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

Solicitation

1. **Solicitation#:** 0900001512
2. **Solicitation Issue Date:** June 10, 2013
3. **Brief Description of Requirement:**

The Office of Management and Enterprise Services (OMES), Information Services Division (ISD), is currently accepting quotes for:

VMware Support and Subscription Production – Technical support – emergency phone consulting – 1 year – 24 x 7

Start Date: 07/01/2013
End Date: 06/30/2014
Bids, along with a signed Non-Collusion Form should be submitted via U.S. Mail or Common Carrier.

4. **Response Due Date:** 6/27/2013 **Time:** 3 p.m. CDT
5. **Issued By and Return Sealed Bid To:**

Personal or Common Carrier Deliver or US Postal Deliver:
Office of Management & Enterprise Services
3115 N. Lincoln Blvd.
Oklahoma City, OK 73105

6. **Contracting Officer:**

Name: Jennifer McCaulla

Phone: (405) 521-4772

Email: Jennifer.McCaulla@omes.ok.gov

7. **Solicitation Type:** Request for Quote

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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 a State agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;

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 change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.

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 Commercial off the Shelf.

A.1.10. "Contract" means the final agreement under which the services and/or products shall be governed.

A.1.11. "Contractor" means the Business Entity with whom the State enters into this contract.

A.1.12. "Close of business" means 5:00PM Central Time.

A.1.13. "Closing Date" is the date the RFP closes, also proposal opening date, and response due date;

A.1.14. "Government Entities" means State Agencies, Boards, Commissions, Authorities, Oklahoma Counties, Cities, Schools, Hospitals, Regents of Higher Education, Colleges, Universities, Municipalities, or political subdivisions;

A.1.15. 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.1.16. "Offer" shall be synonymous with "bid", "proposal", "quote" or other similar term;

A.1.17. "Offeror" shall be synonymous with "vendor", "bidder", or other similar term;

A.1.18. "Procuring Agency" means the State of Oklahoma Agency initiating the procurement.

A.1.19. "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.1.20. "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.1.21. "State Agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body, or house of the executive or judicial branches of the State government, whether elected or appointed, excluding only political subdivisions of the State.

A.1.22. "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.1.23. "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.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" DCS-FORM-CP-076, 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. All offers must be submitted via email or by facsimile.

A.2.3. The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OSF-FORM-CP-004, 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 bid, 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 bid 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", DCS-FORM-CP-011 (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. 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.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".

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

By submitting an offer to this solicitation:

A.5.1. The prospective primary participant certifies to the best of their knowledge and belief, that they 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 of Oklahoma or local department or agency;

A.5.1.2. 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.5.1.3. 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 offenses enumerated in paragraph A.5.1.2. of this certification; and

A.5.1.4. 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.5.2. 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. Offers Subject To Public Disclosure

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. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.

A.7. 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.8. Legal Contract

A.8.1. Submitted offers are rendered as a legal offer and when accepted by the State, shall constitute a contract.

A.8.2. 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.8.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

A.8.4. 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.9. Pricing

A.9.1. Offers shall remain firm for a minimum of one-twenty (30) days from the solicitation closing date.

A.9.2. Offerors guarantee unit prices to be correct.

A.9.3. 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.9.4. 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.10. Firm Fixed Price

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

A.11. Pricing Requirements

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

A.12. 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.13. 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.14. Award of Contract

A.14.1. 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.14.2. Contract awards shall be made to the lowest and best offer(s) unless the solicitation specifies that best value criteria is being used.

A.14.3. 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.14.4. It is the preference of the State to award to a single vendor.

A.15. Contract Modification

A.15.1. 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.15.2. 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.16. Delivery, Inspection and Acceptance

A.16.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The contractor shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the offer shall include all such charges. All products and/or services to be delivered pursuant to the contract shall be subject to final inspection and acceptance by the State at destination. “Destination” shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the contractor until accepted by the receiving agency. The contractor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

A.16.2. Contractor(s) shall be required to deliver products and services as offered on or before the required date. Deviations, substitutions, or changes in products and services shall not be made unless expressly authorized in writing by the State.

A.17. Invoicing and Payment

A.17.1. Contractor shall be paid upon submission of an accurate and proper invoice(s), as defined by Title 62 O.S. §34.73, to the agency, at the prices stipulated on the contract. Failure to provide accurate invoices may result in delay of processing invoices for payment. Pursuant to 74 O.S. §85.44B, invoices shall be paid in arrears after products have been delivered or services provided. Invoices shall contain the purchase order number, a description of the services provided, and the dates of those services.

A.17.2. Interest on late payments made by the State of Oklahoma is governed by Title 62 O.S. §34.71 and 62 O.S. §34.72.

A.18. Tax Exemption

State agency acquisitions are exempt from sales taxes and federal excise taxes. Offerors shall not include these taxes in price quotes.

A.19. Audit and Records Clause

A.19.1. 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 successful contractor(s) agree any pertinent State or Federal agency shall have the right to examine and audit all records relevant to execution and performance of the contract.

A.19.2. The contractor(s) is required to retain records relative to the contract for the duration of the contract and for a period of seven (7) years following completion and/or termination of the 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.20. Choice of Law

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the contract shall be governed by the laws of the State of Oklahoma.

A.21. Choice of Venue

Venue for any action, claim, dispute, or litigation relating in any way to the contract shall be in Oklahoma County, Oklahoma.

A.22. Termination for Cause

A.22.1. The contractor may terminate the contract for default or other just cause with both a 30-day written request and upon written approval from the State. The State may terminate the contract for default or any other just cause upon a 30-day written notification to the contractor.

A.22.2. The State may terminate the contract immediately, without a 30-day written notice to the contractor, when violations are found, when conditions preclude the 30-day notice, or when the State determines that, an administrative error occurred prior to contract performance.

A.22.3. If the contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.23. Termination for Convenience

A.23.1. The State may terminate the contract, in whole or in part, for convenience if the State Purchasing Director or the State CIO determines that termination is in the State's best interest. The State shall terminate the contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of contract termination. The contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.

A.23.2. If the contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

A.24. Insurance

The contractor shall maintain and provide proof to the State of the following insurance during the term of this agreement:

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. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

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

A.25. Employment Relationship

The contract does not create an employment relationship. Individuals performing services required by this solicitation or a resulting contract are not employees of the State of Oklahoma or the procuring agency. The contractor's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to State employees.

A.26. Compliance with The Oklahoma Taxpayer And Citizen Protection Act Of 2007

By submitting an offer for services, the offeror certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at www.dhs.gov/E-Verify.

A.27. Compliance with Applicable Laws

The products and services supplied under the contract shall comply with all applicable Federal, State, and local laws and the contractor shall maintain all applicable licenses and permit requirements.

A.28. Gratuities

The right of the contractor to perform under this contract may be terminated, by written notice, if the Contracting Officer determines that the contractor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State employee directly involved in this solicitation. Furthermore, a contractor convicted of such violation may also be suspended or debarred.

A.29. 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.30. Mutual Responsibilities

The State and contractor agree that under this Agreement:

A.30.1. 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.30.2. This is a non-exclusive agreement and each party is free to enter into similar agreements with others.

A.30.3. Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

A.30.4. Where approval, acceptance, consent, or similar action by either party is required under this agreement, such action shall not be unreasonably delayed or withheld.

A.31. Background Checks and Verifications

At the sole discretion of the State, the contractor may be subject to user background checks. The contractor must submit the required background check information to the State in a timely manner. The State may not allow any access prior to completion of background verification.

A.32. Confidentiality

A.32.1. Pursuant to Title 62 O. S. §34.12.(C.). "The Office of Management and Enterprise Services and all agencies of the executive branch of the State shall not be required to disclose, directly or indirectly, any information of a State agency which is declared to be confidential or privileged by State or Federal statute or the disclosure of which is restricted by agreement with the United States or one of its agencies, nor disclose information technology system details that may permit the access to confidential information or any information affecting personal security, personal identity, or physical security of State assets."

If required for the performance of this contract, the above information may be given to the contractor after the contract is awarded in accordance with the requirements of this section.

A.32.2. The contractor shall maintain strict physical security of all data and records entrusted to it. If certain functions are sub-contracted in accordance with the terms expressed herein, the contractor shall insure that the sub-contractor maintains strict physical security of all data and records transmitted to the sub-contractor.

A.32.3. The contractor shall never turn data or records over to a third party unless specifically authorized to do so by the State's CIO, the State Agency Director, or in compliance with a valid court order.

A.33. Unauthorized Obligations

At no time during the performance of this contract shall the contractor have the authority to obligate the State or the agency for payment of any goods or services over and above the awarded contract. If the need arises for goods or services over and above the contract for this project, contractor shall cease the project and contact agency for approval prior to proceeding.

A.34. Electronic and Information Technology Accessibility

Pursuant to Title 74, Section 85.7d.and OAC 580:16-7-56, electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of Management Enterprise Services.

Such standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance shall be necessary on the contractor's part. Such requirements shall be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

All representations contained in the VPAT or other comparable document provided will be relied upon by the State for accessibility

compliance purposes.

A.35. Patents and Copyrights

If in the performance of this contract, contractor uses any Product covered by a third party's patent or copyright, it is mutually agreed and understood without exception that the contractor's contract prices shall include all royalties or costs charged by the third party arising from the use of such patent or copyright. If such royalties or costs are not covered in the contractor contract price, contractor's obligations are as outlined immediately below.

A.35.1. If a third party claims that a product the contractor provides to an Procuring Agency infringes that party's patent or copyright, the contractor shall defend the State against that claim at contractor's expense and pay all costs, damages, and attorney's fees that a court finally awards, provided the State: (i) promptly notifies the contractor in writing of the claim; and (ii) to the extent authorized by the Attorney General of the State Oklahoma, allows the contractor to control, and cooperates with the contractor in, the defense and any related settlement negotiations; provided however, that if the Attorney General of the State of Oklahoma does not authorize the contractor to have sole control of the defense and any related settlement negotiations, then to the extent allowed by Oklahoma law, contractor shall have no obligation to indemnify the State of Oklahoma under this Section.

If such a claim is made or appears likely to be made, the State agrees to permit contractor to enable the State to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If the contractor determines that none of these alternatives is reasonably available, the State agrees to return the product to the contractor upon written request. Contractor shall then give the State a refund equal to the net book value for the product, provided the State has followed applicable accounting principles. Net book value is the original cost of the product amortized over three (3) years using the straight-line accounting method of depreciation.

A.35.2. Contractor has no obligation regarding any claim based on any of the following: (i) anything the State provides which is incorporated into a product; (ii) modification of a product by any party other than contractor, contractor's representative or contractor's sub-contractor, or any State employee acting at the contractor's direction, or 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 contractor as a system, or the combination, operation or use of a product with any product, data, or apparatus that contractor did not provide; or (iv) infringement by a non-contractor product alone, as opposed to its combination with products contractor provides to the State as a system.

A.36. Federal Terms and Conditions

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

A.36.1. 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.36.2. 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.36.3. 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.36.4. 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.37. Assignment

Contractor's obligations under this contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of 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. Failure to Enforce

Failure by the State of Oklahoma at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the State of Oklahoma to enforce any provisions at any time in accordance with its terms.

A.40. Licensed Software

A.40.1. Under no circumstances shall the contractor be required to install or maintain software packages that it has reason to believe are not properly licensed.

A.40.2. All software/software licensing previously installed by the agency remains the responsibility of the agency. Software used by the contractor in performance of this contract is the responsibility of the contractor.

A.41. Conflict of Interest

Contractor must disclose any contractual relationship or any other relevant contact with any State personnel, or other State contractors involved in the development of this solicitation that result in a contract. Any conflict of interest shall, at the sole discretion of State, be grounds for termination of project involvement; provided that such termination must be made within a reasonable time after disclosure of such relationships or contacts.

In addition to any requirements of law or through a professional code of ethics or conduct, the contractor and the contractor's employees performing services for the State are required to disclose any outside activities or interests that conflict or may conflict with the best interests of the State. Further, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interests of the State of Oklahoma during the period of this agreement without prior written approval of the State. Prompt disclosure is required under this paragraph 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, other third-party individuals, or entities holding contracts with the State.

Furthermore, contractor must certify that no person who has been involved in any manner in the development of a solicitation or contract while employed by the State shall be employed to fulfill any of the services provide for under said solicitation or contract.

A.42. Limitation of Liability

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

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

A.43.1. In conjunction with the Oklahoma Computer Equipment Recovery Act and the Office of Management and Enterprise Services - ISD's Information Security, Policies, Procedures, and Guidelines – Media Sanitization Procedures for the Destruction or Disposal of all Electronic Storage Media: disk drives and memory cards purchased with or for use in leased equipment under this contract remain the property of the State of Oklahoma.

A.43.2. Disk drives and memory cards purchased with or included in leased or purchased equipment under this contract shall remain the property of the State of Oklahoma; therefore, 'Keep Your Hard Drive' costs must be included in the offeror's proposed cost.

A.43.3. 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 Agencies or for the resale of refurbished equipment that has been in use by State entities, by the contractor to the general public or other entities. Electronic Media Retention by the State entities for equipment whether purchased or leased shall also be applied to replacement devices and components the selected offeror's 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, there shall be sufficient safeguards in place (such as a record of hard drive serial numbers) to protect the Personal Identification Information that may be stored within the hard drive/memory of the device.

A.43.4. The State of Oklahoma IT Security Policies may be found at:

http://www.ok.gov/OSF/documents/InfoSecPPG.pdf

A.44. Offshore Services

No offshore services are provided pursuant to this contract. The use of State of Oklahoma information by Contractor Services located internationally will be limited to Implementation and Service Support. No proprietary information can be used for troubleshooting without permission from an authorized Office of Management and Enterprise Services Representative.

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. 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.49. Ownership Rights

A.49.1. 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.49.2. 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.50. Right of Use

A.50.1. The State has the right to use or not use the software, not including any utilities, and to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. However, contractor shall bear no liability for any changes the State makes to such software.

A.50.2. In the event that it should be determined that any of such software or supporting documentation does not qualify as a "Work Made for Hire", contractor irrevocably grants to the State an non-exclusive, irrevocable license to use such portion. With respect to any Utilities, the State shall have the right to perpetual, internal use of the Utilities included in the deliverable.

A.50.3. Contractor shall assist the State and its Agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering Software. Contractor shall sign any such applications, upon request, and deliver them to the State. The State of Oklahoma shall bear all expenses that it causes to be incurred in connection with such copyright, trademark, and/or patent protection.

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

No State agency, as defined by Section 250.3 of Title 75 of the Oklahoma Statutes, nor the Purchasing Division of the Department of Central Services, unless otherwise provided by Federal law, shall enter into a contract for the acquisition of customized computer software developed or modified exclusively for the agency or the State, unless the contractor agrees to place into escrow with an independent third party the source code for the software and/or modifications.

A.51.1. The contractor must agree to place the source code for the software and any upgrades supplied to an agency in escrow with a third party acceptable to the agency and to enter into a customary source code escrow agreement which includes a provision that entitles the agency to receive everything held in escrow upon the occurrence of any of the following:

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

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

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

d) The filing of a petition in bankruptcy by or against the contractor 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 contractor's

property;

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

g) The ceasing of a contractor of maintenance and support of the software.

The fees of any third-party escrow agent subject to this section shall be borne by the contractor.

A.51.2. As used in this section:

a) "State agency" shall include all State agencies, whether subject to the Central Purchasing Act or not, except the Oklahoma Lottery Commission; and

b) "Source code" means the programming instruction for a computer program in its original form, created by a programmer with a text editor or a visual programming tool and saved in a file.

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 contractor is not in any way an endorsement of contractor or contractor's services by the State and shall not be so construed by contractor in any advertising or publicity materials. Contractor 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. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the State. Nor shall contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project 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. 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.59. 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

B.2.1. The initial contract period shall begin on the effective date and shall extend through One (1) Year.

B.3. Contractors and Sub-Contractors Obligations

B.3.1. The contractor may not use sub-contractors in support of this contract;

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

C. SOLICITATION SPECIFICATIONS

SKU	Product Name / Unit	Term	Quantity
VS5-ENT-P-SSS-C	VMware Support and Subscription Production – Technical support – emergency phone consulting – 1 year – 24 x 7 – 30 min – for VMware vSphere Enterprise Edition (v.5) – 1 processor	7/1/2013 – 6/30/2014	**16**
VCS5-STD-P-SSS-C	VMware Support and Subscription Production – Technical support – emergency phone consulting – 1 year – 24 x 7 – 30 min – for VMware vCenter Server Standard for vSphere (v.5)	7/1/2013 – 6/30/2014	**1**

D. EVALUATION

D.1. Evaluation and Award

D.1.1. Offers shall be evaluated on the “lowest cost” determination.

D.2. Bid 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. Selection Criteria

D.3.1. Cost

D.4. Evaluation Process

D.4.1. 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 bid 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.4.2. Evaluation Process - Evaluation of Offer

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

D.4.3. Evaluation Process - Evaluation of Cost

Cost comparisons are performed.

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. 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: the offeror's bid should be paginated and can be emailed to the contracting officer,

E.4. 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

E.5. 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.6. Offeror Clarifications

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 p.m. Central Time on June 24, 2013. 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.7. General Solicitation Questions

Offeror may submit general questions concerning the specifications for the solicitation. All questions regarding this RFP shall be posted to the IT procurement wiki at:

https://wiki.ok.gov/display/itprocurement/0900001512

E.7.1. 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.7.2. In order to guarantee that your access is created prior to closing date for submitting questions for a solicitation, please request access at least 3 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.7.3. When posing questions, offeror should:

a) Be concise

b) Include section references, when possible

c) Do not use tables or special formatting, use simple lists.

E.7.4. These questions shall be answered in the form of an amendment and posted on the OMES website and linked on the wiki.

E.7.5. Offerors are advised that any questions received after 3 p.m. June 24, 2013 shall not be answered.

E.8. Deliverables

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.8.1. Completed “Responding Bidder Information” DCS/Purchasing Form 076.

E.8.2. Completed “Certification for Competitive Bid and Contract” DCS/Purchasing Form 004.

Clarification or additional documents may be requested.

E.8.3. Pricing

E.8.4. Any software licensing, maintenance, or service agreements the contractor requires, should they be the successful contractor, not submitted with contractor’s original offer shall not be considered.

E.8.5. Voluntary Product Accessibility Template (VPAT)

E.8.6. Pricing- Section F

E.8.7. Response to Requirements as outlined in Sections C and E

E.9. 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

SKU	Product Name / Unit	Term	Quantity	Unit Price	Extended Price
VS5-ENT-P-SSS-C	VMware Support and Subscription Production – Technical support – emergency phone consulting – 1 year – 24 x 7 – 30 min – for VMware vSphere Enterprise Edition (v.5) – 1 processor	7/1/2013 – 6/30/2014	**16**		
VCS5-STD-P-SSS-C	VMware Support and Subscription Production – Technical support – emergency phone consulting – 1 year – 24 x 7 – 30 min – for VMware vCenter Server Standard for vSphere (v.5)	7/1/2013 – 6/30/2014	**1**		

State of Oklahoma
Office of Management and Enterprise Services
Information Services 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 #: 0900001512

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purpose 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 employees 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.

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 #** 0900001512

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