vendor's proposed solution
c. Proposed cost.
d. Where the proposed software falls within the technology life-cycle.
e. Extent Vendor agrees with desirable terms and conditions.
f. Participation of Small, Women-Owned and Minority-Owned Businesses.

1.23 Selection Process:

Subject to approval by the Review Committee, proposals are evaluated on the basis of the criteria enumerated in the RFP and are scored in accordance with a weighting scheme established and approved prior to the opening of any proposals.

The Commonwealth is not required to furnish a statement of the reasons why a particular proposal was not the most advantageous. Should the Issuing Office determine in writing, and in its sole discretion, that only one vendor is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that vendor.

The proposal evaluation process involves, first, the review by a Selection Committee of all proposals received in response to the RFP to ensure that each proposal meets the mandatory requirements and the mandatory terms and conditions identified in Section 8 of this RFP. Proposals which have been determined by the Selection Committee not to

have met one or more mandatory requirements or mandatory terms and conditions, and cannot be brought into compliance, are excluded from any further consideration.

The second step in the evaluation of proposals involves each Selection Committee member evaluating the vendor's technical proposal and assigning a score to each of the selection criteria based on his/her personal understanding or interpretation of each of the proposed items. It will be decided at the beginning of the process how scores are to be assigned to each of the criteria (such as from zero to four in half point increments, with two (2) as average). The full Selection Committee will then meet to discuss the scoring. Members may change their scoring, if they desire. Preliminary scoring may also be changed by committee members after oral presentations or demonstrations by the vendor. Technical scores are totaled and multiplied by the weights assigned to arrive at a cumulative score and numerical ranking. At this point, vendors may be offered the opportunity to submit revised cost proposals.

In the final step, the vendor's cost proposals will be opened by the Selection Committee. The proposed costs will be evaluated using the formula below. The technical and cost proposals will be summed to provide a ranked list of vendors. Unless there is deemed to be one vendor that is clearly more qualified, two or more vendors deemed to be fully qualified and having the highest evaluation scores are then selected for negotiations. Vendor may be requested to provide revised pricing for their proposals as amended during negotiation. If revised costs are requested, cost will be recomputed; scores for the other evaluation criteria **MAY NOT BE ALTERED**. The lowest price received is the basis for the application of the cost scoring formula.

The cost scoring formula for evaluating proposals is:

Cost factor = (LV/V)

Where: LV = lowest cost vendor ($)

V = vendor being evaluated ($)

Cost score = cost factor x points available for cost

1.24 Site Visits

The Commonwealth may require the vendor to arrange a visit by the selection committee to a customer site with software identical to or nearly identical to that proposed. The site should have a volume of activity similar to DIT. The site should be one of the Offeror's listed references.

For planning purposes, the Offeror should arrange for, and provide several dates, subsequent and close to the closing date of the RFP, for the selection committee's consideration as possible visit dates. The group would consist of no more than seven (7)

individuals. Should the sites be outside of the Richmond area, the Commonwealth will pay for all travel, meals and lodging. The Offeror may be asked to assist with arrangements to insure coordination with Offeror personnel traveling to the site.

1.25 Review Phase:

A Review Committee, consisting of Commonwealth employees who do not have a direct involvement in the selection, will review the selection process and major decisions such as vendor disqualification, to ensure that the selection was fair and unbiased.

1.26 Post Award Review:

Following selection of the winning vendor(s) and formal notification, the Director, Acquisition Services Division, or his designated representative, will review the selection with other vendors on an appointment basis only. Vendors desiring to review the selection process must do so within 10 days after Notification of Intent to Award, or other notification as deemed applicable by DIT, is posted.

1.27 Participation by Small Businesses, and Businesses Owned by Women and Minorities.

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract is required. By submitting a proposal, Offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in a lower evaluation ranking.

All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses and minority-owned businesses must be submitted. If an Offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after receipt of vendor proposals.

Instructions for providing the required information, including definitions, are included as Appendix "A" to this RFP. Forms to assist the Offeror in providing the required information are also included as Appendix "A". You are not required to use the forms so long as the minimum information required is provided in the prescribed format.

1.28 Faith Based Ministries

The Commonwealth of Virginia does not discriminate against faith-based ministries.

1.29 Contractual Binding:

a. This RFP, the response submitted by the successful contractor, and all amendments and written clarifications, or any portions thereof, may be incorporated into the agreement signed by the successful contractor and the Commonwealth of Virginia. If a proposal contains items or services which are not manufactured, generally supplied, or maintained by the proposing vendor, the vendor will accept full responsibility for the service as if it were the vendor's own. The Commonwealth will contract only with the prime vendor who will be responsible for the performance of and payment to any subcontractor(s).

b. Price quotations and other time dependent information contained in proposals shall be valid for a minimum of 120 days following the closing date.

c. SECTION 8 of this solicitation, entitled "Mandatory Terms and Conditions" for acquisition of a DB2 toolset, contains the mandatory terms and conditions. These terms will be included verbatim in any agreement executed by the Department of Information Technology. **FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE VENDOR'S PROPOSAL NON-RESPONSIVE AND ELIMINATE THE VENDOR FROM FUTHER CONSIDERATION. THE VENDOR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS, VERBATIM LISTED IN SECTION 8 OF THIS RFP.**

d. SECTION 9 of this solicitation, entitled "Desirable Terms and Conditions", contains language the Commonwealth considers highly desirable for inclusion in any contract. The Commonwealth will consider, during negotiation, changes to the wording of these terms and conditions if the vendor proposes alternative language which the Commonwealth feels is in its best interest to accept.

1.30 eVA Business to Government Portal

The Commonwealth of Virginia is in the process of implementing an electronic procurement system (eVA) that will centralize and automate the processing of purchase orders for products and services. Participants in eVA are required to register with the Department of General Services as vendors. This requires, at a minimum, a yearly

subscription payment. Offerors submitting proposals are required to register for participation in eVA. Additional details are available via the Internet at <http://www.eva.state.va.us> .

1.31 IFA

Vendors are advised to read and understand the paragraphs entitled "Contractor's Report of Sales" and "Industrial Funding Adjustment" listed in the attached Terms and Conditions. **FAILURE TO ACCEPT THESE TERMS AND CONDITIONS WILL RENDER THE VENDOR'S PROPOSAL NON-RESPONSIVE AND IT WILL NOT BE FURTHER CONSIDERED.** Failure to comply after award will result in a "Breach of Contract" situation that will result in Contract cancellation and other remedies as necessary.

SECTION 2: GENERAL VENDOR INFORMATION

2.1 General Information:

This section requires information about the vendor's background and experience.

2.2 Vendor's Operating Organization:

Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels.

2.3 Company Contact:

Provide the name, title, street address, city, state, zip code, telephone number and email address of the primary contact person.

2.4 Corporate Identity:

a. Provide the identity of any parent corporation.
b. Provide the identity of any subsidiaries if appropriate.

2.5 Vendor Qualifications:

a. Company name, pre-award and post-award contact persons, address, telephone number, facsimile number, e-mail addresses, Federal Identification Number and firm's web site, if applicable.
b. List of corporate officers, years in business, including a list of all corporate names the firm has used to conduct this type of business (include the dates and states of incorporation for each corporate name).

2.6 References:

The Offeror shall provide at least three (3) current references who can confirm the firm's qualifications. References provided should be of the similar size to the Department of Information Technology. See the Vendor Client Reference Form in APPENDIX D. The Commonwealth will make such reasonable investigations as deemed proper and necessary to determine the ability of the Offerors to perform the contract and these may include, but may not be limited to, reference checks and interviews.

SECTION 3: GENERAL BACKGROUND/DESCRIPTION OF CURRENT ENVIRONMENT

3.1 Background

The Data Center Environment at DIT:

Processors	IBM 9672-Y56	IBM 9672-Y46
Operating System	Z/OS 1.3 and OS/390	OS/390
Tape	IBM 3494 B18 VTS 864gb Cache 24 - 3590 Native 6 - 3590 Direct Attached 24 - 3490-A20 4 - 3480 4 - 3420	

The Commonwealth of Virginia (COV), Department of Information Technology (DIT) has chosen DB2 as its Relational Database Management System (RDMS) for our MVS systems. DIT has already purchased Abend-Aid, CICS Abend-Aid/FX, File-Aid for DB2 and Xpediter extension and now requires a tool or set of tools to monitor performance, administer and manage DB2 objects and provide archiving capability for DB2 data.

3.2 Proposed Configuration Changes by Year End

Plans are to run Z/OS 1.3 on both machines.

3.3 Processor Upgrade

DIT plans to upgrade the IBM 9672-Y46 (528 MIPS) to an IBM 9672-Y56 (642 MIPS) in fall 2003. Any additional cost associated with this upgrade must be supplied as a separate item on the price schedule.

SECTION 4: MANDATORY REQUIREMENTS

This section provides a minimum number of parameters or ground rules for the proposed solution provided by the vendor. Parameters or ground rules stated herein are deemed minimums.

4.1 General

The proposed software must provide administration and management of DB2 objects, DB2 performance monitoring and archiving (backup and recovery) functionality to the DIT customer community on both of DIT's MVS systems.

4.2 Software Requirements

4.2.1 Global Requirements

The proposed product must:

a. Be available on all LPARs.
b. Be accessible and useable to state agencies independently (no assistance from DIT required).
c. Gain performance improvement that justifies any overhead cost of using the product(s).
d. Provide vendor training.
e. Provide vendor support for tool usage and problem resolution.
f. Interface with Computer Associates ACF2
g. Products be upgradeable to new releases of DB2 within 6 months of new DB2 release.

4.3 Administration Tool Requirements

The proposed product must:

a. Assist with migrating tables and indexes between databases located on different MVS LPARs. Tools should provide for moving both structures and data.
b. Assist with disk space management by providing ability to perform historical reporting, to project growth, and to display extents.
c. Extract and print SQL from DBRM modules or the DB2 catalog.

4.4 Archive Tool Requirements

The proposed product must:

a. Support the DB2 Distributed Data Facility for remote processing.
b. Allow related data to be archived from 1 or more table based upon user defined criteria, not just upon the specification of DB2 Referential Integrity.

c. Provide for the automatic restore of archived data, based upon references to the data (much like what SMS does when you reference an archived dataset) for both online and batch.

4.5 Installation and Delivery

4.5.1 Installation

Contractor must provide technical support for installation during normal business work hours 8:00 a.m. to 5:00 p.m. Monday-Friday.

4.5.2 Delivery

Delivery shall begin within 30 days of execution of the contract by both parties. The contractor shall supply five (5) copies of all manuals required for the installation, operation and maintenance of all software.

4.6 Warranty/Maintenance

4.6.1 Warranty

The Offeror must provide a solution with one (1) year warranty services for all products proposed as detailed in the Section 8 Mandatory Terms and Conditions.

4.6.2 Maintenance

The Offeror must provide:

a. A firm price quote for maintenance of all proposed software for two one-year periods after the initial one (1) year of warranty services.
b. Technical staff available by phone 8:00 a.m. to 5:00 p.m. Monday – Friday.
c. All additional Maintenance requirements as detailed in Section 8 Mandatory Terms and Conditions.

4.7 Training

4.7.1 On-Site Training

The Offeror must detail the kind and amount of onsite training to be provided for:

a. Up to ten (10) engineers for installation and operation
b. Up to twenty (20) people in two sessions to cover the product installation, operation and general areas covering the software proposed.

4.7.2 Training Materials

The Contractor must provide training materials for students, including but not limited to:

a. The overall capabilities of the product
b. Product installation
c. Product operation

4.7.3 Product Documentation

The Contractor must provide the following product documentation:

a. Five (5) copies of hardcopy documentation
b. One (1) copy of softcopy documentation

4.8 Acceptance Test Plan

The acceptance test plan will be developed and mutually agreed upon by DIT and the contractor during contract negotiation/execution.

The Offeror must describe a typical acceptance test plan for the products proposed.

4.9 Acceptance Testing

Acceptance testing will be performed by DIT with an acceptance time period to be determined during contract negotiation/execution.

4.10 Product License

The Offeror must describe how your product is licensed.

4.11 Resourced Based Billing

The Offeror must describe how usage measurement is captured.

4.12 Backup/Disaster Site

The license must allow the Commonwealth to use software at any Backup or Disaster Site.

4.13 Browser or GUI Interface

The Offeror must describe the capability of the proposed product to be operated by a browser, or GUI Interface.

4.14 Resource Monitors

4.14.1 Alerts

The Offeror must describe the capability the monitors have to send alerts.

4.14.2 Frame Work Systems

The Offeror must describe the capability the monitors have to work with frame work systems like TIVOLI or Computer Associates TNG UNICENTER.

4.14.3 Historical Reporting

The Offeror must describe the capability the monitors have to report or replay historical data.

4.14.4 Correlation Capabilities

The Offeror must describe the data correlation capabilities the monitor has.

4.14.5 Help or Suggestion Panels

The Offeror must describe what help or suggestions the monitors have to assist with trouble shooting.

4.15 Security

The Offeror must describe how security is administered.

SECTION 5: DESIRABLE REQUIREMENTS

5.1 General

This section list the desirable requirements the Commonwealth feels would add value to the proposed software. Additionally, the Offeror may propose additional features that would add value to your proposal.

5.2 Software Requirements

5.2.1 Global Requirements

The Commonwealth desires the proposed software:

a. Execute in both batch and on-line.
b. Estimate required DASD amount
c. Provide model JCL for utilities that is user updateable
d. Promote web-enablement

5.3 Administrative Tool Requirements

The Commonwealth desires the proposed software:

a. Provide reverse engineering of DB2 tables and indexes from DB2 catalog.
b. Provide some level of "automation" for routine tasks.
c. Perform historical log analysis and reporting.
d. Help in recovering DB2 objects that have been deleted.
e. Recover/rebuild multiple indexes with one pass of the table.
f. Display DB2 objects in the catalog and their related objects.
g. Unload DDL.

5.4 Archive Tool Requirements

The Commonwealth desires the proposed software:

a. Find all tables automatically.
b. Have ability to access multiple sub-systems.
c. Improve database performance by being able to archive and delete in same process.
d. Fully support referential integrity and understand relationship between tables.
e. Have ability to select rows to archive based on date.

5.5 Installation and Delivery

The Commonwealth desires:

a. 24/7 technical support during the installation period.
b. The Offeror propose additional features or options for Installation and Delivery that would add value to your proposal.

5.6 Warranty/Maintenance

The Commonwealth desires:

a. 24/7 technical support with 2 hour response time.
b. The Offeror may propose additional features or options for Warranty/Maintenance that would add value to your proposal.

5.7 Training

The Offeror may propose additional features or options for Training that would add value to your proposal.

5.8 Acceptance Test Plan

The Offeror may propose additional features or options for Acceptance Test Planning that would add value to your proposal.

5.9 Acceptance Testing

The Commonwealth desires:

a. A minimum acceptance period of 60 days.
b. The Offeror may propose additional features and/or options for Acceptance Testing that would add value to your proposal.

5.10 Product License

The Commonwealth desire to have the right to modify such software or combine it with other programs or material at the Commonwealth's risk.

5.11 Resource Based Billing

The Commonwealth desires resource billing information that DIT can directly tie back to the user.

5.12 Backup/Disaster Site

No desirables for Backup/Disaster Site

5.13 Browser or GUI Interface

The Commonwealth desires that the products offer a browser or GUI interface

5.14 Resource Monitors

The Commonwealth desires the proposed software:

a. Monitor performance at the DB2 Package Level, not just plan level.
b. Provide both real time and historical reporting capabilities.
c. Provide problem analysis, along with the program or resource that is causing the problem.
d. Show the CPU and the I/O consumption at the package level.
e. Report on buffer pool usage.
f. Report lock usage.
g. Provide detailed "explain" output reporting for SQL statements.
h. Run with TSO, CICS, and batch mode.

5.14.1 Alerts

The Commonwealth desires the monitor to send alerts and do threshold monitoring.

5.14.2 Frame Work Systems

The Commonwealth desires the monitor to work with frame work systems such as TIVOLI and Computer Associate's TNG UNICENTER.

5.14.3 Historical Reporting

The Commonwealth desires the monitor have historical reporting capabilities.

5.14.4 Correlation Capabilities

The Commonwealth desires the monitor to have correlation capabilities.

5.14.5 Help or Suggestion Panels

The Commonwealth desires the monitor to provide suggestions as to where to look for problems.

5.15 Security

The Commonwealth desires the proposed products to protect one user's data from another and provide different levels of inquiry such as display and update.

5.16 Description of Proposed Products

The Commonwealth desires the Offeror:

a. Provide an overview of the features and capabilities of the proposed products.
b. Describe the installation process for the proposed products.
c. Describe the relationship of your proposed products to one another.

d. Identify those overall and application-specific features and capabilities which your firm feels differentiates it from its competition.

5.17 Additional Services

Describe and provide pricing information for additional services your organization offers that will add value to and provide benefit to the Commonwealth as it relates to the products proposed.

5.18 Niche Strengths

Describe niche strengths that would help DIT understand how your products will add value to and benefit the Commonwealth.

SECTION 6: TECHNICAL QUESTIONS

SECTION 7: PRICING SCHEDULE

DB2 Tools	Cost
Monitor Performance	_____
Object Administration/Management	_____
Archiving	_____

DB2 Tools Maintenance 1st year after warranty	Cost
Monitor Performance	_____
Object Administration/Management	_____
Archiving	_____

DB2 Tools Maintenance 2nd year after warranty	Cost
Monitor Performance	_____
Object Administration/Management	_____
Archiving	_____

List any additional cost associated with future processor upgrade (3.3)

Section 8: MANDATORY CONTRACTUAL TERMS AND CONDITIONS

The following terms and conditions are **MANDATORY** and shall be included verbatim in any Contract awarded.

1. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."

2. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

3. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over $10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

   1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees

and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

4. ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

5. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

6. DEBARMENT STATUS

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

7. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

8. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

9. CLARIFICATION OF TERMS

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

10. PAYMENT

A. To Prime Contractor:

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve

an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia,* § 2.2-4363).

B. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

(c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

11. QUALIFICATIONS OF OFFERORS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

12. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

13. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or

nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager, DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Fiscal Officer, DIT of the assignment and shall supply the Fiscal Officer with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event DIT receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after the DIT's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of DIT shall promptly notify the Contractor of any assignment notice it receives.

14. MODIFICATIONS

This Contract may be modified in accordance with § 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing on paper and signed in ink by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, The only representatives authorized to modify this Agreement on behalf of the Commonwealth and the Contractor are shown below.

Any Contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or $50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

CONTRACTOR	**COMMONWEALTH OF VIRGINIA**
_____	Contracts Manager
_____	Dept. of Information Technology
_____	Richmond Plaza Bldg., Lobby Level
_____	110 South 7th Street
_____	Richmond, VA 23219

15. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at http://www.tax.state.va.us/. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

16. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

17. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits.

2. Employers Liability - $100,000.

3. Commercial General Liability - $500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

4. Automobile Liability - $500,000 - Combined single limit

18. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract over $30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site

(www.eva.state.va.us) for a minimum of 10 days.

19. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

20. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

21. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: $25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is $500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: $200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is $500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Special Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

22. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

23. NON-APPROPRIATION

All funds for payment of software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

24. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of three years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

25. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

26. PURCHASE OPTION

At any time during the term of this Master Agreement, DIT may order additional quantities of items or features purchased under this Agreement for DIT or other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users" by sending the Contractor a written Delivery Order to that effect, signed by the Commonwealth's Contracts Manager or designated representative. The purchase price shall be the lower of the unit cost identified in any executed Attachment or the Contractor's then-current, published price. The foregoing shall not apply to services provided to the Commonwealth at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

27. PRICE PROTECTION

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement.

28. TERM

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for a period of time to include delivery, installation, training, acceptance, one year of warranty and two years of Software maintenance support services, collectively "Initial Term". By mutual written agreement, this Agreement may be extended for one (1) year periods after the Initial Term. The Commonwealth shall issue a written notice to the Contractor thirty (30) days prior to the expiration of the then current term, stating the requirement to extend the Contract.

29. DELIVERY DATE

Contractor shall deliver all Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

30. RECORDS

The Commonwealth shall maintain appropriate daily records documenting performance during the Acceptance Period and such records shall be conclusive for purposes of determining Acceptance.

31. TRAINING

Contractor shall provide On-site training and training materials, as delineated in *Section 4. Mandatory Requirements*, for up to ten (10) engineers for installation and operation, to be determined by DIT and for up to twenty (20) students, in two (2) sessions on product installation, operation and general information about the software product.

32. MANUALS

At the time of Software installation, Contractor shall provide a minimum of five (5) hard copies and one (1) soft copy of product documentation (Installation and User Manuals). Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities expected of such deliverables.

33. INVOICES

All invoices shall be rendered promptly to DIT after all Products or Services covered by the invoice has been accepted. No invoice may include any costs other than those identified herein. Invoices shall provide at a minimum:

1. Type and description of the Product or Services;
2. Serial number, if any;
3. Charge for each item;
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN);

34. AVAILABILITY OF SOFTWARE

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

35. SOFTWARE SPECIFICATION

Each software Product shall conform to all specifications published or provided by the Contractor or developer in all respects, including, but not limited to, operating performance, timing characteristics, sizing and compatibility.

36. LICENSED SOFTWARE

Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

37. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, perpetual license basis and shall commence upon Acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is

perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder without first obtaining a written decision from a court of competent jurisdiction that identifies that specific remedy.

38. SOFTWARE UPGRADES

Provided the Commonwealth has procured current software maintenance, the Commonwealth shall be entitled to receive any and all upgraded versions of the Software Product that Contractor may make available in the future including any third party Software Product provided by the Contractor under this Agreement. The maximum charge to the Commonwealth shall not exceed the difference between the price which the Commonwealth paid for the present version, and the lowest price at which the Contractor has sold or licensed the upgraded version.

39. CONFIDENTIALITY

The Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. The Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

The Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section entitled "CONFIDENTIALITY" shall terminate three (3) years after the Commonwealth ceases using the Software Product containing the proprietary information.

40. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;

b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;

c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;

d. The right to copy such software for safekeeping or backup purposes;

e. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

f. Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

41. SOFTWARE WARRANTY

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction or errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor, and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

42. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

43. CORRECTION OF ERRORS

In the event Contractor cannot correct errors in the then-current, unaltered version (including updates) of the Software Products to keep such products in specified operating condition by responsive service, the Contractor shall replace or fix the Product within thirty (30) days. In the event Contractor does not keep the Software Product(s) in specified operating condition in accordance with this Agreement, then the Commonwealth, at its sole option, shall have the right to return any or all of the software and related technical data and Contractor shall refund the total fees paid less a pro rata amount based on a sixty (60) month period from the date of Acceptance.

44. PRINCIPAL PERIOD OF MAINTENANCE

The Principal Period of Maintenance (PPM), for Software Support Warranty/Maintenance Services shall be 8:00 a.m. to 5:00 p.m. M-F, EST.

45. RESPONSE TIME

During the PPM, the Contractor shall provide Software Support Warranty/Maintenance Services via telephone to initiate corrective action within a two (2) hour response time.

46. CONTRACTOR'S MAINTENANCE POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its maintenance representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

47. MAINTENANCE AND SOFTWARE SUPPORT

When requested by the Commonwealth, the Contractor shall always be responsive to maintenance requirements of the Commonwealth. Maintenance Service (Software Support Services) shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product. The Commonwealth shall be entitled to all revisions, patches, updates, enhancements and upgrades for the Software during any covered Maintenance period at no additional charge. Maintenance charges shall include all travel that the Contractor deems necessary at its sole discretion, labor, documentation, and telephonic support. At the expiration of the initial first year Warranty , the Commonwealth shall have the option of purchasing up to two (2) additional one-year periods of Maintenance Support Service as long as the Software Maintenance is generally made available to Contractors' other customers, at the prices contained herein. Thereafter, additional periods of Software maintenance support shall be provisioned as described below. The Contractor's response times during these Maintenance periods for problem determination and resolution is as specified herein under the section entitled "Response Time."

48. MAINTENANCE RENEWAL

At the expiration of the initial first year Warranty, and the second and third year Maintenance periods, Software Support Maintenance under this Agreement may be renewed at the sole option of the Commonwealth for any instance whereby the Contractor continues to offer continuing Software maintenance to its other customers. The Commonwealth shall issue a written notification to the Contractor for each additional one (1) year period that Software Support Maintenance Services is required. The price for such additional maintenance for years two and three shall be as set forth herein. The percentage increase for years after three, shall not exceed 8% (eight percent) from any previous year. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer.

49. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 51.

50. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the

claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder without a written decision from a court of competent jurisdiction identifying that specific remedy.

51. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor's liability under this contract for loss or damages to government property caused by the use of any defective or deficient supplies, products, equipment and/or services delivered under this Contract shall not exceed the greater of two million dollars ($2,000,000.00) or two times the total amount paid to the Contractor under this contract. The Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation per liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or willful negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement."

52. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

53. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

54. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

55. COMPLIANCE WITH FEDERAL LOBBYING ACT

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

56. NONVISUAL ACCESS TO TECHNOLOGY

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

57. DISASTER RECOVERY

By executing this Agreement, Contractor hereby authorizes the Commonwealth to operate Contractor's licensed software products identified in this Agreement at other location(s) for purposes of disaster recovery and disaster recovery testing. In addition, Contractor recognizes that to prepare for such an event the Commonwealth must test the Contractor's software product (normally for a periods of two to three days, twice annually) at a disaster recovery vendor's Cold Site. The use of Contractor's software products by the Commonwealth, at such times and under such events will be in accordance with the terms and conditions of this Agreement. Contractor agrees that there shall be no additional charge to the Commonwealth when Contractor's software products are used during an actual disaster or for disaster recovery testing.

58. CONTRACTOR'S REPORT OF SALES

In any event wherin DIT places an order for Products that are to be licensed at any other site than DIT, then the Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales of Product for other than the DIT location under this Contract by calendar quarter; i.e., January through March, April though June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

59. INDUSTRIAL FUNDING ADJUSTMENT

In any event wherin DIT places an order for Products that are to be licensed at any other site than DIT, then the Contractor must pay DIT, an Industrial Funding Adjustment (IFA) for all Products ordered for other than the DIT location. The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates

agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

Section 9: DESIRABLE CONTRACTUAL TERMS AND CONDITIONS

The following terms and conditions are desirable. The Contractor may propose alternative language, but the basic form of the Agreement shall be retained. Contractors are requested to limit their proposed changes, if any, to those of a substantive nature.

60. SCOPE OF AGREEMENT

This is a Master Agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and _____(the "Contractor"), a _____ corporation having its principal place of business at_____ for the purchase of software (the "Product" or "Products"), along with any required support services (the "Services") pursuant to the Commonwealth's Request For Proposal #2003-039, dated _____ (the "RFP") and the Contractor's proposal, dated _____ __, 2001 in response thereto.

At any time during the term of this Master Agreement or any extension thereof, DIT may order additional quantities of Software or Services purchased under this Agreement for DIT or other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users".

This Master Agreement may only be used subject to a valid sole source or other appropriate procurement method as delineated in the VPPA, or other as DIT or its successor deems appropriate.

61. INTERPRETATION OF AGREEMENT

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal if any, if submitted in response to a Request For Proposal ("RFP"); and (4) the Commonwealth's RFP, if any. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

62. INSTALLATION RESPONSIBILITY

Except where otherwise expressly provided, "delivery" includes, without limitation, shipping FOB destination, unpacking and preparation of Product, and the provision for On-site technical staff and Software Support Services during installation. Delivery shall not be complete until the Commonwealth, with assistance by Contractor's On-site technical staff, if required by the Commonwealth, completes the installation of all Products ready for Acceptance Testing. The installation schedule shall be mutually agreed upon by both parties prior to execution of the contract.

63. COMMENCEMENT OF ACCEPTANCE TESTING

Products shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products are ready to begin Acceptance Testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and change the delivery date accordingly. During the Acceptance Testing period, the Contractor shall provide Telephonic Support Services twenty-four (24) hours a day, seven (7) days a week. As required by the Commonwealth, Contractor shall provide On-site Technical Support within twenty-four (24) hours of notification, for a period of up to five (5) days.

64. REQUIRED PERFORMANCE LEVEL

To qualify for Acceptance, all Products must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in the Acceptance Plan developed and mutually agreed to by the Contractor and the Commonwealth, for a period of sixty (60) consecutive days. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product does not meet the standard of performance during the initial sixty (60) consecutive days, the Acceptance Period shall continue on a day-to-day basis until all Products concurrently meet the standard of performance for sixty (60) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the Acceptance Period, but such a delay shall not exceed thirty (30) consecutive days.

65. ACCEPTANCE

Products shall be deemed accepted on the first day after successful completion of the Acceptance Period defined herein under "REQUIRED PERFORMANCE LEVEL". Upon request, the Commonwealth shall provide written confirmation of Acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the Acceptance Period, then the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

66. CONTRACT DOCUMENTS

Nothing contained in this Contract is considered Proprietary or Confidential or containing trade secrets as determined by the Contractor. All Contractor provided quotes and other information, in response to DIT's request in the performance of this Contract, shall not contain any proprietary or Confidential information. The Contractor hereby irrevocably withdraws any claim that any future document provided to in response to actions under this Contract, should be treated as proprietary, confidential or contain trade secrete information.

All Contractor documents and information provided in response to DIT's request under the performance of this Contact, as well as all documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Contractor agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted herein.

67. EXPANDED RESPONSE TIMES

The Commonwealth desires the Contractor to identify other plans and pricing for response times not identified in the Mandatory sections of this RFP that would be available to the Commonwealth under this Contract.

68. COMMONWEALTH'S RIGHT TO MODIFY SOFTWARE

The Commonwealth shall have the right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk.

69. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CONTRACTOR	**COMMONWEALTH OF VIRGINIA**
BY: _____	**BY:** _____
NAME: _____	**NAME:** Jeff Davis
TITLE: _____	**TITLE:** Contracts Manager
DATE: _____	**DATE:** _____

ATTACHMENT "A"
TO
AGREEMENT VA_____ – ___
FOR THE
VIRGINIA DEPARTMENT OF _____

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA _____ – ____ between XYZ and the Commonwealth of Virginia.

CONTRACTORS DO NOT ADD ANY INFORMATION TO THIS ATTACHMENT "A" AT THIS TIME. THIS ATTACHMENT WILL BE COMPLETED DURING CONTRACT NEGOTIATIONS BETWEEN THE PARTIES TO THIS AGREEMENT.

LISTING OF ALL PRODUCT PRICES

LISTING OF ALL PRODUCT MAINTENANCE PRICES

SHIP TO BILL TO ADDRESSES

DELIVERY SCHEDULE

AGENCY POINTS OF CONTACT

ATTACHMENT "B"
TO
AGREEMENT VA – _____ – ___
FOR THE
VIRGINIA DEPARTMENT OF _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Printed Name: _____

Organization: _____

Date: _____

APPENDIX A

PARTICIPATION IN STATE PROCUREMENT TRANSACTIONS BY SMALL BUSINESS AND BUSINESSES OWNED BY WOMEN AND MINORITIES

The following definitions will be used in completing the information required by one or more of the three categories of businesses contained in this Appendix as applicable to your firm: (1) Participation by Small Businesses; (2) Participation by Businesses Owned by Women; and (3) Participation by Businesses Owned by Minorities.

DEFINITIONS

Period is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

Firm Name, Address and Phone Number is the name, address and business of minority-owned business with which the Offeror plans to involve in this contract, as applicable.

Contact Person is the name of the individual in the specified small business, women-owned business or minority-owned business who would have knowledge of the specified contracting and would be able to validate the information provided in this list.

Type Goods or Services is the specific goods or services the Offeror has contracted for from the specified small, women-owned or minority-owned business over the specified period of time or plans to use in the performance of this contractor, as applicable. The Offeror will asterisk (*) those goods and services that are in the Offeror's primary business or industry.

Dollar Amount is the total dollar amount (in thousands of dollars) the Offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this contract, as applicable.

%Total Company Expenditures for Goods and Services is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the Offeror over the specified period for goods and services.

% of Total Contract is calculated by dividing the estimated dollars planed for the indicated firm on this contract by the total Offeror estimated price of this contract.

PARTICIPATION BY SMALL BUSINESS

A. Offeror certifies that it ( ) is, ( ) is not, a small business concern. For the purpose of this procurement, a small business is a concern, including its affiliates, which is independently owned and operated, but is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.

B. List Small businesses with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12 -month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

PARTICIPATION BY SMALL BUSINESS
(Continued)

C. Describe Offeror's plans to involve small businesses in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

PARTICIPATION BY BUSINESSES OWNED BY WOMEN

A. Offeror certifies that is ( ) is, ( ) is not, a women's business enterprise or women-owned business. For the purpose of this procurement, a women-owned business is a concern that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.

B. List businesses owned by women with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

PARTICIPATION BY BUSINESSES OWNED BY WOMEN
(Continued)

C. Describe Offeror's plans to involve businesses owned by women in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

PARTICIPATION BY BUSINESSES OWNED BY MINORITIES

A. Offeror certifies that is ( ) is, ( ) is not, a minority business enterprise or minority-owned business. For the purpose of this procurement, a minority-owned business is a concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cases. Such persons include, but are not limited to, Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts.

B. List businesses owned by minorities with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

PARTICIPATION BY BUSINESSES OWNED BY MINORITIES
(Continued)

C. Describe Offeror's plans to involve businesses owned by minorities in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

APPENDIX B

Appendix B intentionally left Blank

APPENDIX C LIST OF PROPRIETARY INFORMATION

APPENDIX D VENDOR REFERENCE FORM

REQUEST FOR PROPOSAL 2003-39

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF INFORMATION TECHNOLOGY

VENDOR CLIENT REFERENCE FORM

Vendor Name:_____

CLIENT

Name of Firm:_____

Address:_____

_____

_____

Telephone Number of Contact:_____