COMMONWEALTH OF VIRGINIA Virginia Information Technologies Agency

SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMICATIONS				FIN:	
1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:
	2003-051	Jul 1, 2003	Jul 17, 2003	314	

For Information Call: Douglas Crenshaw (804) 371-5993

6. ISSUING OFFICE:	7. SHIP TO:
Virginia Information Technologies Agency Office of Acquisition Services 110 S. 7th Street, Lobby Floor Richmmond, Va. 23219-9300 ATTN: Bid Section	Dept of Health 1500 E. Main Street Suite#217 Richmond, VA 23219

SOLICITATION

8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Jul 17, 2003.

CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions

This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 10; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-19; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference.

Offers will be publicly opened at: 2:10 p.m. local time Jul 17, 2003, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.

All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.

Douglas L. Wilson, Acting Director
Office of Acquisition Services

Signature

OFFER

In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.

9. CONTRACTOR:	10: BILL TO:
Company Name: _____ Address: _____ City, State: _____ Signature: _____ Name (Typed): _____ Title: _____ Phone: _____	Virginia Department of Health Attn: Purchasing, Room 217 P.O. Box 2448 Richmond, VA 23218

AWARD

11. Accepted as to Item Numbers:	12. Amount:	13. Award Date:

14. Name of Contracting Officer:	15. COMMONWEALTH OF VIRGINIA	PAGES:
Jeff Davis Contracts Manager	By:	1 of 10

FORM 62 Rev. 12/15/2000

VITA-62A	SCHEDULE	IFB NO.	Page:
07/01/03		2003-051	2 of 10

NAME OF CONTRACTOR	REQUIRED DELIVERY DATE:	INITIALS
	(RDD) 20 DAYS ARO	

ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
1	Appendix A: Software	1	lot		
2	Appendix B: Hardware	1	lot		
3	Appendix C: Installation Services	1	lot		
	Above items to include warranty per attached Terms and Conditions.				
4	Hourly charge to provide consulting services to change email domains. This is a fully burdened rate. This rate includes all expenses incurred by the Contractor: i.e., but not limited to travel, mileage, and other to provide the Service	1	ea.		
	TOTAL EVALUATED COST				

1. This Public Body does not discriminate against faith-based organizations.

2. The Virginia Information Technologies Agency (VITA), on behalf of the Virginia Department of Health (VDH), Richmond Va. location, seeks to purchase hardware, software and services to ensure accessibility to email at all times. The proposed purchase will replace existing equipment and will provide the redundancy needed to ensure that email is always available to VDH personnel. It is imperative that email is available to Emergency Preparedness and Response personnel and that key public health professionals have the ability to communicate with the Centers for Disease Control, emergency health contacts, private physicians, the legislature and the citizens of the Commonwealth.

3. VDH seeks a complete turnkey solution. Only bids that offer all of the hardware, software and services listed herein will be considered to be responsive. All hardware, software and services to be purchased are listed in the appendices to this solicitation. All hardware must be new.

4. SCOPE OF WORK:
The proposed solution is limited to Sun products, and includes three Sun Microsystems V480 servers. Two of these will be at VDH's central site running in a clustered environment. In the event of a failure on one of the servers, the remaining server will take over without interruption to the VDH staff. The third server will be located at VDH's disaster recovery site. Utilizing Sun StorEdge Availablity Suite, data stored on the main servers will be replicated every ten minutes or less to the remote server. In the event tht Internet service, power or loss of the complete main building should occur, the remote server will take over. In addition to the three servers listed above, the solicitation includes two Sun Microsystems 280R servers. One will be located at the main site and the other will be located at the disaster site. The purpose of these servers is to provide Internet mail relay and check all incoming and outgoing mail for viruses. Also, this solicitation includes two Sun Microsystems Sun Fire V120 servers to serve as LDAP servers, one at the main site and one at the disaster site.

5. The system shall be in place no later than 90 days after delivery of all equipment, while maintaining the operations of the current system. As stated, VDH requires a turnkey solution that would include the installation and configuration of all hardware and software for both the central and disaster recovery locations, including the Solaris operating system, SunOne Web Communications Bundle, StorEdge Availablity Suite, Solstice Backup and Sun Cluster, and any other hardware or software required for successful operation. Configuration of the SunOne Web Communications Bundle includes the costs to transfer VDH's current LDAP (directory) entries and message store (mailboxes) to the new system.

6. This Invitation for Bids will take place in two stages. The initial stage will consist of the submission of a "Technical" response in which the bidder will respond to the mandatory requirements of the solicitation. Bidders are directed to examine the requirements of the solicitation and respond that they can supply all specified hardware, software and services. If a bidder notices that a hardware, software or installation requirement is missing or is incorrectly stated, that bidder is requested to notify the procurement engineer listed on the first page of this solicitation no later than 4:00 p.m. local time, July 7, 2003.

   Once the Technical responses have been examined, all Bidders who have met the mandatory requriements will be asked to submit a "Cost" response. The total cost submitted shall include the cost of transportation (FOB destination), inside delivery and all cables, connectors, interfaces, media and documentation required for successful implementation and operation at the customer's sites. Bids must reflect a complete, turnkey solution. The Commonwealth will not pay for any hardware, software or service required that is not specifically listed in the bidder's cost proposal. The lowest-priced responsible and responsive bid will be selected for an award.

7. The Commonwealth reserves the right to request any bidder to submit any information which the Commonwealth deems necessary in order to clarify and evaluate a bidder's offer.

8. Inside delivery of all equipment is required within 20 days of award. Partial shipments are not desired. Contractor shall remove all packing materials.

9. No-bids are neither required nor desired.

10. At the time of submission of response, the Bidder must currently be an authorized Sun dealer or reseller. Bidder shall provide written proof of certification. The Commonwealth reserves the right to confirm the status of the Contractor as an officially authorized Sun dealer or reseller.

11. The Contractor shall certify that the Equipment identified in the schedule is eligible for immediate warranty/maintenance from the manufacturer, and is eligible to be added to VDH's current Sun maintenance contract. Any costs incurred in meeting these requirements shall be borne by the Contractor.

12. The equipment shall have a 3 year warranty as described in the attached Terms and Conditions, at no additional charge to the Commonwealth.

13. In the event a Contractor defaults on a contract, the Commonwealth reserves the right to award to the next lowest-priced responsive and responsible bidder.

14. VDH reserves the right to purchase the additional service of transferring the email system to a different domain. Please provide an hourly price for this service on page 2 of this document.

15. All bidders must be registered with the VITA prior to award. The Bidder's Federal Identification Number (FIN) should be placed in the appropriate box on page 1 of this solicitation. In the event the Bidder does not supply the appropriate idenification number, VITA may not be able to verify registration and the Vendor's bid may be ruled non-responsive without appeal.

    Registration forms are available from the Office of Acquisition Services (OAS) website at http://www.oas.virginia.gov, or bidders may call (804) 371-5900 to request forms.

16. By date of award, all bidders are required to be registered with the Commonwealth of Virginia's e-Procurement website (eVa), located at http://www.eVa.state.va.us. Bidders are advised to print the eVa page which lists their firm's name and submit it with the bid response.

    If not registered with eVa, please visit this website: https://web-9.buysense.com/vssu/glue/default.asp. Bidders are advised to print a copy of the completed registration confirmation and submit it with the bid response.

    FAILURE TO PROVIDE EVIDENCE OF eVa REGISTRATION MAY RENDER BID NON-RESPONSIVE.

17. The Office of Acquisition Services (OAS) maintains a website at http://www.oas.virginia.gov. Vendors are requested to check this site prior to submitting bids,in the event the bid is amended or is extended.

18. Bid results will not be given out by telephone. Bidders wishing results should submit a stamped, self-addressed envelope along with their bid. Bid results will be posted to the OAS website.

19. The e-mail address of the individual submitting the bid is:

    _____

20. VITA will not sign or execute any additional contract, license or other agreement containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, VITA, shall have no validty and the attached Terms and Conditions shall supersede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submitting a bid.

21. APPENDIX A SOFTWARE

AVAILABILITY SUITE

-NAV2S-LCO-9929. 1 each.
Sun StorEdge Availablity Suite software license (per 1TB storage). RTU only.

-NAV9S-310-99YS. 1 each.
Sun StorEdge Localization Availablity Suite 3.1 media kit and documentation.

CLUSTER SOFTWARE

-CLUZS-999-99M9. 1 each.
Sun Cluster 3.1 Base media kit for SunPlex Systems latest. This part number refers to the latest release of SC 3.1 base software.

-CLA9S-999-99M9. 2 Each.
Sun Cluster 3.1 Agents media kit for Sun Plex Systems latest CD. This part number refers to the latest release of SC 3.1 Agents software.

-CLSIS-LCO-G999. 2 each.
SunPlex server license for Sun fire V480. One license is required per server.

22. APPENDIX B Hardware

V480 Servers and Storage Arrays.
Note: There are 3 V480 servers required. Quantities listed below are for each of those servers.

-A37-WSPF4-08GQB 1 each.
Sun Fire V480 Server, 4@ 900MHz Cu., 8GB memory, 2x36GB 1.0", 10K RPM FC-AL disks, DVD, 2 power supplies. Standard configuration.

-X311L 2 each.
Localized power cord kit, North American/Asian.

-X6767A 1 each.
StorEdge 2Gb PCI single fibre channel network adapter, 200MB/s per channel with optical interface.

-XTA3510R01A2R365 1 each.
StorEdge 3510 fibre channel array, rack ready, 365GB (5 x 73GB 10K RPM disks) w/2 FC-AL HW RAID controller, 1GB std cache per controller. 2 A/C power supplies and StorEdge configuration service.

-X311L 2 each.
Localized power cord kit, North American/Asian.

-X9732A 1 each.
2M LC to LC FC optical cable.

-XTA-3310-RK-19S 1 each.
Rack kit, 2U, 19" cab. 22-28".

-SDESS-210-9FNS 1 each
Sun Storage Automated Diagnostic Environment Ver. 2.1 media and documentation and no charge unlimited RTU with purchase of new select Sun StorEdge storage array.

-SOLZS-090C9AYM. 1 each
Solaris 9 to be included with each server. Include Solaris 9 System Administrator's medai kit (latest release). Contains multilingual CD & DVD media & English installation documentation, SPARC Platform Edition.

Disk Option for 3510 StorEdge:
-XTA-3510-73GB-10K 1 each.
73GB fibre channel 10K RPM drive.

23. LDAP Servers
Note: There are 2 V120 servers required. Quantities listed below are for each of those servers.

N25AUTA1-9S-102AV1 1 each
Sun Fire V120, one pack 650 MHz, 512KB eCache, 1GB memory, 2 x 36GB 10K RPM SCSI disks, 2x10/100 on-board Ethernet ports. 2xUSB ports, UltraSCSI II port, removable system configuration card, internal A/C power supply, no keyboard or mouse port, no graphics, no audio. Single 32-bit/33MHz PCI slot. Includes 19 inch rackmount kit, Solaris 8 & LomLite2 pre-installed. Standard configuration.

SOLZS-090C9AYM 1 each.
Solaris 9 System Administrator's media kit (latest release). Multilingual CD & DVD media & English installation documentation. SPARC platform edition.

-X311L 1 each.
Localized power cord kit, North American/Asian.

-X7288A 1 each.
X-Option Internal DVD-ROM drive, slimline, IDE (for Netra T1 AC200/DC200, Sun Fire V120, Netra 120). Supports 8X speeds for DVD-ROMs and 40x speeds for CD-ROMs.

V280R Servers
Note: There are 2 V280R servers required. Quantities listed below are for each of those servers.

-A35-WBF2-8GRB1 1 each.
Sun Fire 280R server, two 1.2GHz UltraSPARC-III processors, 8MB E-cache, 8GB memory, two 73GB 10K RPM HH internal FCAL disk drives, DVD. Two power supplies. Pre-loaded Solaris 8 & Solaris 9, Standard Configuration.

-X311l 2 each.
Localized power cord kit, North American/Asian.

24. L25 TAPE LIBRARIES
There are two L25 tape libraries. Quantities listed below are for each.

-SG-XLIBL25L-BASE 1 each.
L25 LTO base unit, 25 cart cap, 0 drives.

-LSBIS-610-2009 1 each.
Autochanger software module 1-32 slots

-SG-XTAPLTO-MOD 1 each.
LTO HVD drive option, L25/100 modular libraries.

-SG-XMGMTCARD-MOD 1 each.
Mgmt. card, L25/100 modular libraries.

-LSBIS-610-2102 1 each.
Network addition for Solaris.

-LSBMS-610-2088 1 each.
Solstice backup media kit

-X6541A 1 each.
Dual-channel differential UntraSCSI host adapter, PCI, includes two 2m SCSI cables.

25. APPENDIX C INSTALLATION

-CLUS-WG-INSTALL 1 each.
Sun Enterpise Cluster Startup Pkg. Planning and install for Workgroup Cluster.

-ARRAY--INS-BAS2 3 each.
ARRAYSTART

-ARRAY-INS-PER-TRAY 3 each.
Sun StorEdge ArrayStart installation service. Per-tray charge. ARRAYSTART Base Charge plus Per-Tray charge provides hardware and software installation and configuration of Sun StorEdge arrays. 1 ARRAY-INS-PER-TRAY for each disk tray to be installed.

-PS-CLNODC: 3 each.
Building block of Cluster Implementation Service

-PS-CLRGRC: 1 each.
Cluster Implementation Service Module (CIS)

-PS-CLSTND: 3 each.
Cluster Information Service Module

-PS-WS-IPMSQ: 3 each.
iPlanet Message Server Quick Start Service. Two week fixed-scope engagement to install, configure and test a standard implementation of iPlanet Message Server at the customer's site. The customer shall receive knowledge transfer on utilization and maintenance of the product.

SOLICITATION INSTRUCTIONS
REV. 03/01/02

1. EXPLANATION TO VENDORS

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. PRIOR TO SUBMISSION OF A BID, VENDORS ARE REQUIRED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, READ ALL TERMS AND CONDITIONS AND CHECK THE ACQUISITION SERVICE DIVISION'S (ASD'S) WEB PAGE AT (HTTP://ASD.STATE.VA.US) FOR ANY AMENDMENTS OR CHANGES. THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE COMMONWEALTH OF VIRGINIA VENDOR'S MANUAL WHICH WAS REVISED IN DECEMBER 1998 AND ANY REVISIONS THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY. A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps). Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.

B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.

C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; DIT Form 62A or 62B. Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.

D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution which meets the required specifications of the procurement. Additional bids shall be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

VENDORS SUBMITTING ADDITIONAL BIDS ARE REMINDED THAT THE TERMS AND CONDITIONS WHICH APPLY TO THE ORIGINAL BID SHALL ALSO APPLY TO THE ADDITIONAL BID AND ANY MODIFICATION TO TERMS AND CONDITIONS OF A SOLICITATION OR THE ADDITION OF RESTRICTIVE PROVISIONS BY A BIDDER SHALL BE CAUSE FOR REJECTION OF THE BID.

E. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN BLOCK #6 OF THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Vendors must pay particular attention to ensure that the bid is properly addressed. The State is not responsible if the bid is not properly addressed. The State is not responsible if the bid does not reach the destination specified by the date and time identified in block #8 page 1 of the Bid. Sealed bids received after the date and hour identified in block #8 are automatically disqualified, and will not be considered. All bids must be sealed, marked and addressed, to the address shown in block #6 of the Solicitation, and marked on the outside of the vendor's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

From: Name of Vendor
Street or Box Number
City, State, Zip Code
Due Date Time
IFB No.

4. SPECIFICATIONS AND USE OF BRAND NAMES

Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bids to the specific brand, make or manufacturer named. Any item which the State at its sole discretion determines to be the equal of that specified as defined in the Schedule, will be accepted. The award will be made to the lowest responsive and responsible bidder or offeror offering the functional equivalent to the brand name described in the specification. Thus, equivalent products of other manufacturers will be considered only if proof of equivalency is contained in or accompanies the bid.

5. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)

B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB.

6. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. The content of these solicitations will be made public in accordance with Paragraphs 1.9 and 2.4 of the Vendor's Manual. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

7. SOLICITATION TERMS AND CONDITIONS

The terms and conditions contained in this solicitation are considered mandatory and are the only terms and conditions governing transactions under any contract awarded as a result of this solicitation.

If the vendor includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, then it is understood that those terms and conditions are of no consequence to any resulting contract.

Any other modification, addition, clarification, or change to the mandatory terms and conditions by the vendor shall cause the bid to be rejected.

8. AWARD OF CONTRACT

Bids shall be evaluated and the responsive and responsible bidder offering the lowest price will be awarded the Contract. The State reserves the right to reject any and all bids in whole or in part and to waive any informality in the bids.

9. AWARD NOTICES

Upon the completion of evaluation, the State will either post a NOTICE OF AWARD (NOA) or a NOTICE OF INTENT TO AWARD (NOITA). If a NOITA is used, the notice will be publicly posted ten days prior to the actual award date of the contract. All award notices will be posted on ASD's Web Page (HTTP://ASD.STATE.VA.US) and posted in ASD's lobby in written format.

A NOTICE OF INTENT TO AWARD OR A NOTICE OF AWARD will be mailed to any bidder submitting a self-addressed, stamped envelope with their bid.

NOTICES OF INTENT TO AWARD OR NOTICES OF AWARD will be posted in accordance with paragraph 6.3 of the Vendor's Manual.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

10. FAILURE TO DELIVER

Failure to comply with the terms and conditions of the IFB or to deliver equipment, software or services identified in the solicitation at the price quoted may result in cancellation or rescission of the award/contract by the Commonwealth and may subject the Contractor to removal from DIT's Vendor Registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

11. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid. All amendments will be posted to the ASD's Web page at (http://asd.state.va.us) and posted in ASD's lobby in written format.

If the bid opening date is extended the new date and time will be clearly shown on the face of the amendment.

Bidders will be required to sign and return a copy of the amendment with their bid to indicate that they have received the document and are aware of the changes made.

12. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Vendor understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder' firm.

13. DEMONSTRATIONS

The State reserves the right to require the Bidder to demonstrate to the satisfaction of the State, that the products offered will perform in a completely acceptable manner and to meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the State and Bidder. A Bidder refusing to demonstrate his products bid after determination that he is the apparent low responsive and responsible bidder may be removed from DIT's vendor registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

14. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with Chapter 9 of the Vendors Manual.

15. VENDOR REGISTRATION

AN AWARD WILL NOT BE MADE TO ANY BIDDER NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than the award date. Call (804) 371-5900 to request a registration form.

16. CONTRACT

Any contract which is awarded as a result of this solicitation, offer and award shall be between DIT and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the schedule or any terms and conditions of the contract. All problems associated with the resulting contract shall be brought to the attention of the Contracts Manger, DIT.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing to the issuing office (See Block #6 DIT Form #62) at least ten (10) days prior to the closing date.

17. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of *Code of Virginia*, Section 2.2-4342, 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 reason 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 document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.**

CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BID (IFB) #2003-051

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency), will acquire Hardware, Software and Services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor." This Contract is executed by VITA on behalf of the Virginia Department of Health, Richmond Virginia location.

The Virginia General Assembly passed legislation that abolishes the Department of information Technology as of July 1, 2003. All activities and functions of DIT will be consolidated into a new agency that will become the Virginia Information Technologies Agency. Therefore, for the purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

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 meeting these requirements.

b. The Contractor will include the provisions of 1. 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 bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, 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 bids, bidders 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 bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids 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. 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.

2) 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 (2) 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.

9. QUALIFICATIONS OF BIDDERS

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

10. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without the Virginia Information Technologies Agency's (VITA'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 VITA 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 VITA'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 VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, 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 VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA'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 VITA shall promptly notify the Contractor of any assignment notice it receives.

11. MODIFICATIONS

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by authorized representatives. No modifications to this contract shall be effective unless it is in writing and signed 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 authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation.

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.

12. 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.

13. 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:

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

b. Employers Liability - $100,000.

c. 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.

d. Automobile Liability - $500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

14. 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.

15. 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.

16. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that 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 bidder is responsible to clearly specify and 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 bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.

17. 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.

18. 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-6a
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.

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.

eVA BUSINESS-TO-GOVERNMENT CONTRACTS

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.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

19. 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.

20. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

a. Prices and options committed to remain in force over a specified period(s) of time;

b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

21. INSTALLATION DATES (or SERVICE COMMENCEMENT DATES)

a. The Contractor shall deliver/install the requested Hardware, software, or services ready for use, by the installation date (day, month, year) identified as the required delivery date (RDD) in the Schedule.

b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.

c. If the Hardware, software or services is not delivered/installed within the time specified in the Schedule, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver/install the proposed Hardware as stated in response to a solicitation document may result in removal from VITA's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.

d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

22. RISK OF LOSS OR DAMAGE

The Contractor shall have the risk of loss or damage to all Hardware until clear and unrestricted title to such Hardware is transferred to the Commonwealth.

23. HARDWARE CONDITION

All Hardware to be supplied by Contractor shall be new Hardware.

24. 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 Hardware, 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 Hardware or software furnished hereunder with any Hardware 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 Hardware 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 Hardware, 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.

25. NON-APPROPRIATION

All funds for payment of Hardware, 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.

26. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

27. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all Hardware and software specifically listed in the Schedule, and the notes in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Hardware and/or software acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for Hardware acquired under this Contract unless signed by the Contracts Manager, VITA, or his alternate as designated by the Director, VITA.

28. TITLE

Clear and unrestricted title to all Hardware purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

29. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

30. TERM

The term of this Contract shall be from the date of award and continue through delivery, installation, acceptance, and three year Warranty.

31. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

32. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

33. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, 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, Hardware and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

34. SITE PREPARATION

a. Hardware environmental specifications, if required, for the Hardware to be delivered under this Contract shall be furnished in writing by the Contractor upon award. These specifications shall be in

such detail to ensure that the Hardware to be installed shall operate efficiently from the point of view of environment.

b. The State shall prepare the site at its own expense and in accordance with the Hardware environmental specifications provided by the Contractor.

35. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, Hardware, software and services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor to test, evaluate and accept the materials, Hardware, software and services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractors materials, Hardware, software or services fail to meet the Contract specifications or other requirements, or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, Hardware, software or services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, Hardware, software or services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

36. FIELD MODIFICATIONS AND/OR ENGINEERING CHANGES

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the State at no additional charge for a period of one (1) year from the date of installation. The State reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

37. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of Hardware installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

38. GUARANTEE (WARRANTY)

Contractor will provide "Global Warranty for entry level servers" for a period of thirty-six (36) months, beginning on the date of acceptance, at no cost to the State. Contractor shall act as sole point-of-contact for all units repaired under warranty.

39. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the Hardware or services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the Hardware will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

40. 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.

41. TITLE (SOFTWARE/FIRMWARE)

The 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.

42. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the 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 a decision or ruling from a court of competent jurisdiction.

43. WARRANTY SOFTWARE

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum ninety (90) days after installation. Software Products that 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.

In addition, the Contractor agrees to provide all patches, fixes, revisions, updates, upgrades and releases to both the software/firmware and applicable documentation, which may be released by the software developer, along with unlimited telephone support for the duration of the warranty period.

44. 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 Hardware;
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.

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.

45. CONFIDENTIALITY

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. 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.

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 G.3 shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

46. 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 "A" 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.

47. CONTRACTOR'S REPORT OF SALES

The Contractor must report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract within sixty (60) days of payment for goods delivered under this Contract. 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, VITA, and a copy of the report to the Contracts Manager, VITA, both within 60 days after receiving payment. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy.

48. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay VITA, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 60 days after receiving payment for goods delivered under this Contract. The IFA equals two percent (2%) of the total 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. The payment shall be made by check made payable to the Controller, VITA.

If the full amount of the IFA is not paid within the 60 calendar days after receiving payment for goods delivered under this Contract, then 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.

49. 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.

50. ORDERS

VITA reserves the right to issue Order/s against this Contract for additional Services related to this procurement. These additional hourly On-Site Services shall be as priced on the Schedule IFB 2003-051 of this Contract. VITA may issue Order/s at any time during the Term of this Contract.

ATTACHMENT "A"
TO
IFB 2003-051

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: _____