LOI #7051814

TITLE: Computer Technical Support Services (MPA-230)

SUBMISSION DEADLINE: 9 Jan 08 @ 1:30 P.M. (Eastern Time)

PRE-BID/PROPOSAL CONFERENCE: Yes

DATE: 17 Dec 07   Time: 9:00 AM

MANDATORY: No

LOCATION: Department of Administration, Conference Room A (2nd floor), One Capitol Hill, Providence, RI

Questions concerning this solicitation may be e-mailed to the Division of Purchases at **questions@purchasing.state.ri.us** no later than 17 Dec 07 @ 5:00 PM (Eastern Time). All correspondence must be in Microsoft Word format. Please reference the LOI Number on all correspondence. Answers to questions received, if any, will be discussed at the pre-proposal meeting and included in the meeting summary as well as posted on RIVIP as an addendum to the LOI.

SURETY REQUIRED: No

BOND REQUIRED: No

Jerome D. Moynihan, C.P.M., CPPO
Administrator of Purchasing Systems

Vendors must register on-line at the State of Rhode Island Purchasing Website at www.purchasing.state.ri.us.

<u>**NOTE TO VENDORS:**</u>

Offers received without the entire completed three-page RIVP Generated Bidder Certification Form attached may result in disqualification.

THIS PAGE IS NOT A BIDDER CERTIFICATION FORM

SECTION 1 – OVERVIEW

The Rhode Island Department of Administration/Division of Purchases, on behalf of the Rhode Island State Division of Information Technology (State) requests Letters of Interest from qualified firms and organizations to provide computer skills in accordance with the terms of this solicitation, the State's General Conditions of Purchase (available on the Rhode Island Vendor Information Program (RIVIP) Website at www.purchasing.ri.gov), and the Information Technology (IT) Supplemental Terms and Conditions attached hereto as Exhibit 1. The purpose of this solicitation is to establish a roster of vendors, plus possibly an additional roster of vendors with expertise in health information technology, qualified to perform the services referenced within this solicitation for the **period March 1, 2008 through March 1, 2009 with the option to extend, at the State's discretion, for two additional years**. The roster, including the separate health information technology roster if established, will be referred to as MPA 230 (Master Price Agreement Number 230). The State reserves the right to add to the initial list of qualified vendors through public re-solicitation for additional Letters of Interest. MPA 230 vendors will be authorized to participate in providing supplemental computer technical support services to various State of Rhode Island entities as authorized by the State Chief Information Officer, or his designee (CIO). The CIO will authorize engagements of pre-qualified vendors for specific support service projects. State Agencies, other than the Department of Administration, are prohibited from contracting directly with vendors included on the Master Price Agreement. However, MPA 230 service providers are encouraged to make their services, and MPA pricing, available to cities, towns, public school systems, and quasi-public agencies within Rhode Island.

INSTRUCTIONS AND NOTIFICATIONS TO OFFERORS:

- Potential offerors are advised to review all sections of this Request carefully, and to follow instructions completely, as failure to make a complete submission as described elsewhere herein may result in rejection of the proposal.

- Alternative approaches and/or methodologies to accomplish the desired or intended results of this procurement are solicited. However, proposals which depart from or materially alter the terms, requirements, or scope of work defined by this Request will be rejected as non-responsive.

- All costs associated with developing or submitting a proposal in response to this Request, or to provide oral or written clarification of its content shall be borne by the offeror. The State assumes no responsibility for these costs.

- Proposals are considered to be irrevocable for a period of not less than sixty (60) days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent or Chief Purchasing Officer.

- Proposals misdirected to other State locations or which are otherwise not present in the Division of Purchases at the time of opening for any cause will be determined to be late and will not be considered. PROPOSALS EMAILED OR FAXED TO THE DIVISION OF PURCHASES WILL NOT BE CONSIDERED.

- It is intended that an award pursuant to this Request for Letters of Interest will be made to prime contractor(s) who will assume responsibility for all aspects of the work. Joint ventures shall be considered, so long as the contractor's duties and responsibilities are clearly articulated in such form as acceptable to the State. Subcontracts are permitted, provided that their use is clearly indicated in the offeror's proposal, and the subcontractor(s) proposed to be used are identified in the proposal.

- In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, a corporation without a Rhode Island business address, shall have the right to transact business in the state

until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040). This is a requirement only of the selected service providers.

- All pricing submitted in response to this LOI should be considered the bidder's best pricing, subject to the State negotiating such pricing downward to achieve a final fixed price for the vendor to be included on the MPA. For selection on to MPA 230, your response will be ranked from lowest to highest based on the average cost of the primary roles for the categories they represent.

- If you are a vendor specializing in Health IT, please clearly denote this distinction in section 2 of the technical proposal and provide an explanation and supporting documentation regarding your experience in Health IT that will substantiate this distinction. The State reserves the right to establish a separate roster from the submissions for this LOI by health IT vendors.

- Vendors may submit proposals for the generic IT services roster, the health IT services roster, or both.

- Bidders are advised that all materials submitted to the State for consideration in response to this Request will be considered to be public records, as defined in Title 38 Chapter 2 of the Rhode Island General Laws, without exception, and will be released for inspection immediately upon request, once an award has been made.

- This is a Letter of Interest (LOI), not an Invitation for Bid. In addition to price, responses will be evaluated based on a variety of criteria including, but not limited to, cost and qualifications of the staff.

- There will be no public opening and reading of responses received pursuant to this LOI, other than to name those Vendors who have submitted responses.

- Inclusion as a qualified vendor on MPA230 is not a guarantee that the vendor will be selected for work during the contract period. Vendor selection will be based on State need, in addition to vendor qualifications, pricing and availability. Historical State spending patterns is no guarantee of future expenditures.

- Retention of vendors for various assignments may be subject to certain approvals.

- The State reserves the right to request Vendor/service provider to provide various reports, such as a monthly report of hours and work performed to both agency and MPA Administrator.

- The State of Rhode Island has a goal of ten percent (10%) participation by MBE's in all State procurements. For further information, visit the website www.mbe.ri.gov . To speak with an MBE officer, call (401) 574-8253.

- **Equal Employment Opportunity (RIGL 28-5.1)**
  § 28-5.1-1 Declaration of policy. – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies in all areas where the state dollar is spent, in employment, public service, grants and financial assistance, and in state licensing and regulation. For further information, contact the Rhode Island Equal Employment Opportunity Office, at 222-3090

- Interested parties are instructed to peruse the Division of Purchases' website on a regular basis, as additional information relating to this solicitation may be released in the form of an addendum to this LOI.

SECTION 2 – BACKGROUND, PURPOSE AND SCOPE

From time to time the State requires technical talents or skills for a particular project or a particular aspect of operations that are unavailable among its information technology (IT) staff. Therefore, the State is seeking to pre-qualify a roster of vendors who can supply, in both the health and non-health IT areas, skilled individuals to train and augment State IT staff as circumstances require. In Fiscal year 2007 the MPA 230 transacted approximately $9.4 million dollars. However, historical spending patterns are no guarantee of future State expenditures.

Purpose: MPA 230 will be used for technical fixed price projects and hourly skilled individuals to train and augment staff.

Additional attributes of MPA engagements may, but are not required to, include the following:

- Acquiring a higher or missing skill levels
- Acquiring specific experience with a particular technology, methodology or project type
- Temporary fulfillment of a role due to scheduling, illness, inadequate staffing or other similar constraints

Scope: Staff augmentation will mean the utilization of a qualified information technology services contractor(s) to fill any roles which require skills or resources unavailable from State workers at the time of need. Contractors will operate under the close supervision of the State. Technical Projects will mean fixed priced or not to exceed Information Technology projects, under $100,000, to be performed by vendor under the supervision of the State. There are specific processes that will be followed by the MPA administrator to engage a vendor in a fixed price project. All fixed priced projects will be first approved by the Project Review Committee.

Engagement   The State anticipates requiring staff augmentation in the following categories:
(See Appendix III for a list the various roles and a general list skills which may be included under this MPA):

- Application Delivery and Support,
- Server Administration and Desktop Support,
- Network Support
- Project management.

Contractors may be engaged for multiple roles, on multiple projects, provided there is sufficient balancing of priorities which does not jeopardize individual project schedules.

Governance: Oversight and management of all MPA engagements will be through the office of the State Chief Information Officer (CIO) in accord with the procedures outlined in Appendix II. All MPA engagements must be approved and coordinated by the office of the CIO.

SECTION 3 –ADDITIONAL TERMS AND CONDITIONS

- The State reserves the right to request additional and periodic information from vendors to demonstrate continued financial responsibility of vendor.

- All engagements will be for named individuals only.

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- Vendors may subcontract work to acquire skills and experience required by State; however the State reserves the right to approve any subcontractors.

- All work contracted under MPA 230 will be considered "work for hire" with all rights to intellectual property assigned to the State.

- All contractors and subcontractors will be subject to policies, procedures, and legal terms and conditions of the State (as posted on the purchasing website and/or part of or attached to this solicitation). Violation of policies and procedures by vendor may be cause for termination of contract and elimination from the MPA.

- Although indicated herein that the ten (10) lowest ranked category averages will participate on MPA 230, the State reserves the right to increase the number of participants beyond the ten if deemed desirable. Cost proposal evaluation is predicated on the Offeror receiving a minimum of 70, out of a 100, technical points. Respondents scoring less than the minimum 70 technical points will be dropped from further award consideration.

- The State reserves the right to require additional terms and conditions when entering into individual engagements with vendor(s).

- Vendors may respond to any or all categories. However, there is no obligation to offer services in all categories. **To be validated for a category you must supply rates for all the <u>category</u> <u>primary roles</u>** and be ranked within the ten(10) lowest averages for the category amongst all vendors (assuming the Offeror has received the required minimum technical score). If there are not rates for all the primary roles, the average will be skewed and the category will not be ranked. <u>If vendor's category average is ranked among the ten (10) lowest category averages, then all other roles with submitted rates within the category will be automatically validated.</u>

- The State may approve or reject an offeror's participation in any category without rejecting the vendor's entire offer.

- The State reserves the right to require background (BCI) check(s), at vendor's expense, prior to individuals beginning work.

- Contractors may be required to sign a non-disclosure form. Contractors may also be required to sign a HIPAA Business Associate Agreement.

- The State reserves the right to require drug test(s), at vendor's expense, on individuals prior to beginning work.

- All hired contractors must adhere to all applicable IT policies.

- Contractors will be required to have the following insurance:

<u>Commercial General Liability Insurance:</u> Contractor shall obtain at contractor's expense, and keep in effect during the term of this contract Commercial General Liability Insurance covering bodily injury, and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal advertising injury liability, independent contractors, products completed operations, contractual liability and broad form property damage coverage. Coverage shall be written on an occurrence basis. A combined single limit of <u>$1,000,000</u> per occurrence and aggregate is required.

Auto Liability Insurance: Contractor shall obtain, at Contractor's expense and keep in effect during the term of this contract, Auto Liability Insurance covering all owned, non-owned or hired vehicles. A combined single limit per occurrence of $1,000,000 will be obtained.

Workers Compensation: Contractor shall obtain statutory Workers Compensation coverage in compliance with the compensation laws of the State of Rhode Island. Coverage shall include Employers Liability Insurance with minimum limits of $100,000 each accident, $500,000 disease or policy limit, $100,000 each employee. An Alternative Employer Endorsement shall be required for both the workers compensation and employer liability policy.

Technology Errors and Omissions Liability Insurance: Coverage to include Errors or Omissions, Product Failure, Security Failure, Professional Liability and Personal Injury. Contractor will obtain Technology Errors and Omissions Liability Insurance with minimum limits of $1,000,000 per occurrence and aggregate. Insured will include any individual who is an agent or independent contractor while acting within the scope of his or her contract with the named insured on projects under this agreement.

The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.

The Commercial General Liability Insurance and the Technology Errors and Omissions Liability Insurance shall include the State of Rhode Island Department of Administration Division of Information Technology, officers and employees as Additional Insured but only with respect to the Contractor's activities under this contract.

The insurance required in this agreement, through a policy or endorsement shall include:

A waiver of subrogation waving any right to recovery the insurance company may have against the State.

A provision that Contractor's insurance coverage shall be primary as respects any insurance, self insurance or self retention maintained by the State and that any insurance, self insurance or self retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute.

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal without 30 days written notice from the Contractor or its insurer(s) to the Department of Administration Division of Information Technology. Any failure to comply with the reporting provisions of this clause shall be grounds for immediate termination of this contract.

As evidence of the insurance coverage required by this contract, the successful Bidders shall furnish Certificate(s) of Insurance to the Department of Administration, Purchasing Division. Failure to comply with this provision shall result in the contractor being excluded from the master price agreement.

Insurance coverage required under the contract shall be obtained from insurance companies acceptable to the Department of Administration. The Contractor shall pay all deductibles, self insured retentions and/or self insurance included hereunder. The Contractor shall disclose to the State the amount of any deductible, self-insured retention and/or self insurance. The State reserves the right to reject any such insurance as not complying based on the amount of the deductible, self-insured retention and/or self-insurance.

The Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional or more extensive coverage for any individual requirement

SECTION 4 – PROPOSAL SUBMISSION

Responses **(an original plus one (1) copy)** should be mailed or hand-delivered in a sealed envelope marked **LOI#7051814"Computer Technical Support Services, MPA-230".**

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RI Dept. of Administration
Division of Purchases, 2nd floor
One Capitol Hill
Providence, RI 02940-6528

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Proposals should include the following:

1. A completed and signed three-page RIVIP Bidder Certification Cover Form, available at www.purchasing.ri.gov.

2. A separate Cost Proposal reflecting the fee structure, proposed for this scope of services, as described herein. Special instructions detailing the cost proposal submission is described later in this solicitation.

3. A Technical Proposal describing the qualifications and background of the applicant and experience with similar programs, as well as the work plan or approach proposed for this requirement.

4. A completed and signed W-9 (taxpayer identification number and certification). Form is downloadable at www.purchasing.ri.gov.

5. In addition to the multiple hard copies of proposals required, Respondents are requested to provide their proposal in electronic format (CDRom or Diskette). Microsoft Word / Excel OR PDF format is preferable. Two electronic copies are requested. .

The Vendor assumes responsibility for proposals submitted by mail or commercial delivery service. Proposals misdirected to other State locations or which are otherwise not present in the Division of Purchases at the time of opening, for any cause, will be determined to be late and will not be considered. The "official" time clock is located in the reception area of the Division of Purchases. Faxed or emailed proposals will not be considered.

Any additional information pertaining to this LOI or changes in the timeline may be posted on an as-needed basis. It is the responsibility of the Bidder to regularly review the RIVIP website (www.purchasing.ri.gov) to check for any additional postings.

It is strongly suggested that the vendor mark this RFP on the RIVIP Vendor Watchlist for ease of monitoring critical information and amendments. Assistance in using this RIVIP feature can be obtained by reviewing the online tutorials available under the Vendor Center Section or by contacting the RIVIP Help Desk at (401) 222-3766.

Use of the Electronic Bid Forms provided by the State for submission of the Cost Proposals for the **LOI** is mandatory. It is a Bidder's responsibility to assure that such Bidder has the technical capability to obtain and utilize all Bid documentation in the form and manner set forth in this RFP.

Proposals found to be technically or substantially non-responsive at any point in the evaluation process will be rejected and not considered further.

TECHNICAL PROPOSAL:

Technical Responses must be submitted in a separate sealed envelope and organized within binders by section (1 thru 7) and appendices (1 thru 2) as indicated below. Each section should have a separator page and be clearly labeled.

Sections:

1. A completed and signed in ink RIVIP- generated bidder certification cover form (downloaded from the R.I. Division of Purchases Internet home page at www.purchasing.ri.gov) must be attached to the front of the offer. (Vendor must be registered on the Purchasing Website to generate the Cover Sheet.)
2. A. A statement of experience describing the offeror's background, qualifications, and experience with other clients in the categories and skills listed.
    B. A list of engagements and at least three (3) references for each classification vendor is submitting a bid for (health IT services and/or generic IT services), demonstrating vendor's capacity to deliver services as referenced elsewhere in this solicitation
    C.   A statement clearly denoting vendors interest in participating on the generic IT services roster, the health IT services roster (if established), or both.
    D. For those vendors interested in participating on the health IT services roster, please describe your relationship with all National Public Health Organizations that you are affiliated with, involved in or participate with.
3. A description of the offeror's capability and capacity to deliver services, including sample resumes of individuals available to be assigned to the State.
4. Information sufficient to demonstrate financial responsibility, which may include the most recent 2 years financial statements, tax returns, certificate(s) of insurance, or other financial references.
5. A statement of company history listing the number of employees, volume of business, and general business references.
6. Description of human resource, hiring or screening processes, policies, and procedures.
7. A completed and signed W-9 Taxpayer Identification Number and Certification Form, which may be downloaded from www.purchasing.ri.gov.

Additional information is encouraged, but not required. Such information would include:

Appendices:

1. Description of any vendor provided training, support or tools provided to employees or subcontractors.
2. Description of vendor's customer support process for the State (for example individual profiles of client relationship manager/team, staffing or other managers assigned to the State and related processes).

COST PROPOSAL:

Cost Proposals must be submitted in a separate sealed envelope and be organized within a binder or folder, with separator pages and clearly labeled. It must include the following:

 Responses must be submitted on CD using Electronic Excel Spreadsheets downloadable at www.purchasing.ri.gov. You will find the following Excel Spreadsheets that must be completed and submitted with your response: 1 – Appendix A: Vendor Pricing Response and 2 - Appendix B: Vendor Pricing Category Response. If you wish to be considered for the Health IT Roster,   please complete the following: Appendix C: Health Vendor Pricing Response and Appendix D: Health Vendor Pricing Category Response. It is the responsibility of Bidder to assure that all of the required Electronic Bid Form files are contained on the submitted CD as well and that they are uncorrupted, readable and usable by State of Rhode Island purchasing officials. An additional backup CD should be submitted.

1. A signed in ink printed copy of the Vendor Pricing Response (Appendix A) and Vendor Pricing Category Response (Appendix B)and if applicable, two signed Health appendices (Appendix C and Appendix D).

See **Appendix III** for role and skill descriptions under each category.

SECTION 5 - EVALUATION AND SELECTION

EXPLANATION:

Award will be based on qualifications and capability of the vendor (minimum score of 70 out of 100) and then by ranking within category by the category average hourly cost. There are three categories - Application development, Server/Desktop/Network support, and Project management – each will have two (2) to four (4) primary roles for which you will supply hourly rates. You will also supply the average cost of each category's primary roles' rates in a space provided in Appendix B,or Appendix D or both, (Excel Spreadsheets). Each vendor's hourly rate average for the respective category will be used to rank the ten (10), lowest to highest, vendor responses The ten (10) lowest hourly averages for the category will participate on MPA 230, assuming the proposal has received the minimum required technical score . Everyone else will not participate in that category. NOTE: It is imperative to supply hourly rates for all category roles you are interested in. If you are awarded to participate in a category, (one of the 10 lowest category hourly averages), all roles and rates supplied for that category will automatically be validated. **You will not be validated for any role that an hourly rate is not supplied.**

The State will commission a Technical Review Committee, which will evaluate and score all proposals, category by category using the following criteria:

- Staff Qualifications   50 points

- Capability, Capacity, and Qualifications of the Offeror   50 points

- Cost   Lowest ten(10) category average hourly rates

Once again, offers/proposals must receive a minimum of 70, out of 100, technical points to warrant cost consideration and further evaluation.

Once the lowest (10) category average rates are established, the State reserves the right to negotiate the pricing downward with only these vendors to achieve a final fixed price for that vendor to be included on the MPA.

In the event that the State decides to establish a health IT services roster, such roster shall be established using the same evaluation and selection criteria and procedures as provided for in this Section.

Category Primary Roles:

Application Development Primary Roles

     Senior Programmer
     Intermediate Programmer
     Senior Web Developer
     Senior Database Administrator

Server/Network/Desktop Support Primary Roles

     Intermediate Network Technician

Junior Desktop Support Technician
Senior Intel Server Administrator
Senior Desktop Support Technician

Project Management Primary Roles

Sr. Project Manager
Project Manager

Vendor will provide average rate for each category above in the provided spreadsheet.

Minimum Requirements. Respondents must attain a minimum combined total score of 70 points in the Staff Qualifications and Capability, and Capacity and Qualifications categories to be considered for the cost evaluation.

The State reserves the right to accept or reject any or all options, bids, or submissions and to act in its own best interest.

The State may, at its sole option, elect to require presentation(s) by offerors clearly in consideration for award

APPENDIX I - COST PROPOSAL SUMMARY

Cost Proposals must be submitted in a separate sealed envelope and be organized within a binder or folder, with separator pages and clearly labeled. It must include the following:

 Responses must be submitted on CD using Electronic Excel Spreadsheets downloadable at www.purchasing.ri.gov. You will find the following Excel Spreadsheets that must be completed and submitted with your response: 1 – Appendix A: Vendor Pricing Response and 2 - Appendix B: Vendor Pricing Category Response.   If you wish to be considered for the Health IT Roster,   please complete the following: Appendix C: Health Vendor Pricing Response and Appendix D: Health Vendor Pricing Category Response. It is the responsibility of Bidder to assure that all of the required Electronic Bid Form files are contained on the submitted CD as well and that they are uncorrupted, readable and usable by State of Rhode Island purchasing officials. An additional backup CD should be submitted.

2. A signed in ink printed copy of the Vendor Pricing Response (Appendix A) and Vendor Pricing Category Response (Appendix B)and if applicable, two signed Health appendices (Appendix C and Appendix D).

See **Appendix III** for role and skill descriptions under each category.

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APPENDIX II – POLICIES AND PROCEDURES RELATING TO THE MANAGEMENT OF THE MASTER PRICE AGREEMENT:

Governance: Oversight and management of all contractors and staff will be through the office of the State Chief Information Officer (CIO), and subject to policies and procedures as defined by the CIO and approved by the Division of Purchases. All engagements must be approved and coordinated by the CIO or designee.

Vendor shall not provide services unless and until a valid state Purchase Order Release approved by the CIO (or designee) has been issued and received by the Vendor.

VENDOR WILL NOT BE ENTITLED TO ANY PAYMENT FOR ANY SERVICES RENDERED OUTSIDE OF THIS POLICY.

Process: Process will vary, based upon estimated size of engagement as follows:

SECTION: Staff Augmentation

- **Definition**: Staff that are hired from MPA 230 that report to a State Supervisor and work on an hourly basis via contract for a set period.

Hourly Engagement Process:

1. Agency IT Manager (AIM) or IT Hiring manager defines role, skills and deliverables required and submits a "Request for Consultant Services form (RP6A)" for approval.
2. Once approval is received, the proper MPA 230 forms are filled out and submitted to the MPA administrator.
   a. Agency IT Manager or IT Hiring Manager is responsible for, and must obtain all approvals for this initial form.
3. MPA Administrator solicits resumes from interested vendor(s) (emailed to vendors who can respond electronically) or if Agency IT Manager or Hiring Manager have a specific candidate they would like to hire based on previous work performed, continuity of a project or existing knowledge of an application, that candidate may be requested and if available, MPA administrator skips to item 8 below.
4. MPA Administrator obtains resume(s) from vendor(s), and may require references and samples of previous deliverables produced by individual contractor.
5. MPA Administrator sends resumes (w/o rates) and any sample work to Agency IT manager/Hiring Manager for review and ranking.
6. Agency IT manager or IT hiring Manager can interview candidates and check references at will. Agency IT manager or Hiring IT manager ranks top three qualified candidates.
7. MPA Administrator presents rates to IT / Agency Manager and/or Hiring Manager for final selection.
8. MPA Administrator notifies agency and vendor when the purchase order release has been created. The signature of the CIO (or designee) is required on all purchase order releases.
9. Agency notifies MPA Administrator of any issues relating to engagement.
10. Upon completion of assignment, Agency IT Manager or IT Hiring Manager may choose to complete an evaluation form on individual contractor(s) assigned.
    a. Two poor ratings may place an individual on a "do not hire list."

  b. Vendor will be provided an opportunity to respond to the Project Review Committee within 10 days regarding any negative evaluations.

11. MPA Administrator periodically reports to the CIO and/or his/her designee on the status of all MPA contracts, ratings and feedback on individual contractors and projects.

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SECTION: <u>Technical Fixed Price Projects</u>

Size of Engagement	Allowable structure(s)
<$10,000 or 154 hours	• Hourly, not to exceed • Fixed price
>$10,000 or 154 hours, and <=$100,000 or 1538 hours	• Proposal from qualified Vendor required: o Solicitation to at least 3 qualified vendors o See process description below • Allowable structures will include: o Hourly, not to exceed o Fixed price • All engagements must have clearly defined deliverables and milestones • Engagement may be for a phase of a larger project
>$100,000 or 2,500 hours	• Engagements of this size are not permitted via MPA 230. Use RFP process.

<u>For hourly not to exceed (NTE) or fixed price engagements – process the same as Hourly Engagement, except</u>:

1. All engagements must have clearly defined deliverables, scope and acceptance criteria and be approved by the Project Review Committee
 a. Agency specifications must be complete and thorough enough for vendors to bid based upon a fixed price (As judged by the Project Review Committee).
2. Where possible, MPA Administrator will seek to solicit bids from at least 3 MPA vendors.
3. Payment terms will be based on work accepted – per deliverable, minus a retainage:
 a. For partially complete deliverables, payment will be based upon time worked as a percentage of total estimate. For a partially complete deliverables the State will not pay more than 75% of the cost of the deliverable until such time the deliverable has been completed and accepted by the State.
 b. Upon acceptance of individual deliverable(s), an additional 15% of the cost of that deliverable will be paid.
 c. The final balance will be paid upon final acceptance of all deliverables contracted in the engagement
4. Any change in scope, or change order over 10% of bid for any deliverable or engagement must be documented and approved by Project Review Committee.

With approval of any specific engagement, the Project Review Committee may require additional reporting, governance, and oversight of contractor.

Exceptions to the above process will require written approval from the CIO.

<u>Any requests to sole source a contractor based upon unique requirements must be approved by the CIO and the Purchasing Agent</u>

All fixed price projects will be reviewed and approved by the Division of Information Technology Project Review Committee.

ALL hourly not to exceed (NTE) or fixed price engagements MUST break down costs by deliverable with defined acceptance criteria. The State reserves the right to accept or reject individual deliverables, with an obligation to pay only for those deliverables accepted. The State may agree to pay a prorated amount of the deliverable price based on percentage completion of deliverables. Any increase greater than 10% of original estimates must be documented and submitted to State CIO (via the Project Review Committee) for approval. Authorization for increases will be in the form of Change Orders to the Purchase Order Release originally authorizing the engagement.

In any engagement in the event of unplanned turnover, the State may hold Vendor responsible to the state for the cost of bringing a new consultant up to speed on any engagement.

All engagements will be subject to policies and procedures developed by the Division of IT, and may change upon 15 days notice. Notice of policy changes will be posted on the State's Division of Information Technology's website.

Contractor Engagement Process:

Contractors will be selected for discrete engagements based upon:

- Depth, breadth and relevancy of experience with specific skills or technologies required for engagement
- Education, training and certifications
- Interpersonal and communication skills
- Knowledge of technology, process and methodology
- References and track record
- State experience and track record
- Price (estimated # hours of work to complete deliverables and/or hourly rates)
- Other, as identified by the Project Review Committee or MPA230 administrator

Weighting may vary based upon specific engagement needs.

Definitions:

Agency IT Manager	Individual responsible for all IT functions of a specific agency.
IT Hiring Manager	A manager who reports to an Agency IT Manager and is responsible for application development or technical support.
CIO:	State Chief Information Officer

MPA Administrator:	Individual role within the Division of Information Technology, as designated by CIO to administer and coordinate MPA engagements
Project Review Committee:	Committee chartered by CIO to review and approve all projects including: scope of work; deliverables; acceptance criteria; relative terms and conditions; skills and methodology required for all engagements.

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Sample technology skills which may be required by the State:

- **Operating Systems:** UNIX (AIX, HPUX, SCO, LINUX and others), OS/400, DOS/VSE, MVS, zOS, NT/Windows2000+, Windows XP, VMWARE, CITRIX
- **Application Programming Languages:** Powerbuilder, Access, PeopleTools, Oracle Development Tools, COBOL, CICS, C++, Java, Visual Basic and others,
- **Web Development:** HTML, XML, Perl, PHP, e-Commerce tools, and others,
- **Relational Databases:** Oracle, DB2, MS SQL, MySQL, Sybase, Informix and others,
- **ERP products:** Oracle, PeopleSoft, SCT and others,
- **Communications Programming:** TCP/IP, IPX, SNA, COBOL, CISCO Systems, Extreme, and others,
- **Local Area Networking:** Compaq, Dell, Gateway, CITRIX, Wired and Wireless Ethernet, Novell, Microsoft, and others,
- **End user computer hardware and software:** Novell and Microsoft collaboration and productivity products, and others.

APPENDIX III - Role definitions and required skills, by category.

Application Development Category

Category (App Dev)	Description	Required Skills
Junior Business Analyst	Gathers and details specific application or project requirements.	Minimum of 1 years experience in gathering and documenting business requirements in technical application development settings. Must be able to describe both functional and process work flow requirements. Experience and certification in application delivery methodology strongly preferred.
Intermediate Business Analyst	Gathers and details specific application or project requirements.	Minimum of 3 years experience in gathering and documenting business requirements in technical application development settings. Must be able to describe both functional and process work flow requirements. Experience and certification in application delivery methodology strongly preferred.
Sr. Business Analyst	Same as above, plus: Specifies the business workers and entities required, and defines the responsibilities, operations, attributes, process flows and relationships necessary to realize the business objectives of the project. Produces both functional and process requirements and documentation necessary to design and build the system.	Same as above, with a minimum of 6 years experience. Must have specific experience in the development of use-case and process flow models. Experience with the UML and RUP strongly recommended.
Junior System Analyst	Leads and coordinates requirements elicitation and use-case modeling by outlining the system's functionality and delimiting the system.	Minimum 1 years systems analysis experience.
Intermediate System Analyst	Leads and coordinates requirements elicitation and use-case modeling by outlining the system's functionality and delimiting the system.	Minimum 3 years systems analysis experience.
Sr. System Analyst	Leads and coordinates requirements elicitation and use-case modeling by outlining the system's functionality and delimiting the system.	Minimum 6 years systems analysis experience.
Intermediate Oracle Financials Specialist	Configures, understands, and recommends solutions for implementing and maintaining the Oracle E-business Suite.	Deep understanding of the Oracle Financials modules with at least 3 years experience.
Sr. Oracle Financials Specialist	Configures, understands, and recommends solutions for implementing and maintaining the Oracle E-business Suite.	Deep understanding of the Oracle Financials modules with at least 6 years experience.
Intermediate Configuration Specialist	Configures commercial off the shelf applications (COTS) to meet specific business or requirements.	Deep understanding of specific system or technology to be configured. At least 3 years experience.
Sr. Configuration Specialist	Configures commercial off the shelf applications (COTS) to meet specific business or requirements.	Deep understanding of specific system or technology to be configured. At least 6 years experience.
Junior Database Administrator		Have demonstrated programming, troubleshooting and design of database applications. Experienced in problem solving affecting relational database systems as well as developing databases for

Category (App Dev)	Description	Required Skills
		expansion and enhancement. With at least 3 years experience. (e.g. Oracle , DB2, MS SQL Server, Informix, Sybase, Access, etc.)
Intermediate Database Administrator		Have demonstrated programming, troubleshooting and design of database applications. Experienced in problem solving affecting relational database systems as well as developing databases for expansion and enhancement. With at least 8 years experience. (e.g. Oracle , DB2, MS SQL Server, Informix, Sybase, Access, etc.)
Sr. Database Administrator		Have demonstrated programming, troubleshooting and design of database applications. Experienced in problem solving affecting relational database systems as well as developing databases for expansion and enhancement. With at least 11 years experience. (e.g. Oracle , DB2, MS SQL Server, Informix, Sybase, Access, etc.)
Intermediate Designer (technical)	Defines the responsibilities, operations, attributes and relationships of one or several classes of objects or components, and determines how they should be adjusted to the implementation environment. Designer may have responsibility for one or more design packages or design subsystems, including classes owned by the packages or subsystems. Designer may develop messaging standards, such as xml document definitions and schemas.	Minimum 3 years technical design experience. Knowledge of both object oriented (OO) and procedural development environments. Training, education and certification in specific technology of choice may be required. For engagements utilizing a web services architecture, skills and experience in designing, developing, using or supporting XML, SOAP, WSDL, or UUDI standards may be required.
Sr. Designer (technical)	Defines the responsibilities, operations, attributes and relationships of one or several classes of objects or components, and determines how they should be adjusted to the implementation environment. Designer may have responsibility for one or more design packages or design subsystems, including classes owned by the packages or subsystems. Designer may develop messaging standards, such as xml document definitions and schemas.	Minimum 6 years technical design experience. Knowledge of both object oriented (OO) and procedural development environments. Training, education and certification in specific technology of choice may be required. For engagements utilizing a web services architecture, skills and experience in designing, developing, using or supporting XML, SOAP, WSDL, or UUDI standards may be required.
Junior Process Architect	Gathers requirements and optimizes (re)design of business processes.	Ability to gather functional and business requirements, define existing processes, design optimized process and develop gap analysis. Knowledge and experience with process engineering methodologies such as Six Sigma, CMM, OSO or others may be required. Minimum 2 years experience
Intermediate Process Architect	Gathers requirements and optimizes (re)design of business processes.	Ability to gather functional and business requirements, define existing processes, design optimized process and develop gap analysis. Knowledge and experience with process engineering methodologies such as Six Sigma, CMM, OSO or others may be required. Minimum 5 years experience

Category (App Dev)	Description	Required Skills
Sr. Process Architect	Gathers requirements and optimizes (re)design of business processes.	Ability to gather functional and business requirements, define existing processes, design optimized process and develop gap analysis. Knowledge and experience with process engineering methodologies such as Six Sigma, CMM, OSO or others may be required. Minimum 8 years experience
Junior Programmer	Plans and develops application code to meet system requirements.	Minimum 1 years programming experience with target technology or language (COBOL, Java, C, C++, .Net, etc).
Intermediate Programmer	Plans and develops application code to meet system requirements.	Minimum 4 years programming experience with target technology or language (COBOL, Java, C, C++, .Net, etc).
Sr. Programmer	Plans and develops application code to meet system requirements	Minimum 8 years application development and programming experience with target technology or language. Familiarity with object oriented methodologies and best practices.
Intermediate Solution Architect	Defines and integrates the overall system, roles and processes for delivering the solution. Identifies primary system components, critical success factors, risks, and overall technical strategy.	Senior technical resource, with a minimum of 10 years experience in a variety of technical environments. Deep knowledge of hardware, software and data environments and application development and integration methodologies. Able to recommend technology choices based upon the benefits and risks associated with different technology alternatives. Strong executive communication skills. Technical education, certification, and training directly relevant to target environment may be required.
Sr. Solution Architect	Defines and integrates the overall system, roles and processes for delivering the solution. Identifies primary system components, critical success factors, risks, and overall technical strategy.	Senior technical resource, with a minimum of 14 years experience in a variety of technical environments. Deep knowledge of hardware, software and data environments and application development and integration methodologies. Able to recommend technology choices based upon the benefits and risks associated with different technology alternatives. Strong executive communication skills. Technical education, certification, and training directly relevant to target environment may be required.
Intermediate System Integrator	Plan and combine system components for integrated functionality. Define interface definitions for system interoperability.	Minimum 10 years system and application development experience. Knowledge of both object oriented (OO) and procedural development environments, along with understanding of hardware, software and data environments. Training, education and certification in specific technology of choice may be required.
Sr. System Integrator	Plan and combine system components for integrated functionality. Define interface definitions for system interoperability.	Minimum 14 years system and application development experience. Knowledge of both object oriented (OO) and procedural development environments, along with understanding of hardware, software and data environments. Training, education and certification in specific technology of choice may be required.
Jr Tester/ Designer	Responsible for the planning, design, implementation, and evaluation of testing, including the generation of the test plan and test model, implementation of test procedures, and evaluation of test coverage, test results, and effectiveness.	Minimum 2 years experience in application development and testing methodologies.

Category (App Dev)	Description	Required Skills
Intermediate Tester/ Designer	Responsible for the planning, design, implementation, and evaluation of testing, including the generation of the test plan and test model, implementation of test procedures, and evaluation of test coverage, test results, and effectiveness.	Minimum 5 years experience in application development and testing methodologies.
Sr.Tester/ Designer	Responsible for the planning, design, implementation, and evaluation of testing, including the generation of the test plan and test model, implementation of test procedures, and evaluation of test coverage, test results, and effectiveness.	Minimum 9 years experience in application development and testing methodologies.
Jr. Web Developer	Designs and develops web applications and sites, which may include technical application and UI development.	Minimum 1 year web development experience. An ability to work with web publishing software such as Microsoft Front Page, and Dream Weaver
Intermediate Web Developer	Designs and develops web applications and sites, which may include technical application and UI development.	Minimum 4 years web development experience. An ability to work with web publishing software such as Microsoft Front Page, and Dream Weaver
Sr Web Developer	Designs and develops web applications and sites, which may include technical application and UI development.	Minimum 8 years web development experience. An ability to work with web publishing software such as Microsoft Front Page, and Dream Weaver
Data Entry	Data Entry	Basic computer and typing skills.
Jr. GIS Specialist	Develops, implements and supports geographic information systems.	Minimum 1 years experience with geographic information systems.
Intermediate GIS Specialist	Develops, implements and supports geographic information systems.	Minimum 3 years experience with geographic information systems.
Senior GIS Specialist	Develops, implements and supports geographic information systems.	Minimum 6 years experience with geographic information systems.
Jr Imaging/Document management specialist		Minimum 1 years experience with imaging and document management systems.
Intermediate Imaging/Document management specialist		Minimum 3 years experience with imaging and document management systems.
Sr. Imaging/Document management specialist		Minimum 6 years experience with imaging and document management systems.
Jr.Content Developer	Gathers requirements, develops and organizes both static and dynamic content for applications or websites.	Minimum 1 years content development and management experiences. Strong interface design, organizational and writing skills.
Intermediate Content Developer	Gathers requirements, develops and organizes both static and dynamic content for applications or websites.	Minimum 3 years content development and management experiences. Strong interface design, organizational and writing skills.
Sr. Content Developer	Gathers requirements, develops and organizes both static and dynamic content for applications or websites.	Minimum 6 years content development and management experiences. Strong interface design, organizational and writing skills.

Category (App Dev)	Description	Required Skills
Jr. Technical Writer	Produces end user support material, such as user guides, help texts, release notes, etc.	Minimum 1 years technical writing experience.
Intermediate Technical Writer	Produces end user support material, such as user guides, help texts, release notes, etc.	Minimum 3 years technical writing experience.
Sr. Technical Writer	Produces end user support material, such as user guides, help texts, release notes, etc.	Minimum 6 years technical writing experience.
Jr. Course Developer	Develops training material in conjunction with project delivery to teach users and administrators how to use and support system. Creates slides, student/teacher notes, examples, tutorials and so on to enhance the understanding of the product.	Minimum 1 years experience with technical training, writing, and course development.
Intermediate Course Developer	Develops training material in conjunction with project delivery to teach users and administrators how to use and support system. Creates slides, student/teacher notes, examples, tutorials and so on to enhance the understanding of the product.	Minimum 3 years experience with technical training, writing, and course development.
Sr Course Developer	Develops training material in conjunction with project delivery to teach users and administrators how to use and support system. Creates slides, student/teacher notes, examples, tutorials and so on to enhance the understanding of the product.	Minimum 5 years experience with technical training, writing, and course development.
Trainer	Responsible for training in conjunction with project delivery.	Minimum of 3 years experience in training on specific technology required.

Server / Desktop / Network Category

Category: (Server/desktop/Network)	Description	Required Skills
Jr. Server Administrator	Server administration for the Windows, Novell, and Citrix environments.	Should have at least 3 years experience in server administration, software and related equipment installations, upgrades, repair and problem resolution. Must be able to coordinate activities with other micro support technicians. Certification preferred. Experience with one or more of the following disciplines: Microsoft Server 2000/2003, Netware, Exchange,

Category: (Server/desktop/Network)	Description	Required Skills
		Groupwise, Citrix and the various desktop operating systems.
Intermediate Server Administrator	Server administration for the Windows, Novell, and Citrix environments	Should have at least 6 years experience in server administration, software and related equipment installations, upgrades, repair and problem resolution. Must be able to coordinate activities with other micro support technicians. Certification preferred. Experience with one or more of the following disciplines: Microsoft Server 2000/2003, Netware, Exchange, Groupwise, Citrix and the various desktop operating systems.
Sr. Server Administrator	Server administration for the Windows, Novell, and Citrix environments.	Should have at least 11 years experience in server administration, software and related equipment installations, upgrades, repair and problem resolution. Must be able to coordinate activities with other micro support technicians. Certification preferred. Experience with one or more of the following disciplines: Microsoft Server 2000/2003, Netware, Exchange, Groupwise, Citrix and the various desktop operating systems.
Jr. Mainframe Systems Programmer		Must have at least 5 years experience in a mainframe operating system and communications environment. Experience with DOS/VSE/ESA, MVS, OS390, OS400
Intermediate Mainframe Systems Programmer		Must have at least 10 years experience in a mainframe operating system and communications environment. Experience with DOS/VSE/ESA, MVS, OS390, OS400
Sr Mainframe Systems Programmer		Must have at least 15 years experience in a mainframe operating system and communications environment. Experience with DOS/VSE/ESA, MVS, OS390, OS400
Jr. Unix Administrator	Unix administration for application servers. Able to troubleshoot operating system problems. Technical knowledge of Unix utilities and be able to support and administer Unix resources.	Must have at least 3 years progressive experience with Unix systems administration. Must have a working knowledge of shell programming, familiarity with software installation, operating system monitoring, Unix communication software and operating systems. Able to troubleshoot operating system problems. Technical knowledge of Unix utilities and be able to support and administer Unix resources; Experience with one or more of the following: HP-UX, AIX, SCO Unix, Solaris, Linux.
Intermediate Unix Administrator	Unix administrator with strong skills and experience with Unix systems administration. Able to troubleshoot complex operating system problems	Must have at least 7 years progressive experience with Unix systems administration. Certification preferred. Must have a working knowledge of shell programming, software installation, operating system monitoring, performance tuning,

Category: (Server/desktop/Network)	Description	Required Skills
		Unix communication software and operating systems. Able to troubleshoot complex operating system problems; excellent communication skills; organized. Technical knowledge of Unix utilities and be able to support and administer Unix resources. In depth knowledge of one or more of the following: HP-UX, AIX, SCO Unix, Solaris, Linux.
Sr. Unix Administrator	Unix administrator with strong skills and experience with Unix systems administration. Able to troubleshoot complex operating system problems	Must have at least 12 years progressive experience with Unix systems administration. Certification preferred. Must have a working knowledge of shell programming, software installation, operating system monitoring, performance tuning, Unix communication software and operating systems. Able to troubleshoot complex operating system problems; excellent communication skills; organized. Technical knowledge of Unix utilities and be able to support and administer Unix resources. In depth knowledge of one or more of the following: HP-UX, AIX, SCO Unix, Solaris, Linux.
Junior Desktop Support Technician	Support and maintenance of desktops and peripherals	Must have at least 1 year progressive experience in microcomputers, software operating systems, database management and related equipment, installations, upgrades, repair and problem resolution and design. Good communication skills; articulate; courteous; prior experience on a technology help desk preferred.
Intermediate Desktop Support Technician	Support and maintenance of desktops and peripherals	Must have at least 3 years progressive experience in microcomputers, software operating systems, database management and related equipment, installations, upgrades, repair and problem resolution and design.
Senior Desktop Support Technician	Support and maintenance of desktops and peripherals	Must have at least 7 years progressive experience in microcomputers, software operating systems, database management and related equipment, installations, upgrades, repair and problem resolution and design.

Category: (Server/desktop/Network)	Description	Required Skills
Junior Network Technician	Assists in network monitoring, operations, installation or maintenance with direct supervision.	Knowledge of tools, equipment, and methods used in the diagnosis of factors affecting network performance: • Understand technical hardware and software documentation. • Ability to perform routine network activities. • Knowledge of data communications and wiring standards. • Knowledge of network operating systems including Windows and Netware. • Ability to respond to help desk referrals and provide assistance with the support on the network. • Knowledge of TCP/IP, NetBEUI, IPX and related protocols. • Knowledge of SNMP tools and methods
Network Technician	Responsible for moderately complex tasks relating to network monitoring, operations, installation and maintenance with general supervision.	Minimum 3 years network experience. Must be able to: • Work with and configure frame-relay, ATM and point-to-point communication lines. • Document network, and maintain records related to the network hardware, cabling, software versions and location of equipment. • Troubleshoot dial-up, VPN and e-mail issues. • Install and program various network hardware. • Diagnose defects in network cabling and hardware. • Work independently and effectively in the absence of a supervisor. • Knowledge of Cisco IOS is a plus.
Senior Network Technician	Responsible for the most complex network tasks. May function in a lead capacity within a department or provide direction and supervision for less experienced technicians.	Minimum 6 years network experience. Must possess: • Working knowledge of Unix based operating systems including Red Hat Linux and IBM AIX • Knowledge of internet protocol (e.g. E-mail, FTP, DNS). • Knowledge of Apache web server software, MySQL database software. • An ability to work with web publishing software such as Microsoft Front Page, and Dream Weaver. • An ability to plan, cable, and install or assist in the installation of wide area networks. • An ability to configure Intrusion Detection Systems. • An ability to configure network to network and individual user based VPN accounts. • An ability to configure and work with Radius software • Working knowledge of Unix based operating systems including Red Hat Linux and IBM AIX • Knowledge of internet protocol (e.g. E-mail, FTP, DNS). • Knowledge of Apache web server software, and database software
Security Analyst	Develops security plans, protocols, architecture and	Minimum 3 years experience with security technologies, including planning, architecture, policies and procedures.

Category: (Server/desktop/Network)	Description	Required Skills
	procedures.	Candidates should possess one or more of the following certifications: Certified Information Systems Security Professional (CISSP), Certified Information Systems Auditor(CISA), Certified Information Systems Manager(CISM), or Certified Computer Examiner.

Project Management Category

Category:(Project Management)		
Project Manager	Individual who plans, executes and controls project. Develops project plan which defines scope, as evidenced by a work break down structure. Coordinates project activities and resources. Reports status and issues to project steering committee.	Minimum 4 years application development and project management experience. PMI certification strongly recommended. Experience with projects of similar size and scope, methodology and technologies may be required.
Sr. Project Manager	Individual who plans, executes and controls project. Develops project plan which defines scope, as evidenced by a work break down structure. Coordinates project activities and resources. Reports status and issues to project steering committee.	Minimum 10 years application development and project management experience. PMI certification strongly recommended. Experience with projects of similar size and scope, methodology and technologies may be required. Experience with large, multi-year projects.

Exhibit 1 Information Technology (IT) Supplemental Terms and Conditions

GENERAL PROVISIONS:

The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding, which may involve the Agreement. This agreement may not be modified, except by mutual consent executed in writing by both parties.

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

   a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.

   b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.

   c) "**Attachment**" means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.

   d) *"Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.*

   e) **"Buyer"** means the State's authorized contracting official.

   f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.

   g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.

   h) **"Custom Software"** *means Software that does not meet the definition of Commercial Software.*

   i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term, including its or their subcontractors and agents.

   j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

   k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.

   l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, documentation, software code, tangible outcomes, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.

   m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.

   n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.

   o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).

   p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

   q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.

   r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

   s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.

   t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.

   u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include

voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

w) **"Machine Alteration"** means any change to a Contractor -- supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.

x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.

y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.

z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.

aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.

bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.

dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.

ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.

gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.

kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.

ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.

mm) **"Software Failure"** means a malfunction in the Contractor -- supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.

nn) **"State"** means the government of the State of Rhode Island, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Rhode Island.

oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. COMPLETE INTEGRATION:

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

3. SEVERABILITY:

The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

4. INDEPENDENT CONTRACTOR:

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity

and not as officers or employees or agents of the State.

5. APPLICABLE LAW:

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of Rhode Island; venue of any action brought with regard to this Contract shall be in Providence County, Providence, Rhode Island. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

6. COMPLIANCE WITH STATUTES AND REGULATIONS:

a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of Rhode Island and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.

b) If this Contract is in excess of $500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

7. CONTRACTOR'S POWER AND AUTHORITY:

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party, which might abridge any rights of the State under this Contract.

8. ASSIGNMENT:

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

9. WAIVER OF RIGHTS:

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

10. ORDER OF PRECEDENCE:

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

a) statement of work, including any specifications incorporated by reference herein - said statement of work shall only be used to describe the vendor's work for the State and shall not be allowed to change the order hereof unless approved by the Legal Department, Department of Administration and the Chief Purchasing Officer;

b) MPA 230;

c) these General Provisions – Information Technology Supplemental Terms & Conditions for MPA 230;

d) contract form, i.e., Purchase Order, Agreement, etc., and any amendments thereto;

e) information technology special provisions; and

f) all other attachments incorporated in the contract by reference.

11. PACKING AND SHIPMENT:

a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:

i) show the number of the container and the total number of containers in the shipment; and

ii) the number of the container in which the packing sheet has been enclosed.

b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.

c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Division of Purchases.

12. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.

b) If "prepay and add" is selected, supporting freight bills are required when over $50, unless an exact freight charge is approved by the Transportation Management Unit within the State's Division of Purchases.

c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

a) The State will not reimburse the Contractor for any Travel or Entertainment expenses.

13. DELIVERY:

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

14. SUBSTITUTIONS:

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

15. INSPECTION, ACCEPTANCE AND REJECTION:

Unless as provided in MPA230 for hourly not to exceed or fixed price engagement,

a) payment terms may be based on work accepted – per deliverable, minus a retainage:

b) For partially complete deliverables, payment will be based upon time worked as a percentage of total estimate, with a 25% retainage held back until individual deliverables are accepted.

c) Upon acceptance of individual deliverable(s), an additional 15% of the cost of that deliverable will be paid.

d) The final balance will be paid upon final acceptance of all deliverables contracted in the engagement

Unless otherwise specified in the Statement of Work:

a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.

b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.

c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.

16. SAMPLES:

a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.

b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

17. WARRANTY:

a) Unless otherwise specified in the Statement of Work, the warranties in this subsection begin upon final acceptance of the all Deliverable or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.

c) Unless otherwise specified in the Statement of Work: (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption. (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified, recommended or approved by Contractor, or (C) misuse by the State. (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.

d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.

e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to: (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover.

"Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the

limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."

18. SAFETY AND ACCIDENT PREVENTION:

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

19. INSURANCE:
See MPA 230 Insurance requirements

20. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.

21. TERMINATION FOR THE CONVENIENCE OF THE STATE:

a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, by notice of Termination specifying the extent of termination and the effective date thereof.

b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
(i) Stop work as specified in the Notice of Termination.
(ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
(iii) Terminate all subcontracts to the extent they relate to the work terminated.
(iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;

c) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
(i) The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
(ii) The total of:
A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.

d) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause. In no event will lost profit be allowed.

22. TERMINATION FOR DEFAULT:

a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
i) Deliver the Deliverables or perform the services to acceptable quality standards as determined by the state within the time specified in the Contract or any amendment thereto;
ii) Make progress, so that the lack of progress endangers performance of this Contract; or
iii) Perform any of the other provisions of this Contract.
iv) Breach of state policies or procedures

b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.

c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing MaterialsHowever, the Contractor shall continue the work not terminated.

d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
(i) completed Deliverables,
(ii) partially completed Deliverables, and,
(iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement

of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.

23. FORCE MAJEURE:

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 causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

a) Acts of God or of the public enemy, and

b) Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and 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 Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

24. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.

b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.

c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.

d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

25. STATE'S LIMITATION OF LIABILITY:

The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the Purchase Price.Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

26. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

27. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, personal injury or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

28. INVOICES:

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted monthly in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount.

29. TAXES:

Unless otherwise required by law, the State of Rhode Island is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

30. NEWLY MANUFACTURED GOODS:
All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

31. CONTRACT MODIFICATION:
No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

32. CONFIDENTIALITY OF DATA:
All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available through no fault of Contractor, is already rightfully in the Contractor's possession and which is not subject to prior contrary obligations of confidentiality, is independently developed by the Contractor without the use of such confidential data or information outside the scope of this Contract, or is rightfully obtained from third parties and which is not subject to prior contrary obligations of confidentiality. Contractor and its staff may be required to sign a non -disclosure form.

33. NEWS RELEASES:
Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Office of the CIO.

34. DOCUMENTATION:
a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary and proprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. Documentation must be sufficient to use, operate, support and integrate the system, satisfactory to the State. b) If

the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment.

If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice of any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

35. RIGHTS IN WORK PRODUCT:
All work will be "work for hire" with all rights to intellectual property inuring to the State. The Contractor agrees to make no claims to the intellectual property created in connection with this Contract.
a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the Rhode Island Access to Public Records Act.
b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:
a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 36a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. *Unless* a Third

Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 36a) will be conditional upon the following:

   i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

   ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and

   (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge by the State. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

   (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made, recommended, approved or furnished by the Contractor; or,

   (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or

   (iii) The unauthorized modification by the State of the Equipment furnished hereunder or of the Software; or

   (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software unless such Software is approved or recommended by the Contractor.

e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws and other intellectual property rights. Contractor further certifies and warrants to the State that it has the legal title to any Software or has obtained the right from the legal owners to use and to license to use to the State.

37. EXAMINATION AND AUDIT:

Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

38. STOP WORK:

a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

   (i) Cancel the Stop Work Order; or

   (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

   (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and

   (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting

from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

39. COVENANT AGAINST GRATUITIES:

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

40. FOUR-DIGIT DATE COMPLIANCE:

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

41. AMERICANS WITH DISABILITIES ACT:

Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

42. GOVERNANCE:

Contractor acknowledges that this engagement is through the Office of the State Chief Information Officer (CIO) and the Division Of Purchasing.

43. ADDITIONAL INFORMATION

The State has the right to require the Contractor to provide additional and periodic information at any time to demonstrate the continued financial responsibility of the Contractor.

44. NAMED INDIVIDUALS ONLY

All work will be performed only by the specific employees named and agreed to. The Contractor will not use any other employee, independent contractor, company or subcontractor without the prior written consent of the CIO and the Division of Purchasing. Any breach of this condition will be cause for default, with the state reserving the right to cancel the Purchase Order. Any waiver of this condition allowing for substitution must be done in writing.

45. INDIVIDUAL ENGAGEMENTS

The State reserves the right to negotiate pricing on individual engagements. Such terms may be different from the stated amount in the Master Blanket or Purchase Order.

46. BACKGROUND CHECKS/ NON DISCLOSURE FORM

The State reserves the right, in its absolute discretion, to conduct criminal and civil background checks prior to or during the term of this Contract. Contractor and its staff may be required to sign a non -disclosure form and/or HIPPAA Business Associate Agreement..

47. DRUG TESTS

The State reserves the right, in its absolute discretion, to conduct drug test(s) on individuals prior to or during the term of this Contract.

48. INDIVIDUAL DELIVERABLES:

The State reserves the right, in its absolute discretion, to accept or reject individual deliverables, with an obligation to pay only for those deliverables accepted. The State may agree, in its absolute discretion, to pay a prorated amount of the deliverable price based on a percentage completion of the deliverables.

49. CHANGE IN PRICE OF DELIVERABLES:

Any change in the price for any deliverable must receive the prior written approval of the CIO, or his designee and the Division of Purchasing.

50. CHANGES IN PERSONNEL:

Contractor may be responsible, for reimbursement to the State, for all costs associated with unplanned turnover including, but not limited to briefing and training any new consultants hired by the Contractor after the issuance of the Purchase Order. .

The cost reimbursement contemplated in this paragraph is not intended to suggest that the vendor providing services under a purchase order release is guaranteed the opportunity to replace resources due to unplanned turnover, rather replacement of named individuals under a purchase order release is subject to the terms outlined in Paragraph 45.

51. MODIFICATIONS TO TERMS, CONDITIONS, POLICIES ETC:

The Terms, Conditions, Policies and Procedures may be changed during the period of this Contract, provided fifteen (15) days prior written notice is provided to the Contractor. Posting on the Information Technology Divisions website shall constitute permissible notice under this section.

52. PERIODIC REPORTING:

The State reserves the right to request that the Contractor will provide a report, to the CIO, his/her designee or an Agency IT manager, summarizing all contracts with the State, or in the case of an Agency IT Manager, for a Department, deliverables completed, hours and rates billed, and any material issues during that period.

53. WAIVER OF NON-COMPETITION AND RELATED AGREEMENTS

The Contractor agrees that the State may hire any employee, consultant or independent contractor of the Contractor after the employee, consultant or independent contractor has performed services for the State for period of eighteen (18) months (of 100 hours

or more / month) or greater without the payment of any
referral fee or other compensation to the Contractor.
The Contractor agrees not to enforce any noncompetition
or related agreements to which the
employee, consultant or independent contractor is a
party and waives any and all claims against the State. If
the employee, consultant or independent contractor
performed services for the State for a period of less than
eighteen (18) months then a referral fee or alternate
form of compensation will be negotiated in good faith,
not to exceed fifteen percent (15%) of the first year
state anniversary of the employee.

Disk Based Bidding Information

RIDOT disk based bids have custom software designed for completing their bids. This information does NOT apply to RIDOT bids.

File Format

All disk based bid files are ZIP files that you can open using the **WinZip 8.1** software. The ZIP file will contain one or more files based on the type of Bid/RPF.

Downloading the Disk Based Bid

Bids that have a file for download are marked with a "D" in the Info field of the bid search results. The "D" will be an active link to the WinZip file until the bid reaches its opening date. Clicking on the active "D" link will allow you to open or save the ZIP file associated with the bid. Opening the WinZip file will download a copy to your computer's temporary directory.

Opening the Disk Based Bid

Once downloaded, you can open the ZIP file with Winzip and view the Microsoft Office files contained within the WinZip file. Immediately save (extract) the individual files to an appropriate directory on your computer, such as "Desktop" or "My Documents".

Completing the Disk Based Bid

Once the Microsoft Office files are properly saved, open the individual files and enter the required information in the appropriate fields. Save each file again to capture the new information you entered.

Submitting the Disk Based Bid

Save the completed files to a CD or diskette. Label the CD or diskette with the Bid/RFP number and bidder's name (company name, not contract name). Submit as instructed in the Bid or RFP solicitation document.