

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. WORDING FOR AGENDA: Request Board approve purchase and installation of Telecommunications Data Equipment for the Midfield Terminal Complex from Siemens Communications, Inc./Extreme off Florida State Contract No. 250-000-03-1 in the amount of \$426,234.77.	2. SUBJECT CATEGORY: Budgeting, Purchases, Contracts, and Agreements <div style="text-align: center; font-size: 1.5em; font-family: cursive;">C14B</div>
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	3. MEETING DATE: 10-19-2004
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4. AGENDA: <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> APPEALS <input type="checkbox"/> PUBLIC TIME REQUIRED: (Public Only)	5. REQUIREMENT/PURPOSE: (Specify) <input type="checkbox"/> STATUTE <input type="checkbox"/> ORDINANCE <input type="checkbox"/> ADMIN. CODE <input type="checkbox"/> OTHER	6. REQUESTOR OF INFORMATION: A. (ALL REQUESTS) NAME <u>Mark Fisher</u> DEPT. <u>Development</u> B. (PUBLIC ONLY) CITIZEN NAME _____ CITIZEN PHONE _____
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7. BACKGROUND:

Based on the Board-approved designs of the DMJM Aviation team, the Southwest Florida International Airport (RSW) Midfield Terminal Complex is well under construction and within a year of being complete. DMJM Aviation has developed specifications for a state-of-the-art data system to serve the new terminal. The Dick Corporation, the Midfield Terminal prime contractor, competitively priced the specified system and received four bids. Siemens Communications, Inc., formerly Siemens Information and Communications, Inc., was the lowest bidder and is an authorized reseller of the specified equipment under Florida State Contract No. 250-000-03-1.

The contract was competitively procured by the State of Florida. DMJM Aviation recommends that the Port Authority utilize this State Contract rather than incorporate the proposed data systems work into the terminal construction contract via change order. Utilizing the State Contract does not require the payment of State Sales Tax and will not include mark-up, bonding and insurance costs typically associated with a construction change order, thereby saving the Port Authority an estimated \$68,000.

The Port Attorney's Office has reviewed the State Contract, the competitively priced bid submitted to the Dick Corporation, and the analysis, information and recommendations provided by DMJM Aviation (attached) and recommends acquisition under the attached contract in the amount of \$426,234.77. All expenditures of work associated with this contract will be under the established Total Project Budget of \$437,871,114 previously approved by the Board and in accordance with Board-approved contract and Purchasing Policies.

8. RECOMMENDED ACTION:
 Recommend Board approve purchase and installation of Telecommunications Data Equipment to provide telephone service for the Midfield Terminal Complex from Siemens/Extreme off Florida State Contract No. 250-000-03-1 in the amount of \$426,234.77.

9. RECOMMENDED APPROVAL

DIVISION DIRECTOR	GENERAL SERVICES	FINANCE	PORT ATTORNEY	DEPUTY EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR

10. SPECIAL MANAGEMENT COMMITTEE ACTION:

APPROVED 9-27-04
 DENIED
 DEFERRED
 OTHER

BT
Chairman JMUT

11. PORT AUTHORITY ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

Schultz, Dan

From: Schultz, Dan
Sent: Friday, September 24, 2004 9:19 AM
To: 'Hagen, Greg'
Cc: 'Henke, Ed'; 'Fisher, Mark'
Subject: FW: Voice and Data System for Midfield Terminal
Importance: High

Jeff Cohen (DMJM System Solutions), who is DMJM Aviation's telephone/data subconsultant, has reviewed the latest State Purchasing contract information supplied by both Siemens and Sprint. As noted below, he finds that the attached spreadsheets accurately represent what was required in our original bid documents (excluding sales tax).

If you need any additional information, please give us a call.

Thank you for your assistance in expediting the procurement of the MTC telephone and data systems.

**Dan L. Schultz
Vice President
and Program Manager
DMJM Aviation - Fort Myers, FL
239.561.0007 x224**

-----Original Message-----

From: Cohen, Jeff
Sent: Thursday, September 23, 2004 3:31 PM
To: Schultz, Dan
Cc: Callaway, (Albert) Steve
Subject: Voice and Data System for Midfield Terminal

Dan -

As requested, attached please find the latest information (Excel spreadsheets) from both Sprint and Siemens. I have compared this information with the bid documents. I have also reviewed this information with a representative from each company. I am confident that it accurately represents what we have asked for in the bid documents, as well as what both companies provided us as their best and final offer during the bid process (excluding tax, which we had originally asked each company to include). Therefore, I recommend their approval by the LCPA.

The Sprint information is on (2) forms, the first detailing the PBX equipment, and the second detailing the additional service/maintenance we requested. The total (excluding tax, which has been omitted) is \$294,979.91.

The Siemens information has now been consolidated onto 1 spreadsheet. The total (excluding tax, which has been omitted) is \$426,234.77.

9/24/2004

As always, if you have any questions, please do not hesitate to contact me (443-253-9006).

Jeff

Siemens Proposal - Best and Final Offer 6/3/04

SouthWest Florida International Airport - Revision1: Remove Sales Tax; Clarify Testing

Core 1						
BD6808 8-Slot Chassis						
MFG	Model #	Description	Qty	Unit	---Price---	Total
Extreme	50011	BD 6808 Chassis	1	\$3,626.98		\$3,626.98
Extreme	50020	BlackDiamond 6800 iPower Dual-Input 110VAC Power Supply (Includes Two L5-20P Twist Lock Power Cords)	2	\$3,021.98		\$6,043.98
Extreme	50017	BlackDiamond 6800 Management Switch Fabric Module 3	2	\$8,466.98		\$16,933.96
Extreme	51052	BD 6800 G24T3 24-port 10/100/1000 UTP	1	\$8,466.98		\$8,466.98
Extreme	51051	BlackDiamond 6800 16-port 1000BASE-X SFP (mini GBIC) Module	3	\$7,861.98		\$23,585.94
Extreme	10052	Mini-GBIC, SFP, 1000BaseLX, LC Connector	6	\$601.98		\$3,611.88
Extreme	10051	Mini-GBIC, SFP, 1000BaseSX, LC Connector	34	\$299.48		\$10,182.32
Extreme	50005	BlackDiamond 6800 Blank Front Panel	4	\$12.70		\$50.80

Core 2 BD6808 8-Slot Chassis					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	50011	BD 6808 Chassis	1	\$3,626.98	\$3,626.98
Extreme	50020	BlackDiamond 6800 iPower Dual-Input 110VAC Power Supply (Includes Two L5-20P Twist Lock Power Cords)	2	\$3,021.98	\$6,043.96
Extreme	50017	BlackDiamond 6800 Management Switch Fabric Module 3	2	\$8,466.98	\$16,933.96
Extreme	51052	BD 6800 G24T3 24-port 10/100/1000 UTP	1	\$8,466.98	\$8,466.98
Extreme	51051	BlackDiamond 6800 16-port 1000BASE-X SFP (mini GBIC) Module	3	\$7,861.98	\$23,585.94
Extreme	10052	Mini-GBIC, SFP, 1000BaseLX, LC Connector	6	\$601.98	\$3,611.88
Extreme	10051	Mini-GBIC, SFP, 1000BaseSX, LC Connector	34	\$299.48	\$10,182.32
Extreme	50005	BlackDiamond 6800 Blank Front Panel	4	\$12.70	\$50.80

Room 10110						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 10411						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1068						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 101013						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 101108						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1B127						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1B128

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1B42

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10052	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1C220

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 1C226

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	16101	Summit 400-48t	1	\$6,046.98		\$6,046.98
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 1C420

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 1D14

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	2	\$2,026.75		\$4,053.50
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 1D35					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25	\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Room 1B414					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75	\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Room 2014					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25	\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Room 2048					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75	\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Room 201004					
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u> <u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75	\$2,026.75
Extreme	13240	Summit 200-24	1	\$1,119.25	\$1,119.25
	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Room 201105

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 2B28

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 2B44

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	13240	Summit 200-24	1	\$1,119.25		\$1,119.25
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 2C14

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	13240	Summit 200-24	1	\$1,119.75		\$1,119.75
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 2C42

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10052	Mini LX Gbic LC connector	2	\$601.98		\$1,203.96

Room 2D13						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 2D45						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	15040	Summit 200-48	1	\$2,026.75		\$2,026.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 3012						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75		\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Room 30619						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	16101	Summit 400-48t	3	\$6,046.98		\$18,140.94
Extreme	10051	Mini SX Gbic LC connector	4	\$299.48		\$1,197.92

Room 30733						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	16101	Summit 400-48t	3	\$6,046.98		\$18,140.94
Extreme	10051	Mini SX Gbic LC connector	4	\$299.48		\$1,197.92

Room 301102						
<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>---Price---</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75		\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48		\$598.96

Fire Fighting Station #2

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	15040	Summit 200-48	2	\$2,026.75	\$4,053.50
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Chiller Plant

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Toll Plaza

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Taxi Limo

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Fuel Farm

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.86

New Vehicle Mtca

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Runway Mtce

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>---Price---</u> <u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Training Facility

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>---Price---</u> <u>Unit</u>	<u>Total</u>
Extreme	13240	Summit 200-24	1	\$1,119.75	\$1,119.75
Extreme	10051	Mini SX Gbic LC connector	2	\$299.48	\$598.96

Network Management

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>---Price---</u> <u>Unit</u>	<u>Total</u>
Extreme	81411	EpiCenter 4.1	1	\$4,231.98	\$4,231.98

Fiber Optic Patch Cables

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>---Price---</u> <u>Unit</u>	<u>Total</u>
North Supply	0000104046	SC - LC SX Fiber Patch Cord	128	\$39.92	\$5,109.76
North Supply	0000104047	SC - LC LX Fiber Patch Cord	24	\$56.31	\$1,351.44

Routers

<u>MFG</u>	<u>Model #</u>	<u>Description</u>	<u>Qty</u>	<u>---Price---</u> <u>Unit</u>	<u>Total</u>
Cisco	CISCO2611XM	Dual 10/100 Ether	2	\$3,096.90	\$6,193.80

UPS						
MFG	Model #	Description	Qty	---Price---	Unit	Total
APC	SU3000NET/6511	APC SMART-UPS 3000	2		\$1,300.00	\$2,600.00
APC	SUA1000	Smart-UPS 1000VA	36		\$459.00	\$16,524.00
APC	AP9817	APC Network Management Card	38		\$289.00	\$10,982.00

SUB-TOTAL Material Price **\$320,708.71**

SUB-TOTAL Maintenance (24X7X4 Hour On-Site) **\$19,500.00**

SUB-TOTAL Labor **\$36,022.00**

Performance/Payment Bond **\$2,596.99**

Section 17290 3.2B 200 Hours of Systems Integration **\$35,000.00**

Data Network Training 5 personnel for up to 16 hours **No Charge**

Spares						
MFG	Model #	Description	Qty	Unit	Unit	Total
Extreme	13240	Summit 200-24	3		\$1,119.75	\$3,359.25
Extreme	10051	Mini SX Gbic LC connector	5		\$299.48	\$1,796.88
Extreme	16101	Summit 400-48t	1		\$6,046.98	\$6,046.98
Extreme	10052	Mini LX Gbic LC connector	2		\$601.98	\$1,203.96

Grand Total **\$426,234.77**

Pricing Assumptions:

1. All configuration and application testing will be done at the Siemens Lake Mary Integration Center.
2. End-to-End testing for final installation of the data network will be done at the airport site
3. Cat5 patch cables are owner supplied and owner installed.
4. Eight hours (8) of help desk support.
5. Equipment racks will have power strips available for APC units.
6. Tax is not included.
7. Procurement under State Contract 250-000-03-1.

Please use the above listed unit pricing for Post Acceptance pricing.

IT Hardware Contract 250-000-03-1

How to Use this Contract:

To purchase under this Contract use a Request for Quotes (Suggested Form).

Contract Specialist

David Comer

State Purchasing

Florida Department of Management Services

(850) 487-4196

Suncom 277-4196

comerd@dms.state.fl.us

Contract Users may find the following Contract Provisions relevant:

- ✦ **Eligible Customers**
- ✦ **Purchase Orders**
- ✦ **Transportation & Delivery**
- ✦ **Inspection & Acceptance**
- ✦ **Installation**
- ✦ **Invoicing & Payment**
- ✦ **Service**
- ✦ **Warranty**
- ✦ **Lease & Installment Purchases**
- ✦ **Refurbished & Remanufactured Products**

IT Hardware Home

IT Hardware

250-000-03-1

Vendor Information

- * **3Com** http://www.3com.com/solutions/en_US/gove
- * **ABC Computers** <http://www.abc2000.com/computer-st-gov-pr>
- * **Ace Computers** <http://www.acecomputers.com/showpages.as>
- * **Acer America** <http://www.acer.com/APP/AKC/INTERNET/A/>
- * **ADIC** <http://www.adic.com/florida>
- * **Aethra, Inc.** http://www.aethra.net/official_price.pdf
- * **Alcatel** http://www.ind.alcatel.com/cf_forms/florida/
- * **American Power Conversion** <http://159.215.19.5/govrslr.nsf/state?OpenVie>
- * **Apple Computer** <http://homepage.mac.com/flcontract/fl.pdf>
- * **Avaya** <http://www1.avaya.com/floridastate/florida4>
- * **CDW-G (Toshiba)** <http://www.cdwg.com/shop/contracts/contra>
- * **Cisco** <http://www.cisco-fl.com/>
- * **IKON Office Solutions** <http://www.ikon.com/extranet/florida/techno>
- * **Impressions Solutions Inc. (Kyocera Mita)** <http://www.impressionsolutions.com/florida/>
- * **Insight Public Sector (Formerly Comark)** <http://www.ips.insight.com/floridaIT>
- * **Conditioned Air and Power Inc (Liebert)** <http://www.liebertstatecontract.com/>
- * **Cyberguard** <http://www.cyberguard.com/florida/main.cfm>

- ⊕ **Dell** <http://www1.us.dell.com/content/default.asp>
- ⊕ **EMC** <ftp://ftp.emc.com/pub/fusa>
- ⊕ **Enterasys** <http://www.enterasys.com/solutions/verticals>
- ⊕ **Epson** <http://corpeai.com/StateFL.htm>
- ⊕ **Extreme Networks** <http://www.extremenetworks.com/common/a>
- ⊕ **Executive Source** <http://www.execsource.com/sfl2000/>
- ⊕ **Foundry** <http://www.foundrynet.com/sales/florida/>
- ⊕ **Fujitsu PC** <http://www.fujitsupc.com/www/floridaPricing>
- ⊕ **Fujitsu Technology** <http://www.ftsi.fujitsu.com/services/gov/flori>
- ⊕ **Gateway** <http://esource.gateway.com/florida>
- ⊕ **Hewlett-Packard** <http://www.compaq.com/state/florida>
- ⊕ **Hitachi** <http://www.freedomstorage-florida.com/>
- ⊕ **Howard Computers** <http://www.howardcomputers.com/state/fl>
- ⊕ **IBM** <http://www-1.ibm.com/gold/portal/servlet/gc>
- ⊕ **Innovative Tech** <http://innovativetechinc.com/state/price.htm>
- ⊕ **Lewis Digital, Inc.** <http://www.it.lewisdigital.net>
- ⊕ **Lexmark** <http://store.lexmark.com/cgi-bin/ncommerce3>
- ⊕ **Marconi Communications** <http://www.marconi.com/html/contact/stated>
- ⊕ **Micron** <http://mqcs.buympc.com/state/state of florid>
- ⊕ **Minolta-QMS** <http://www.minolta-qms.com/government/sta>
- ⊕ **NEC Solutions** <http://www.necolutions-am.com/government>
- ⊕ **Network Appliance** <http://www.netapp.com/sales/florida.html>

- ✦ **NH&A (Netscreen)** <http://www.nha-fl.com/>
- ✦ **Nortel Networks** <http://www.nortelnetworks.com/prd/statefla/>
- ✦ **OCE'USA** http://myoce.oceusa.com/StateofFL/florida_in
- ✦ **Oki Data** <http://bpx.okidata.com/fl.nsf>
- ✦ **Polycom** <http://www.polycom.com/florida/>
- ✦ **Pomeroy Computer Resources (Juniper)** <http://web3.pomeroy.com/stateofflorida/>
- ✦ **Powerware** <http://www.oem.powerware.com/stateofflorid>
- ✦ **Premio** <http://www.premiopc.com/florida/statepricing>
- ✦ **Promark (Exabyte & Overland Data)** <http://www.promarktech.com/fltermcontract/>
- ✦ **Radvision** <http://www.radvision.com/NBU/State+of+Flor>
- ✦ **Radware** <http://www.radware.com/content/USA-FL/di>
- ✦ **RiCOH** <http://www.ricoh-usa.com/rmap/floridastatep>
- ✦ **Riverstone Networks** <http://www.riverstonenet.com/florida/>
- ✦ **SonicWALL** <http://www.sonicwall.com/floridastate/>
- ✦ **Sony** **PRICING**
- ✦ **Spectra Logic** <http://www.spectrallogic.com/common/collate>
- ✦ **StorageTek** <http://www.storagetek.com/florida/>
- ✦ **Sun** <http://www.sun.com/products-n-solutions/go>
- ✦ **Surge Suppression, Inc.** <http://www.ssiflcontract.com/>
- ✦ **Tandberg, Inc.** <http://tandbergflorida.gearboxx.net/>
- ✦ **Telcom Engineering Consultants (VUGATE)** <http://www.tec-inc.com/FloridaContract.html>

- ⊕ **Unisys** <http://www.app2.unisys.com/state/fl/hardwa>
- ⊕ **VCON** <http://www.vcon.com/state/florida/>
- ⊕ **VTEL** <http://www.vtel.com/state/florida/>
- ⊕ **Winncom** http://www.winncom.com/webpages/state_of
- ⊕ **Xerox** <http://idsdocushare2.xids.com/dscqi/ds.py/Vi>

IT Hardware Home

Extreme Networks, Inc.

CONTRACT # ITB-52-250-000-B

SPURS VENDOR NUMBER: F770430270-001

Contact Information:

Marco A. Martinez
11860 NW 3rd Drive
Coral Springs, Florida
954-214-6900
954-796-9026 Fax
email: mmartinez@extremenetworks.com
<http://www.extremenetworks.com>

Remit Address:

Extreme Networks
3585 Monroe Street
Santa Clara, CA 95051-1450

Certified Dealers and Resellers

SBC Datacom
F364284455-001 (Spurs)
Shirley Rice
1835 Shackleford Ct, Suite 200
Norcross, GA 30093
Shirley.rice@sbc.com
www.sbc.com
800/588-2432
800/588-1548 Ordering Fax Number

Hayes E-Government Resources, Inc
F593633709-001 (Spurs)
Connie Williams
1355 Thomaswood Dr.
Tallahassee, FL 32312
cwilliams@hcs.net
www.hcs.net
800/825-9390 ext. 162
850/297-0644 Ordering Fax Number

Transparent Technology
F592757514-002 (Spurs)
Erik Rietwyk
100 Village Square Crossing Suite 105
Palm Beach Gardens, FL 33410
eric@transparent-technology.com
www.transparent-technology.com
561/207-6100 X2001
561/207-6101 Ordering Fax Number

Siemens Enterprise Networks
F541999434-001 (Spurs)
Luci Norlin
4014 Gunn Highway, Suite 275
Tampa, FL 33624
luci.norlin@icn.siemens.com
www.icn.siemens.com
813/964-3002
813/964-3059

Traffic Control Devices Inc
F591858994-001(Spurs)
Bob Ledford
580 W. Franklin Ave
Altamonte Springs, FL 32714
bobledford@trafficcontroldevices.com
www.trafficcontroldevices.com
407/869-5300

CONTRACT

This Contract, effective the last date signed below, is by and between the State of Florida, Department of Management Services ("Department"), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and ***** .. ("Contractor").

The Contractor responded to the Department's Invitation for Bid No. 52-250-000-B for Information Technology Hardware. The Department has determined to accept the Contractor's bid and to enter into this Contract in accordance with the terms and conditions of the solicitation.

Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract, which is a state term contract authorized by section 287.042(2)(a) of the Florida Statutes (2001). Contractor is authorized to offer products in the following (sub)categories: *****.

The term of the Contract is from the effective date to July 31, 2005. The Contract consists of the following documents, which, in case of conflict, shall have priority in the order listed, and which are hereby incorporated as if fully set forth:

- ✦ Any written amendments to the Contract
- ✦ This document
- ✦ Technical Specifications
- ✦ Instructions to Bidders
- ✦ General Conditions
- ✦ Any purchase order under the Contract
- ✦ Contractor's bid

STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES

By: .

Date

Approved as to form and legality by the Department General Counsel's Office:

Date

[CONTRACTOR]

By:
Its:

Date

Technical Specifications

Contents

- 2.01 Eligible Hardware
- 2.02 Eligible Brands
- 2.03 Additional Eligible Brands
- 2.04 Video Teleconferencing Systems and Video Bridging Equipment Specification
- 2.05 Standard Support Levels
- 2.06 Additional Support-Video Teleconferencing and Video Bridging Equipment
- 2.07 Refurbished and Remanufactured Product

2.01 **Eligible Hardware:** The Contract shall include hardware products grouped within the following categories:

- ⊕ Personal Computers
- ⊕ Thin Clients
- ⊕ Servers
- ⊕ Connectivity Devices
- ⊕ Uninterruptible Power Supplies and Surge Suppressors
- ⊕ Storage Devices
- ⊕ Printers
- ⊕ Videoconferencing Systems and Video Bridging Equipment
- ⊕ Firewalls

Hardware subcategories are identified below under “Eligible Brands” and on the bid tables.

In addition, during the term of the Contract, Contractors may offer hardware components normally associated with the product category or subcategory they are authorized to offer, provided (1) they shall do so at the same or greater percentage price discount offered for the category or subcategory and (2) the product does not fall within another category or subcategory that the Contractor is not authorized to offer. For example, a Contractor authorized to offer Personal Computers may offer monitors, keyboards, mice, memory upgrades, pen plotters, scanners, CD-ROM drives, data storage, CPU upgrades, digital cameras, handheld computers, monitors, expansion cards, modems, speakers and other standard system components; the Contractor shall not, however, offer printers, unless authorized to do so either as a direct bidder under those categories or as a reseller certified by a direct bidder under those categories. Contractors shall also offer at the same or greater percentage price discount, and either installed or uninstalled at the Customer’s option, software necessary or reasonably related to their authorized hardware; for example, operating systems, productivity suites, communications, etc. Contractors may also install preconfigured software loads provided by the Customer.

This additional hardware and software option is for the convenience and benefit of Customers and Contractors. The intent of the option is to promote “one-stop shopping” for both basic and

enhanced systems. The Department reserves the right to prohibit the sale of any and all additional products if the Department determines, in its sole discretion, that a Contractor is abusing the option to circumvent Contract pricing or to offer products it is not authorized to offer. In any "bundled deal," Customers are encouraged to review pricing carefully, to purchase products that meet their needs at the lowest net delivered costs, and to report any problems to the Contract Specialist.

The Department reserves the right to increase or decrease the number of authorized hardware categories and subcategories as markets change and new technologies emerge.

2.02 Eligible Brands: Only the following brands shall be eligible for bid within each category and subcategory, unless a bidder satisfies the criteria outlined below under paragraph 2.03, "additional eligible brands." Particular products within each brand are identified on the bid tables included in section 4.0 of these solicitation documents; bidders may offer those products most closely associated with the identified products as of the date bids are due.

⚡ Personal Computers

- **Desktop PCs:** Acer, Compaq, Dell, Fujitsu/Siemens, Gateway, Hewlett-Packard, IBM, Micron, and NEC
- **Portable PCs:** Acer, Compaq, Dell, Fujitsu/Siemens, Gateway, Hewlett-Packard, IBM, NEC, and Toshiba
- **Workstations:** Compaq, Dell, Fujitsu/Siemens, Hewlett-Packard, IBM, and SGI
- **PC Servers:** Compaq, Dell, Fujitsu/Siemens, Gateway, Hewlett-Packard, IBM, and NEC
- **Thin Clients:** Acer, Boundless Technology, Cedar Systems, Compaq, IBM, Neoware, Netier and Network Computing Devices

⚡ Servers

- **Enterprise Servers:** Compaq, Fujitsu/Siemens, Hewlett-Packard, IBM, NCR, Sun, and Unisys
- **Midrange Servers:** Bull, Compaq, Fujitsu/Siemens, Hewlett-Packard, IBM, and Sun
- **Entry-Level Servers:** Bull, Compaq, Fujitsu/Siemens, Hewlett-Packard, IBM, and Sun
- **Server Appliance for Internet Applications:** CacheFlow, Compaq, Dell, Hewlett-Packard, IBM, NETmachines, Network Appliance and Sun

⚡ Connectivity Devices

- **Network Routers:** 3Com, Alcatel, Cisco, Enterasys, Ericsson, Juniper, Lucent, Netgear, and Nortel
- **Network Switches:** 3Com, Alcatel, Avaya, Cisco, D-Link, Enterasys, Extreme Networks, Foundry Networks, Hewlett-Packard, Marconi, Netgear, Nortel, and SMC
- ⚡ **Uninterruptible Power Supplies and Surge Suppressors:** American Power Conversion, Best Power, Exide Electronics Group, IntelliPower, and TrippLite
- ⚡ **Storage Devices**
 - **Disk Array:** Compaq, EMC, Fujitsu/Siemens, Hewlett-Packard, Hitachi, IBM, LSI, Storage Technology, and Sun
 - **Optical:** FileNET, Hewlett-Packard, Plasmon LMS and Maxoptic
 - **Tape Products:** ADIC, Benchmark, Compaq, Dell, Ecrix, Exabyte, Hewlett-Packard, IBM, Overland Data, Quantum/ATL, Seagate, Sony, Storage Technology, Sun, and Tandberg
- ⚡ **Printers**
 - **Production Printers:** Canon, Heidelberg, IBM, OCE, Xeikon, and Xerox
 - **Workgroup Printers:** Canon, Hewlett-Packard, IBM, Lexmark, Minolta-QMS, OCE, Oki Data, Ricoh, Sharp, and Xerox
- ⚡ **Videoconferencing Systems and Video Bridging Equipment:** NEC, PictureTel, Polycom, Sony, Tandberg, VCON and VTEL
- ⚡ **Firewalls:** Atipa, Axent Technologies, BorderWare Technologies, CyberGuard, Equant Integration Services, eSoft, Fremont Avenue Software, IBM, InfoExpress, Internet Appliance, Livermore Software Laboratories, Netscreen Technologies, NetWolves, PGP Security, Solsoft, SonicWall, Symantec, Tiny Software, WatchGuard Technologies, Zone Labs and Zyan Communications.

2.03 Additional Eligible Brands: In addition to the foregoing brands, the Department will consider other manufacturers' brands. To be eligible for consideration, a bidder must conclusively demonstrate, by documentation submitted with its bid in the manner and time described in the Instructions to Bidders, either (1) for all categories except Video Teleconferencing, that the brand offers products comparable to those identified and that it satisfies the criteria for "other" brands specified on the bid table for that particular category (for example, a minimum installed base, greater percentage of market share, etc.), or (2) for Video Teleconferencing Systems and Video Bridging Equipment, that the brand complies with the following specification (section 2.04).

2.04 Video Teleconferencing Systems and Video Bridging Equipment Specification

Standard Protocols

International Telecommunication Union - Telecommunication Standardization Sector (ITU-T)

H.221	Frame structure for a 64 to 1920 kbit/s channel in audiovisual teleservices
H.224	A real time control protocol for simplex applications using the H.221 LSD/HSD/MLP channels
H.230	Frame-synchronous control and indication signals for audiovisual systems
H.231	Multipoint control units for audiovisual systems using digital channels up to 1920 kbit/s
H.242	System for establishing communication between audiovisual terminals using digital channels up to 2 Mbit/s
H.243	Procedures for establishing communication between three or more audiovisual terminals using digital channels up to 1920 kbit/s
H.261	Video CODEC for audiovisual services at p x 64 kbit/s
H.263	Video coding for low bit rate communication
H.281	A far end camera control protocol for videoconferences using H.224
H.320	Narrow-band visual telephone systems and terminal equipment
H.323	Packet-based multimedia communications systems
G.711	Pulse code modulation (PCM) of voice frequencies
G.722	7 kHz audio-coding within 64 kbit/s
G.728	Coding of speech at 16 kbit/s using low-delay code excited linear prediction
T.120	Data protocols for multimedia conferencing

Copies may be obtained from:

International Telecommunication Union
List of ITU-T Recommendations
www.itu.int/publications

In systems where equipment of different manufacturers is proposed, the Contractor is responsible for insuring the compatibility of the equipment to be purchased, including any required tests or demonstrations.

The teleconferencing equipment covered by this specification shall be supplied with all necessary software and AC power cord. The Contractor shall provide the Customer with any assistance required in selecting the necessary equipment, options, and accessories needed to configure teleconference systems meeting user needs.

CODEC

Diagnostics: All CODEC's shall include diagnostics for local use. Specific diagnostics must be listed that are available either remotely or locally.

Software Updates: As a part of the warranty in the first year and under any maintenance

agreement thereafter, software updates for CODEC's purchased under this specification shall be updated, at no cost to the Customer, in a timely manner to adhere to new standards when they are incorporated by the Contractor.

Auto-Answer: The CODEC shall be capable of engaging in a videoconference automatically when called or connected.

Transmission Data Rates/Standards: The CODEC shall be capable of supporting ITU-T standards H.320 or H.323 or both (i.e., dual compliant). An H.320 compliant CODEC shall be capable of full duplex, color video and integrated audio for transmission across industry standard telephone facilities (T-1 and ISDN) with transmission rates of at least 112 Kbps. An H.323 compliant CODEC shall be capable of full duplex, color video and integrated audio transmission across LAN/WAN facilities at transmission rates of at least 128 Kbps.

CODEC Video: The CODEC shall have picture resolution of no less than 352 x 288 pixels at full CIF (FCIF), and shall support picture-in-picture or windowing. The CODEC shall be capable of being connected to a video bridge for multi-room conferences.

CODEC Audio: The CODEC audio system shall:

- ✦ be full duplex, have active echo cancellation, and be simple to tune for a particular room;
- ✦ be compatible with other video conferencing systems;
- ✦ allow normal conversation between rooms as if the users were in the same location;
- ✦ allow users to talk from both ends at the same time, with interruptions to either party, without clipping, distortion, or loss of contents;
- ✦ have privacy or mute function capability from the system control unit;
- ✦ support the requirement of a bridge or virtual bridge for multi-room conferencing;
- ✦ provide for "Lip Sync" between the video and audio and allow volume adjustments from the CODEC control unit; and
- ✦ contain the audio amplifiers, echo canceller, and combiner either internal to the CODEC or by the use of external equipment, as well as the control switching functions for both audio and video.

Video Bridging Equipment

General: The video bridging equipment covered by this specification shall be supplied with all necessary hardware, software, and cables needed to connect to the network and AC power. The video bridge shall be configured according to the Customer's requirements at the time of order.

Minimum Requirements

Video Compression Algorithms: Video bridges shall be capable of integrating signals from ITU-T H.320 and/or H.323 compliant CODECs and support ITU-T H.231 (Multipoint control units for audiovisual systems using digital channels up to 1920 kbit/s); and be able to link at least three (3) H.320 and/or H.323 CODECs. Video bridges shall also be compatible with ITU-T H.243 (Procedures for establishing communication between three or more audiovisual

terminals using digital channels up to 1920 kbit/s) for control procedures between H.231 video bridges and H.320/H.323 CODECs.

Cascading: All ITU-T H.320 video bridges shall accept a minimum of three simple video bridge cascades.

Switching: All video bridges shall support ITU-T H.243 (Procedures for establishing communication between three or more audiovisual terminals using digital channels up to 1920 kbit/s) voice activated switching (sites are viewed as participants speak), and shall have chair person controlled video switching (facilitators at sites select site to view).

Reservation and Diagnostics: The video bridge shall provide conference reservation features, either by built-in software or by communication with an outside reservation system. The reservation feature shall provide advanced scheduling capabilities with automatic dial up and/or manual dial-in of conference sites, and ad hoc conferencing configurations. Additionally, operational control and monitoring of multipoint conferences shall be included and shall provide complete analysis and control of all conferences.

Audio Compression Algorithms: Video bridges must support at least the following ITU-T audio coding schemes: G.711, G.722 and G.728.

2.05 Standard Support Levels: Contractors shall provide the following levels of support under the Contract:

- ✦ Inside delivery, with buyer set-up and installation
- ✦ Standard manufacturer's warranty
- ✦ 30-day money back guarantee, return to Contractor, with no shipping charges or restocking fee or comparable charges

Optional Support that may be offered on particular purchases:

- ✦ Contractor set-up and installation
- ✦ Warranty upgrade (to 5-year maximum). Warranty upgrade may be purchased at time of system purchase or during the warranty period
- ✦ Warranty service response upgrade, e.g.; maximum 4-hour response and/or 8-hour response

Optional support levels resulting in increased cost to Customers shall be clearly and separately identified on the Contractor's authorized product and price list. Integrated components shall carry the same support level and warranty provisions as the system (by way of non-exclusive example, monitors, keyboards, mouse and trackball, expansion boards, network interface cards, internal modems, and multimedia). Customers shall not be required to purchase maintenance from Contractor and may enter into separate agreements for maintenance and support with persons other than Contractor.

2.06 Additional Support -Video Teleconferencing and Video Bridging Equipment

In addition to the Standard Support Levels referenced above, the following minimum Customer training is required. The cost of this training shall be included in the purchase price of the equipment.

✦ Video Teleconferencing Equipment:

When requested by the Customer, the Contractor shall provide on-site training in the use of the new equipment at each of the Customer's videoconference rooms. Training shall include all aspects of equipment operation, including basic problem identification, and shall include operating instructions and system documentation. Training sessions shall be at least one hour in length, and may be consolidated with the Customer's approval for multiple systems delivered to the same location, e.g., a building or campus. Training dates and times shall be coordinated with the Customer.

✦ Video Bridging Equipment:

When requested by the Customer, and for each video bridging equipment package purchased, the Contractor shall provide on-site technical and operational training for at least one system administrator. The training session shall be at least four hours in length. Training shall include all required instruction manuals, technical documents, and software, and shall cover all aspects of the programming and operation of the equipment. This training may also be supplemented by user training at the Contractor's facilities. Training dates and times shall be coordinated with the Customer.

2.07 Refurbished and Remanufactured Product: The State encourages recycling and conservation of resources. Toward this end, a Contractor may offer refurbished and remanufactured product and product with refurbished and remanufactured components. "Refurbished" means the product or component has been cleaned, resurfaced, re-engineered, and returned to its original level of operation. "Remanufactured" means the product or component has been repaired or upgraded by incorporating used equipment, parts, or systems from elsewhere. **A CONTRACTOR SHALL CONSPICUOUSLY IDENTIFY ANY REFURBISHED OR REMANUFACTURED PRODUCT OR COMPONENTS OFFERED UNDER THE CONTRACT.** Any such product shall be completely tested by the Contractor and ready for installation, and shall be covered by the standard support levels specified in sections 2.05 and 2.06. Customers should consider that lowest price does not always equate with best value. Customers should consider the technical merits of used vs. new product, and should weigh the merits against the capital and operational costs for the product's expected life cycle. Unless a purchase order expressly specifies refurbished or remanufactured product or components, the Contractor shall furnish new product only.

IT Hardware Home

Instructions to Bidders

Contents

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- 1.02 General Instruction
- 1.03 Terms and Conditions
- 1.04 Who May Bid
- 1.05 Ordering Instructions and Manufacturer's Certification
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- 1.22 Purchasing Card Program
- 1.23 Public Records
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1.01 Definitions: See the general conditions for definitions of "bid," "Contract," "Contractor," "Customer," "Department," "product," "purchase order," and "State," which terms are material to these instructions.

1.02 General Instruction: The bidder shall read all of the solicitation documents and comply with all specified requirements.

1.03 Terms and Conditions: All bids are subject to the terms of the following sections of these solicitation documents, which, in case of conflict, shall have the order of precedence listed: technical specifications; instructions to bidders; and general conditions. These terms and conditions supersede the "general conditions" contained in the Bidder Acknowledgement form (PUR 7027 Rev. 6/1/98), which is included in section 4.0 of these solicitation documents. The Department objects to and shall not consider any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting its bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect.

Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.

1.04 Who May Bid: ONLY THE MANUFACTURERS OF BRANDS IDENTIFIED IN THE TECHNICAL SPECIFICATIONS MAY SUBMIT BIDS. “Manufacturer” means the entity that holds the trademark in the identified brand name. At its option, a manufacturer may authorize a single entity, such as a distributor or other agent, to represent the manufacturer for purposes of bidding and entering into the Contract, in which case conclusive proof of such authorization shall be submitted with the bid. Dealers and resellers shall not submit bids. The Department reserves the right to accept bids from entities offering products that satisfy the “other” brand criteria outlined in the technical specifications but that do not have protected trade names.

1.05 Ordering Instructions and Manufacturer’s Certification: On the Ordering Instructions form included in section 4.0 of these solicitation documents, bidders shall identify those dealers or resellers that will accept orders and complete deliveries and certify that they are authorized to do so. **BIDDERS SHALL IDENTIFY AT LEAST THREE AUTHORIZED DEALERS OR RESELLERS PER (SUB)CATEGORY, AT LEAST ONE OF WHICH SHALL BE A FLORIDA CERTIFIED WOMAN- OR MINORITY-OWNED BUSINESS.** A bidder may identify itself as an authorized dealer, in which case it need only identify two more. Information on certified minority vendors is available from the Office of Supplier Diversity at <http://osd.dms.state.fl.us>. The certification shall be executed by a duly-authorized manufacturer’s representative; dealers and resellers are not authorized to sign this certification on behalf of the manufacturer. **AUTHORIZED DEALERS AND RESELLERS MAY SELL ITEMS UNDER THE CONTRACT DIRECTLY TO CUSTOMERS, PROVIDED THEY OFFER AT LEAST AS GREAT AS THE THEN-CURRENTLY AUTHORIZED PERCENTAGE SAVINGS FOR THE BRAND.** Bidders shall indicate on the Ordering Instructions form the standard delivery time, which is the number of calendar days normally required to make delivery after receipt of a purchase order. Bidders shall also identify on the Ordering Instructions form all service representatives that will be responsible for providing service during the term of the Contract.

For every entity identified on the Ordering Instructions form, the bidder shall include complete and detailed ordering instructions, including SPURS vendor number(s). A manufacturer may add or delete dealers, resellers, and service representatives during the Contract term by submitting a revised Ordering Instructions form to the Contract Specialist, which shall not be deemed a Contract amendment.

1.06 Basis for Award: The Department intends to make multiple awards on a state-wide basis to responsive bidders offering discounted prices. **EACH BIDDER SHALL SUBMIT WITH ITS BID BOTH A HARD COPY AND AN ELECTRONIC COPY OF THE LIST THE BIDDER USES AS THE BENCHMARK LIST AGAINST WHICH TO MEASURE OFFERED PRICE SAVINGS.** Failure to measure percentage savings against the “benchmark” list, or an attempt to include reference to any other price, product, or similar list, will render a bid non-responsive and constitute grounds for rejecting the bid. **EACH BIDDER MUST OFFER A PERCENTAGE DISCOUNT OF AT LEAST 5% OFF OF ITS PUBLISHED PRODUCT LIST FOR THE FLORIDA MARKET.** The percentage shall not reflect any savings that may be offered for refurbished or remanufactured product. Bidders shall note the percentage on the Savings/Price Increases or Reductions form (PUR

7064) included in section 4.0 of these solicitation documents. Bidders need not, however, use their retail lists for the Florida market as the "benchmark" list; for example, a bidder may choose to use as its "benchmark" a list associated with a contract with the General Services Administration of the United States.

Bidders may bid fewer than all of the product categories and sub-categories outlined in the Technical Specifications and noted on the bid tables included in section 4.0 of these solicitation documents. For each sub-category, a bidder shall enter on the bid table either a numeral percentage to the nearest tenth (e.g., 35.5%) representing the offered savings, or "N/A" representing that the bidder is not bidding that sub-category. Alternatively, and to avoid submitting many pages filled with "N/A," a bidder may return only those bid tables containing categories it is bidding, but shall identify in a cover letter exactly which pages it is submitting (for example, if bidding only the category of Uninterruptable Power Supplies and Surge Suppressors, a bidder need only return page 20 of the bid tables and so state in its cover letter). Bidders are solely responsible for submitting the appropriate forms with their bid.

The Department reserves the right to make award by individual item, group of items, or a combination thereof. The Department reserves the right to accept or reject any and all bids, or separable portions, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so will serve the State's best interest.

1.07 Questions/Contract Specialist: Bidders shall address any question regarding this solicitation to the Contract Specialist, who is identified on the cover sheet of this solicitation package. Do not contact Customers directly. Questions shall be in writing, shall reference the ITB number and the bid opening date, and shall be **RECEIVED NO LATER THAN APRIL 22, 2002**, and shall be answered in writing on or before April 29, 2002. To minimize the need for written questions and answers, the **DEPARTMENT WILL CONDUCT A PRE-BID CONFERENCE ON APRIL 18, 2002, AT 1:00 P.M.** in Room 301 of the Department's offices, 4050 Esplanade Way, Tallahassee, Florida. Bidders are encouraged, but not required, to attend the pre-bid conference.

1.08 Conflict of Interest: This solicitation is subject to chapter 112 of the Florida Statutes. Bidders shall disclose with their bid the name of any officer, director, employee or other agent who is also an employee of the State. Bidders shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the bidder or its affiliates.

1.09 Convicted Vendors: A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list: submitting a bid on a contract to provide any goods or services to a public entity; submitting a bid on a contract with a public entity for the construction or repair of a public building or public work; submitting bids on leases of real property to a public entity; being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

1.10 Discriminatory Vendors: An entity or affiliate placed on the discriminatory vendor list

capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the Contract price then in effect or, if none, then at the Contractor's U.S. commercial list price. Once such additional licenses and capacities are purchased, licensee shall be deemed to have been in compliance retroactively, and licensee shall have no further liability of any kind for the unauthorized use of the product.

Bankruptcy: The Contract is subject to the terms of section 365(n) of the United States Bankruptcy Code ("Code") if the licensor files a bankruptcy petition. Licensor's failure to perform its continuing obligations shall constitute a material breach of the Contract excusing performance by the licensee. Royalty payments for use of intellectual property shall be separate from and independent of payments for performance of all other obligations under the Contract (e.g., continuing development obligations, maintenance and support obligations, obligations to provide updates, indemnity obligations, etc.). Upon request, the licensor shall furnish licensee any intellectual property, as defined in the Code, and any embodiment of that intellectual property held by the licensor. If licensee must hire third-parties to perform support, maintenance, or development tasks previously performed by licensor, the licensee may provide intellectual property to such third-parties without violating non-disclosure or exclusivity provisions.

3.24 Invoicing and Payment: Invoices shall contain the Contract number, purchase order number, and the Contractor's SPURS vendor number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract. At the Department's option, Contractors may be required to invoice electronically pursuant to Department guidelines. Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Time limits do not begin until the Contractor submits a properly completed invoice. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

3.25 Taxes: The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Purchases by non-State Customers may be subject to taxes, which shall be computed based on the purchase price and added to the invoice submitted to such entity for payment.

3.26 Customer's Default: A Customer's breach of the terms of a particular order shall not be deemed a breach of the Contract. If a Customer fails to make a payment to the Contractor for products delivered or provided, accepted, and properly invoiced, within sixty days after approval for payment, then the Contractor may, upon ten days advance written notice to both the Department and Customer's purchasing official, suspend additional shipments of product or provision of services to that specific Customer until such time as reasonable arrangements have been made and assurances given by the Customer for current and future Contract payments. Notwithstanding the foregoing, the Contractor shall, in writing and at least ten days before declaring a Customer in breach of the terms of a particular order, notify both the

Department and Customer's purchasing official of the specific facts, circumstances and grounds upon which the Contractor intends to declare a breach. If the Contractor's basis for declaring a breach is determined, then or later, to be insufficient, then the Contractor's declaration of breach and failure to service the Customer shall constitute a breach of the Contract by the Contractor and the Department or Customer may thereafter seek any remedy available at law or equity.

3.27 Annual Appropriations: The State's performance and obligation to pay under the Contract are contingent upon an annual appropriation by the Legislature.

3.28 Surcharge Fee and Summary of Total Sales: Pursuant to section 287.1345 of the Florida Statutes, a surcharge fee of one percent (1.0%) is imposed on Contractor's sales under the Contract. The fee shall be paid by the Contractor and must be included in prices bid and cannot be added as a separate item. After receipt of payment from the Contract purchases, all Contractor surcharge fees shall be payable to the Department no later than 15 days after the end of each quarter. The Contractor shall note "surcharge fee" and the contract number on a check and remit it to:

Florida Department of Management Services
P.O. Box 5438
Tallahassee, FL 32314-5438

At the end of each calendar quarter, the Contractor shall complete and submit to State Purchasing the Vendor User Fee Report form (PUR 7073C) included in section 4.0 of these solicitation documents. By submission of these reports and corresponding Contractor surcharge deposits, Contractor is certifying their correctness. All such reports and fee deposits shall be subject to audit by the State. Contractors shall be responsible for reporting sales and paying user fees resulting from sales made by authorized resellers. The Department reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding surcharge fees. **CONTRACTORS DELINQUENT IN PAYING USER FEES MAY BE EXCLUDED FROM BIDDING ON DEPARTMENT CONTRACTS.**

3.29 Governmental Restrictions: If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Department in writing, indicating the specific restriction. The Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Department.

3.30 Compliance with Laws: The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example,

the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

3.31 Lobbying and Integrity: Pursuant to section 216.347 of the Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barn/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

3.32 Indemnification: The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer. Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided that the State or Customer shall give the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in an infringement action without the Contractor's prior written consent, which shall not be

unreasonably withheld. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The Customer shall not be liable for any royalties. Except as specified in the foregoing portions of this section, for all other claims against the Contractor under any individual purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, or consequential damages, including lost data or records (unless the purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

3.33 Performance Bond: Customers may require the Contractor to furnish without additional cost a performance bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of work under the Contract. Such requirement shall be set forth in the purchase order.

3.34 Suspension of Work: The Department may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the State to do so. The Department shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Department shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.

3.35 Termination for Convenience: The Department, by written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any goods or perform any services after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

3.36 Termination for Cause: The Department may terminate the Contract if the Contractor fails to (1) deliver the supplies or perform the services within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the

Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), Florida Administrative Code, governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted services or supplies were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.

3.37 Force Majeure, Notice of Delay, and No Damages for Delay: The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer or the Department. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer or Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, and/or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

3.38 Equitable Adjustment: The Department may, in its sole discretion, make an equitable adjustment in the Contract terms and/or pricing if pricing or availability of supply is affected

by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

3.39 Scope Changes: The Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Department may solicit separate bids to satisfy them.

3.40 Renewal: Subject to Chapter 287 of the Florida Statutes, and upon mutual agreement, the Department and the Contractor may renew the Contract, in whole or in part. Any renewal shall be in writing and signed by both parties.

3.41 Advertising: The Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State, the Department, or any Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

3.42 Assignment: The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Department; provided, the Contractor assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.

3.43 Dispute Resolution: Any dispute concerning performance of the Contract shall be decided by the Contract Specialist, who shall reduce the decision to writing and serve a copy on the Contractor and, if appropriate, the Customer. The decision of Contract Specialist shall be final and conclusive unless within ten (10) days from the date of receipt, the Contractor files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, the Contractor waives any right to jury trial that it may have, and the prevailing party shall be awarded reasonable costs incurred, including attorneys' fees and costs on appeal.

3.44 Employees, Subcontractors, and Agents: All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or

exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

3.45 Security and Confidentiality: The Contractor shall comply fully with all security procedures of the State and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

3.46 Independent Contractor Status of Contractor: The Contractor, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under the Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of the State or Customer or deemed to be entitled to any benefits associated with such employment. During the term of the Contract, Contractor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide Customers with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

3.47 Insurance Requirements: During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, as a minimum, shall be: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. Upon request, the Contractor shall provide certificate of insurance. The Contract shall

not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in Florida.

3.48 Service: If a Customer is unable to obtain service/warranty within the time specified, or if difficulties are encountered in obtaining service from the Contractor's designated service location, the Customer shall notify the individual designated on the Contractor's ordering instruction sheet, who shall then arrange and coordinate service by an alternate service dealer at no additional cost to the Customer.

3.49 Warranty: Contractor warrants that all product furnished under the Contract shall be free of defective material and workmanship, and shall otherwise perform in accordance with required performance criteria, for a period of not less than one (1) year from date of acceptance.

Warranty repairs shall be completed within the time specified in any support level requirements. If it is likely that the time for repairs will exceed the specified time, the Contractor shall provide equivalent loaner equipment upon request by the Customer. Loaner equipment shall be provided at no cost, including shipment to the Customer's location and return of loaner equipment to the Contractor.

3.50 Warranty of Authority: Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

3.51 Warranty of Ability to Perform: The Contractor shall provide the Department, no later than the time the Contractor returns a signed copy of the Contract, with proof of a Certificate of Status from the Secretary of State, Division of Corporations, demonstrating that the Contractor is in good standing and legally authorized to transact business in Florida. Failure to submit this documentation shall be sufficient grounds for withholding payment under the Contract and cause for termination. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

3.52 Year 2000 Compliance Warranty: All products furnished under the Contract shall be Year 2000 compliant, that is, able to accurately process date data from, into, and between the twentieth and twenty-first centuries, including leap year calculations. Resellers may provide a "pass through warranty" from the manufacturer/software developer, which meets all the warranty requirements specified by the State, and which shall include all other warranties provided by the manufacturer or software developer. Reseller shall be responsible for warranty assurance, assistance, enforcement and any other actions or remediation, required to satisfy warranty requirements.

3.53 Warranty of No Hardstop/Passive License Monitoring: Unless a Customer is specifically and conspicuously advised to the contrary in writing at the time of order and before product acceptance, the Contractor hereby warrants and represents that the product and upgrades do not and will not contain any computer code that would disable the product or upgrades or impair in any way operation based on the elapsing of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes called "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the product to cause such disablement or impairment (sometimes called a "trap door" device). The Contractor agrees that upon an alleged breach of this provision, the Customer shall not have an adequate remedy at law, including monetary damages, and that the Customer shall be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any other remedies to which the Customer shall be entitled.

3.54 Notice: All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery. Notices to the Department shall be delivered to the Contract Specialist identified in the Instructions to Bidders. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

3.55 Leases and Installment Purchases: The State Comptroller's prior approval is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

3.56 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE): To the extent that a product is certified by or is available from PRIDE, and has been approved in accordance with section 946.515(2) of the Florida Statutes, it is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned. This provision is required by section 946.515(6) of the Florida Statutes; additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

3.57 Modification of Terms: The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions by Customer under the Contract. The Contract may only be modified or amended upon mutual written agreement of the Department and the Contractor. No oral agreements or representations shall be valid or binding upon the Department, a Customer, or the Contractor. For individual purchase orders, however, the Contractor may offer the Customer more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, upon request the Contractor shall furnish to the Department a copy of the better offer. The Department shall determine, in its sole discretion, whether the offer, on the whole, is in fact more advantageous. Any offer that is not more advantageous, even if this determination is not made until after

acceptance, shall be voidable at the Customer's option, in which case the Contract terms and conditions shall govern. Other than where terms are more advantageous for the Customer than those set forth in the Contract, no alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer unless authorized by the Department or specified in the notice of award. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. A Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

3.58 Waiver: The delay or failure by the Department to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

3.59 Execution in Counterparts: The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

3.60 Severability: If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

IT Hardware Home

**State Term Contract No. 250-000-03-1
Amendment No. 1**

THIS AMENDMENT, effective as of the last date signed below, is by and between the State of Florida, Department of Management Services (the "Department"), and the entity identified below as Contractor (the "Contractor") (collectively, the "Parties"), and amends State Term Contract No. 250-000-03-1 (the "Contract").

WHEREAS, the Department is implementing an electronic procurement system, currently known as MyFloridaMarketPlace, (the "System") with the assistance of a third-party agent, Accenture LLP ("Accenture"); and

WHEREAS, the Department wishes to include the Contractor and the Contract in the System; and

WHEREAS, the Contractor desires to participate in the System;

WHEREAS, the Contract allows modifications in the event an electronic procurement system is implemented; and,

WHEREAS, it is convenient to make other clarifying amendments in conjunction with those necessary to implement the System.

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Registration. The Department shall allow the Contractor, following effective registration with Accenture, to participate in the System. The Contractor shall register in the System within ten (10) business days of the effective date of this Amendment. Contractor shall visit www.myfloridamarketplace.com and follow the appropriate instruction in order to register.

2. Transaction Fee. Effective April 1, 2003, the Contract provision entitled "Surcharge Fee and Summary of Total Sales" is deleted and replaced with the following "Transaction Fee" section. This Transaction Fee is in lieu of, and not in addition to, the surcharge fee authorized by section 287.1345, Florida Statutes (2002).

Transaction Fee

The Department has instituted a statewide eProcurement System ("System"), with the assistance of a third-party agent, Accenture LLP ("Accenture"). All transactions from this Contract shall be deemed a "transaction processed through the eProcurement System" as that term is used in the contract between the Department and Accenture.

Pursuant to section 287.057(23), Florida Statutes (2002), a Transaction Fee of one percent (1.0%) of the total dollar amount of each purchase order shall apply to all purchases from this Contract. The fee shall be paid by the Contractor, and shall not be added to purchase orders as a separate item. Because the Transaction Fee will be used, in part, to compensate Accenture for the development, operation, and maintenance of the System, Accenture is an intended third-party beneficiary of this paragraph imposing the Transaction Fee on transactions from this Contract.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, whether within or without the State accounting system, Accenture shall either (1) establish with the Customer an automated process for billing and collecting the Transaction Fee from payments that are made to the Contractor or (2) rely upon the Contractor to self-report and pay the Transaction Fee pursuant to processes that Accenture may establish. By submission of these reports and corresponding Contractor deposits, Contractor is certifying their correctness. All such reports and fee deposits shall be subject to audit by the State.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the applicable purchase order or Contract.

Contractor shall be responsible for reporting sales and paying Transaction Fees resulting from sales made by authorized resellers.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM BIDDING ON DEPARTMENT CONTRACTS.**

3. Electronic Invoicing. Notwithstanding any provision of the Contract, the Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the System. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

4. Catalog Data. Accenture is responsible for converting Contract catalog information into a format supported by the System. To accomplish this conversion, the Contractor shall provide certain information in electronic format directly to Accenture; alternatively, the Contractor may follow the "punchout" solution described in more detail below.

Within ten (10) days of written notice from Accenture, Contractor shall provide all information necessary to facilitate electronic purchases from this contract, or shall contact Accenture and begin work on the "punchout" solution described below. Such information may include, but is not limited to, Contractor name, SKU, brand/manufacturer, product name and brief description, unit of measure, and price. Contractor shall provide this information in the format requested by Accenture. No costs or expenses associated with providing this information shall be charged to the Department, Customers, or Accenture. With Contractor's timely assistance, Accenture shall create and maintain web-based placement of the requested contract information.

"Punchout" Alternative

The Contractor may offer, as an alternative to providing the information discussed above, an online "punchout" solution, in which the Customer accesses the Contractor's website directly from the System, rather than the System maintaining the Contractor's data. This solution must allow the Customer to reach the Contractor's site, browse for contracted items only, and return to the System with a list of items ready to be inserted into a requisition. If Contractor selects this alternative, it must meet the following requirements:

- The solution must conform to cXML 1.0 or 1.1 standards.
- The solution must conform to the technical specifications and implementation requirements provided by Accenture, and the Contractor must work with Accenture to ensure successful integration of the punchout solution into the System
- The solution must have the capability to provide only those products awarded under the contract, and block any non-contract item(s) from being added to the requisition.

Warranty

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the Department and Accenture the right and license to use, reproduce, transmit, distribute and publicly display within the System the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the Department and Accenture the right and license to reproduce and display within the System the Contractor's trademarks, system marks, logos, trade dress or other branding designation that identifies the products made available by the Contractor under the Contract.

If the Contractor is not the manufacturer, it shall be the Contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this section, including securing any intellectual property rights of the manufacturer. If the Contractor is the manufacturer, it shall only authorize dealers, outlets, distributors, value-added resellers, etc. within their network that can comply with the provisions of the Contract.

5. Additional Modifications. The Department reserves the right to further revise the collection and reporting requirements in conjunction with alterations to the System.

6. Transportation and Delivery. General Condition 3.19 of the Contract is hereby deleted and replaced with the following provision:

3.19 Transportation and Delivery: Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order; provided, however, that the Contractor and Customer may agree to FOB Origin if each of the following conditions is satisfied: (1) the Contractor maintains insurance, procured for the benefit of Customers, sufficient to cover damage and/or loss to Products during transit, (2) the Contractor provides to the Customer appropriate claim procedures to use in the event of a loss, and (3) the Contractor provides the Customer the right to assign payments from any insurance settlement to the Contractor, so as to permit the repair of damaged products or the replacement of products that are lost or damaged beyond repair. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability to deliver or intentional delays shall be cause for Contract cancellation and Contractor suspension.

7. Indemnification. General Condition 3.32 of the Contract is hereby deleted and replaced with the following provision:

3.32 Indemnification: The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and

refund the Customer the amounts paid in excess of a reasonable rental for past use. The Customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

Except as specified in the foregoing portions of this section, for all other claims against the Contractor under any individual purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

8. Conflict. In the event any of the terms herein conflict with the terms of the Contract, the terms of this Amendment shall control. All other terms of the Contract remain in full force and effect. Contractor waives and releases any and all claims for additional compensation arising out of or relating to this Amendment.

9. Warranty of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

SO AGREED:

CONTRACTOR

Contractor Name

Address

By:
Its:

Date

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**

By:

Date

Approved as to form and legality by the Department General Counsel's Office:

Date

pursuant to section 287.134 of the Florida Statutes may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

1.11 Bidder's Representation and Authorization: In submitting a bid, each bidder understands, represents, and acknowledges the following (if the bidder cannot so certify to any of following, the bidder shall submit with its bid a written explanation of why it cannot do so).

- ✦ The bidder is not currently under suspension or debarment by the State or any other governmental authority.
- ✦ To the best of the knowledge of the person signing the bid, the bidder, its affiliates, subsidiaries, directors, officers, and employee are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- ✦ To the best of the knowledge of the person signing the bid, the bidder has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- ✦ The bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- ✦ The bid prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other bidder or potential bidder; neither the prices nor amounts, actual or approximate, have been disclosed to any bidder or potential bidder, and they will not be disclosed before bid opening.
- ✦ The bidder has fully informed the Department in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- ✦ Neither the bidder nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- ⊕ Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- ⊕ Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- ⊕ The product offered by the bidder will conform to the specifications without exception.
- ⊕ The bidder has read and understands the Contract terms and conditions, and the bid is made in conformance with those terms and conditions.
- ⊕ If an award is made to the bidder, the bidder agrees that it intends to be legally bound to the Contract that is formed with the State.
- ⊕ The bidder has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the bid, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the bid.
- ⊕ The bidder shall indemnify, defend, and hold harmless the Department and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the bidder's preparation of its bid.
- ⊕ All information provided by, and representations made by, the bidder are material and important and will be relied upon by the State in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the State of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

1.12 Performance Qualifications: The Department reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by bidder meet the Contract requirements. Bidder shall at all times during the Contract term remain responsive and responsible. Bidder must be prepared, if requested by the Department, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the manufacturer for the production, distribution, and servicing of the product bid. If the Department determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Department may reject the bid or terminate the Contract. Bidder may be disqualified from receiving awards if bidder, or anyone in bidder's

employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Department to make an investigation either before or after award of the Contract, but should the Department elect to do so, bidder is not relieved from fulfilling all Contract requirements.

1.13 Execution of Bid: Each bid shall be in the form included with these solicitation documents and manually signed by an authorized representative of the bidder. Bids shall be typed or printed in permanent ink. Any correction or alteration shall be in ink and initialed. The bidder's name shall appear on each page of the bid in the space noted. Each bid shall include the Bidder Acknowledgement form (PUR 7027 Rev. 6/1/98), but the "General Conditions" of that form are superseded by the terms of and conditions of these solicitation documents.

1.14 Submittal of Bid: Submit the original bid and one copy in a sealed envelope. DO NOT INCLUDE MORE THAN ONE BID PER ENVELOPE. The face of the envelope shall indicate State Purchasing's address, the bid number, and date and time of the bid submittal. Bids not submitted on the forms included with these solicitation documents shall be rejected. Each bidder is responsible for ensuring that its bid is delivered at the proper time and to the proper place. The Department shall not consider late bids. **BIDS MUST BE RECEIVED AT STATE PURCHASING, 405 ESPLANADE WAY, ROOM 315F, TALLAHASSEE, FLORIDA, AT OR BEFORE 2:00 P.M. ON MAY 6, 2002.**

1.15 Bid Tabulation: Bids shall be opened on the date specified on the Bidder Acknowledgement form (PUR 7027 Rev. 6/1/98), or as amended, and thereafter tabulated. Bid tabulations will be furnished upon written request and payment of a predetermined fee, as provided on the Request for Notification of No Award form (PUR 7063) included in section 4.0 of these solicitation documents. The Department shall not provide bid tabulations by telephone.

1.16 Special Accommodation: Any person requiring a special accommodation at State Purchasing because of a disability should call State Purchasing at (850) 488-8440 at least five (5) workdays prior to the bid opening. If you are hearing or speech impaired, please contact State Purchasing by using the Florida Relay Service at (800) 955-8771 (TDD).

1.17 Firm Bids: The Department may make award within sixty (60) days after the date of bid opening, during which period bids shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, a bid shall remain firm until either the Department awards the Contract or the Department receives from the bidder written notice that the bid is withdrawn. Any bid that expresses a shorter duration may, in the Department's sole discretion, be accepted or rejected.

1.18 Clarifications/Revisions: Before award, the Department reserves the right to seek clarifications, to request bid revisions, and to request any information deemed necessary for proper evaluation of bids from all bidders deemed eligible for Contract award. Failure to provide requested information may result in rejection of the bid.

1.19 Contract Formation: No contract shall be formed between bidder and the Department until the Department signs the Contract. The Department shall not be liable for any costs

incurred by a bidder in preparing or producing its bid or for any work performed before the Contract is effective.

1.20 Notice of Award: The Department shall issue a notice of award, if any, to successful bidders, who shall be responsible for reproducing and distributing copies of the notice and Contract documents to all of the dealers or resellers identified in the bid as authorized to accept purchase orders and complete deliveries and to all authorized service centers.

1.21 Contract Overlap: Bidders shall identify any products covered by this solicitation that they are currently authorized to furnish under any other contract with the Department. By entering into the Contract, a Contractor authorizes the State to eliminate duplication between agreements in the manner the State deems to be in its best interest.

1.22 Purchasing Card Program: The State has implemented a purchasing card program through NationsBank, using the Visa network. Contractors will receive payment from the purchasing card in the same manner as other Visa purchases. Accordingly, bidders must presently have the ability to accept Visa or take whatever steps necessary to implement the ability before the start of the Contract term. The State reserves the right to revise this program in conjunction with implementation of an on-line procurement system.

1.23 Public Records: The Department does not intend to solicit confidential or proprietary information in response to this solicitation. Bidders are cautioned that Florida law generously defines what constitutes a public record; see, for example, section 119.07 of the Florida Statutes. If a bidder believes that its bid contains information that should not be a public record, the bidder shall clearly segregate and mark that information (for example, stamp each page "Confidential" and place it in an envelope marked "Confidential") and briefly describe in writing the grounds for claiming exemption from the public records law. The Department will not independently evaluate the bidder's claim of exemption. If the Department receives a public records request related to the bid, the Department shall notify the bidder in writing at least seven days before making the information available for review by the requester. The bidder shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law. If the bidder fails to do so, the Department shall make the information available for review. In no event shall the Department or any of its employees or agents be liable for disclosing, or otherwise failing to protect the confidentiality of, information submitted in response to this solicitation.

1.24 Bid Protests: Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Failure to comply with the law shall constitute a waiver of the protest.

IT Hardware Home

General Conditions

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3.01 Definitions:

The term "bid" means the offer extended to the Department in response to this solicitation. The forms to accompany the bid are included in section 4.0 of these solicitation documents.

"Contract" means the legally enforceable agreement, if any, that results from this solicitation. The parties to the Contract will be the Department and Contractors. The Contract shall be reduced to writing substantially in the form included in section 4.0 of these solicitation documents.

"Contract, Specialist" means the State Purchasing employee who is primarily responsible for administration of the Contract. The Contract Specialist is identified in the Instructions to Bidders, and the Department shall conspicuously post contact information on its Internet web page associated with the Contract. The Department may appoint a different Contract Specialist, which shall not constitute an amendment to the Contract, by updating the posted contact information and sending notice to Contractor. Any communication to the Department by Contractors, by State Customer contract managers or contract administrators, or by other Customer purchasing officials, shall be addressed to the Contract Specialist.

"Contractor" means a successful bidder, which, along with the Department, will enter into the Contract. The Department anticipates making a multiple award, but for sake of convenience the solicitation documents use the singular form of this term. If a Contractor is a manufacturer, its certified dealers and resellers may also furnish products under the Contract; in choosing to do so, the dealers and resellers agree to honor the Contract and the term "Contractor" shall be deemed to refer to them. Unless awarded the Contract as a direct bidder, however, dealers and resellers are not parties to the Contract, and the Contractor that certifies them shall be responsible for their actions and omissions.

“Customer” means the State agencies and other eligible users that will order products directly from the Contractor under the Contract. By ordering products under the Contract, the Customer agrees to its terms. Customers are not, however, parties to the Contract.

“Department” means the Florida Department of Management Services. The Department will be a party to the Contract. “State Purchasing,” a division within the Department’s Support Program, is responsible for administration of this solicitation and will be responsible for day-to-day administration of the Contract. State Purchasing may be reached at 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950, (850) 487-4634, or via links posted at <http://www.myflorida.com/myflorida/business/index.html>. The Department reserves the right to contract with a third-party service provider to assume responsibility for administration of the Contract.

“Product” means any deliverable under the Contract, which may include commodities, services, technology or software.

“Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).

“State” means the State of Florida and its agencies.

3.02 Eligible Customers: Section 287.056 of the Florida Statutes governs agencies’ use of the Contract. Others may seek Department approval under section 287.042(2)(a) as an eligible user of the Contract. Customers participating in the Contract do so according to the following terms: (1) non-State Customers assume and bear complete responsibility with regard to performance of any contractual obligation or term; (2) breach of a Contract term by any particular Customer shall not be deemed a breach of the Contract as a whole, which shall remain in full force and effect, and shall not affect the validity of the Contract nor the Contractor’s obligations to non-breaching Customers or the Department; (3) the State shall not be liable for any breach by a non-State Customer; (4) each non-State Customer and the Contractor guarantee to save the State and its officers, agents, and employees harmless from liability that may be or is imposed by their failure to perform in accordance with their obligations under the Contract.

3.03 Requests for Quotes: Unlike most products, technology products historically decrease in price over time. Therefore, it is in the Customer’s best interest not to set the price for any particular technology product until the date the product is purchased. For all purchases of \$2,500 or greater, **CUSTOMERS ARE RESPONSIBLE FOR COMPETITIVELY SETTING THE PRICE FOR EACH PARTICULAR ORDER, AND THEY SHALL DO SO BY INITIATING A REQUEST FOR QUOTES (“RFQ”)**, which is an oral or written request for written pricing or service information from a Contractor for products available under the Contract from that Contractor. Customers shall create and maintain written records of oral and written requests, as well as records of quotes received. Quotes shall be in writing but otherwise informal, and need not be received or posted publicly or at a particular time or place. A Customer shall initiate a sufficient number of requests to obtain a minimum of three quotes, should look for a Contractor willing to beat its own (or a competitor’s) currently

authorized Contract price, and shall place its purchase order with the Contractor quoting the lowest price, unless the Customer documents in writing that the lowest price quote would not result in best value (for example, lowest price is for refurbished or remanufactured product).

3.04 Posting and Revision of Authorized Product and Price List: Every Contractor shall maintain on the Internet a list of the products it is authorized to sell under the Contract. The list shall clearly indicate the ceiling price for each product, expressed either as a single price or as a percentage savings off the "benchmark" price. On the Ordering Instructions form submitted with the bid, bidders shall note the proposed Universal Resource Locator (URL) for this list. Posting of the list in a form easily accessible to the Department and Customers shall be a condition precedent to Contractor's right to payment under the Contract. The Department, in its sole discretion, may maintain Contractor's authorized list or provide electronic links to it. Regardless of the number of links to the list, Contractor shall ensure that Customers are able to access one, and only one, version of the authorized list. The authorized list shall include, either directly or via electronic link, the following: Contract number; contact person; part or product numbers and descriptions; ordering information; and pricing information.

Contractor's initial authorized list shall be substantially identical to the "benchmark" list submitted with the bid and used in making the award, or that portion of it bid by Contractor. Contractor shall not make the list generally available or accept any orders off of it until the Department approves the list. Contractor may thereafter amend the list to reflect product line and price changes, subject to the following restrictions.

- ☛ For product line changes, a Contractor shall offer products under the Contract only within those sub-categories it is currently authorized to offer. For example, if a Contractor currently is authorized to sell servers but not personal computers, the Contractor shall not add personal computers to its authorized list of products. During the term of the Contract, however, a Contractor may seek to increase the number of product categories it is authorized to offer by being added as an authorized Contractor for other categories, as outlined in paragraph 3.12 of these General Conditions. Upon written request of a Customer, the Department may waive this prohibition for a particular transaction and allow a Contractor to bundle and sell products that it is not currently authorized to sell along with products that is authorized to sell, if the Customer conclusively demonstrates, to the Department's satisfaction, that the "package deal" would provide the best value to the State. Within its currently authorized product categories, a Contractor may amend its list to reflect product developments. Any added product shall be offered at the then-current authorized percentage discount, which shall always be at least as great as the discount offered initially.
- ☛ For price changes, a Contractor shall only decrease, and shall never increase, the prices offered initially (stated differently, a Contractor may increase, but never decrease, its percentage discount). Posted price reductions shall take effect immediately and be applied to unshipped and subsequent orders. **CONTRACTORS ARE FREE TO OFFER GREATER DISCOUNTS FOR INDIVIDUAL TRANSACTIONS, AND CUSTOMERS ARE REQUIRED TO SEEK THEM AND TO EXPLORE WHETHER OTHER CONTRACTORS AUTHORIZED**

FOR THE PRODUCT CATEGORY OFFER BETTER DISCOUNTS THROUGH THE RFQ PROCESS.

- ✦ At least two business days before making any changes to the posted authorized list – whether to products, to prices, or otherwise – a Contractor shall notify the Contract Specialist by e-mail of its intent to make a change and describe the proposed change. The Department may, in its sole discretion, prohibit any requested change or direct a Contractor to undo any change already made. In addition, the Department may direct rescission of any purchase order entered into on the basis of an unauthorized product and price list.
- ✦ Changes to the authorized list or to related information (for example, ordering information) shall not be deemed Contract amendments.
- ✦ On a quarterly basis, or more frequently if directed in writing by the Contract Specialist, Contractor shall submit written certification of changes made to its authorized list. The certification shall be substantially in the form included in Section 4 of the solicitation documents, “Certification of Changes to Authorized Product and Price List.” Failure to submit the form in a timely manner shall constitute grounds for terminating the Contract. Falsification of any information on the form shall subject Contractor to civil liability and criminal prosecution.
- ✦ The Department reserves the right to revise these restrictions in conjunction with implementation of an on-line procurement system.

3.05 Product Version: Purchase orders shall be deemed to reference a manufacturer’s most recently released model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the Contractor is willing to provide such model or version.

3.06 Quantity Discounts: Contractors are urged to offer additional discounts for one time delivery of large single orders of any assortment of items. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

3.07 Best Pricing Offer: During the Contract term, if the Contractor sells substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, at a lower price, then at the discretion of the Department the price under the Contract shall be immediately reduced to the lower price.

3.08 Sales Promotions: In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period or for a specific Customer group (e.g., K-12, Higher Education, State Customers, etc.). A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion or (2) specific Customers to which the promotion is addressed and (3) products involved and (4) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall conspicuously post notice of the

promotion with its authorized product list.

3.09 Trade-In: Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Office of the State Comptroller and to the agency property custodian.

3.10 Americans With Disabilities Act: Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

3.11 Energy Star Compliant: The Federal Environmental Protection Agency encourages the manufacture of energy efficient computer hardware, and the State supports this initiative. The Department prefers that all products offered under the Contract be Energy Star compliant and bear the EPA Energy Star Logo. Customers should seek to reduce the total cost of equipment ownership and operation, and they should consider the purchase of Energy Star compliant equipment if it meets their performance needs.

3.12 Authorized Product Categories: Upon Contractor's written request, the Department may authorize the Contractor to furnish product under other categories or subcategories identified in the solicitation documents. In considering Contractor's request, the Department shall apply substantially the same terms and conditions governing the initial solicitation. The Department's decision on the request shall be final and not subject to appeal of any kind.

3.13 Purchase Orders: A Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Even where not otherwise required, **CUSTOMERS ARE ENCOURAGED TO INCLUDE PROVISIONS THAT PROMOTE GOOD CONTRACT MANAGEMENT PRACTICES AND ENABLE THE CUSTOMER AND CONTRACTOR TO MONITOR AND ADJUST PERFORMANCE**, for example, provisions clearly defining the scope of the work, provisions dividing the order into objectively measured deliverables, provisions setting forth schedules for completion and (where appropriate) liquidated damages for untimely completion, etc. State Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes. The Department reserves the right to revise this section in conjunction with implementation of an on-line procurement system.

3.14 Packaging: Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

3.15 Manufacturer's Name and Approved Equivalent: Unless otherwise specified, any

manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are descriptive, not restrictive. With the Department's prior approval, the Contractor may offer any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Department shall determine in its sole discretion whether a product is acceptable as an equivalent.

3.16 Inspection at Contractor's Site: The State reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor or prospective Contractor (bidder) to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

3.17 Safety Standards: All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

3.18 Literature: Upon request, the Contractor shall furnish Customers literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

3.19 Transportation and Delivery: Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability to deliver or intentional delays shall be cause for Contract cancellation and Contractor suspension.

3.20 Installation: Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least

inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

3.21 Inspection and Acceptance: Inspection and acceptance shall be at destination unless otherwise provided. For Contractor-installed products, the date of acceptance is the date the Customer accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the Customer shall certify in writing to the Contractor when the product is accepted (if training or other post-installation services are included in the purchase order, the acceptance shall be conditional). For Customer-installed products, the date of acceptance shall be the delivery date. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damage to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification of rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

3.22 Title to Deliverables: For purposes of this section, a "product" is any deliverable furnished under the Contract, including but not limited to (1) components of the hardware environment, (2) printed materials, (3) third-party software, (4) programs and programming modifications, customizations, tools, data, modules, and components, and (5) any tangible or intangible properties embedded therein. A product is "existing" if it is a tangible or intangible licensed product that exists before Contract work begins (the Contractor shall bear the burden of proving that a product existed before work began). A product is "custom" if it is any product, preliminary or final, that is created under the Contract for the Customer by the Contractor or its employees, subcontractors, or agents.

For existing hardware products, title to a hardware product shall pass to Customer upon written acceptance. For existing software products, that are normally commercially distributed on a license basis by the Contractor or other independent software proprietary owner (ISPO), whether or not embedded in, delivered, or operating in conjunction with hardware or a custom product, title shall remain with the Contractor or ISPO. Effective upon acceptance, such product shall be licensed to the Customer in accordance with the Contractor or ISPO's standard licensed agreement, provided, however, that the license agreement shall, at a minimum, (1) grant the Customer a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless the Contractor demonstrates to the Customer before execution of a purchase order that adaptation will violate existing agreements or law) and distribute the product to authorized users up to the license capacity identified in the purchase order with all license rights necessary to effect the Customer's stated purpose, and (2) recognize the State as the licensee, where the Customer is part of the State. Where these rights are not otherwise covered by the ISPO's standard license agreement, the Contractor shall obtain these rights at its sole expense. The Customer shall reproduce all copyright notices and any other legend of

ownership on any copies authorized under this paragraph.

For custom products, effective upon creation the Contractor hereby conveys to the Customer the sole and exclusive rights, title and interest in the product, including all trademark and copyrights, and the Contractor shall take all necessary and appropriate steps to ensure that the products are protected against unauthorized copying, reproduction, or marketing through the Contractor or its employees, subcontractors, or agents; provided, that the Contractor may otherwise use any related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Contract. In the alternative to taking exclusive ownership and title to such products, the Customer may elect, by providing written notice to the Contractor, to take a non-exclusive license to use, execute, reproduce, display, perform, and distribute the product as described in the preceding paragraph.

3.23 Software License Grant: Where product is acquired on a licensed basis, the following terms shall constitute the license grant.

Scope: Licensee is granted a non-exclusive license to use, execute, reproduce, display, perform, or merge the product within its business enterprise in the United States up to the maximum licensed capacity identified on the purchase order. The product may be accessed, used, executed, reproduced, displayed, or performed up to the capacity measured by the applicable licensing unit identified on the purchase order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, etc.). Licensee shall have the right to use and distribute modifications and customizations of the product to and for use by any Customers otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish licensor's proprietary title or interest. This paragraph grants no license, right, or interest in any trademark, trade name, or service mark.

Term: The license term shall begin the date the product is accepted. Where a license involves licensee's right to copy a previously licensed and accepted master copy, the term shall begin the date the purchase order is executed.

Documentation: Upon request, the Contractor shall deliver to the licensee at the Contractor's expense (1) one master electronic copy and one hard copy of product documentation or (2) one master electronic copy and hard copies of the product documentation by type of license in the following amounts, unless otherwise agreed: for individual/named user, one copy per licensee; for concurrent users, ten copies per site; for processing capacity, ten copies per site. The master electronic copy shall be in either CD-ROM or diskette format and usable without conversion (for example, if a unit has only a 3½" disk drive, software shall be provided on 3½" diskettes). The Contractor hereby grants the Customer a perpetual license right to make, reproduce (including downloading electronic copies), and distribute, either electronically or otherwise, copies of product documentation as necessary to enjoy full use of the product in accordance with the terms of the license.

Technical Support and Maintenance: Licensee may elect the technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to the Contractor any time during the Contract term. Maintenance shall include, at a minimum, (1) providing error corrections, patches, updates, revisions, fixes, upgrades, and new releases to licensee, and (2) Help Desk assistance accessible via toll-free or local telephone call or

on-line. The Contractor shall maintain the products so as to provide licensee with the ability to use the products in accordance with the product documentation, without significant functional downtime to ongoing operations during the maintenance term. The Customer shall not be required to purchase maintenance for use of the product, and the Customer's license shall not be invalidated for refusal to purchase maintenance. The maintenance term(s) and any renewals are independent of the Contract term. The Customer may discontinue maintenance at the end of any current maintenance term upon notice to the Contractor; provided, the term shall not automatically renew. If the Customer does not initially acquire, or discontinues, maintenance, the Customer may at any later time reinstate maintenance without any penalties or other charges, by paying the Contractor the amount, if any, that would have been due under the Contract for the period that maintenance had lapsed, or for twelve months, whichever is less.

Transfers: Licensee's operations may be altered, expanded, or diminished. Licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between agencies. Contractor approval is not required for such transfers, but licensee shall give prior written notice to the Contractor. There shall be no additional license or other transfer fees due, provided that (1) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS) or (2) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system to restrict use and access to the product to that unit of licensed capacity solely dedicated to beneficial use for licensee. If the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

Restricted Use by Third Parties: Outsourcers, facilities management, service bureaus, or other services retained by licensee shall have the right to use the product to maintain licensee's operations, including data processing, provided that (1) licensee gives notice to the Contractor of such third party, site of intended use of the product, and means of access, (2) the third party has executed, or agrees to execute, the product manufacturer's standard nondisclosure or restricted use agreement, which agreement shall be accepted by the Contractor, and (3) the third party shall maintain a logical or physical partition within its computer system to restrict access to the program to that portion solely dedicated to beneficial use for licensee. Licensee shall not be liable for any third party's compliance or noncompliance with the terms of the nondisclosure agreement, nor shall the nondisclosure agreement create or impose any liabilities on the State or the licensee. Any third party with whom a licensee has a relationship for a State function or business activity shall have the temporary right to use product (e.g., Java applets), provided that such use shall be limited to the period during which the third party is using the product for the function or activity.

Archival Backup: Licensee may use and copy the product and related documentation in connection with reproducing a reasonable number of copies for archival backup and disaster recovery procedures.

Source Code Escrow: If either the product manufacturer/developer or the Contractor offers source code or source code escrow to any other commercial customer, or if either entity seeks bankruptcy protection, then the Contractor shall either (1) provide licensee with source code for the product, (2) place the source code in a third-party escrow arrangement with a designated escrow agent, which shall be identified to the Department, and which shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the Department, or (3) certify to the Department that the product manufacturer/developer has named the State, acting by and through the Department, and the licensee, as named beneficiaries of an established escrow arrangement with its designated escrow agent, which shall be identified to the Department and licensee, and which shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements, shall be updated for each new release of the product in the same manner as provided above and such updated shall be certified in writing to the Department. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph. The State may release the source code to licensees under the Contract which have licensed product or obtained services, and which may use the copy of the source code to maintain the product.

Confidentiality: The product is a trade secret, copyrighted and propriety product. Licensee and its employees shall not disclose or otherwise distribute or reproduce any product to anyone other than as authorized under the Contract. Licensee shall not remove or destroy any of the Contractor's proprietary markings.

Restricted Use: Except as expressly authorized by the terms of license, licensee shall not: copy the product; cause or permit reverse compilation or reverse assembly of the product or any portion; or export the product in violation of any U.S. Department of Commerce export administration regulations.

Proof of License: The Contractor shall provide to each licensee that places a purchase order either (1) the product developer's certified license confirmation certificates in the name of the licensee or (2) a written confirmation from the proprietary owner accepting the product invoice as a proof of license. The Contractor shall submit a sample certificate, or alternative confirmation, which shall be in a form acceptable to the licensee.

Audit of Licensed Usage: The Contractor may periodically audit, no more than annually and at its expense, use of licensed product at any site where a copy resides provided that (1) the Contractor gives licensee at least thirty days written advance notice, (2) the audit is conducted during the licensee's normal business hours, (3) the audit is conducted by a State Inspector General's office or, for non-State licensees, by an independent auditor chosen by mutual agreement of the licensee and Contractor as follows: the Contractor shall recommend a minimum of three auditing/accounting firms, from which the licensee shall select one; in no case shall the Business Software Alliance, Software Publishers Association, or Federation Against Software Theft be recommended by the Contractor or used, directly or indirectly, to conduct audits, (4) the Contractor and licensee shall designate a representative who shall be entitled to participate, who shall mutually agree on audit format, and who shall be entitled to copies of all reports, data, or information obtained from the audit, and (5) if the audit shows that the licensee was not in compliance, the licensee shall purchase additional licenses or