

INVITATION FOR BIDS

Issue Date: June 16, 2010...IFB # VCCS-ITS-09-011

Title: Large/Midrange and Entry Level Servers, Desktop and Laptop PCs, and Related Peripheral Products Purchasing Contracts **(Re-Bid)**

Commodity Code: 20400

Issuing Agency: Commonwealth of Virginia
Virginia Community College System
Purchasing Office - 16th Floor
James Monroe Building
101 North 14th Street
Richmond, VA 23219

Using Agency Location: Virginia Community College System
Information Technology Services
James Monroe Building
101 North 14th Street
Richmond, VA 23219

Sealed Bids Will Be Received Until: August 3, 2010 @ 3:00 P.M.

Purchasing Inquiries should be directed to: **Nick Kaveski, CPPB, VCO** email nkaveski@vccs.edu

Phone: (804) 819-4928 Fax: (804) 819-4764

Technical Inquiries should be directed to: **Fred Franklin**, email ffranklin@vccs.edu Phone: (804) 819-4982

101 North 14TH Street, James Monroe Building - 16th Floor, PURCHASING OFFICE

IF BIDS ARE MAILED, SEND DIRECTLY TO **ISSUING AGENCY** SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO: Address Shown Above

In Compliance With This Invitation For Bids And To All The Conditions Imposed Therein, The Undersigned Offers And Agrees To Furnish The Goods/Services At The Price(s) Indicated In Accordance With The Attached Signed Bid.

Virginia Contractor License No. N/A

Class: N/A Specialty Codes: N/A

Name and Address of Firm:

Date: _____

By: _____

Signature in Ink

Name/Title: _____

FEI/FIN No. _____

Telephone Number: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, Section 2.2-4343.1 or against a Bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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I. PURPOSE:

This Invitation for Bids (IFB) is to secure bids to establish competitive system-wide contracts with multiple Contractors for large servers, midrange servers, business class desktop computers, business class laptop computers, hardware maintenance, related peripheral products, and operating system software supporting automation for the VCCS. These contracts shall be structured so that emerging technology is automatically included as it becomes available. There are no guaranteed quantities associated with any contract issued as a result of this solicitation. The VCCS intends for these contracts and pricing to be available to all Public Institutions of Higher Education of the Commonwealth of Virginia. Contract use shall not be limited to the Virginia Community College System.

II. BACKGROUND:

The Virginia Community College System (VCCS) is made up of twenty-three colleges and the System Office. The VCCS has a 40-year track record of educational excellence and innovation to serve the needs of our citizens and strengthen the Commonwealth's economy. Comprised of 23 colleges on 40 campuses, Virginia's community colleges give every Virginian the opportunity to gain a quality education. Each college and campus location maintains appropriate computer labs and automated classrooms to serve their student population. The VCCS maintains a forever evolving system-wide operation using state of the art servers operating a variety operating systems including but not limited to AIX and Linux, and the most current version of Windows server and desktop operating system as well as related peripheral products. The VCCS's desktop and laptop computers are used for instructional technology, college specific applications, and the VCCS's shared administrative applications.

Instructional technology at the colleges delivers course content to students using Blackboard. The VCCS's shared administrative applications serve all twenty-three of the Virginia Community Colleges using a shared 10g Oracle database and PeopleSoft applications for the Student Information System, the Financial System and the Human Resources System. The VCCS's primary network delivers these applications across a secure intranet environment.

III. MANDATORY REQUIREMENTS:

Failure of the Bidder to indicate "Bidder Complies" for the below listed requirements may cause the bid response to be rejected.

- A. All products bid are identified by the Gartner Group (or an equivalent industry leader for technology research) in Gartner's current Magic Quadrant for Global Enterprise Midrange Servers or Entry Level Servers or Desktop PCs or Notebook PCs at the date of bid submission (or an equivalent industry leader technology product assessment). If products bid are assessed by a technology research firm other than the Gartner Group, the Bidder shall supply evidence of industry standing of the research firm and the assessment

criteria with submission of bid. **Acceptance of any equivalent configuration bid as an equivalent is solely at the discretion of the VCCS.**

- B. The Bidder should maintain a toll free telephone number with recording capabilities, providing the ability to contact the vendor 24 x 7. **The Bidder shall provide the telephone number in the space provided below:**

Telephone Number: _____

- C. The Bidder certifies that shipping shall be inside delivery FOB destination UPS ground or equivalent, as a minimum requirement. Any special handling/shipping requests will be considered in addition to normal cost and will be billable. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

- D. The Bidder certifies that all hardware purchased shall be new. No used or remanufactured hardware will be accepted. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

- E. The Bidders shall adhere to the following bid requirements and provide the information required as specified in this IFB:

1. The Bidder certifies that Bidder has been in the business of providing all equipment bid for at least two consecutive years as of the bid issue date. Bidder shall demonstrate experience successfully serving large commercial or large government customers with organizational needs similar to the Virginia Community College System (including Colleges) for a period of two years prior to the bid date. (The approximate number of desktops in use is approximately 30,000 with a five- year refresh cycle. VCCS runs state-of-the-art education applications to support a student population of over 500,000 students including work force training.) To demonstrate experience, Bidder shall supply client profiles as attachments and client references in the space provide in Section X 12 REFERENCES of this IFB with their bid submission. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

2. The Bidder certifies that Bidder is either the manufacturer or an authorized reseller for equipment bid. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

3. The Bidder certifies that Bidder has the capability to provide hardware and maintenance for hardware and software bid to all locations of the VCCS and other potential users of the contract within the Commonwealth of Virginia. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

4. The Bidder certifies that Bidder shall provide an Internet Web site providing current catalog listing of products and maintenance they are bidding for each product group and show the Minimum Discount Percentage from the manufacturer's current "USA MSRP/Price List they are offering as well as ordering information to customers. Annual Maintenance for any product is an option for the agency. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

5. The Bidder certifies that any special promotions, special bundles or additions to the manufacturer's product line shall automatically become part of the contract by written announcement and by addition to the published catalog on the Web-site. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

6. The Bidder agrees to provide, at a minimum, semiannual updates to the Web-site published catalog of hardware, peripherals, and services they are offering so that the agency has the ability to keep pace with changes in this technology. In the event the manufacturer issues a new published price list, the Contractor shall notify the agency in writing within 24 hours and provide an updated Web-site within 5 working days. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

7. The Bidder certifies that Bidder shall provide the best pricing for the VCCS and other potential users of the contract they provide to any other institutions of Higher Education or government agencies equivalent in size to all quotes resulting from contracts awarded from this IFB. **The Bidder shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

8. Bidders bidding Product Groups 2 or 3 certify that Bidder has the capability to accept individual orders and volume orders. Bidder shall be able to accept volume orders

from a single purchase order and ship portions of the order to multiple locations within the Commonwealth of Virginia as specified by the purchase order. **The Bidders bidding Product Groups 2 & 3 shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

IV. PRODUCT GROUPS TO BE PROVIDED:

Contracts shall be awarded for three grouping of products as follow:

- A. Product Group 1; Large to midsize AIX or Unix based servers, blades, chassis, operating system software, hardware maintenance, software maintenance, installation, optional peripheral products, and optional related services.

1. Bidders bidding Product Group 1 in Section XIII PRODUCT INFORMATION certify that Bidder shall provide large to midsize AIX or Unix based servers, blades, chassis, operating system software, hardware maintenance, software maintenance, installation, optional peripheral products, and optional related services. **The Bidders bidding Product Group 1 shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

2. Bidders bidding Product Group 1 in Section XIII PRODUCT INFORMATION certify that Bidder has, for Product Group 1, capability of fulfilling an individual order within 15 days of receiving a Purchase Order. **The Bidders bidding Product Group 1 shall indicate their response to this mandatory requirement by marking the appropriate space below:**

___Bidder Complies

___Bidder Does Not Comply

- B. Product Group 2; 64 GB Intel based servers, 64 GB Intel blades, chassis, operating system software, hardware maintenance, software maintenance (i.e. Red Hat Enterprise Linux Advanced Platform, Premium support), optional installation, optional peripheral products, and optional related services.

1. Bidders bidding Product Group 2 in Section XIII PRODUCT INFORMATION certify that Bidder shall provide 64 GB Intel based servers, 64 GB Intel blades, chassis, operating system software, hardware maintenance, software maintenance (i.e. Red Hat Enterprise Linux Advanced Platform, Premium support), optional installation, optional peripheral products, and optional related services. **The Bidders bidding Product Group 2 shall indicate their response to this mandatory requirement in the space provided below:**

___Bidder Complies

___Bidder Does Not Comply

2. Bidders bidding Product Group 2 in Section XIII PRODUCT INFORMATION certify that Bidder has, for Product Group 2, the capability of fulfilling an individual order within 15 days of receiving a Purchase Order and volume orders, 24+ units, within 45 days of receiving a Purchase Order. **The Bidders bidding Product Group 2 shall indicate their response to this mandatory requirement in the space provided below:**

___Bidder Complies

___Bidder Does Not Comply

- C. Product Group 3: Business class desktop computers, business class laptop computers, hardware maintenance (i.e. 4 year onsite warranty with accidental damage coverage), optional installation, optional peripheral products, and optional related services.

1. Bidders bidding Product Group 3 in Section XIII PRODUCT INFORMATION certify that Bidder shall provide Business class desktop computers, business class laptop computers, hardware maintenance (i.e. 4 year onsite warranty with accidental damage coverage), optional installation, optional peripheral products, and optional related services. **The Bidders bidding Product Group 3 shall indicate their response to this mandatory requirement in the space provided below:**

___Bidder Complies

___Bidder Does Not Comply

2. Bidders bidding Product Group 3 in Section XII PRODUCT INFORMATION certify that Bidder has, for Product Group 3 capability of fulfilling a small order, <50 units, within 10 days of receiving a Purchase Order and volume orders, 100+ units within 30 days and 500+ units within 60 days, of receiving a Purchase Order. **The Bidders bidding Product Group 3 shall indicate their response to mandatory requirement in the space provided below:**

VI. PRE-BID CONFERENCE (Optional):

Questions concerning this IFB shall be submitted in writing by interested Vendors to the VCCS Purchasing Officer prior to the Pre-Bid Conference. This Pre-Bid Conference is scheduled at 15th Floor Board Room 101 North 14th Street Richmond VA 23219 at 9:00 AM on Tuesday June 29, 2010. Questions received one week prior to the Pre-Bid Conference will be answered during the conference, any addition questions will be collected at the Pre-Bid Conference. A bid addendum will be issued addressing all questions submitted.

While attendance at this conference will not be a prerequisite to submitting a bid, Bidders who intend to submit a bid are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

VII. ADMINISTRATIVE PROCESS:

- A. Users shall build model configuration(s) using their technical requirements and submit these requirements to from 1 to n vendors holding contracts for products in the Product Group required. With their requirements users shall also establish a timeframe, between 1 and 5 business days, for vendors to respond. The duration of the timeframe is at the sole discretion of the user.
- B. Users shall review the quotes to insure the quote fully meets the requirements requested. Users may challenge vendors to modify their quotes if user believes the vendors quote does not meet the technical requirements of the agency. Selection of the vendor to receive the order shall be at the sole discretion of the user and based on the user's decision of which vendor's overall quote best meets the agency's requirements.
- C. User shall submit documentation appropriate for their agency to have the Purchase Order issued through eVA.

VIII. SPECIAL INSTRUCTIONS:

- A. Bidders shall submit one signed and complete original bid as well as a signed and complete version of all addendums. Additionally Bidder should submit one complete copy of their bid including one complete copy of all addendums.
- B. **IMPORTANT NOTE:** *Bidders shall refrain from attaching or submitting company terms and conditions, contracts, agreements and other documentation requiring the Commonwealth to sign or otherwise agree to in addition to or in lieu of terms and conditions noted herein. Such action on the part of bidders may be construed by the Commonwealth as taking exception to stated bid terms and conditions. Failure to comply with this requirement may result in bid being considered non-responsive and subject to non-consideration and rejection. Further, bidders shall complete Section XIV Firm Pricing Schedule included in the IFB in order to be considered for award of contract. Failure of Bidder to complete the included Section XIV Firm Pricing Schedule or attaching company price list in lieu of completing the provided Section XIV Firm Pricing Schedule shall cause for non-consideration and rejection of submitted bid. Bidders shall submit only one (1) signed bid response to this solicitation. Multiple bids will not be considered.*

IX. GENERAL TERMS AND CONDITIONS: (REQUIRED-NON-NEGOTIABLE)

- A. **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."
- B. **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 agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **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 (VPPA)*. 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).
1. During the performance of this contract, the contractor agrees as follows:
 - a. 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 where 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.
 - b. 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.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - 2. 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.
- D. **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.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **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.
- G. **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.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the Bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder 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.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. 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).
- b. 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.
- c. 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.
- d. 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.
- e. **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 which 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 which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) 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

- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. 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.
 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **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 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.

- M. **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.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from

promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **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. 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.
- R. **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 which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder 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 Bidder clearly indicates in its bid that the product offered is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid under this solicitation, the Bidder certifies that if awarded the contract, it will have the following insurance coverage 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 further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.

V. **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.

W. **NONDISCRIMINATION OF CONTRACTORS:** A Bidder shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Bidder employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. 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. (*Code of Virginia*, § 2.2-4343.1H).

- X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA 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. All bidders must register in eVA; failure to register will result in the Bidder being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. 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.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **SET-ASIDES.** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification. For purposes of award, Bidder shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, Bidder shall state bid prices in US dollars.

X. SPECIAL TERMS AND CONDITIONS:

1. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to the Virginia Community College System will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that Virginia Community College System has purchased or uses any of its products or services, and the contractor shall not include Virginia Community College System in any client list in advertising and promotional materials.
2. **AUDIT**: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
3. **ADDITIONAL USERS**: This procurement is being conducted on behalf of all Public Institutions of Higher Education of the Commonwealth of Virginia. The contractor shall honor an order citing the resulting contract from any Public Institution of Higher Education within the Commonwealth of Virginia.
4. **AWARD TO MULTIPLE BIDDERS**: The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Bidder shall offer a minimum percentage off manufacturer's current "USA MSRP/Price List" based on an order quantity of one (1). The award(s) will be made to the responsive and responsible bidder(s) meeting all the requirements of the solicitation. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
5. **BID ACCEPTANCE PERIOD**: Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
6. **CANCELLATION OF CONTRACT**: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
7. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS**: The contractor shall extend any special educational or promotional sale prices or discounts immediately to the

Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

8. **IDENTIFICATION OF BID ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	_____	_____
Name of Bidder	Due Date	Time
_____	_____	
Street or Box Number	IFB No.	
_____	_____	
City, State, Zip Code	IFB Title	
Name of Contract/Purchase Officer or Buyer _____		

The envelope should be addressed as directed on Page 1 of the solicitation.

9. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.
10. **OPTIONAL PREBID CONFERENCE:** An optional pre-bid conference will be held at the 15th Floor Board Room 101 North 14th Street Richmond VA 23219 at 9:00 AM Tuesday June 29, 2010. The purpose of this conference is to allow potential bidders an opportunity to present questions and obtain clarification relative to any facet of this solicitation.
- While attendance at this conference will not be a prerequisite to submitting a bid, bidders who intend to submit a bid are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.
11. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

12. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACTPERSON</u>	<u>TELEPHONE</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

13. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for five (5) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the other goods and services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other goods and services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at www.dgs.state.va.us/dps. Click on the "references" tab along the top of the screen and a link to their web site is listed under "Bureau of Labor Statistics."

14. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

- A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders are required to submit a Small Business Subcontracting Plan. Unless the Bidder is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers,

the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

No Bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
 - C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.
15. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid.
16. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order.
- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.

b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov , 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.

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:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. 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.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

XI. SPECIAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY GOODS AND SERVICES.

1. **CONFIDENTIALITY (Commonwealth)**: The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

2. **DEFINITION - EQUIPMENT**: As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

DEFINITION - SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

3. **LATEST SOFTWARE VERSION**: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation unless otherwise specified in the purchase order issued for the product.
4. **PRODUCT SUBSTITUTION**: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
5. **EQUIPMENT ENVIRONMENT**: Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the Vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the

procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than five consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within seven days following the request for replacement.
7. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.
8. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.
9. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional five (5) one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the other goods and services category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.
10. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within 8 hours following initial notification. All necessary repairs or corrections shall be completed within 48 hours of the initial notification.
11. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll-free phone support with a 2 hour return call response time. On-site maintenance services shall carry a 8 hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within 48 hours of the initial notification.
12. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor.

The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

13. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.
14. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
15. **TITLE TO SOFTWARE:** By submitting a bid, the Bidder represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
16. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract 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 it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
17. **YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY:** The contractor warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under any agreement, and which is used in accordance with the product documentation provided by the contractor, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

Any product provided under this Agreement discovered not to be compliant after acceptance shall be corrected by the contractor at no additional cost to the Commonwealth. Failure to correct the deficiency shall subject the contractor to default action.
18. **SECTION 508 COMPLIANCE:** All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply

with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause 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.

19. **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 non-visual 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 non-visual means;
- (ii) the Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Non-visual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual 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 non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software or peripheral devices used for non-visual 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 non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual 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*.

20. **PERFORMANCE OF MAINTENANCE SERVICE:** Authorized manufacturers maintenance and service shall be performed by the contractor or by a sub-contractor authorized by the contractor. If billing for the maintenance or service is necessary the contractor will submit their bill to the agency issuing the purchase order. The agency issuing

the purchase order will not accept invoices from third parties. (See Section IX General Terms and Conditions; Item J.) The agency issuing the purchase order shall not be required to sign separate contracts with any contractor, manufacturer, or sub-contractor to obtain maintenance or service.

XII. SMALL BUSINESS SUBCONTRACTING PLAN:

Small Business Subcontracting Plan. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which shall not exclude businesses owned by women and minorities in its purchasing programs, in order for the bid to be considered responsive for any prime contract in excess of \$100,000 bidders shall include, as part of their bid, a Small Business Subcontracting Plan that ensures DMBE-certified small business participation as part of its efforts toward achieving the statewide goal of 40 percent of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses unless the solicitation has been set-aside for small businesses or no subcontractor opportunities exist. (See Section X. 14)

If the Bidder on the contract is a DMBE-certified small business, the Bidder shall indicate such in Section A of Annex 6-I. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small-business certification. If the Bidder is not a DMBE-certified small business, the bidder, to be considered responsive, is required to identify the portions of the contract the Bidder plans to subcontract to DMBE-certified small business by completing and returning Section B of Annex 6-I. If no subcontracting opportunities exist see Section X 14. No Bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids.

PIM 98-022, July

Annex 6-I Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the

corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ **Date:**

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the bid to be considered and the Bidder to be declared responsive, the Bidder shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in Section B.

Section A If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- _____ Small Business
- _____ Small and Women-owned Business
- _____ Small and Minority-owned Business

Certification number: _____ Certification Date: _____

Section B: Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					

- XIII. PRODUCT INFORMATION:** The Bidder shall clearly and specifically identify the Product Group(s) and Manufacturer(s) Product Brand being offered and the Web Site for VCCS to verify the manufacturer’s current “USA MSRP/Price List.” The Bidder should enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid. Failure to clearly and specifically identify the Product Group(s) and Manufacturer(s) Product Brand being offered will cause bid to be considered non-responsive and rejected. Failure to enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid may cause bid to be considered non-responsive and subject to rejection.

The Bidder shall indicate in the space below what Product Group(s) and Manufacturer’s Product(s) (i.e., IBM, Dell, HP, ETC.) they are bidding (one Product Group and Manufacturer’s Product per line number) and the Web Site for VCCS to verify the manufacturer’s current USA MSRP/Price List. In the event multiple Bidders for a manufacturer provide a different Web Site for VCCS to verify the manufacturer’s current USA MSRP/Price List the VCCS will obtain clarification to determine which is the true manufacturer’s current USA MSRP/Price List. Bidder(s) providing erroneous versions of the manufacturer’s current USA MSRP/Price List may cause bid to be considered non-responsive and subject to rejection. **Bidder has certified in Section III Item E. 6. to provide the updates to this price list within five work days of changes to the list.**

Line Number	Product Group(s) Bid	Manufacturer’s Product(s) Bid	Web Site for VCCS to verify the manufacturer’s current (as of due date of this IFB) USA MSRP/Price List
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			

XIV. FIRM PRICING SCHEDULE:

Bidder shall bid the manufacturer and models being bid within a product group. Bidder may bid multiple manufacturers for a Product Group. Bidder shall bid a Minimum Discount Percentage, base on a quantity of one (1), per manufacturer's model being offered, this Minimum Discount Percentage shall be applied across the board to the manufacturer's current USA MSRP/Price List for all configurations of the manufacturer's model in the Product Group bid. New models and the associated Minimum Discount Percentage shall be added throughout the life of the contract by change order as they become available for resale. The VCCS has specified three Product Groups, they are: Large/Midrange Servers, Entry Level Servers, and Business Class Desktop/Laptop Computers. **As stated in Section III. A: Acceptance of any equivalent configuration bid as an equivalent is solely at the discretion of the VCCS.**

There are no guaranteed quantities associated with any subsequent contract issued as a result of this bid invitation. All items contained in any of the below referenced Pricing Schedules shall be considered a quantity of one (1) for evaluation/award purposes.

Instructions for completing the Product Group Grid:

- A. Installation is included for Product Group 1. Installation is optional for the agency for Product Groups 2 and 3. Installation will include unpacking and setting up the equipment, running initial tests to insure baseline operability, and removing all boxes and packing material.
- B. With the bid the Bidder should provide a list of optional peripheral products and services they wish to offer the agency and the associated Minimum Discount Percentage from the manufacturer's current USA MSRP/Price List they are offering.
- C. With the bid the Bidder should provide an attachment with the description of optional volume ordering capabilities and discounts they can offer should the agency elect to submit large volume orders for hardware. This should include volume breakpoints and associated percentage discount from the manufacturer's current USA MSRP/Price List they are offering.
- D. The optional products and/or services are for convenience and at the option of the agency. There are no guaranteed quantities associated with these products and/or services. The Minimum Discount Percentage may vary by product. For Optional Services the Normal Hourly Cost shall be shown as an hourly rate, I.E. \$10.00/Hour. *(NOTE: These optional products, services, or volume ordering capabilities and their respective costs will not be considered for purposes of the award.)*

PRODUCT GROUP 1 DISCOUNT PERCENTAGE GRID: List all manufacturers and the large to midsize AIX or Unix based servers, blades, chassis, operating system software, hardware maintenance, software maintenance being bid along with the Minimum Discount Percentage to be applied to the manufacturer's current USA MSRP/Price List.

Line Number	Manufacturer / Model or Product Description	Minimum Discount %
1		
2		
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11		
12		
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PRODUCT GROUP 1 INSTALLATION: For each Line Number bid above list the Normal Cost of Installation and the Minimum Discount Percentage in the corresponding Line Number below, if installation is included in the cost of the server indicate by stating "Included" in the Normal Cost column.

Line Number	Normal Cost of Installation	Minimum Discount %
1		
2		
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PRODUCT GROUP 2 DISCOUNT PERCENTAGE GRID: List all manufacturers and the 64 GB Intel based servers, 64 GB Intel blades, chassis, operating system software, hardware maintenance, software maintenance (i.e. Red Hat Enterprise Linux Advanced Platform, Premium support) being bid along with the Minimum Discount Percentage to be applied to the manufacturer's current USA MSRP/Price List.

Line Number	Manufacturer / Model or Product Description	Minimum Discount %
1		
2		
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11		
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PRODUCT GROUP 2 OPTIONAL INSTALLATION: For each Line Number bid above list the Normal Cost of Installation and the Minimum Discount Percentage in the corresponding Line Number below, if installation is included in the cost of the server indicate by stating “Included” in the Normal Cost column.

Line Number	Normal Cost of Installation	Minimum Discount %
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PRODUCT GROUP 3 DISCOUNT PERCENTAGE GRID: List all manufacturers and the business class desktop computers, business class laptop computers, hardware maintenance (i.e. 4 year onsite warranty with accidental damage coverage) being bid along with the Minimum Discount Percentage to be applied to the manufacturer's current USA MSRP/Price List.

Line Number	Manufacturer / Model or Product Description	Minimum Discount %
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Number of Units	Normal Cost of Installation	Minimum Discount %
1 - 25		
26 - 50		
51 – 100		
101+		

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