State of Oklahoma
Office of Management and Enterprise Services
Information Services Division

Solicitation

1. Solicitation#: 0900000141 **2. Date Issued: June 4, 2014**

3. Brief Description of Requirement:

The Office of Management and Enterprise Services is soliciting for a quantity of 46

SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (1-2 CPU Sockets, Standard Support, 1 Physical, 1 Year)

Contract Period: 07/01/2014 – 06/30/2015

4. Response Due Date: 06/26/2014 **Time: 3 p.m. CDT**

5. Issued By and Return Sealed Bid To:

Office of Management and Enterprise Services
ISD Procurement Department
Solicitation #: 0900000141
3115 N. Lincoln Blvd.
Oklahoma City, OK 73105

6. Contracting Officer:

Name: **Jennifer McCaulla**
Email: **Jennifer.McCaulla@omes.ok.gov**

TABLE OF CONTENTS

GENERAL PROVISIONS 3
A.1. Definitions 3
A.2. Offer Submission 4
A.3. Solicitation Amendments 4
A.4. Offer Change 4
A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters 5
A.6. Offer Public Opening 5
A.7. Offers Subject To Public Disclosure 5
A.8. Oklahoma Open Records Act 5
A.9. Late Offer 6
A.10. Legal Contract 6
A.11. Pricing 6
A.12. Firm Fixed Price 6
A.13. Pricing Requirements 6
A.14. Manufacturers' Name and Approved Equivalents 6
A.15. Rejection of Offer 6
A.16. Award of Contract 6
A.17. Contract Modification 7
A.18. Delivery, Inspection and Acceptance 7
A.19. Invoicing and Payment 7
A.20. Audit and Records Clause 7
A.21. Non-Appropriation Clause 7
A.22. Choice of Law and Venue 7
A.23. Termination for Cause 8
A.24. Termination for Convenience 8
A.25. Insurance 8
A.26. Employment Relationship 8
A.27. Compliance with the Oklahoma Taxpayer And Citizen Protection Act Of 2007 8
A.28. Compliance with Applicable Laws 9
A.29. Gratuities 9
A.30. Preclusion from Resulting Contracts 9
A.31. Mutual Responsibilities 10
A.32. Background Checks and Verifications 10
A.33. Confidentiality 10
A.34. Unauthorized Obligations 10
A.35. Electronic and Information Technology Accessibility 10
A.36. Patents and Copyrights 10
A.37. Assignment 11
A.38. Severability 11
A.39. Paragraph Headings 11
A.40. Failure to Enforce 11
A.41. Conflict of Interest 11
A.42. Limitation of Liability 11
A.43. Media Ownership (Disk Drive and/or Memory Chip Ownership) 12
A.44. Offshore Services 12
A.45. Failure to Provide 12
A.46. Agency Policies 12
A.47. Compliance with Technology Policies 12

A.48. High Technology System Performance and Upgrades 12
A.49. Emerging Technologies 12
A.50. Ownership Rights 13
A.51. Source Code Escrow – Reference Title 62 O.S. § 34.31 13
A.52. Right to Renegotiate 14
A.53. Used or New Products 14
A.54. Publicity 14
A.55. Mandatory and Non-Mandatory Terms 14
A.56. Non Tobacco – Smoke Free 14
A.57. OMES/ISD / Agency Relationship 14
A.58. Federal Terms and Conditions 14
A.59. Acceptance of Request for Proposal Content 15
A.60. Special Provisions 15

B. SPECIAL PROVISIONS 16
B.1. Glossary of Terms 16
B.2. Contract Term, Renewal and Extension Option 16
B.3. Obligations of Permitted Subcontractor 16
B.4. Warrants 16
B.5. Commercial Off-The-Shelf (Cots) Software 16

C. SOLICITATION SPECIFICATIONS 17
C.1. Mandatory Requirement 17

D. EVALUATION 18
D.1. Evaluation and Award 18
D.2. Proposal Clarification Questions 18
D.3. Competitive Negotiations of Offers 18
D.4. Selection Criteria 18
D.5. Evaluation Process 18

E. INSTRUCTIONS TO OFFEROR 20
E.1. Introduction 20
E.2. Preparation of Offer 20
E.3. Submission of Offer 20
E.4. Proprietary and/or Confidential 20
E.5. Oklahoma Open Records Act 20
E.6. Communications Concerning Solicitation 20
E.7. Offeror Clarifications 20
E.8. General Solicitation Questions 20
E.9. Electronic Funds Transfer (EFT) 21
E.10. Deliverables 21
E.11. Notice of Award 21

F. PRICE AND COST 21

A. GENERAL PROVISIONS

The following provisions shall apply where applicable to the solicitation.

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

A.1.1. "Acquisition" means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, or rental pursuant to applicable state law.

A.1.2. "Addendum" means a written modification to a contract.

A.1.3. "Alteration" means a modification an offeror makes to a solicitation response prior to the response due date.

A.1.4. "Alternate or alternative offer" means an offer, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

A.1.5. "Amendment" means a written restatement of or modification to a Contract Document executed by both parties.

A.1.6. "Bid" means an offer in the form of a bid, proposal or quote an offeror submits in response to a solicitation.

A.1.7. "Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. When used in this Chapter, bidder is synonymous with a "supplier" , "vendor", or "offeror" responding to a solicitation.

A.1.8. "Business Entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute.

A.1.9. "COTS" means software that is commercial off the shelf.

A.1.10. "Contract" means this document, as may be amended from time to time, which together with other Contract Documents, evidences the final agreement between the parties with respect to this statewide contract for the Products.

A.1.11. "Contract Document" means, when executed by all applicable parties, this Contract, Attachments to this Contract, any statement of work, work order, rider or similar document related hereto, any purchase order related hereto, other statutorily required or mutually agreed documents related hereto, and any Amendment to any of the foregoing.

A.1.12. "Contractor" means the Business Entity with whom the State enters into this contract.

A.1.13. "Close of business" means 5:00PM Central Time.

A.1.14. "Closing Date" is the date the RFP closes, also proposal opening date, and response due date,

A.1.15. "Interlocal Entity" means, with respect to any state other than Oklahoma, any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of such state government, any political subdivision of such state, and any organization related to any of the foregoing.

A.1.16. "Minor Deficiency" or "minor informality" means an immaterial defect in a response or variation in a bid from the exact requirements of a solicitation that may be correct or waived without prejudice to other offerors. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

A.1.17. "Offer" shall be synonymous with "bid", "proposal", "quote" or other similar term.

A.1.18. "Offeror" shall be synonymous with "vendor", "bidder", or other similar term.

A.1.19. "OMES" means the Office of Management and Enterprise Services for the State of Oklahoma.

A.1.20. "Procuring Agency" means the State of Oklahoma Agency initiating the procurement.

A.1.21. "Request for Information or RFI" means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

A.1.22. "State" means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Oklahoma. References to "State" in this document refer to the Office of Management and Enterprise Services - ISD.

A.1.23. "State Entity" means any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State government, any political subdivision of the State, and any organization related to any of the foregoing.

A.1.24. "State CIO" is the State Chief Information Officer, as used herein the CIO has the same authority as the State Purchasing Director for all IT and Telecommunications purchasing and are used interchangeably.

A.1.25. "Solicitation" means a request or invitation by the State Purchasing Director or a State agency for an offeror to submit a priced offer to sell acquisitions to the State. A solicitation may be an invitation to bid, request for proposal, or a request for quotation.

A.1.26. "Utilities" means Vendor's reusable or pre-existing proprietary intellectual property that forms the basis for a customized or developed software deliverable for the State and which is specifically identified as such by the Vendor in writing prior to execution of this Contract.

A.2. Offer Submission

A.2.1. Submitted offers shall be in strict conformity with the instructions to offeror, and shall be submitted with a completed "Responding Bidder Information" OMES Form 076OSF, and any other forms completed as required by the solicitation.

A.2.2. Offers shall be submitted to the State Agency identified in the front page of this solicitation, in a single envelope, package, or container and shall be sealed. The name and address of the offeror shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

A.2.3. The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OSF Form 004ISD, must be made out in the name of the offeror and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.

A.2.4. All offers shall be legibly written or typed. Any corrections to offers shall be initialed. Penciled bids and penciled corrections shall NOT be accepted and shall be rejected as non-responsive.

A.2.5. All offers submitted shall be consistent with the Oklahoma Central Purchasing Act, the Central Purchasing Rules, and subject to the Information Services Act and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein, all of which are made part of this solicitation.

A.2.6. By submitting a proposal, contractor agrees not to make any claims for damages or have any rights to damages, because of any misunderstanding or misrepresentation of the specifications or because of any misinformation or lack of information.

A.2.7. If a contractor fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the contractor, or an error that reasonably should have been known by the contractor, the contractor shall submit a proposal at its own risk; and if awarded the contract, the contractor shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a contractor takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.

A.2.8. Offeror should note that this solicitation reflects those changes in the existing operation to increase efficiencies and streamline business environment in the State of Oklahoma. All previous solicitations or resultant contracts should not be either depended upon, perceived or interpreted to have any relevance on this exclusive solicitation.

A.3. Solicitation Amendments

A.3.1. If an "Amendment of Solicitation", OMES Form 011OSF (or other format as provided), is issued, then the offeror shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the offer or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The State must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the offer to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.

A.3.2. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the State.

A.3.3. It is the contractor's responsibility to check the State's website frequently for any possible amendments that may be issued. The State is not responsible for the contractor's failure to download any amendment documents required to complete a solicitation.

A.4. Offer Change

If the offeror needs to change an offer prior to the solicitation response due date, a new offer shall be submitted to the State with the following statement "This offer supersedes the offer previously submitted" in a single envelope, package, or container and shall be sealed. The name and address of the offeror shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting an offer to this solicitation:

A.5.1. The Offeror certifies that the Vendor and their principals or participants:

A.5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;

A.5.1.2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; or for violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

A.5.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and

A.5.1.4. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

A.5.2. Where the Vendor is unable to certify to any of the statements in the certification above, Vendor shall attach an explanation to this offer.

A.5.3. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:

A.5.3.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State of Oklahoma or local department or agency;

A.5.3.2. Have not within a three-year period preceding this solicitation been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

A.5.3.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.6.3.1 of this certification; and

A.5.3.4. Have not within a three-year period preceding this solicitation had one or more public (Federal, State or local) contracts terminated for cause or default.

A.5.4. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its offer.

A.6. Offer Public Opening

Sealed offers MAY BE OPENED UPON PUBLIC REQUEST, by the requesting agency identified in the front page of this solicitation, at the time and date specified in the solicitation as Response Due Date and Time.

A.7. Offers Subject To Public Disclosure

A.7.1. Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information an offeror submits as part of or in connection with an offer are public records and subject to disclosure. Offerors claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. It is the sole discretion of the State CIO shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.

A.7.2. If the CIO agrees the information is proprietary, ISD will maintain the information as Confidential. If the CIO does not acknowledge the information as proprietary, ISD will return or destroy the information with proper notice to the offeror and the evaluation will be completed without consideration of the information marked Proprietary.

A.7.3. PROPOSALS MARKED, IN TOTAL, AS PROPRIETARY and/or CONFIDENTAIL SHALL NOT BE CONSIDERED.

A.8. Oklahoma Open Records Act

Proposals are subject to public disclosure in accordance with the Open Records Act. To the extent permitted by the Oklahoma Open Records Act, 51 O. S. (2001) § 24A.1-27, the offerors proposals will not be disclosed, except for purposes of evaluation, prior to approval by the CIO of the resulting contract. All material submitted becomes the property of the State of Oklahoma. Proposals will not be considered confidential after a contract is awarded except that information in the proposal determined to be confidential by the CIO shall continue to be considered confidential.

A.9. Late Offer

Offers received by the State after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

A.10. Legal Contract

A.10.1. Submitted offers are rendered as a legal offer and when accepted by the State, shall constitute a contract.

A.10.2. The contract resulting from this solicitation shall consist of the following documents in order of preference: State of Oklahoma Statutes, contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statement, and change orders; the solicitation including any amendments; and the successful offer to the extent that the offer does not conflict with the requirements of the contract award documents or solicitation or applicable law. In the event there is a conflict between any of the preceding documents, the contract award documents prevail over the solicitation, and both the contract award documents and the solicitation shall prevail over the successful offer.

A.10.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

A.10.4. All transactions related to this solicitation, and any contract resulting therefrom, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

A.11. Pricing

A.11.1. Offers shall remain firm for a minimum of one-twenty (120) days from the solicitation closing date.

A.11.2. Offerors guarantee unit prices to be correct.

A.11.3. In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the contractor in performance of the contract shall be included in the total bid price/contract amount.

A.11.4. All costs incurred by the offerors for proposal preparation and participation in this competitive procurement shall be the sole responsibility of the offerors. The State of Oklahoma shall not reimburse any offeror for any such costs.

A.12. Firm Fixed Price

Unless the solicitation specifies otherwise, an offeror shall submit a firm, fixed price for the term of the contract.

A.13. Pricing Requirements

If offeror pricing does not meet requirements of a solicitation, the offer may be considered non-responsive.

A.14. Manufacturers' Name and Approved Equivalents

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information, and/or catalog numbers listed in a specification are for information and not intended to limit competition. Offeror may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). However, if offers are based on equivalent products, indicate on the offer form the manufacturer's name and number. Offeror shall submit sketches, descriptive literature, and/or complete specifications with their offer. Reference to literature submitted with a previous offer shall not satisfy this provision. The offeror shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Offers that do not comply with these requirements are subject to rejection.

A.15. Rejection of Offer

The State reserves the right to reject any offers that do not comply with the requirements and specifications of the solicitation. An offer may be rejected when the offeror imposes terms or conditions that would modify requirements of the solicitation or limit the offeror's liability to the State. Other possible reasons for rejection of offers are listed in OAC 580:15-4-11

Attempts to impose unacceptable conditions on the State, or impose alternative terms not in the best interest of the State shall not be tolerated. Continued attempts to impose unacceptable conditions or terms on the State shall result in a determination of your non-responsiveness of your offer due to the lack of compliance with the terms and conditions of negotiation or the solicitation.

A.16. Award of Contract

A.16.1. The State may award the contract to more than one offeror by awarding the contract(s) by item or groups of items, or may award the contract on an ALL OR NONE basis, whichever is deemed by the State to be in the best interest of the State of Oklahoma.

A.16.2. Contract awards shall be made to the lowest and best offer(s) unless the solicitation specifies that best value criteria is being used.

A.16.3. In order to receive an award or payments from the State of Oklahoma, vendor must be registered. The vendor registration process can be completed electronically through the DCS website at the following link: https://www.ok.gov/dcs/vendors/index.php.

A.16.4. It is the preference of the State to award to a single vendor. However, the State reserves the right to award to multiple vendors when it has been determined to be in the best interest of the State.

A.17. Contract Modification

A.17.1. The contract issued as a result of this solicitation is under the authority of the State personnel signing the Contract. The contract may be modified only through a written Contract Modification, signed by the State.

A.17.2. Any change to the contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Office of Management and Enterprise Services - ISD in writing, or made unilaterally by the contractor, is a breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the contractor shall not be entitled to any claim under a contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant contract.

A.18. Delivery, Inspection and Acceptance

A.18.1. All deliveries shall be F.O.B. Destination. The Vendor shall prepay all packaging, handling, shipping and delivery charges and prices quoted shall include all such charges. Any Products delivered pursuant to this Contract shall be subject to final inspection and acceptance by the procuring entity at Destination and the procuring entity has no responsibility for the delivered Products prior to acceptance. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted. The Vendor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance. "Destination" shall mean delivered to the receiving dock or other point specified in the applicable purchase order.

A.18.2. Vendor shall be required to deliver Products as offered on or before the required date. Deviations, substitutions, or changes in the Products shall not be made unless expressly authorized in writing by the State or Interlocal Entity, as applicable.

A.19. Invoicing and Payment

A.19.1. Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services.

A.19.2. State Acquisitions are exempt from sales taxes and federal excise taxes.

A.20. Audit and Records Clause

A.20.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.

A.20.2. The Vendor is required to retain records relative to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.21. Non-Appropriation Clause

The terms of this Contract and any purchase order issued for multiple years under this Contract are contingent upon sufficient appropriations being made by the applicable state legislature, federal government or other appropriate government entity. Notwithstanding any language to the contrary in this Contract, or any other Contract Document, any State Entity or Interlocal Entity may terminate its obligations under this Contract if sufficient appropriations are not made by the Oklahoma Legislature, federal government or other appropriate governing entity to pay amounts due for multiple year agreements. The decision as to whether sufficient appropriations are available shall be accepted by, and be final and binding on, the Vendor.

A.22. Choice of Law and Venue

A.22.1. Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of

Oklahoma, or in the case of an Interlocal Entity, in the state in which the Interlocal Entity is located, without regard to application of choice of law principles.

A.22.2. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Vendor or as otherwise provided by applicable law.

A.23. Termination for Cause

A.23.1. The Vendor may terminate this Contract in whole or in part for default with both a thirty (30) day written request and upon written approval from the State. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Vendor.

A.23.2. The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Vendor, when violations are found to be an impediment to the function of the State and detrimental to the cause of a procuring State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Interlocal Entity may terminate its obligations to Vendor immediately upon any of the foregoing conditions in this subsection.

A.23.3. If this Contract or certain obligations hereunder are terminated, the State, State Entity or Interlocal Entity, as applicable, shall be liable only for payment for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.24. Termination for Convenience

A.24.1. The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Vendor a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Interlocal Entity may terminate its obligations to Vendor upon a determination by the proper authority for such Interlocal Entity that termination is in the Interlocal Entity's best interest and notice of termination by such Interlocal Entity shall be provided in accordance with the foregoing requirements set forth in this subsection.

A.24.2. If this Contract or certain obligations hereunder are terminated pursuant to this section, the State, State Entity, or Interlocal Entity, as applicable, shall be liable only for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.25. Insurance

The Vendor shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Vendor has any obligation under a Contract Document:

a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than $1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;

c) Automobile Liability Insurance with limits of liability of not less than $1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;

d) Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than $1,000,000 per claim and in the aggregate; and

e) Additional coverage required by the State in writing in connection with a particular Acquisition.

A.26. Employment Relationship

This Contract does not create an employment relationship between the parties. Individuals performing services required by this Contract are not employees of the State, a State Entity or an Interlocal Entity and, accordingly, shall not be eligible for rights or benefits accruing to such employees including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

A.27. Compliance with the Oklahoma Taxpayer And Citizen Protection Act Of 2007

The Vendor certifies that it is registered and participates in the Status Verification System, available at www.dhs.gov/E-Verify, as required under applicable State law and is in compliance with applicable federal immigration laws and regulations. Vendor agrees that compliance with the certification set forth in this section shall be a continuing obligation.

A.28. Compliance with Applicable Laws

A.28.1. In connection with its performance of obligations under the terms of this Contract, the Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:

a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;

b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;

c) Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;

d) 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375;

e) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

f) Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity; and

g) Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.

A.28.2. The Vendor shall maintain all applicable licenses and permits required in association with its obligations hereunder.

A.28.3. The Vendor shall inform its employees or agents who perform services for the State under this Contract of the Vendor's obligations hereunder and shall require its employees or agents to comply accordingly. At the request of the State, Vendor shall promptly provide adequate evidence that such persons are its employees or agents and have been informed of their obligations hereunder.

A.29. Gratuities

The rights of Vendor under the terms of this Contract may be immediately terminated , in whole or in part, by written notice if it is determined that the Vendor, its employee, agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State or Interlocal Entity employee directly involved in this Contract. In addition, a Vendor determined to be guilty of such a violation may be suspended or debarred.

A.30. Preclusion from Resulting Contracts

Any contractor that has provided any consulting services or technical assistance that resulted in any specifications or concepts in this solicitation, either directly or indirectly, is precluded from the award of such contract and from securing a sub-contractor that has provided such services.

A.31. Mutual Responsibilities

The State and contractor agree that under this Agreement:

A.31.1. Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.

A.31.2. This is a non-exclusive agreement and each party is free to enter into similar agreements with others.

A.31.3. Each party grants the other only the licenses and rights specified in the Contract Document.

A.31.4. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either party is required under this Contract, such action shall not be unreasonably delayed or withheld

A.32. Background Checks and Verifications

At the sole discretion of the State, State Entity or Interlocal Entity, as applicable, employees of the Vendor and any subcontractor of the Vendor may be subject to background checks. If background check information is requested, the Vendor must submit, or cause to be submitted, the required information in a timely manner and the Vendor's access to facilities, data and information may be withheld prior to completion of background verification acceptable to such State, State Entity or Interlocal Entity.

A.33. Confidentiality

A.33.1. The Vendor shall maintain strict security of all State data and records entrusted to it or to which the Vendor gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Vendor for performance of its obligations hereunder. The Vendor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Vendor utilizes a permitted subcontractor, Vendor shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Vendor, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.

A.33.2. No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State Chief Information Officer, the Director of a procuring State Entity or in compliance with a valid court order. The Vendor shall immediately forward to the State and the State Chief Information Officer any request by a third party for data or records in the possession of the Vendor or any subcontractor or to which the Vendor or subcontractor has access and Vendor shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

A.34. Unauthorized Obligations

At no time during the performance of this Contract shall the Vendor have the authority to obligate any other party hereto for payment of any goods or services over and above those set forth in this Contract. If the need arises for goods or services over and above the Products, Vendor shall cease the project and contact the appropriate procuring entity for written approval prior to proceeding.

A.35. Electronic and Information Technology Accessibility

Vendor shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf and Vendor shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the Products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Vendor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

A.36. Patents and Copyrights

A.36.1. Without exception, the Products prices shall include all royalties or costs owed by the Vendor to any third party arising from the use of a patent or copyright.

A.36.2. If a third party claims that any portion of the Products provided by Vendor under the terms of this Contract infringes that party's patent or copyright, the Vendor shall defend the State against the claim at the Vendor's expense and

pay all related costs, damages, and attorneys' fees incurred by, or assessed to, the State, provided the State (i) promptly notifies the Vendor in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows the Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.

A.36.3. If such a claim is made or appears likely to be made, the Vendor shall enable the State to legally continue to use, or modify for use, the portion of Products at issue or replace such potential infringing Products with at least a functional non-infringing equivalent. If the Vendor determines that none of these alternatives is reasonably available, the State shall return such portion of the Products at issue to the Vendor, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund, if applicable, of other Products which are rendered materially unusable as intended due to removal of the portion of Products at issue.

A.36.4. Vendor has no obligation regarding a claim based on any of the following: (i) modification of a product by any party other than Vendor, its employee, agent, representative, permitted subcontractor, or any State employee acting in conjunction with the Vendor; (ii) a program's use in other than its specified operating environment; (iii) the combination, operation, or use of a product with other products not provided by Vendor as a system or (iv) infringement solely by a non-Vendor product that has not been provided to the State by, through or on behalf of the Vendor as opposed to its combination with products Vendor provides to or develops for the State as a system.

A.37. Assignment

Vendor's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Ownership of Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.

A.38. Severability

If any provision for this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

A.39. Paragraph Headings

The headings used in this Contract are for convenience only and do not constitute part of the Contract.

A.40. Failure to Enforce

Failure by the State, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.

A.41. Conflict of Interest

A.41.1. Vendor must provide immediate disclosure of any contractual relationship or any other relevant contact with any State personnel or another State contractor or vendor involved in the development of a Vendor's response to any solicitation resulting in this Contract. Any conflict of interest shall, at the sole discretion of the State, be grounds for termination of project involvement.

A.41.2. In addition to any requirement of law or through a professional code of ethics or conduct, the Vendor and the Vendor's employees performing services for the State are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, without prior written approval of the State, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interest of the State as long as the Vendor has an obligation under this Contract. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State.

A.42. Limitation of Liability

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

A.43. Media Ownership (Disk Drive and/or Memory Chip Ownership)

A.43.1. In accordance with the State of Oklahoma Information Security Policy, Procedures, Guidelines set forth online at http://www.ok.gov/cio/documents/InfoSecPPG.pdf ("Electronic Media Retention Requirements"), any disk drives and memory cards purchased with or included for use in leased or purchased equipment under this Contract remain the property of the State.

A.43.2. Personal Identification Information may be retained within electronic media devices and components; therefore, the State shall not allow the release of electronic media either between State Entities or for the resale of refurbished equipment that has been in use by State Entities, by the Vendor to the general public or other entities. Electronic Media Retention Requirements shall also be applied to replacement devices and components, whether purchased or leased, the Vendor may supply during the downtime (repair) of equipment purchased or leased through this Contract. If a device has to be removed from a location for repairs, the State shall have sole discretion, prior to removal, to determine and enforce sufficient safeguards (such as a record of hard drive serial numbers) to protect Personal Identification Information that may be stored within the hard drive or memory of the device.

A.44. Offshore Services

No offshore services are provided for under this Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State.

A.45. Failure to Provide

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the sole discretion of the State of Oklahoma's Chief Information Officer, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract.

A.46. Agency Policies

The contractor's employees and/or sub-contractors must adhere to the agency policies pertaining to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the contractor to review and relay agency policies covering the above to the consulting staff.

A.47. Compliance with Technology Policies

The contractor agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at:

www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf

A.48. High Technology System Performance and Upgrades

A.48.1. If an Acquisition pursuant to thi Contract includes a "high technology system" as defined under Oklahoma law, the Vendor shall provide documentation of the projected schedule of recommended or required system upgrades or improvements to such system for the three (3) year period following the target purchase date. If Vendor does not plan such system upgrades or improvements, the Vendor shall provide documentation that no system upgrades or improvements to the high technology system are planned for the three (3) year period following the target purchase date.

A.48.2. Any Acquisition pursuant to this Contract of an upgrade or enhancement to a high technology system shall be conditioned upon the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Vendor; the Vendor providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Vendor providing documentation that it will no longer supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.

A.49. Emerging Technologies

The State of Oklahoma reserves the right to modify the terms of this contract at any time to allow for technologies not identified elsewhere under this document. If there are repeated requests for an "emerging technology" and the State feels it is warranted to add such technologies, the State reserves the right to include such technology hereunder or to issue a formal modification or amendment to the contract.

A.50. Ownership Rights

A.50.1. Any software developed by the Vendor is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on the Vendor's Utilities, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Utilities, the Vendor grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Utilities embodied in or delivered to the State in conjunction with the Products.

A.50.2. Except for any Utilities, all work performed by the Vendor of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

A.50.3. In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work Made for Hire", Vendor hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Utilities embodied in or delivered to the State in conjunction with the Products.

A.50.4. Vendor shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Vendor shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

A.50.5. If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Vendor.

A.50.6. It is understood and agreed that the Software is being developed by the contractor for the sole and exclusive use of the State of Oklahoma. Moreover, except with regard to any deliverable based on contractor's reusable or pre-existing intellectual property ("Utilities"), the State of Oklahoma shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto.

A.50.7. Except for any utilities, all work performed by the contractor of software and any supporting documentation therefore shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be opened by and for the benefit of State of Oklahoma.

A.51. Source Code Escrow – Reference Title 62 O.S. § 34.31

If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a state agency, the Vendor shall have a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Vendor shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

a) A bona fide material default of the obligations of the Vendor under the agreement with the agency;

b) An assignment by the Vendor for the benefit of its creditors;

c) A failure by the Vendor to pay, or an admission by the Vendor of its inability to pay, its debts as they mature;

d) The filing of a petition in bankruptcy by or against the Vendor when such petition is not dismissed within sixty (60) days of the filing date;

e) The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Vendor's property;

f) The inability or unwillingness of the Vendor to provide the maintenance and support services in accordance with the agreement with the agency;

g) The ceasing of a Vendor of maintenance and support of the software; or

h) Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

A.52. Right to Renegotiate

Prior to exercising the State's right to cancel a contract, the State may renegotiate an existing contract with a contractor for the purpose of obtaining more favorable terms for the State, provided that the term of the contract is not modified.

A.53. Used or New Products

Offeror shall offer new items of current design unless the solicitation specifies used, reconditioned, or remanufactured products are acceptable. Warranties in both cases should be the same.

A.54. Publicity

The award of this Contract to Vendor is not in any way an endorsement by the State of Vendor or the Products and shall not be so construed by Vendor in any advertising or publicity materials. Vendor agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied as an endorsement. Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of the State.

A.55. Mandatory and Non-Mandatory Terms

A.55.1. Whenever the terms "shall", "must", "will", or "is required" are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Offeror's Proposal.

A.55.2. Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection.

A.56. Non Tobacco – Smoke Free

By order of the Governor's Executive Order 2012-01, effective August 06, 2012 the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

A.57. OMES/ISD / Agency Relationship

Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (62 O.S. §§ 35.1 – 35.9), OMES/ISD is the entity designated to purchase information technology assets on behalf of the State of Oklahoma. The Act directs OMES/ISD to acquire necessary hardware and software, and directs OMES/ISD to authorize the use of these assets by other State agencies. OMES/ISD, as the owner of information technology assets, allows other State agencies to use these assets while retaining ownership and the right to reassign them upon written notification to the vendor.

A.58. Federal Terms and Conditions

The following terms apply if federal monies are used to fund this solicitation:

A.58.1. Equal Opportunity and Discrimination

The contractor certifies they are an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive Orders 11246 and 11375. The provider assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act

A.58.2. Lobbying

The contractor certifies compliance with the Anti-Lobbying law, Section 1352, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over $100,000.00 as defined at 45 CFR 93, Section 93.105 and 93.110.

A.58.3. Drug-Free Workplace

The contractor certifies compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, and implemented at 45 CFR part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610

A.58.4. Environmental Protection

If the payments pursuant to the contract are expected to exceed $100,000.00, then the contractor must comply with all applicable Federal Laws such as Section 306 of the Clean Air Act (42 U.S.C. 1857 (L)), Section 508 of the Clean Water Act

(33 U.S.C. 1638), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R Part 15), which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities

A.59. Acceptance of Request for Proposal Content

Unless otherwise provided in Section One of the Vendor's response to this Request for Proposal, all Offers shall be firm representations that the responding Vendor has carefully investigated and will comply with all terms and conditions contained in this Request for Proposal Upon award of any contract to the Successful Vendor, the contents of this Request for Proposal, as may be amended by the Vendor's response in Section One, shall become contractual obligations between the parties. Failure to provide all proposed amendments to the terms and conditions contained in this Request for Proposal in Section One of the Contractor's response may cause the bid to be rejected from consideration for award.

A.60. Special Provisions

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

B. SPECIAL PROVISIONS

B.1. Glossary of Terms

B.1.1. Contractor – A vendor, offeror, or bidder that has been awarded a contract by the State.

B.2. Contract Term, Renewal and Extension Option

B.2.1. The initial contract period shall begin on the effective date and shall extend through One (1) Year unless renewed, extended, or terminated in accordance with applicable contract provisions. The contractor shall not commence work, commit funds, incur costs, or in any way act to obligate the State until so notified in writing of the approval of the contract. The authorized State representative is the only individual who can transmit that approval to the contractor.

B.3. Obligations of Permitted Subcontractor

B.3.1. If the Vendor is permitted to utilize subcontractors in support of this Contract, the Vendor shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name and by employee name in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Vendor in connection with provision of the Products, the Vendor shall obtain written approval of the State of such subcontractor and each employee of such subcontractor proposed for use by the Vendor. Such approval is within the sole discretion of the State. As part of the approval request, the Vendor shall provide a copy of a written agreement executed by the Vendor and subcontractor setting forth that such subcontractor is bound by and agrees to perform the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Vendor under the terms of all applicable Contract Documents. Vendor agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

B.3.2. All payments for Products shall be made directly to the Vendor. No payments shall be made to the Vendor for any services performed pursuant to this Contract by unapproved or disapproved employees of the Vendor or a subcontractor.

B.4. Warrants

Contractor warrants and represents that products or deliverables specified and furnished by or through the contractor shall individually, and where specified by contractor to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of a minimum of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. During the warranty period, defects in the products or deliverables specified and furnished by or through the contractor shall be repaired or replaced by contractor at no cost or expense to the State.

B.5. Commercial Off-The-Shelf (Cots) Software

In the event that Vendor specifies terms and conditions or clauses in an electronic license agreement notice that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

C. SOLICITATION SPECIFICATIONS

C.1. Mandatory Requirement

Vendor shall provide a quote for:

QTY	SKU	DESCRIPTION	CONTRACT PERIOD
46	874-006255	SUSE Linux Enterprise Server for X86, AMD64 & Intel64 (1-2 CPU Sockets,Standard Support,1 Physical,1 Year)	07/01/2014 – 06/30/2015

D. EVALUATION

D.1. Evaluation and Award

D.1.1. Offers shall be evaluated on the "lowest and best" determination.

D.1.2. The State reserves the right to request demonstrations and question clarifications from any or all-responding contractors.

D.2. Proposal Clarification Questions

The State reserves the right, at its sole discretion, to request clarifications of technical proposals or to conduct discussions for the purpose of clarification with any or all contractors. The purpose of any such discussions shall be to ensure full understanding of the proposal. If clarifications are made because of such discussion, the contractor(s) shall put such clarifications in writing. The clarification shall not alter or supplement the proposal.

D.3. Competitive Negotiations of Offers

The State of Oklahoma reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the vendor's offer.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

D.3.1. Negotiations may be conducted in person, in writing, or by telephone.

D.3.2. Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.

D.3.3. Terms, conditions, prices, methodology, or other features of the offeror's offer may be subject to negotiations and subsequent revision. As part of the negotiations, the offeror may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.

D.3.4. The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

D.3.5. BEST and FINAL – The State may request best and final offers if deemed necessary, and shall determine the scope and subject of any best and final request. However, the vendor should not expect an opportunity to strengthen its offer and should submit its best offer based on the terms and condition set forth in this solicitation.

D.4. Selection Criteria

D.4.1. Cost

D.4.2. VPAT

Note: Accessibility is required to be a part of the selection criteria.

D.5. Evaluation Process

D.5.1. Evaluation Process – Determination of Solicitation Responsiveness

A responsive offer is defined as an offer that meets all the general mandatory requirements as outlined below:

- Responding Bidder Information Sheet complete Form 076
- Certification for Competitive Bid and Contract (Non-Collusion Certification) Form 004
- Amendments, if issued, are acknowledged.
- VPAT

Meeting all requirements outlined above allows the offer to proceed in the evaluation process. Failure to meet all of the above may result in the proposal being disqualified from further evaluation.

Note: The following evaluation process is not presented in any sequence as any selection process may overlap the other in the evaluation.

D.5.2. Evaluation Process - Evaluation of Offer

The technical section of the offer is evaluated based on the required submittals in Section E.

D.5.3. Evaluation Process - Evaluation of Cost

Cost comparisons are performed.

D.5.4. Best Value Evaluation of Product/Services

D.5.4.1. Selection

The selection and award of contractor is based upon which contractor best meets the needs of the State.

The State reserves the right to negotiate with one or more contractors, at any point during the evaluation. The State may negotiate any and all content of the offer.

D.5.5. Contractors should be prepared to participate in oral presentations and demonstrations to define their submittal, to introduce their team, and to respond to any and all questions regarding their offer if requested by the State prior to award.

E. INSTRUCTIONS TO OFFEROR

E.1. Introduction

Prospective contractors are urged to read this solicitation carefully. Failure to do so shall be at the offeror's risk. Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, offers shall be evaluated and any resultant contract(s) shall be administered in accordance with the plain meaning of the contents hereof. The offeror is cautioned that the requirements of this solicitation can be altered only by written amendment approved by the State and that verbal communications from whatever source are of no effect. In no event shall the offeror's failure to read and understand any term or condition in this solicitation constitute grounds for a claim after contract award.

E.2. Preparation of Offer

E.2.1. Any usage amounts specified are estimates only and are not guaranteed to be purchased.

E.2.2. Information shall be entered on the form provided or a copy thereof.

E.3. Submission of Offer

E.3.1. Completeness of offer(s): It is desirable that the offeror respond in a complete, but concise manner. It is the offeror's sole responsibility to submit information in the offer as requested by the solicitation. The offeror's failure to submit required information may cause its offer to be rejected. However, unnecessary information should be excluded from the offeror's offer.

E.3.2. Copies: Proposal should be paginated and indexed in alpha order with reference to RFP sections.

E.3.3. The offeror should include one (1) "machine readable" version, preferably in Microsoft WORD format, on CD or DVD, of the offeror's offer.

E.4. Proprietary and/or Confidential

E.4.1. Offerors claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The CIO shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.

E.4.2. If an offeror believes particular information requested by the RFP for evaluation purposes is proprietary, the offeror shall submit that information separate and apart from its response and mark it Proprietary and Confidential. If ISD in its sole discretion agrees the information is proprietary, ISD will maintain the information as Confidential. If ISD does not acknowledge the information as proprietary, ISD will return or destroy the information with proper notice to the offeror and the evaluation will be completed without consideration of the information marked Proprietary. PROPOSALS MARKED, IN TOTAL, AS PROPRIETARY and/or CONFIDENTAIL SHALL NOT BE CONSIDERED.

E.5. Oklahoma Open Records Act

Proposals are subject to public disclosure in accordance with the Open Records Act and will not be considered confidential except as determined by the Oklahoma Chief Information Officer in his sole discretion.

E.6. Communications Concerning Solicitation

The contracting officer listed on the cover page of this solicitation is the only individual in which the offeror should be in contact with concerning any issues with this solicitation. Failure to comply with this requirement may result in the offeror response being considered non-responsive and not considered for further evaluation.

E.7. Offeror Clarifications

E.7.1. Offerors who believe solicitation requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Contracting Officer listed herein. To be considered a request for review must be received no later than 3:00PM Central Time on June 18, 2014. The State shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the solicitation. Requests for administrative review of technical or contractual requirements shall include the reason for the request, supported by information, and any proposed changes to the requirements.

E.8. General Solicitation Questions

Offeror may submit general questions concerning the specifications of the solicitation. All questions and answers regarding this RFP

shall be posted to the IT procurement wiki at:

https://wiki.ok.gov/display/itprocurement/0900000141

E.8.1. Questions received via any other means will not be addressed. If your firm is not currently registered with the State of Oklahoma with wiki access, you may go to the link below to request access.

https://wiki.ok.gov/display/itprocurement/Home

E.8.2. In order to guarantee that your access is created prior to closing date for submitting questions for a solicitation, please request access at least 5 business days prior to the closing date for questions. The State of Oklahoma cannot be responsible for a vendor's lack of access if the request is not made within this timeline.

E.8.3. When posing questions, every effort should be made to:

a) be concise

b) include section references, when possible

c) do not use tables or special formatting, use simple lists

E.8.4. These questions shall be answered directly on the wiki and in the form of an amendment and posted on the OMES website and linked on the wiki. Offerors are advised that any questions received after June 18, 2014 shall not be answered.

E.9. Electronic Funds Transfer (EFT)

The State of Oklahoma passed legislation in 2012 requiring funds disbursed from the State Treasury be sent electronically.

If awarded a contract will your company accept payment for invoices from the State by EFT:

Yes _____ No _____ (check one)

E.10. Deliverables

Responses should be bond, tabbed by section, and clearly marked as Original or Copy.

Note: Deliverables are to be in both hard copy and in a single machine-readable format, preferably in Microsoft Word format, on either CD or DVD.

E.10.1. Section One – Introduction

a) Letter of Introduction

b) Completed "Responding Bidder Information" OSF Form 076ISD.

c) Completed "Certification for Competitive Bid and Contract" OSF Form 004ISD.

d) Signed Amendment(s), if any.

e) Any exceptions to solicitation terms and conditions.

E.10.2. Section Two – Response to Requirements

Provide detailed response to specifications/requirements outlined in Section C.

E.10.3. Section Three – EITA Compliance.

Provide adequate information defining your products level of EITA compliance by providing a Voluntary Product Accessibility Template (VPAT) that indicates compliance of all products offered with the provisions of Section 508 of the Rehabilitation Act Amendments included in the Workforce Investment Act of 1998. Please complete the attached VPAT & Accessibility -OMES form 053also attached is the VPAT Instructions Template.

E.10.4. Section Four - Pricing

All information relating to costs are to be sent.

Clarification or additional documents may be requested.

E.11. Notice of Award

A notice of award in the form of a PO or contract resulting from this solicitation shall be furnished to the successful contractor and shall result in a binding contract.

F. PRICE AND COST

Vendor shall provide a quote.

State of Oklahoma
Office of Management and Enterprise Services
Central Purchasing Division

Certification for Competitive Bid and/or Contract (Non-Collusion Certification)

NOTE: *A certification shall be included with any competitive bid and/or contract exceeding $5,000.00 submitted to the State for goods or services.*

Solicitation or Purchase Order #: _____

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
    a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
    b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
    c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
    d. to any efforts or offers with state agency or political subdivision officials or others to create a sole brand acquisition or a sole source acquisition in contradiction to 74 O.S. 85.45j.1.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature	Certified This Date
Printed Name	Title
Phone Number	Email
Fax Number	

State of Oklahoma
Office of Management and Enterprise Services
Information Services Division

Responding Bidder Information

"Certification for Competitive Bid and Contract" ***MUST*** *be submitted along with the response to the Solicitation.*

1. **RE: Solicitation #** _____

2. **Bidder General Information:**

FEI / SSN: _____ VEN ID (if unknown, leave it blank): _____

Company Name: _____

3. **Bidder Contact Information:**

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ FAX#: _____

Email: _____ Website: _____

4. **Oklahoma Sales Tax Permit[1]:**

☐ YES – Permit #: _____

☐ NO - Exempt pursuant to Oklahoma Laws or Rules

5. **Registration with the Oklahoma Secretary of State:**

☐ YES – Filing Number: _____

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. **Workers' Compensation Insurance Coverage:**

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – include a certificate of insurance with the bid

☐ NO – attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2001, § 2.6 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)[2]

_____ _____
Authorized Signature Date

_____ _____
Printed Name Title

[1] For frequently asked questions concerning Oklahoma Sales Tax Permit, see http://www.tax.ok.gov/faq/faqbussales.html
[2] For frequently asked questions concerning Workers' Compensation Insurance, see http://www.ok.gov/oid/Consumers/Workers'_Compensation/index.html