



Commonwealth of Virginia  
Virginia Information Technologies Agency

**VA-030206-PT**

**Optional Use Contract**

Date: January 10, 2006

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA, and other VDDHH approved Virginia based  
purchasers

Contractor: Potomac Technologies  
One Church Street  
Suite 101  
Rockville, MD 20850

FIN: 39-1590513

Contact Person: Patricia Relihan  
Voice: 800-433-2838  
Email: [patricia.relihan@potomactech.com](mailto:patricia.relihan@potomactech.com)

FOB: Destination

Delivery: 14 days After Receipt of Order

Term: February 20, 2006 – February 19, 2007

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:

Joe Parr, CPPO, VCO  
Technical Contract Engineer  
Phone: 804-371-5991  
E-Mail: [joe.parr@vita.virginia.gov](mailto:joe.parr@vita.virginia.gov)  
Fax: 804-371-5969

Doug Leslie  
Phone: 804-371-5123  
Email: [doug.leslie@vita.virginia.gov](mailto:doug.leslie@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>

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA):** Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.



**MODIFICATION # 5  
TO  
CONTRACT NUMBER VA-030206-PT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
POTOMAC TECHNOLOGY**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Potomac Technology, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #5 is hereby incorporated into and made an integral part of Contract VA-030206-PT, as modified.

Both of the above referenced parties agree to the following:

**Reference: Page C-12 of C-21, Paragraph 36 entitled "Term":**

The term of Contract VA-030206-PT shall be extended from February 20, 2006 through February 19, 2007.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030206-PT 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.**

POTOMAC TECHNOLOGY

BY: Patricia J. Relihan  
NAME: Patricia J. Relihan  
TITLE: VP  
DATE: 1/2/06

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr  
NAME: Joe A. Parr  
TITLE: Acquisition Supervisor  
DATE: 1/9/06

**MODIFICATION # 4  
TO  
CONTRACT NUMBER VA-030206-PT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
POTOMAC TECHNOLOGY**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Potomac Technology, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #4 is hereby incorporated into and made an integral part of Contract VA-030206-PT, as modified.

Both of the above referenced parties agree to the following:

**Reference: Page C-12 of C-21, Paragraph 36 entitled "Term":**

The term of Contract VA-030206-PT shall be extended from February 20, 2005 through February 19, 2006.

**Reference: Page C-5 of C-21, Paragraph 15 entitled "Modifications":**

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 (VITA). Therefore, for purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030206-PT 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.**

POTOMAC TECHNOLOGY

BY: Patricia Relihan

NAME: Patricia J. Relihan

TITLE: VP

DATE: 1/25/05

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Senior Sourcing Specialist

DATE: 1/31/05

CONTRACT NUMBER VA-030206-PT

**MODIFICATION No. 3**

BETWEEN

THE COMMONWEALTH OF VIRGINIA,  
VIRGINIA INFORMATION TECHNOLOGIES AGENCY

AND

**POTOMAC TECHNOLOGY, INC.**

The purpose of Modification No. 3 is to document the agreement between the Commonwealth of Virginia, Virginia Information Technologies Agency (VITA), and Potomac Technology, Inc., concerning Contract Renewal.

Both above referenced parties agree to extend the term of the contract, from February 20, 2004 through February 19, 2005, with two remaining additional one-year renewal periods, to provide TTY/TDD devices that will be used on behalf of the Virginia Department for the Deaf and Hard of Hearing (VDDHH), as detailed in IFB #2003-014, dated February 6, 2003.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

POTOMAC TECHNOLOGY, INC.

BY: Patricia J. Reihan

NAME: Patricia J. Reihan

TITLE: VP

DATE: 02/02/04

COMMONWEALTH OF VIRGINIA

BY: T. Moore

NAME: Timothy L. Moore

TITLE: Director for Susan Woolley  
Supply Chain Management

DATE: 2/6/04

**MODIFICATION # 2  
TO  
CONTRACT NUMBER VA-030206-PT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
POTOMAC TECHNOLOGY**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Potomac Technology, 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-030206-PT, as modified.

Both of the above referenced parties agree that the Agreement was modified in error by Modification #1. Both parties further agree that the pricing revisions contained in Modification #1 are hereby deleted in their entirety, and that the original pricing in the Agreement, VA-030206-PT dated February 6, 2003 shall govern.

In addition, both above-referenced parties agree to the following:

Effective as of the date of execution of this Modification #2, all references made to "Department of Information Technology" or "DIT" shall refer to "Virginia Information Technology Agency" or "VITA." Both parties agree that although the name of VITA has changed, from the name Department of Information Technology to Virginia Information Technology Agency, all Contract duties and obligations of the Contractor and the State have not changed.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030206-PT 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.**

POTOMAC TECHNOLOGY

BY: Patricia J. Relihan  
NAME: Patricia J. Relihan  
TITLE: Vico President  
DATE: 12/1/03

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr  
NAME: Joe A. Parr  
TITLE: Contracts Engineer  
DATE: 12/4/03

**MODIFICATION # 1  
TO  
CONTRACT NUMBER VA-030206-PT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
POTOMAC TECHNOLOGY**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Potomac Technology, 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-030206-PT, as modified.

Both of the above referenced parties agree to the following:

**Reference: Page C-5, Paragraph 15 entitled "Modifications" and Page C-7, Paragraph 24 entitled "eVA Business-To Government Vendor Registration":**

Both above referenced parties agree to the adjustment of the unit prices contained in the Schedule of the Agreement to reflect the 1% eVA Transaction Fee per order, as follows:

<u>Item No.</u>	<u>Current Unit Price</u>	<u>Revised Unit Price</u>
1	\$12.50	\$12.63
2	\$24.00	\$24.24
3	\$54.00	\$54.54
4	\$22.00	\$22.22
5	\$21.00	\$21.21

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030206-PT and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

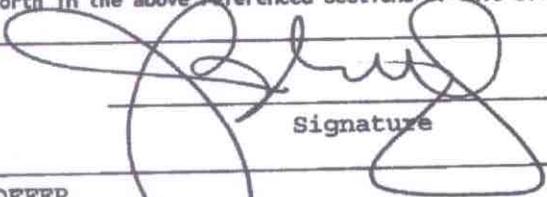
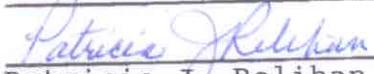
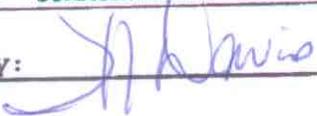
**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

POTOMAC TECHNOLOGY

BY: Patricia J. Relihan  
 NAME: Patricia J. Relihan  
 TITLE: VP  
 DATE: 11/10/03

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr  
 NAME: Joe A. Parr  
 TITLE: Contracts Engineer  
 DATE: 11/13/03

SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS					FIN: 39 1590513	
1. Contract No: <i>VA-030206-PT</i>	2. IFB No: 2003-014	3. Date Issued: Jan 2, 2003	Date Due: Jan 28, 2003	4. APR 101	5. Approval No: <i>E150</i>	
For Information Call: Teresa Hudgins			(804) 371-5919			
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: Using agency/user as specified on orders			
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 Jan 28, 2003.  CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions						
This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 13; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-21; 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 Jan 28, 2003, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.  All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.						
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: <u>Potomac Technology, Inc.</u> Address: <u>One Church St., #101</u> City, State: <u>Rockville MD 20850</u> Signature: <u></u> Name (Typed): <u>Patricia J. Relihan</u> Title: <u>Vice President</u> Phone: <u>1-800-433-2838 (v/tty)</u>			10: BILL TO: Using agency/user as specified on orders			
AWARD						
11. Accepted as to Item Numbers: <i>LOT 3, Item 6</i>			12. Amount: <i>per order</i>		13. Award Date: <i>2/16/03</i>	
14. Name of Contracting Officer: Jeff Davis Contracts Manager			15. COMMONWEALTH OF VIRGINIA By: 		PAGES: 1 of 13	

pg 2

DIT-62A 01/15/91		SCHEDULE		IFB NO. 2003-014		PAGE 2 OF 13	
NAME OF CONTRACTOR Potomac Technology, Inc.			REQUIRED DELIVERY DATE: (RDD) 14 DAYS ARO			INITIALS	
ITEM NO:	DESCRIPTION	QTY.	UNIT	UNIT PRICE	EXTENDED PRICE		
The Commonwealth wishes to establish a statewide contract for TTY/TDD devices as delineated below:							
<b>Lot 1 (Item 1)</b>							
1	Basic Telephone Signaler (Wall mount model) (Specifications are located in IFB Schedule section 2.1.1)  Bidder: Provide the following information:  Manufacturer: <u>Ultratec</u>  Model: <u>L, #661-001000</u>	1	each	\$ 12.50	\$ 12.50		
<b>Lot 2 (Items 2 - 5)</b>							
<b>NOTE: All items bid in Lot 2 shall be of the same manufacturer and electronically compatible.</b>							
2	Transmitting Telephone Signaler (Wall mount or Desktop model is acceptable) (Specifications are located in IFB Schedule section 2.1.2)  Bidder: Provide the following information:  Manufacturer: <u>Ultratec</u>  Model: <u>LT, #661-000700</u>	1	each	\$ 24.00	\$ 24.00		
3	Integrated Telephone and Doorbell Signaler (Specifications are located in IFB Schedule section 2.1.3)  Bidder: Provide the following information:  Manufacturer: <u>Ultratec</u>  Model: <u>LTW, #661-001800</u>	1	each	\$ 54.00	\$ 54.00		
4	Sound Signaler (Wall mount or Desktop model is acceptable) (Specifications are located in IFB Schedule section 2.1.4)  Bidder: Provide the following information:  Manufacturer: <u>Ultratec</u>  Model: <u>T, #661-000500</u>	1	each	\$ 22.00	\$ 22.00		

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DIT-62A 01/15/91		SCHEDULE		IFB NO. 2003-014		PAGE 3 OF 13	
NAME OF CONTRACTOR Potomac Technology, Inc.			REQUIRED DELIVERY DATE: (RDD) 14 DAYS ARO			INITIALS	
ITEM NO:	DESCRIPTION	QTY.	UNIT	UNIT PRICE	EXTENDED PRICE		
5	Remote Receiver (Wall mount or Desktop model is acceptable) (Specifications are located in IFB Schedule section 2.1.5)  Bidder: Provide the following information:  Manufacturer: <u>Ultratec</u>  Model: <u>LRD, #661-001300</u>	1	each	\$21.00	\$ 21.00		
	TOTAL Lot 2 (Item No. 2 - 5)	1	lot		\$ 121.00		
	<b>Lot 3 (Item 6)</b>						
6	Voice Carry-Over (VCO) Telephone (Specifications are located in IFB Schedule section 2.2)  Bidder: Provide the following information:  Manufacturer: <u>Ameriphone</u>  Model: <u>Dialogue VCO</u>	1	each	\$126.00	\$ 126.00		
<p><b>NOTE:</b> All prices are to include the Industrial Funding Adjustment (IFA) and eVA as delineated in the terms and conditions herein.</p> <p><b>Bidder, provide company status below:</b></p> <p>Small Business: <u>X</u>            Women-Owned Business: <u>X</u>            Minority-Owned Business: _____</p> <p>Small Business means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated, and has fewer than 100 employees or less than 1,000,000 in annual gross receipts.</p> <p>Women-owned business means a business concern that is at least 51 percent owned by a non-ethnic woman or women who are U.S. citizens and who also control and operate it.</p> <p>Minority-owned business means any business concern that is at least 51 percent owned by a minority individual or individuals who are U.S. citizens and who also control and operate it.</p> <p>Bidders Email Address: <u>pat.relihan@potomactech.com</u></p>							

## NOTES

1. Purpose

The purpose of this Invitation for Bids (IFB) is to solicit bids from authorized sources to establish a statewide contract for TTY/TDD devices that will be used on behalf of the Virginia Department for the Deaf and Hard of Hearing (VDDHH). These devices are used when communicating by telephone with or by persons who are deaf, hard of hearing, hearing-visually impaired, or speech impaired. This contract, when implemented, will allow the required item(s) to be procured by Commonwealth of Virginia State Agencies, Institutions and other Public Bodies, as defined in Section 2.2-4301 *Definitions* of the Virginia Public Procurement Act (VPPA), as amended and other VDDHH-approved Virginia-based purchasers; including but not limited to, individual consumers who are deaf, hard of hearing, hearing-visually impaired or speech impaired and are domiciled in Virginia.

2. Commodity Specification

(Items specified within sections 2.1.2 – 2.1.5 shall be of the same manufacturer and electronically compatible.)

2.1 **TTY/VCO Telephone Signaling Devices**

**Manufacturer: Ultratec or approved equivalent**

**Purpose:** Adaptive telephone signaling equipment composed of components that work individually or all together for the identification of a ringing telephone, a doorbell, and/or other sounds in the home of an individual who is deaf or hard of hearing.

**Specifications:**

The devices shall include at a minimum, the following requirements:

2.1.1 Basic Telephone Signaler

- Plugs directly into phone line
- Built in electrical outlet
- Flash pattern follows ring pattern
- Two year warranty

2.1.2 Transmitting Telephone Signaler

- Plugs directly into phone line
- Built in electrical outlet with on/off switch
- Flash pattern follows ring pattern
- Transmits signal to remote receiver(s)
- Two year warranty

### 2.1.3 Integrated Telephone and Doorbell Signaler

- Plugs directly into phone line
- Wireless doorbell unit included
- Built in electrical outlet with on/off switch
- Flash pattern follows ring pattern
- Transmits signal to remote receiver(s)
- Two year warranty

### 2.1.4. Sound Signaler

- Transmits signal to remote receiver(s)
- Sound sensitivity control to adjust for noise activation
- Two year warranty

### 2.1.5 Remote Receiver

- Receives signal from all signaler devices
- Built in electrical outlet with on/off switch
- Flash pattern follows ring pattern
- Indicator lights to identify different sounds being signaled
- Two year warranty

## 2.2 Voice Carry-Over (VCO) Telephone

**Manufacturer/Model: Ameriphone Dialog VCO telephone or approved equivalent.**

**Purpose:** Adaptive telephone to enable a user to receive a test message through a telecommunications relay service (TRS) and verbally reply to the caller.

### **Specifications:**

The device shall include at a minimum, the following requirements:

- LCD screen for display of text, minimum of 20 character display, 1/4" minimum character height, with back lighting.
- 20dB amplified handset for incoming calls, hearing aid compatible
- Tone control for incoming calls
- Ring volume up to 85 dB with volume control and built-in ring flasher
- Programmable features for memory dialing and relay text message
- Hold, redial and flash buttons
- Auto answer
- AC power
- Five year warranty

3. Equipment Orders for VDDHH-TAP Approved Individuals

Equipment orders, for VDDHH-TAP approved individuals, will be submitted directly to the Contractor by the individual or the VDDHH-TAP Manager or designee. Each order submitted will include a VDDHH issued **Technology Assistance Program (TAP)** coupon that reflects the eligibility status of the individual. VDDHH-TAP will issue only two types of coupons. A description of each is as follows:

3.1 The "Technology Assistance Program Payment (TAPPAY)" coupon will be issued to individuals for whom all of the cost to purchase the requested item(s) will be paid by the applicant. The TAPPAY coupon will specify the following:

- Consumer's name, address, and telephone number
- Coupon number
- Coupon expiration date
- Space for Contractor redemption date
- Type and/or identification code of item ordered
- Consumer signature, telephone number, and date blocks
- Contractor signature, date, and equipment serial number blocks
- VDDHH-TAP authorization and date blocks

3.2 The "Technology Assistance Program Free (TAPFREE)" coupon will be issued to the Contractor on behalf of individuals for whom the total cost to purchase the required item(s) will be paid by VDDHH-TAP. A TAPFREE coupon will be transmitted from VDDHH-TAP to the Contractor via mail or facsimile machine, and will include the following information:

- Consumer's name
- Consumer's shipping address
- Coupon number
- Coupon expiration date
- Type and/or identification code of item ordered
- Contract price of item ordered
- Contractor's signature, date, and equipment serial number blocks
- VDDHH-TAP signature and date blocks

NOTE: Sample TAPPAY and TAPFREE coupons are provided in Appendix A & B.

3.3 All Text Telephones distributed in conjunction with a TAPPAY or TAPFREE coupon, shall be labeled with a non-removable label that indicates that the device was provided via the Virginia Department for the Deaf and Hard of Hearing – Technology Assistance Program.

4. Equipment Orders from state agencies, institutions of higher education and other public bodies

Authorized users may order Equipment from the Contractor by one of the methods contained in Section 40 entitled, "Orders" of the Terms and Conditions

5. Duplicate orders

The Contractor shall make a reasonable effort to identify VDDHH-TAP consumers that have received VDDHH-TAP equipment more than once during the life of the contract. If such duplication is found, the Contractor shall first determine if the coupon has a special eligibility code identifying the consumer as being eligible to receive additional equipment. If there are no special codes on the coupon, the Contractor shall notify the VDDHH-TAP Manager immediately via facsimile transmission for approval to disseminate the equipment. Examples of the special eligibility codes are as follows:

- XXXXXA: New
- XXXXXB: First Renewal
- XXXXXC: Second Renewal
- XXXXXD: Third Renewal
- XXXXXR: Return
- XXXXXX: Exchange

6. Technical Brochures and Photographs

6.1 The Contractor shall provide VDDHH a minimum of 100 copies of technical specification brochures within five (5) business days after the award of the contract. Additional copies shall be available within ten (10) business days after request from VDDHH for the duration of the contract.

6.2 The Contractor shall provide VDDHH camera-ready black and white photographs with accompanying captions that identify the brand and model number of the item for which the bid was awarded within five (5) business days after the award of the contract.

7. Training

Upon receipt of a written request from VDDHH, the Contractor shall provide training within the Commonwealth of Virginia, to VDDHH and other VDDHH-approved individuals on the proper set-up and usage of the selected equipment. The frequency of requests for training will not exceed three (3) requests per each year of the contract. With the approval of VDDHH, professional quality training videotapes on specific equipment may substitute for on-site training. All training-related expenses, including the costs of the videotapes shall be the sole responsibility of the Contractor.

8. Delivery Requirements

8.1 Delivery shall be made within 14 calendar days after receipt of a properly executed purchase order from a Commonwealth of Virginia state agency, institution of higher education or other public body or a properly executed TAPPAY coupon and check or money order from a VDDHH-TAP approved individual that together cover the total cost of the item ordered, or a properly executed TAPFREE coupon issued by VDDHH on behalf of a VDDHH-TAP approved individual.

8.2 Bidder: State your firm delivery date if less than 14 days:

14 /Days After Receipt of an Order.

8.3 The Contractor shall obtain written confirmation of the delivery of all items to TAPPAY and TAPFREE consumers. The confirmation of receipt shall include the following information:

- Consumer's name, address and telephone number
- TAPPAY or TAPFREE coupon number
- Shipment date(s) of item(s)
- Serial number(s) of item(s) delivered
- Signature of VDDHH-TAP approved consumer, or parent or legal guardian, if approved consumer is a minor and date on which item(s) were signed for.

8.4 The Contractor shall notify the VDDHH-TAP Manager or designee, via facsimile transmission, of any unauthorized changes made to TAPPAY or TAPFREE coupons. The Contractor shall obtain approval from the VDDHH-TAP Manager or designee prior to dissemination of equipment for such coupons.

8.5 Generally, delivery of the item(s) shall be within the Commonwealth of Virginia; however, the VDDHH-TAP Manager or designee must approve, in advance and in writing, all shipments to locations outside of the state. Additionally, the Contractor shall not ship items purchased with TAPPAY or TAPFREE coupons to out of state addresses unless prior approval has been granted in writing by the VDDHH-TAP Manager or designee.

9. Contractor Invoices

9.1 The Contractor must provide an individual to function as the single point of contact for all billing matters pertaining to the Contract as a result of this solicitation. A person to function as a backup contact must also be assigned to address accounting billing matters during times when the primary contact is unavailable. At or before the time the contract is executed, the intended Contractor must provide the names, addresses, and voice and facsimile telephone numbers for the contact and backup persons for billing matters.

9.2 To receive payment for item(s) delivered to purchasers other than VDDHH-TAP individual consumers, the Contractor shall directly invoice the originator of the purchase order. The invoices shall include, at a minimum:

- Contract number
- Ordering entities purchase order number
- Type and/or identification code
- Serial number for the device

VDDHH will not honor invoices for item(s) procured by any state agency or local public body, other than itself.

9.3 It shall be the sole responsibility of the Contractor to collect any monies owed by the TAPPAY consumer.

9.4 VDDHH-TAP shall be invoiced for the entire cost of the item(s) ordered for approved individuals by VDDHH-TAP using the TAPFREE coupon. The Contractor's invoice shall be submitted with the TAPFREE coupon and the consumer's signed confirmation of receipt attached.

Invoices will not be honored if the Contractor has not signed and dated the TAPFREE coupon; or provided the type and/or identification code and serial number for the delivered device; or provided the consumer's signed confirmation of receipt. VDDHH will in no instance pay the Contractor more than the amount listed in the "Valid Amount" space on the TAPFREE coupon.

9.5 The Contractor shall submit invoices for TAPPAY and TAPFREE orders by the "Vendor Expiration Date" notated on the TAPPAY and TAPFREE coupons.

10. Publicity Demonstration Unit

Within ten (10) days of award of their contract, each Contractor shall provide VDDHH with five (5) fully functioning demonstration units for each model awarded. VDDHH will be responsible for payment of the demonstration units. These units will be used by VDDHH to publicize the TAP Program and to give potential consumers an opportunity to test or evaluate the item prior to applying to TAP or purchasing a unit.

All charges for shipping the demonstration equipment to VDDHH shall be the responsibility of the Contractor.

All demonstration units shall have a two (2) or five (5) year "Return to Vendor" warranty as delineated in the attached terms and conditions.

11. General

11.1 Award, if made, will be on a lot basis to the lowest responsive and responsible Bidder.

11.2 **Bidder:** Provide a copy of the instructions for utilizing the Contractor's customer service center with your bid response. The Commonwealth, prior to award of the contract, must approve the instructions. \*see pg 10A

11.3 No-Bids are neither required nor desired.

11.4 In the event the selected Contractor defaults, the Commonwealth reserves the right to award to the next lowest responsive and responsible Bidder.

11.5 All Bidders submitting bids must be registered with the Department of Information Technology prior to an award. The Bidder's Federal Identification Number (FIN) should be placed in the appropriate box on Page 1 of the bid solicitation. In the event the Bidder does not supply the appropriate identification number, DIT may not be able to verify registration and the Bidder's bid may be ruled non-responsive without appeal. Registration forms are available from the issuing office, **the ASD web site (<http://asd.state.va.us>)**, or Bidders may call (804) 371-5900 to request forms. In addition, Bidders must also be registered in the eVA Internet electronic procurement solution website portal through eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service as specified in the "eVA Business-To-Government Vendor Registration" term and condition of this solicitation.

11.6 ASD maintains an Internet web site at <http://asd.state.va.us>, which contains the official copy of this solicitation and all amendments. Bidders are requested to check this site prior to submitting bids, in the event the solicitation is amended or

*pg 10*

11. General

11.2 INSTRUCTIONS FOR POTOMAC TECHNOLOGY, INC. CUSTOMER SERVICE CENTER

Customer Service is available Monday through Friday, from 8 a.m. to 5 p.m. call 1-800-433-2838 (V/TTY). A Representative will be available to answer your questions. Customer service may also be contacted via e-mail at: [info@potomactech.com](mailto:info@potomactech.com). We have a website with product information at: [www.potomactech.com](http://www.potomactech.com)

extended. It is the Bidder's responsibility to submit a bid containing the latest version of this solicitation with all signed amendments.

- 11.7 Bid results will not be given out by telephone. Bidders 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. Awards will be posted to the ASD and eVA web site.
- 11.8 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. Bidders should read and understand all of the terms and conditions prior to submission of a bid.
- 11.9 It is the responsibility of the Bidder to understand all requirements and specifications contained in this solicitation. All questions and/or comments concerning the requirements, specifications, or other information provided in this solicitation must be submitted in writing to the Issuing Office to the attention of Teresa Hudgins, via mail at the address listed in block 6, page 1., by fax at (804-371-5969) or e-mail ([thudgins@dit.state.va.us](mailto:thudgins@dit.state.va.us)). No response will be furnished to telephone inquires. Please mark the outside of an envelope, on the fax cover sheet or subject of e-mail "QUESTIONS CONCERNING IFB 2003-014".
- 11.10 All pricing shall include DIT's Industrial Funding Adjustment provisions, to include the Contractor's Report of Sales, as indicated in the attached terms and conditions.
12. Warranty Service Organizations and Customer Service Facilities

**Bidders: In the space below, provide the name, full address, and toll free voice and text telephone accessible telephone number of Warranty Service Organizations and Customer Service Facilities:**

Potomac Technology, Inc. One Church St., Suite 101  
Rockville MD 20850-4158 V/TTY: 1-800-433-2838



Offering Keys to Communication

# VDDHH

**1512 Willow Lawn Drive  
Richmond, VA 23230-3407**

**Coupon Number:** DCP52335N  
**Coupon Date:** December 18, 2002  
**Valid Amount:** \$0.00

(This Section must be completed by the recipient.)

( ) - Home Phone Number \_\_\_\_\_ Recipient's Signature \_\_\_\_\_ Date \_\_\_\_\_

(This section is for the vendor and staff only. Vendor must complete required items for reimbursement.)

Crystal Tone \_\_\_\_\_ Date \_\_\_\_\_  
Device Description \_\_\_\_\_ Serial Number \_\_\_\_\_ Verification \_\_\_\_\_  
Vendor's Signature \_\_\_\_\_ Date \_\_\_\_\_ Coordinator's Authorization \_\_\_\_\_ Vendor Expiration Date \_\_\_\_\_

(Please accompany this coupon with an invoice for payment.)

Mail to:  
**Virginia Dept for the Deaf and Hard of Hearing  
1602 Rolling Hills Drive, Suite 203  
Richmond, VA 23229**

APPENDIX "A"  
TAPPAY Coupon  
(Paid by Consumer)



**Offering Keys to Communication**

# VDDHH

**Coupon Number:** AP52352N  
**Coupon Date:** December 18, 2002  
**Valid Amount:** \$305.00

**1602 Rolling Hills Dr  
Richmond, VA 23229**

APPENDIX "B"  
TAPFREE Coupon  
(Paid by VDDHH)

(This section is for the vendor and staff only. Vendor must complete required items for reimbursement.)

Superprint 4425A

Device Description

Serial Number

Verification

Date

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

January 17, 2003  
Vendor Expiration Date

Vendor's Signature

Coordinator's Authorization

(Please accompany this coupon with an invoice for payment.)

Mail to:

**Virginia Dept for the Deaf and Hard of Hearing  
1602 Rolling Hills Drive, Suite 203  
Richmond, VA 23229**

**SOLICITATION INSTRUCTIONS**  
REV. 03/01/02

**1. EXPLANATION TO VENDORS**

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. PRIOR TO SUBMISSION OF A BID, VENDORS ARE REQUIRED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, READ ALL TERMS AND CONDITIONS AND CHECK THE ACQUISITION SERVICE DIVISION'S (ASD'S) WEB PAGE AT ([HTTP://ASD.STATE.VA.US](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](http://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) #03-014**

**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" (the Department of Information Technology) will acquire Teletypewriter Equipment/Telecommunications Devices for the Deaf (TTY/TDD), hereinafter referred to as "Equipment" or "Hardware" and Services, including, but not limited to warranty ("Services") on behalf of the Virginia Department for the Deaf and Hard of Hearing (VDDHH), from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor." When implemented, this Agreement will permit the required Equipment to be procured by State Agencies, Institutions and other Public Bodies, as defined in Section 2.2-4301. *Definitions of the Virginia Public Procurement Act (VPPA)*, as amended, and other VDDHH-approved Virginia-based purchasers, including but not limited to, individual consumers who are deaf, hard of hearing, hearing-visually impaired, or speech impaired and who are domiciled in Virginia, hereinafter referred to as "Authorized Users".

**2. VENDORS MANUAL**

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

**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

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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 where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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 Equipment 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 Equipment 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. 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 Equipment and the Bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The Commonwealth further reserves the right to reject any

bid if the evidence submitted by, or investigations of, such Bidder fails to satisfy the Commonwealth that such Bidder is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the Equipment contemplated therein.

### **13. TESTING AND INSPECTION**

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

### **14. ASSIGNMENT OF CONTRACT**

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

### **15. MODIFICATIONS**

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

### **16. DEFAULT**

In case of failure to deliver Equipment 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.

### **17. 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.

## 18. 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.

## 19. 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.

## 20. 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 §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder further certifies that the Contractor and any subcontractors will maintain these insurance 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.

## **21. ANNOUNCEMENT OF AWARD**

Upon the award or the announcement of the decision to award a Contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.state.va.us](http://www.eva.state.va.us)) for a minimum of 10 days.

## **22. 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.

## **23. NONDISCRIMINATION OF CONTRACTORS**

A Bidder 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 Equipment, 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 Equipment, 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 Equipment, Services, or disbursements from an alternative provider.

## **24. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](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 Equipment and/or Services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

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

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

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

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

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

## **25. BREACH**

The Contractor shall be deemed in breach of this Contract if the Contractor (a) fails to make any Equipment 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 Contract; (c) fails to comply with any other term of this Contract 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 Contract 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 Equipment 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.

## **26. 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.

## **27. DELIVERY DATES**

a. The Contractor shall deliver the requested Equipment or Services ready for use, by the installation date (day, month, year) identified as the required delivery date (RDD) in the Schedule, which is fourteen (14) days after award of this Contract, or as identified on a subsequent 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 installation date by notifying the Contractor at least ten (10) days before the required installation date.

c. If the Equipment or Services is not delivered/installed within the time specified in the Schedule, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible Bidder. Contractors are cautioned that failure to deliver 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.

## **28. RISK OF LOSS OR DAMAGE**

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

## **29. EQUIPMENT CONDITION**

All Equipment to be supplied by Contractor shall be new Equipment. All Equipment proposed by Contractor must have been approved by Underwriters Laboratories or a recognized equivalent certification agency.

## **30. 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 Contract. 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 Equipment 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.

## **31. 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 that Equipment 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 Equipment or Services dependent on such federal funds without further obligation.

### **32. 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.

### **33. ENTIRE AGREEMENT**

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

### **34. TITLE**

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

### **35. PRICE PROTECTION/ADJUSTMENTS**

Contractor will provide the Equipment as defined in this Contract in accordance with the Contractor's price, set forth in the schedule, for the Initial Term of the Contract. Maintenance increases for additional periods shall be at the sole discretion of the Commonwealth, and shall be effective on the anniversary date for each succeeding year. All increases will be governed by the PPI index entitled "Communications and Related Devices". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistics, Philadelphia Office. If prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the Services at the lowest price available to any other customer.

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.

### **36. TERM**

The term of this Contract shall be from the date of award through February 19, 2004 ("Initial Term"). The Commonwealth, at its sole discretion, reserves the right to renew the term of this Contract for up to three (3) additional one-year periods. Should the Commonwealth elect to exercise this option, the Contractor will be notified of the State's decision not less than thirty (30) days prior to the expiration of the Initial Term or subsequent renewal periods.

### **37. 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.

### **38. 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.

### **39. 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.

### **40. ORDERS**

Authorized ordering officials representing the "Authorized Users" of this Contract may order Equipment from this Contract by one of the following Order methods:

A. eVA

B. Purchase Order: An official Purchase Order form issued by an Authorized User.

C. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT; or its replacement as identified by the COV Legislature.

D. Charge/Credit Card:

- 1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.  
**Contact AMEX at 800-445-2639 for sign-up details.**
- 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, which is under contract for use by an Authorized User.

- E. VDDHH-TAP approved individuals: Orders for Equipment will be submitted directly to the Contractor by the individual or the VDDHH-TAP Manager or designee as delineated in Note 3 of the Schedule.

This ordering authority is limited to issuing Orders for Equipment and Services that are available only under this Agreement. No Authorized User, Customer, or other public body of the Commonwealth shall have the authority to modify this Contract.

#### 41. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, Equipment, software and Services are subject to inspection and testing by the State or Authorized User, 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 or Authorized User shall be given thirty (30) days 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 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 Contractor. Such rejection will terminate this Contract and exempt the State or Authorized User 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 or Authorized User 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 specifications and other requirements. In the event that nonconformance therewith is discovered by the State or Authorized User 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.

#### **42. 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.

#### **43. 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 the State at time of Equipment delivery. The State reserves the right to acquire such supplies from any Contractor of its choice.

#### **44. INVOICES**

All invoices shall be rendered promptly to the Authorized User after all Equipment covered by the invoice has been accepted. 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;
2. Serial number, if any;
3. Charge for each item;
4. This Contract Number,
5. Contractor's Federal Identification Number (FIN), and;
6. Written confirmation of receipt of the delivery of items to TAPPAY and TAPFREE customers, in accordance with the requirements contained in Section 8. "Delivery Requirements" and Section 9. "or Invoices" of the Schedule

#### **45. GUARANTEE (WARRANTY)**

Contractor shall provide depot ("Return to Vendor") warranty Services (labor and parts) for a period of not less than two (2) years for TTY/VCO Telephone Signaling Devices (Note 2.1 of the Schedule) and not less than five (5) years for Voice Carry-Over Telephones (Note 2.2 of the Schedule) at no cost to the State or Authorized User. Contractor shall act as sole point-of-contact for all units repaired under warranty. Contractor shall not require the purchaser to submit warranty cards or other documentation in order for warranty to be honored when item(s) are returned for repair or replacement. Contractor shall

provide name, full address and toll-free voice and text accessible telephone numbers of the warranty service organization as required in Note 12 of the Schedule.

Warranty shall be comprehensive and cover all parts of item(s) except consumable materials such as batteries and paper. Warranty shall cover all failures in material and performance except those caused by (a) natural disasters and "acts of God", including but not limited to lightning and floods, (b) misuse, abuse or neglect, and (c) unauthorized repair or tampering.

#### **46. WARRANTY SERVICE**

The Contractor shall have a customer service facility that is minimally accessible by toll-free telephone (voice and text telephone) during the hours of 8 a.m. to 5 p.m. Eastern Standard Time (EST), Monday through Friday, to answer user questions about the setup and/or installation of a proposed item, or to assist a user in determining whether an item needs to be returned for warranty repair. Clear and concise instructions for using the customer service center shall be included with the shipment of any new item(s). The Contractor shall also include shipping labels, pre-printed with the name and address of the Contractor's repair facility, to facilitate the return of item(s) requiring warranty repair service. Customer service center usage instructions are to be provided to DIT for review and approval to use before Contract award.

Prior to the expiration of the guarantee period, whenever Equipment is shipped for mechanical repair or replacement purposes, the Customer will bear all costs associated with returning the Equipment 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 or Authorized User's original point of shipment. When returning repaired or replacement item(s) to the State or Authorized User the Contractor shall include new shipping labels, preprinted with the name and address of the Contractor's repair facility. Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss.

Contractor shall perform all warranty Services (repair or replacement of defective items) and return a working unit to the Authorized User within thirty (30) calendar days of receipt. Any interim product(s) will be provided at no additional cost to State, until the original product is returned, in good working condition.

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

#### **47. 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 Contractor shall fail to deliver the Equipment or Services required by this Contract or (b) the Contractor shall repeatedly fail to respond to requests for maintenance or other Services within the time limits set forth in the Contract or (c) the Contractor shall breach any of the other terms set forth within this Agreement or (d) the Contractor 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 Contractor 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 return of the Equipment, if applicable, will be the Contractor'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.

#### **48. TERMINATION FOR CONVENIENCE**

This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

#### **49. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER**

Any individual Order placed under this Agreement may be terminated, in whole or in part, by the Commonwealth or an Authorized User for its convenience, at any time up to thirty (30) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

#### **50. 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, the Commonwealth, at its own discretion, may 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 price and the State's cost to cover from the alternate source. In no event shall the State be held to pay the Contractor any costs incurred by the 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.

#### **51. CONTRACTUAL DISPUTES**

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

agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

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

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support Services hereunder.

## **52. CREDITS**

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

## **53. EQUIPMENT REPLACEMENT**

In the event that the Equipment furnished under this Agreement fails to perform in accordance with technical specifications and functional descriptions contained in or referenced in this Agreement and is subject to warranty response three (3) or more times during any one hundred and twenty (120) day period, the Contractor shall, upon the Commonwealth's or Authorized User's request, replace Equipment with new or refurbished Equipment at no cost to the Commonwealth or Authorized User. Replacement Equipment shall be delivered no later than fifteen (15) working days after the request is received by the Contractor.

## **54. REMEDIAL MAINTENANCE**

Remedial Maintenance shall be performed after notification that the Equipment is inoperative. The Contractor shall provide the user with a designated point(s) of contact and make arrangements to enable its maintenance personnel to receive such notification.

## **55. 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.

## **56. COMPLIANCE WITH FEDERAL LOBBYING ACT**

- a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.
- b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.
- c. A representative of Contractor shall sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

## **57. 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, 110 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor, Richmond, VA 23219 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 hard copy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

## **58. 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 paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written Agreement from DIT that validates Agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 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.

## **59. NONVISUAL ACCESS TO TECHNOLOGY:**

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

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

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

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

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

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

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

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

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

**ATTACHMENT "A"**  
**TO**  
**AGREEMENT VA- \_\_\_\_\_ - \_\_\_\_**  
**FOR THE**  
**VIRGINIA DEPARTMENT OF \_\_\_\_\_**  
  
**CERTIFICATION REGARDING LOBBYING**

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

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal , grant, loan, or cooperative Agreement.
  
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subs, subgrants, and Contracts under grants, loans and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signature:   
Printed Name: PATRICIA J. RELIHAN  
Organization: Potomac Technology, Inc.  
Date: 1/23/03



**COMMONWEALTH of VIRGINIA**  
*Department of Information Technology*  
*Acquisition Services Division*  
*110 S. 7th Street*  
*Richmond, Va. 23219*

Cheryl Clark  
Director  
Email: cclark@dit.state.va.us

TDD VOICE-- TEL NO  
804/371-8076

February 6, 2003

Patricia J. Relihan  
Potomac Technology, Inc.  
One Church Street, Suite 101  
Rockville MD 20850

RE: IFB# 2003-014: VA-030206-PT (Contract)

Dear Ms. Relihan:

Please accept this letter as your official notice of award for the above referenced procurement. A copy of the fully executed contract 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 identified, as shown in block #7, Page 1, of DIT Form 62 / the contract. The DIT point of contact for this procurement is Ms. Teresa Hudgins and the DIT point of contact for the resulting contract is Staff.

Sincerely,

A handwritten signature in black ink, appearing to be "JD" or similar initials, written over a horizontal line.

Jeff Davis  
Contracts Manager

Enclosure  
cc: File