

**MODIFICATION #3
TO
CONTRACT NUMBER VA-010221-ISYS
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
INFO SYSTEMS, INC.**

This MODIFICATION #3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and INFO SYSTEMS, INC., hereinafter referred to as "Contractor" relating to the modification of Contract VA-010221-ISYS, as amended. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-010221-ISYS.

Re: a) Modification #2 to Contract VA-010221-ISYS; Item #4;
b) Contract VA-010221-ISYS, pg C-5 of C-17, section #13 entitled "Modifications"

Both parties agree to revise Item #4 in the above-referenced Modification #2 and the Contract Schedule as follows:

ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
4 (Revised)	SD 600-6-60-36 RSA SecureID Keyfob Token. This is a 36 month token with an additional 12 months provided at no charge for a total life of 48 months.	1	ea	\$40.00	\$40.00

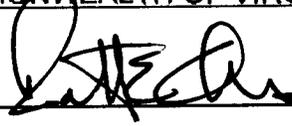
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

INFO SYSTEMS, INC.

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: Jim Kavonius

NAME: Robert E. Gleason

TITLE: Account Mgr.

TITLE: Sr. Sourcing Consultant

DATE: 6-15-2004

DATE: 6/15/04

**MODIFICATION #2
TO
CONTRACT NUMBER VA-010221-ISYS
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
INFO SYSTEMS, INC.**

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and INFO SYSTEMS, INC., hereinafter referred to as "Contractor" relating to the modification of Contract VA-010221-ISYS, as amended. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-010221-ISYS.

Re: Contract VA-010221-ISYS, a) page C-5 of C-17, section #13 entitled "Modifications", and b) Contract Schedule, page 2 of 4.

In accordance with the above-referenced Contract sections, both parties agree to revise Contract pricing as follows:

ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
4 (Revised)	SD 600-6-60-36 RSA SecureID Keyfob Token	1	ea	\$40.00	\$40.00

In accordance with the above-referenced section both parties agree to add the following products as follows:

ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
8 (New)	SD 820-8-60-60 RSA SecurID Software Token Seeds (60 month)	1	ea	\$25.50	\$25.50
9 (New)	SD820-8-60-120 RSA SecurID Software Token Seeds (120 month)	1	ea	\$28.00	\$28.00

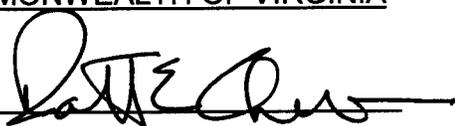
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

INFO SYSTEMS, INC.

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: Jim Kavadias

NAME: Robert E. Gleason

TITLE: ACCOUNT MANAGER

TITLE: Technology Contracts Mgr

DATE: 6-8-2004

DATE: 6/14/04

**MODIFICATION #1
TO
CONTRACT NUMBER VA-010221-ISYS
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
INFO SYSTEMS, INC.**

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and INFO SYSTEMS, INC., hereinafter referred to as "Contractor" relating to the modification of Contract VA-010221-ISYS, as amended. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-010221-ISYS.

1. The Virginia General Assembly passed legislation that abolished the Department of Information Technology (DIT) as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency that is 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. Reference: Page C-5 of C-17; paragraph 16, entitled "Term"

Both above referenced parties do hereby agree to extend the term of Contract VA-010221-ISYS as specified in the above reference, from February 21, 2004 through February 20, 2005.

3. Both above-referenced parties agree to add the following clause to the Agreement:

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal <http://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. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

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

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

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.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010221-ISYS and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

INFO SYSTEMS, INC.

BY: Jennifer McKenzie
NAME: JENNIFER MCKENZIE
TITLE: Contractor
DATE: 4/19/04

COMMONWEALTH OF VIRGINIA

BY: Robert E. Gleason
NAME: Robert E. Gleason
TITLE: Technology Contracts Mgr
DATE: 4/20/04

SOLICITATION, OFFER AND AWARD
DATA PROCESSING / TELECOMMUNICATIONS

FIN: 51-9264531

1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:
VA-010221-1575	2001-016	Jan 25, 2001	Feb 6, 2001	45	C55

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

6. ISSUING OFFICE:

Department of Information Technology
Acquisition Services Division
110 S. 7th Street, Lobby Floor
Richmond, Va. 23219-9300
ATTN: Bid Section

7. SHIP TO:

Department of Information Tech
Jim Adams
110 South 7th Street
3rd Floor
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 A&D 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 Feb 6, 2001.

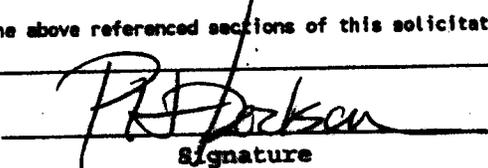
CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions

This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 4; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-17; 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 Feb 6, 2001, in the A&D 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.

Paul H. Dodson, Director
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:

Company Name: Enb Systems, Inc.
Address: 7164 Columbia Gateway Dr.
City, State: Columbia, MD 21046
Signature: [Signature]
Name (Typed): Jeff Allan
Title: Account Manager
Phone: 410-381-2355

10. BILL TO:

Department of Information Tech
Accounts Payable
110 South 7th Street
3rd Floor
Richmond VA 23219

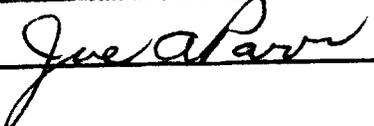
AWARD

11. Accepted as to Item Numbers:	12. Amount:	13. Award Date:
All Items	\$371,901	2/21/01

14. Name of Contracting Officer:

for Jeff Davis
Contracts Manager

15. COMMONWEALTH OF VIRGINIA

By: 

PAGES:

1 of 4

DIT-62A		SCHEDULE		IFB NO.		Page:	
01/15/91				01-016		2 of 4	
NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:			INITIALS	
			(RDD) 30 DAYS ARO				
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE		
1.	2,500 seat RSA Ace Server License	1	ea.	59,717	59,717		
2.	3500 seat RSA Ace Server License	1	ea.	77,005	77,005		
3.	5000 seat RSA Ace Server License	1	ea.	94,290	94,290		
4.	SD 600-6-60-36 RSA SecurID Key Fobs	1500	ea.	49.70	74,550		
5.	2500 seat RSA SecurCare Extended Maintenance/Support (24 X 7 X 365)	1	yr.	17,149	17,149		
6.	3500 user RSA SecurCare Extended Maintenance/Support (24 X 7 X 365)	1	yr.	22,113	22,113		
7.	5000 user RSA SecurCare Extended Maintenance/Support (24 X 7 X 365)	1	yr.	27,077	27,077		
Total Evaluated Cost:						\$	371,901
All prices contain the "I.F.A.", as described herein.							

DIT-62A 01/15/91	SCHEDULE	IFB NO. 01-016	Page: 3 of 4
NAME OF CONTRACTOR	REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS	
<ol style="list-style-type: none"> 1. The Commonwealth of Virginia seeks to establish a statewide contract for RSA Secure ID two-factor authentication software (RSA ACE/Server), RSA SecurID key fobs and RSA SecurCare Extended Maintenance/Support. 2. Upon Award, The Contractor shall deliver a 2500 seat RSA Ace Server license, 1500 key fobs, and one year of RSA SecurCare Extended Maintenance/Support. The Maintenance/Support shall commence upon Acceptance, and shall run concurrently with the 90 day RSA Ace Server warranty. 3. This award will be for indefinite quantity and indefinite delivery. Any additional purchases will conform with the Commonwealth of Virginia VPPA. Unit prices for all items shall apply to follow-on orders. 4. Award, if made, will be to the responsive and responsible bidder with the lowest total evaluated cost. 5. No bids are neither required nor desired. 6. The successful bidder shall agree to the Commonwealth of Virginia Industrial Funding Agreement. See the attached Terms and Conditions for details. 7. The delivery of the initial order shall be within ten (10) business days after Award. In the event the selected vendor defaults on delivery, the Commonwealth reserves the right to award to the next lowest responsive and responsible bidder. 8. Key fobs are covered by a three year replacement warranty. 9. For any upgrade to a higher user-license level of Ace Server software, The Commonwealth will pay the difference in price between the original and the upgrade license. 10. SecurCare Extended Maintenance/Support upgrades shall be pro-rated for the remainder of the life of the Maintenance/Support term. 11. The vendor shall provide, at no additional cost to the Commonwealth, all hardware, software, information and service to ensure a smooth implementation and proper operation of the equipment bid. 12. See the attached Terms and Conditions for the Acceptance Period and Principal Period of Maintenance. 13. All vendors submitting bids must be registered with the Department of Information Technology prior to award. The vendor's Federal Identification Number (FIN) should be placed in the appropriate box on Page 1 of the bid solicitation. In the event the vendor does not supply the appropriate identification number, DIT 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 issuing office, the ASD website (see note #14), or vendors may call (804) 371-5900 to request forms. 			

DIT-62A	SCHEDULE	IFB NO.	Page:
01/15/91		01-016	4 of 4

NAME OF CONTRACTOR	REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS
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14. ASD maintains an Internet website at <http://asd.state.va.us>. Vendors are requested to check this site prior to submitting bids, in the event the bid is amended or extended.
15. Bid results will not be given out by telephone. Vendors wishing bid results should submit a self-addressed, stamped envelope along with their bid. The envelope should have the bid number clearly noted on the outside. Bid results will be posted to the ASD website.
16. Contractual Terms and Conditions are attached to this solicitation document. DIT will not sign or execute any additional contract, license or other agreement containing contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT, shall have no validity 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.

SOLICITATION INSTRUCTIONS

REV. 12/15/00

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](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 THERE TO, 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 Vendor's 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 these 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](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's 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 Manager, 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 11-52D, 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) #2001-016**

GENERAL PROVISIONS

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions which shall govern the sale of Software, and Equipment (Equipment includes hardware) and Services identified in the Schedule herein, from the Contractor identified in block #9, page 1 of the Solicitation.

Upon award, the Contractor shall deliver to DIT the items identified in paragraph #2, page 3, of this IFB 2001-16. Subsequent to this initial delivery, the Contract may be used by other Agencies, Institutions, and other public bodies as defined in Section 11-37 of the Virginia Public Procurement Act (VPPA) hereinafter referred to as "Authorized users". Each Authorized User that is subject to the Virginia Public Procurement Act must ensure that all requirements of the Act have been satisfied before that Authorized User may issue any Order for Contractor's goods or Services under this Agreement.

2. 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.

3. DELIVERY DATES

- a. Initially, the Contractor shall deliver the requested Equipment, Software, or Services ready for use, within 10 days of Award of this Contract. Subsequent Orders shall be delivered within 30 days ARO.
- 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 delivery date by notifying the Contractor at least ten (10) days before the required delivery date.

- c. If the Equipment, Software or Services is not delivered 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 the proposed Equipment as stated in response to a solicitation document may result in removal from DIT'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.

4. ANTTITRUST:

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, titles 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.

5. TAXES - FEDERAL, STATE AND LOCAL

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes; such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor.

6. NEW EQUIPMENT/SOFTWARE AND SUBSTITUTE EQUIPMENT

Unless otherwise specifically requested in the Schedule, all Equipment furnished under this Contract shall be new Equipment and in current production. All Software provided under this Contract shall be the latest version available to the general public as of the due date of this solicitation.

During the term of this Contract, the vendor is not authorized to substitute any item for that Equipment or Software identified in the Schedule without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the Contract.

7. PATENT/COPYRIGHT PROTECTION

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

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

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

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

If the use of such Equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Equipment, Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs of paragraph 7. above.

8. NON-APPROPRIATION

All funds for payment of Equipment, Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of nonappropriation 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.

9. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT.

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

10. GOVERNING LAW

This Contract and any disputes arising hereunder shall be governed in accordance with the laws of the Commonwealth of Virginia and shall be deemed to have been executed and entered into within the Commonwealth of Virginia. Any litigation arising in connection with this Agreement shall be brought in the courts of the Commonwealth of Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

If any term or provision of this Contract shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Contract shall remain in full force and effect, and such term or provision shall be deemed null and void.

11. 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.

12. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all Equipment and Software and Services 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 Equipment 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 Equipment acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

13. MODIFICATIONS

This Contract may be modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing 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.

14. TITLE

Clear and unrestricted title for any item of Equipment purchased under this Contract shall pass to the Commonwealth of Virginia whenever the agreed to purchase price is paid.

15. 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.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

16. TERM

The Term of this Contract shall be from the date of award and continue for 36 months. At the Commonwealth's sole discretion, the Contract may be extended for two (2) additional one year periods. The Commonwealth shall provide written documentation to the Contractor 30 days in advance, for any extension period.

17. VIRGINIA PUBLIC PROCUREMENT ACT

Employment Discrimination by Contractor Prohibited (Section 11-51, Code of Virginia).

- a. During the performance of this Contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities except where religion, sex or national origin 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 such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- b. The Contractor will include the provision of the foregoing paragraphs a.1, a.2 and a.3 in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

18. ADDITIONAL CERTIFICATIONS

Contractor hereby certifies its compliance with the following:

- a. Virginia Fair Employment Contracting Act.
- b. Virginia Governmental Frauds Act.
- c. Virginia Public Procurement Act.
- d. Federal Immigration Reform and Control Act of 1986.
- e. Virginians with Disabilities Act.
- f. Americans with Disabilities Act.
- g. Federal Civil Rights Act of 1964.

19. 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.

20. 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.

21. 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, Equipment 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.

22. CONTINGENT FEE WARRANTY

The Contractor warrants that he/it has not employed or retained any person or persons not generally associated with Contractor for the purpose of soliciting or securing this agreement. The Contractor further warrants that he/it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this agreement. For breach of one or both of the foregoing warranties, the Commonwealth shall have the right to terminate this agreement without liability, or in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

23. SITE PREPARATION

- a. Equipment environmental specifications, if required, for the Equipment 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 Equipment 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 Equipment environmental specifications provided by the Contractor.

24. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, Equipment, Software and Services are subject to inspection and testing by the State, and any which do 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 (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the materials, Equipment, 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 Contractor's materials, Equipment, Software or Services fail to meet the Contract specifications or other requirements, including the specifications of the brand name (see paragraph 4 of the Solicitation Instructions), 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, Equipment, 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, Equipment, 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.

25. 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.

26. 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 Equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

27. WARRANTY - EQUIPMENT

Contractor will provide Return To Vendor warranty Services (labor, parts) for a period of not less than thirty-six (36) months or such greater period as may be provided in the Schedule, 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. All warranty and maintenance Services shall be provided during the Principal Period of Maintenance which is hereby defined as 24 hours per day, 7 days per week, 365 days per year. The Contractor shall respond to all requests for warranty and maintenance service within four (4) hours after notification that a failure has occurred.

Whenever hardware is shipped for mechanical repair or replacement purposes, the Commonwealth will bear all costs associated with returning the Equipment or hardware to the Contractor's repair facility. When repair of the Equipment is completed the Contractor shall bear all costs associated with returning the Equipment to the State's original point of shipment. Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss. Contractor shall repair the Equipment or provide an interim replacement product, within 24 hours of receipt of defective hardware.

All parts used under this Agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

28. 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 Equipment 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 deinstallation and return of the Equipment 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.

29 FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

30. DISPUTES

Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The public body will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

A Contractor may not institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that Agency fails to render such 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 11-70, Code of Virginia or Administrative Appeals Procedure Section 11-71, Code of Virginia.

Any dispute, claim or cause of action filed by Contractor (or any party making such claim on behalf of or under the rights of Contractor, his agents or any subcontractor) shall be governed by Sections 11-69, 11-70, 11-71, Code of Virginia (1950), as amended, and any period of limitation set forth therein.

31. INVOICES

All invoices shall be rendered promptly after all Equipment/Software covered by the invoice have been accepted. Invoices for Software support (if any) may be paid annually in advance upon the expiration of the warranty period set forth in this Contract. No invoice may include any costs other than those identified in the Schedule. Invoices shall provide at a minimum:

- 1 Type and description of the Equipment or Software;
2. Serial number, if any;

3. Charge for each item;
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN);

32. PROMPT PAYMENT

Payment shall be due within thirty (30) days after (1) acceptance of all Equipment or Software, (2) receipt of a correct invoice for such payment, and (3) when applicable, receipt of the payment instruction form referenced in the paragraph entitled ("Assignments"), whichever is latest. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the Commonwealth under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

In accordance with the Virginia Public Procurement Act, all proper charges for which payment is more than seven (7) days overdue shall accrue interest as provided in Sections 11-62.1 through 11-62.9 of the Code of Virginia. The rate of interest shall be determined in accordance with Section 11-62.5 of the Code of Virginia. In no event shall any interest penalty accrue, however, when payment is delayed because of a disagreement between the Commonwealth and the Contractor regarding the quantity, quality or time of delivery of any Product or Service or the accuracy or correctness of any invoice. The Contractor shall notify the Controller of the Department of Information Technology of all invoices that are in excess of thirty (30) days old.

33. PAYMENTS TO SUBCONTRACTORS

In accordance with Section 11-62.11 of the Code of Virginia, within seven days after receipt of amounts paid to the Contractor by the Commonwealth for work performed by a subcontractor, the Contractor shall

- a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor, or
- b. Notify the agency and subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Commonwealth for work performed by the subcontractor, except for amounts withheld as allowed in (b) above. The Contractor shall provide its federal employer identification number (or social security number, if Contractor is an individual) to the Commonwealth as required by Section 11-62.11 (2) of the Code of Virginia. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. Nothing in this paragraph shall be construed as creating any obligation on the part of the Commonwealth or as authorizing any additional charge to the Commonwealth.

34. THIRD PARTY BILLING

All goods or Services provided under this Contract, 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.

35. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

36. TRANSPORTATION AND PACKING OF EQUIPMENT

All shipments to the State's site(s) shall be made at the Contractor's expense. The Contractor shall make all arrangements for transportation and shall notify the receiving agency or institution upon shipment.

37. 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.

38. TERM OF LICENSE

The license(s) identified in the Schedule are purchased on a perpetual license basis (unless otherwise stated in the Schedule) and shall continue in perpetuity until canceled by the State or unless terminated in accordance with the provisions of this Contract. The license(s) granted to the State are for the use of the Software/firmware product at the using agency's computing facilities (site) and on the Equipment or for the purpose identified in the Schedule.

39. WARRANTY SOFTWARE/FIRMWARE

Contractor warrants the operation of the Software/firmware products identified in the Schedule for a period of ninety (90) days after acceptance. Products which fail to meet the vendor's published specifications will be returned (at the Contractor's expense) for replacement. Contractor agrees to replace the Software/firmware product within three (3) days after receipt of the returned product.

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.

40. TERMS OF USE

The State's rights in computer Software/firmware developed at private expense may be restricted by the Contractor in accordance with this Contract. As a minimum, however, the State shall have:

- a. Unlimited use of such Software/firmware on the Equipment for which it is acquired and any future upgrades of such Equipment;
- b. Use of such Software/firmware with a backup system if the system(s) for which or with which it was acquired is inoperative because of a malfunction, or during an emergency, or the performance or engineering changes or changes in features or model;
- c. The right to use such Software/firmware at any state installation to which the computer(s) may be transferred by the State;
- d. The right to copy such computer programs for safekeeping (archives) or backup purposes.

41. CONFIDENTIALITY

Commonwealth agrees that when the Software/firmware Product is proprietary to Contractor and has been developed/acquired at Contractor's expense, that it shall hold and use the Software/firmware Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor permit any of its employees, agents, or representatives to knowingly divulge, any information with respect to the Software/firmware Product, the technology embodied therein, or any other 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 Commonwealth and its employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software/firmware Product.

42. MAINTENANCE RESPONSE

The Contractor shall provide Software Warranty and Software maintenance support with a four (4) hour telephone response time, during the Principal Period of Maintenance (PPM) which is hereby defined as 24 hours per day, 7 days per week, 365 days per year.

The State may alter the PPM by requesting a change, in writing, thirty (30) days prior to the requested change in the PPM, subject to mutual agreement between the parties.

43. REPAIR PARTS

All parts used under this agreement must be new parts or refurbished parts certifiable as new. Parts, which have been replaced, shall become the property of the Contractor.

44. MAINTENANCE CONTINUITY

Contractor will provide the required warranty, maintenance/Software support Services as defined in this Contract for a period not to exceed five (5) years. Such Services shall be provided in accordance with the Contractor's price, set forth in the schedule, for the period as defined herein. Maintenance increases for additional periods shall be effective on the anniversary date for each succeeding year. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance Services at the lowest price available to any other customer.

45. SOFTWARE MAINTENANCE RENEWAL

Maintenance under this Agreement shall be renewed at the option of the State. The State shall issue a written notification to the Contractor for each twelve (12) month period that maintenance Services are required after the initial three year warranty/maintenance period.

46. 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, 2.1-807 through 2.1-811 of the Code of Virginia.

47. INSURANCE

By signing and submitting a bid under this solicitation, the bidder 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 §§ 11-46.3 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 coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. **Worker's Compensation** – Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on Contractor's policy.
2. **Employers Liability** - \$100,000.
3. **Commercial General Liability** - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. **Automobile Liability** - \$500,000 – Combined single limit. (Only if motor vehicle is to be used in the Contract.)

48. 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 forgoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

"Drug-free workplace" means a site for the performance of work done in connection with this Contract, wherein the Contractor's employees 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.

49. CONTRACTOR'S REPORT OF SALES

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

50. INDUSTRIAL FUNDING ADJUSTMENT

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

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

falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

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

51 QUALIFICATIONS OF (BIDDERS/OFFERORS):

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeree) to perform the Services/furnish the goods and the (bidder/offeree) 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/offeree's) physical facilities prior to award to satisfy any questions regarding the (bidder's/offeree's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeree) fails to satisfy the Commonwealth that such (bidder/offeree) is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the goods contemplated therein.

52. TERMINATION OF CONTRACT FOR CONVENIENCE

The Commonwealth reserves the right to cancel and terminate Contract, in whole or in part, without penalty, upon thirty (30) days written notice to the Contractor. There shall be no termination liability or other costs associated with the termination of this Agreement on the part of the Commonwealth. 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.

53. TERMINATION OF ORDERS FOR CONVENIENCE

The Commonwealth, for its convenience, may terminate any individual Order issued under this Agreement, either in whole or in part, by providing Contractor an advance thirty (30) day written notice of Order termination.

Upon the receipt of such written notice of termination as specified above, the Contractor may, within 30 (thirty) days after receipt of written notice, file a claim with the agency issuing the Order that shall include an invoice for all products delivered or costs incurred on or before the Order termination.

54 NO ADDITIONAL GOVERNING TERMS

The Commonwealth will not sign or execute any additional Contracts, licenses or agreements containing Contractual terms and conditions as a result of this procurement.

55. PURCHASE OPTION

At any time during the term or any extensions thereof, of this Agreement, any Authorized User may issue an Order (Purchase Order, or Delivery Order) for Equipment, Software, or Services as identified herein.



COMMONWEALTH of VIRGINIA

MICHAEL E. THOMAS
Agency Director
Email: mthomas@dit.state.va.us

Department of Information Technology

110 SOUTH SEVENTH STREET
RICHMOND, VIRGINIA 23219
(804) 371-5000

TDD VOICE - TEL. NO.
371-8076

February 21, 2001

Mr. Jeff Allan
Account Manager
Info Systems, Inc.
7164 Columbia Gateway Drive
Columbia, MD 21046

RE: IFB# 2001-016, Contract VA-010221-ISYS (Contract)

Dear Mr. Allan:

Please accept this letter as your official notice of award for item/s as noted in block 11, page 1, solicited under the above referenced procurement. A copy of the fully executed contract (indicating the specific items awarded) is enclosed with this notice. Please reference the contract number shown above in all future correspondence/invoices concerning this agreement.

Correspondence concerning acceptance of the products and services should be addressed to the attention of the individual ordering agent, as shown in block #7, Page 1, of DIT Form 62 / the contract. The DIT point of contact for this contract is Mr. Doug Crenshaw (804) 371-5993.

Sincerely,

A handwritten signature in cursive script that reads "Joe A. Parr".

Joe A. Parr
Contracts Engineer

Enclosure
cc: File