



Commonwealth of Virginia
Virginia Information Technologies Agency

ENTERPRISE-WIDE MESSAGE BROKER SOFTWARE

Optional Use Contract

Date: June 21, 2005

Contract #: VA-020906-AG

Authorized User: State Agencies, Institutions and Public Bodies
as defined in the VPPA

Contractor: Software AG, Inc.
11190 Sunrise Valley Drive
Reston, VA 20191

FIN: 54-0943991

Contact Person: Sari Clark
Phone: 703-391-8246
Fax: 703-391-8320

E-Mail Orders to: sari.clark@softwareagusa.com

Term: September 6, 2004 – September 5, 2005

Payment: Net 30 days

For Additional Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

Bob Gleason
Phone: 804-371-5923
E-Mail: bob.gleason@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT NUMBER VA-020906-AG

MODIFICATION No. 3

BETWEEN

**THE COMMONWEALTH OF VIRGINIA,
VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

AND

SOFTWARE AG, 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 SOFTWARE AG, INC., hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-020906-AG.

1. **Reference:** Page C-12 of C-23, Paragraph 34 entitled "Term":

Both above referenced parties hereby agree to extend the term of Contract VA-020906-AG as specified in the above reference, from September 5, 2004 through September 6, 2005.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020906-AG 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.

SOFTWARE AG, INC.

COMMONWEALTH OF VIRGINIA

BY: Jennifer M. Loudenslager

BY: [Signature]

NAME: Jennifer M. Loudenslager

NAME: [Signature]

TITLE: Director of Accounting

TITLE: Operations Mgr

DATE: 8/24/04

DATE: 8/24/04

**MODIFICATION #2
TO
CONTRACT NUMBER VA-020906-AG
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
SOFTWARE AG, INC.**

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and SOFTWARE AG, INC., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-020906-AG.

The purpose of this Modification #2 is to document both parties' agreement concerning a change to the specified rate delineated herein, effective December 1, 2003.

References:

- a. Page C-5 of C-23; paragraph 16, entitled "MODIFICATIONS"
- b. Page C-11 of C-23; paragraph 33, entitled "PRICE PROTECTION / ADJUSTMENTS"

In accordance with the above references, both parties hereby agree to modify the referenced Contract with the updated product and pricing schedule attached hereto and incorporated herein as Attachment A, pages A-1 through A-2.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020906-AG 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.

SOFTWARE AG, INC.

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: Michael G. Sharpe
TITLE: Director of Accounting

NAME: Robert E. Gleason
TITLE: Technology Contracts Mgr

DATE: 12-16-03

DATE: 12/17/03



**Attachment A
To
Modification #2
Contract VA-020906-AG**

Attachment "A" is hereby incorporated into and made an integral part of Modification #2 to Contract VA-020906-AG between SOFTWARE AG, INC. and the Commonwealth of Virginia.

Item #	Product Description	Pricing Basis	Price
29	Message Broker/ Integration Server (Legacy Bundle)		
	Tamino Server	priced per processor	\$46,401
	Tamino X-Node for Adabas	priced per processor	\$4,640
	EntireX Mediator	priced per processor	\$25,779
	EntireX XML Gateway for Adabas		\$25,779
	EntireX XML Mediator Gateway		\$25,779
	EntireX XML Adapter for ebXML		\$25,779
	EntireX XML Adapters Transformation Engine	priced per processor	\$20,623
	EntireX XML Adapters Transformation Workbench	priced per adapter	\$10,311
	EntireX Communicator	priced per processor	\$56,842 for Unix/\$31,347 for Windows
30	Message Broker/Annual Maintenance		
	Tamino Server	priced per processor	\$9,280
	Tamino X-Node for Adabas	priced per processor	\$928
	EntireX Mediator	priced per processor	\$5,156
	EntireX XML Gateway for Adabas		\$5,156
	EntireX XML Mediator Gateway		\$5,156
	EntireX XML Adapter for ebXML		\$5,156
	EntireX XML Adapters for Transformation Engine	priced per processor	\$4,125
	EntireX XML Adapters for Transformation Workbench	priced per adapter	\$2,062
	EntireX Communicator	priced per processor	\$11,368 for Unix/\$6269 for Windows
31	Basic Adapters		
	Basic File Adapters		included
32	Basic File Adapters/Maintenance		included
33	RDBMS	EntireX XML Gateway for RDBMS	\$25,779
		EntireX XML Adapter for RDBMS	\$25,779
34	RDBMS Maintenance	EntireX XML Gateway for RDBMS Maintenance	\$5,156
		EntireX XML Adapter for RDBMS Maintenance	\$5,156

35	MOM Adapter		see above solution; may also need Adapter for MQ Series
		EntireX XML Adapter for MQ Series	\$25,779
36	MOM Adapter/Maintenance		see above solution; may also need Adapter for MQ Series
		EntireX XML Adapter for MQ Series	\$5,156
37	XML Adapter		see solution above
38	XML Adapter/Maintenance		see solution above
	Intelligent Adapters for Legacy Systems		
39	Oracle Financial Adapter	EntireX XML Gateway for Oracle DB	\$25,779
		Tamino X-Node for Oracle	\$4,640
40	Oracle Financial Adapter/Maintenance	EntireX XML Gateway for Oracle DB	\$5,156
		Tamino X-Node for Oracle Maintenance	\$928
41	PeopleSoft Adapter	EntireX XML Adapter for PeopleSoft	\$61,868
42	PeopleSoft Adapter/Maintenance	EntireX XML Adapter PeopleSoft Maintenance	\$12,374
43	J.D. Edwards Adapter	EntireX XML Gateway for JD Edwards OneWorld	\$61,868
44	J.D. Edwards Adapter/Maintenance	EntireX XML Gateway for JD Edwards OneWorld Maintenance	\$12,374
45	SCT-Banner Adapter		see RDBMS above
46	SCT-Banner Adapter/Maintenance		see RDBMS maintenance above
47	FRS Adapter		see RDBMS above
48	FRS Adapter/Maintenance		see RDBMS maintenance above
49	SAP Adapter	EntireX XML Adapter for SAP R/3	\$61,868
50	SAP Adapter/Maintenance	EntireX XML Adapter for SAP R/3 Maintenance	\$12,374
51	Custom Adapter		Developer's Kit included in EntireX Communicator
52	Custom Adapter/Maintenance		see EntireX Communicator Maintenance
53	Adapter Development Toolkit		Developer's Kit included in EntireX Communicator
54	Adapter Development Toolkit/Maintenance		see EntireX Communicator Maintenance
55	Education/Training	priced per hour	\$210
56	Consulting Services	priced per hour	\$210

**MODIFICATION #1
TO
CONTRACT NUMBER VA-020906-AG
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
SOFTWARE AG, 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 SOFTWARE AG, INC., hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-020906-AG.

1. **Reference:** Page C-12 of C-23, Paragraph 34 entitled "Term":

Both above referenced parties hereby agree to extend the term of Contract VA-020906-AG as specified in the above reference, from September 6, 2003 through September 5, 2004.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020906-AG 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.

SOFTWARE AG, INC.

BY: Michael G. Sharpe

NAME: Michael G. Sharpe
Director of Accounting

TITLE: _____

DATE: 10-9-03



COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 10/10/03

SOLICITATION, OFFER AND AWARD
DATA PROCESSING / TELECOMMUNICATIONS

FIN: 54-0943991

1. Contract No: VA-020906-AG	2. IFB No: 2002-027	3. Date Issued: Jun 4, 2002	Date Due: Jul 11, 2002	4. APR 93	5. Approval No: D-120
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For Information Call: Robert Crawford (804) 371-5990

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:

Dept. of Information Technology
Danny Wilmoth
110 South 7th St.
3rd Floor
Richmond, VA 23219-3931

SOLICITATION

8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Jul 11, 2002.

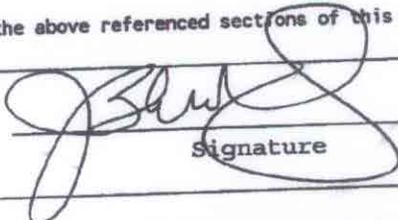
CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions

This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 9; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-23; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference.

Offers will be publicly opened at: 2:10 p.m. local time Jul 11, 2002, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.

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

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: Software AG, Inc.
Address: 11190 Sunrise Valley Dr.
City, State: Reston, VA 20191-5424
Signature: M.C. Lee
Name (Typed): M.C. Lee
Title: Chief Financial Officer
Phone: 703-391-8129

10. BILL TO:

Dept. of Information Technology
Att: Accounts Payable
110 South 7th St.
3rd Floor
Richmond, VA 23219-3931

AWARD

11. Accepted as to Item Numbers: <u>29 through 56</u>	12. Amount: <u>Per Order</u>	13. Award Date: <u>Sept 6, 2002</u>
14. Name of Contracting Officer: Jeff Davis Contracts Manager	15. COMMONWEALTH OF VIRGINIA By: <u>J. Davis</u>	PAGES: 1 of 9

DIT-62A 01/15/91		SCHEDULE		IFB NO. 02-027	Page: 2 of 9	
NAME OF CONTRACTOR Software AG, Inc.			REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO		INITIALS	
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE	
	<p>The Commonwealth desires to set in place up to five (5) contracts for Enterprise-wide Message Broker software products running on OS/390 mainframes and up to five (5) contracts for Enterprise-wide Message Broker software running on Unix/Windows NT/Windows 2000. The contracts will allow State agencies and institutions the convenience of choosing from an existing contract as their need for these products emerges.</p> <p>Contracts awarded will be optional use contracts. An award does not guarantee that any products will be purchased by the Commonwealth.</p> <p>Group OS/390</p>					
1.	Message Broker/Integration Server	1	ea.			
2.	Message Broker/Integration Server Annual Maintenance	1	ea.			
	Basic Adapters					
3.	Basic file adapter (input/output from local file systems)	1	ea.			
4.	Basic file adapter annual maintenance	1	ea.			
5.	Relational Data Base Management System (RDBMS) adapter	1	ea.			
6.	RDBMS adapter annual maintenance	1	ea.			
7.	Message Oriented Middleware (MOM adapter)	1	ea.			
8.	MOM adapter annual maintenance	1	ea.			
9.	eXtensible Markup Language (XML) adapter	1	ea.			
10.	XML adapter annual maintenance	1	ea.			
	Continued on next page.					

DIT-62A 01/15/91		SCHEDULE		IFB NO. 02-027		Page: 3 of 9	
NAME OF CONTRACTOR Software AG Inc.			REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO		INITIALS		
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE		
	Group OS/390 continued						
	Intelligent Adapters for Legacy Systems						
11.	Oracle Financials adapter	1	ea.				
12.	Oracle Financials adapter annual maintenance	1	ea.				
13.	PeopleSoft adapter	1	ea.				
14.	PeopleSoft adapter annual maintenance	1	ea.				
15.	J.D. Edwards adapter	1	ea.				
16.	J.D. Edwards adapter annual maintenance	1	ea.				
17.	SCT-Banner adapter	1	ea.				
18.	SCT-Banner adapter annual maintenance	1	ea.				
19.	Financial Records Systems (FRS) adapter	1	ea.				
20.	FRS adapter annual maintenance	1	ea.				
21.	SAP adapter	1	ea.				
22.	SAP adapter annual maintenance	1	ea.				
23.	Custom Adapter (develop custom adapter)	1	ea.				
24.	Custom Adapter annual maintenance	1	ea.				
25.	Adapter Development Toolkit	1	ea.				
26.	Adapter Development Toolkit annual maintenance	1	ea.				
27.	Education/training	1	hr.				
28.	Consulting Services for Message Broker and Adapter Software (hourly rate must include all expenses for on-site consultation).	1	hr.				
	Total						

DIT-62A 01/15/91		SCHEDULE		IFB NO. 02-027	Page: 4 of 9	
NAME OF CONTRACTOR <i>Software AG, Inc.</i>			REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO		INITIALS	
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE	
	Group Unix/Windows NT/Windows 2000					
29.	Message Broker/Integration Server	1	ea.			
30.	Message Broker/Integration Server Annual Maintenance	1	ea.			
	Basic Adapters					
31.	Basic file adapter (input/output from local file systems)	1	ea.		incl. in LB	
32.	Basic file adapter annual maintenance	1	ea.		incl in LB	
33.	Relational Data Base Management System (RDBMS) adapter	1	ea.		incl in LB	
34.	RDBMS adapter annual maintenance	1	ea.		incl in LB	
35.	Message Oriented Middleware (MOM adapter)	1	ea.		not reg'd	
36.	MOM adapter annual maintenance	1	ea.		not reg'd	
37.	eXtensible Markup Language (XML) adapter	1	ea.		not reg'd	
38.	XML adapter annual maintenance	1	ea.		not reg'd	
	Intelligent Adapters for Legacy Systems					
39.	Oracle Financials adapter	1	ea.		not reg'd	
40.	Oracle Financials adapter annual maintenance	1	ea.		not reg'd	
41.	PeopleSoft adapter	1	ea.		not reg'd	
42.	PeopleSoft adapter annual maintenance	1	ea.		not reg'd	
43.	J.D. Edwards adapter	1	ea.		not reg'd	
44.	J.D. Edwards adapter annual maintenance	1	ea.		not reg'd	
	Continued on next page.					

**Please see attached sheet for itemized list of Legacy Bundle (LB) for product and annual maintenance*



Pricing Schedule

Group OS/390 Pricing

The proposed product suite is not yet fully released on the OS/390 platform. Once products are formally announced, we will be happy to provide comprehensive licensing information to the Commonwealth. Please note, however, that our products do not have to reside on the mainframe (i.e., they can be installed on Unix or Windows) to access and/or update the Commonwealth's mainframe applications and data.

Group Unix/Windows NT/Windows 2000

Item No.	Description	Qty	Unit	Unit Price	Extended Price
29.	Message Broker/Integration Server (Legacy Bundle (LB)) *Note 1				
	29(a) EntireX Broker Adapter	1	ea.	\$25,779	\$25,779
	29(b) EntireX Adabas Adapter	1	ea.	\$25,779	\$25,779
	29(c) EntireX Generic RDBMS Adapter	1	ea.	\$25,779	\$25,779
	29(d) EntireX Basic Adapter Suite *Note 2	1	ea.	\$25,779	\$25,779
	29(e) Tamino Server	1	ea.	\$46,401	\$46,401
	29(f) EntireX Mediator	1	ea.	\$25,779	\$25,779
30.	Message Broker/Integration Server Annual Maintenance				
	30(a) EntireX Broker Adapter	1	ea.	\$ 4,640	\$ 4,640
	30(b) EntireX Adabas Adapter	1	ea.	\$ 4,640	\$ 4,640
	30(c) EntireX Generic RDBMS Adapter	1	ea.	\$ 5,156	\$ 5,156
	30(d) EntireX Basic Adapter Suite *Note 2	1	ea.	\$ 4,640	\$ 4,640
	30(e) Tamino Server - priced per processor	1	ea.	\$ 9,280	\$ 9,280
	*Note 1	1	ea.	\$ 5,156	\$ 5,156
	30(f) EntireX Mediator - priced per processor				
	* Note 1				
	Basic Adapters				
31.	Basic File Adapter	1	ea.		Incl. in LB
32,	Basic File Adapter Annual Maintenance	1	ea.		Incl. in LB
33.	RDBMS Adapter	1	ea.		Incl. in LB
34.	RDBMS Adapter Annual Maintenance	1	ea.		Incl. in LB

Use or disclosure of data contained in this document is subject to the restriction in the disclosure notice.



Item No.	Description	Qty	Unit	Unit Price	Extended Price
35.	MOM Adapter	1	ea.		not req'd *Note 3
36.	MOM Adapter Annual Maintenance	1	ea.		not req'd
37.	XML Adapter	1	ea.		not req'd
38.	XML Adapter Annual Maintenance	1	ea.		not req'd
Intelligent Adapters for Legacy Systems					
39.	Oracle Financials Adapter	1	ea.		not req'd
40.	Oracle Financials Adapter Annual Maintenance	1	ea.		not req'd
41.	PeopleSoft Adapter	1	ea.		not req'd
42.	PeopleSoft Adapter Annual Maintenance	1	ea.		not req'd
43.	J.D. Edwards Adapter	1	ea.		not req'd
44.	J.D. Edwards Adapter Annual Maintenance	1	ea.		not req'd
45.	SCT-Banner Adapter	1	ea.		not req'd
46.	SCT-Banner Adapter Annual Maintenance	1	ea.		not req'd
47.	Financial Records Systems (FRS) Adapter	1	ea.		not req'd
48.	FRS Adapter Annual Maintenance	1	ea.		not req'd
49.	SAP Adapter	1	ea.		not req'd
50.	SAP Adapter Annual Maintenance	1	ea.		not req'd
51.	Custom Adapter	1	ea.		not req'd
52.	Custom Adapter Annual Maintenance	1	ea.		not req'd
53.	Adapter Development Toolkit	1	ea.		Incl. in LB
54.	Adapter Development Toolkit Annual Maint.	1	ea.		Incl. in LB

Software Product Notes:

Note 1:

- All products listed may be installed on most UNIX or Windows operating systems depending on how licensed.
- EntireX Broker Adapter, EntireX Adabas Adapter, EntireX Generic RDBMS Adapter and EntireX Basic Adapter Suite are licensed on a per copy basis.
- Tamino Server and EntireX Mediator are priced on a per processor basis and thus the license fee would be determined by the number of processors in the machine for which they are licensed. An increase in the number of processors would be considered a change in the machine and additional license fees would be due. However, Software AG will accept discounting the per-machine license price to be based on only those number of processors on the machine that are



actually using the software provided the Commonwealth accepts restricting use of the software to only that subset number of processors on the machine.

- Industrial Funding Adjustment (IFA) is included in all prices.

Note 2:

- EntireX Basic Adapter Suite includes File System, Socket and Program Adapters.

Note 3:

- “Not required” indicates that our proposed solution precludes the need for that adapter technology.

Services

Item No.	Description	Qty	Unit	Unit Price	Extended Price
55.	Education/Training	1	hr.	\$210/hour	TBD on number of hours ordered
56.	Consulting Services	1	hr.	\$210/hour	TBD on number of hours ordered
	Total				

Services Notes:

Industrial Funding Adjustment (IFA) is included in all prices

NAME OF CONTRACTOR <i>Software AG, Inc.</i>	REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS
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ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
	Group Unix/Windows NT/Windows 2000 continued.				
45.	SCT-Banner adapter	1	ea.	not reg'd	
46.	SCT-Banner adapter annual maintenance	1	ea.	not reg'd	
47.	Financial Records Systems (FRS) adapter	1	ea.	not reg'd	
48.	FRS adapter annual maintenance	1	ea.	not reg'd	
49.	SAP adapter	1	ea.	not reg'd	
50.	SAP adapter annual maintenance	1	ea.	not reg'd	
51.	Custom Adapter (develop custom adapter)	1	ea.	not reg'd	
52.	Custom Adapter annual maintenance	1	ea.	not reg'd	
53.	Adapter Development Toolkit	1	ea.	incl in LB	
54.	Adapter Development Toolkit annual maintenance	1	ea.	incl in LB	
55.	Education/training	1	hr.	\$210/hr	TBD
56.	Consulting Services for Message Broker and Adapter Software (hourly rate must include all expenses for on-site consultation)	1	hr.	\$210/hr	TBD
	Total				
	Industrial Funding Adjustment (IFA) must be included in all prices as delineated above. See Contractual Terms and Conditions.				
	Vendor's email address: <u><i>Sari.clark@softwareagusa.com</i></u>				

SOLICITATION INSTRUCTIONS
REV. 11/01/01

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 THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY. A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps). Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.
- B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; DIT Form 62A or 62B. Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution which meets the required specifications of the procurement. Additional bids shall be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

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

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

3. SUBMISSION OF BIDS

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

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

4. SPECIFICATIONS AND USE OF BRAND NAMES

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

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

- A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)
- B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB.

6. PUBLIC OPENING OF BIDS

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

7. SOLICITATION TERMS AND CONDITIONS

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

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

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

8. AWARD OF CONTRACT

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

9. AWARD NOTICES

Upon the completion of evaluation, the State will either post a NOTICE OF AWARD (NOA) or a NOTICE OF INTENT TO AWARD (NOITA). If a NOITA is used, the notice will be publicly posted ten days prior to the actual award date of the contract. All award notices will be posted on ASD's Web Page ([HTTP://ASD.STATE.VA.US](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 2.2-4342, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. **The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.**

**CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BID (IFB) #2002-027**

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or DIT (Department of Information Technology) will establish a Master Contract for use by State Agencies, Institutions and other Public Bodies, as defined in § 2.2-4301, Definitions of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users", for the acquisition of Software and Services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy 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 site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

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

4. ANTI-DISCRIMINATION

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

In every Contract over \$10,000 the provisions in a. and b. below apply:

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

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

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

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

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. 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.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

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

7. 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.

8. 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.

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

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.

10. 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.

11. PAYMENT

a. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

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

5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

b. To Subcontractors:

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

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

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

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

12. PRECEDENCE OF TERMS

Paragraphs 1-12 of these General Terms and Conditions 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.

13. QUALIFICATIONS OF BIDDERS

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

14. 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.

15. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

16. MODIFICATIONS

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below No modifications to this contract shall be effective unless it is in writing 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.

17. 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 that the Commonwealth may have.

18. TAXES

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

19. USE OF BRAND NAMES

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

20. 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.

21. INSURANCE

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

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.

- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
- d. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

22. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of 10 days.

23. 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.

24. NONDISCRIMINATION OF CONTRACTORS

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

25.

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

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

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

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

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

B-6a

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

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

eVA BUSINESS-TO-GOVERNMENT CONTRACTS

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

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

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

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

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

26. BREACH

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

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

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

27. 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.

28. DELIVERY / SERVICE COMMENCEMENT DATES

a. The Contractor shall be fully prepared to begin deliveries under this Contract within thirty (30) days of award. The Contractor shall deliver the requested software, or services ready for use, by the delivery date (day, month, year) identified on any Order.

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 delivery date.

c. If the software or services are 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 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.

29. PATENT/COPYRIGHT PROTECTION

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

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

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

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

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

30. 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 non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

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

31. 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.

32. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all 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.

33. 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.

34. TERM

The initial Term of this Contract shall be for one (1) year, from the date of award. The Commonwealth at its own discretion, may renew this Contract for four (4) additional one (1) year periods at the prices quoted in the Schedule plus any allowable price escalations. The Commonwealth shall issue a writing stating its intention to renew, thirty (30) days prior to any expiration.

35. 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.

36. 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.

37. 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.

38. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, software and services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the materials, 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, 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 making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, 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, 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.

39. 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.

40. 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.

41. SERVICES WARRANTY

For Services employed to develop custom Software, the Contractor represents and warrants that the Services are guaranteed in that the developed products shall be software supported and maintained as defined herein by the Contractor at the prices identified herein.

For Services employed for consultation, the Contractor represents and warrants that the Services will be performed in conformance with good business practices and industry standards. The Contractor's price identified in the Schedule shall be inclusive of travel, meals, lodging, and any other costs required for the Contractor to provide the Services.

42. 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"