

Invitation for Bids

Novell Software Reseller

PROJECT NO. 050R5800203



Department of Budget and Management

Issue Date: April 26, 2005

NOTICE

Prospective bidders who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the IFB or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO BIDDERS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to submit a bid on this contract, please e-mail bbowser@dbm.state.md.us or fax (410-974-3274) this completed form to the attention of Mr. William Bowser. Thank you for your assistance.

Title: Novell Software Reseller
Project No: 050R5800203

If you have responded with a "no bid", please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with Maryland Government is simply too complicated.
(Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the bid/proposals is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposals requirements (other than specifications) are unreasonable or too risky.
(Explain in REMARKS section.)
- MBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory.
(Explain in REMARKS section.)
- Payment schedule too slow.
- Other: _____

2. If you have submitted a bid, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS: _____

Bidder Name: _____ Date _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

KEY INFORMATION SUMMARY SHEET

STATE OF MARYLAND Invitation For Bids

NOVELL SOFTWARE RESELLER

PROJECT NUMBER 050R5800203

IFB Issue Date: April 26, 2005

IFB Issuing Office: Department of Budget and Management

Procurement Officer: William M. Bowser
Phone: (410) 260-7683
Fax: (410) 974-3274
e-mail: bbowser@dbm.state.md.us

Procurement Method: Competitive Sealed Bidding (COMAR 21.05.02)

Contract Term: On or about July 1, 2005 through June 30, 2007
with two, (2) two-year renewal options

Pre-Bid Conference: May 4, 2005, 10:00 AM (Local Time)
Department of Budget and Management
45 Calvert Street – Room 164
Annapolis, Maryland 21401
For directions see Attachment F

**Bids are to be sent to: Department of Budget and Management
Procurement Unit - Room 110
45 Calvert Street
Annapolis, MD 21401
Attention: William M. Bowser**

Closing Date and Time: May 16, 2005 at 2:00 PM (Local Time)

NOTE: Prospective bidders who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the IFB or other communications can be sent to them. Contact the Procurement Officer to obtain an electronic file of the IFB in Microsoft software.

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

The Department of Budget and Management (DBM) is seeking a contractor to serve as a reseller of Novell software licenses, maintenance, at a firm fixed percentage discount off the applicable Novell List Price.

DBM has a statewide Novell Master License Agreement (MLA) that expires June 30, 2007 (See Attachment D). The purpose of this solicitation is to procure competitively a reseller that is authorized to sell all Novell software products via the MLA.

DBM intends to make a single contract award as a result of this IFB.

1.2 Abbreviations and Definitions

For the purposes of this IFB, the following abbreviations and terms have the meanings indicated below:

- a) **Bidder** – An entity that submits a bid in response to this IFB.
- b) **BPW** – The Maryland Board of Public Works
- c) **Contract Manager** - The State representative that will serve as the technical manager for the contract that results from this IFB. The Contract Manager monitors the daily activities of the contract and provides technical guidance to the contractor.
- d) **Contractor's Contract Administrator** – Person designated at the time of contract award as the single point of contact with the authority and knowledge to resolve contract issues.
- e) **COMAR** - Code of Maryland Regulations
- f) **Contract** – The State's Contract attached to this IFB as Attachment A.
- g) **Contractor** – The selected Bidder, the business entity awarded the contract for the procured services identified in this IFB.
- h) **Customer** – Any agency, office, institution or political subdivision permitted by the Department to participate in this contract.
- i) **DBM** – The Maryland Department of Budget and Management
- j) **Department** – Means the Maryland Department of Budget and Management
- k) **Discount Price** – The actual price to be paid by the customer. The Discount Price is calculated by multiplying the contractor's fixed percent discount by the Novell List Price for the specified product to be purchased to determine the Discount Value, and subtracting the Discount Value from the Novell List Price.

For example:

If the Novell List Price is \$100 and the fixed percent discount (percentage discount) is 44%, then the Discount Value is (100×0.44) \$44, and the Discount Price is $(\$100 - \$44)$ \$56.

- l) **Discount Value** – Results from multiplying the contractor's fixed percent discount by the Novell List Price for the specified product to be purchased.
- m) **IFB** – The entire contents of this Invitation For Bids, "Novell Software Reseller", Project #050R5800203, including any amendments/addenda thereto.
- n) **Local Time** – Time in the Eastern Time Zone as observed by the State.
- o) **MBE** - Minority Business Enterprise certified by the Maryland Department of Transportation.

- p) **MLA** – Novell Master License Agreement
- q) **Novell List Price** – The List Price is established by Novell and is the price for the respective Novell products & services available at Novell’s website at <http://www.novell.com/licensing/price.html> and is subject to change by Novell. The List Price is the basis for establishing the Discount Price. Also list price may be obtained in writing directly from Novell. During the MLA term, the Novell list price for available licenses or Maintenance shall remain at the price published by Novell the first month of such term (or whenever the product first became published on the price list during the term). The limited price protection will expire at the end of each Term. Any decrease in list prices will apply to orders placed under this procurement received after publication of a new Price List.
- r) **NSGA’s** – Means non-State government agencies offices and departments located in Maryland.
- s) **Procurement Officer** – The State representative who is responsible for this IFB and for the determination of contract scope issues; also the only State representative who can authorize changes to the contract.
- t) **SGA’s** – Means Maryland State Government agencies of the Executive Branch of State government

1.3 Contract Type

The contract that results from this IFB will be an Indefinite Quantity Contract with Fixed percent discount represented as a percent discount off the Novell Price List, in accordance with COMAR 21.06.03.02 and 21.06.03.06.

1.4 Contract Duration

The Contract resulting from this IFB shall be for a period of approximately two (2) years commencing on or about July 1, 2005 and terminating on June 30, 2007. The State, at its sole option, shall have the unilateral right to extend the contract for up to two, (2) additional, two-year renewal option periods.

1.5 Procurement Officer and Contract Manager

- A. The sole point-of-contact in the State for purposes of this IFB prior to the award of a contract is the Procurement Officer as listed below:

William M. Bowser, Procurement Officer
Department of Budget and Management
Procurement Policy & Administration Division
45 Calvert Street/First Floor, Room 110
Annapolis, Maryland 21401
Telephone: 410-260-7683
Fax: 410-974-3274
Email: bbowser@dbm.state.md.us

DBM may change the Procurement Officer at any time by written notice to the Contractor.

- B. The State's Contract Manager manages the daily activities of the contract and provides technical guidance to the Contractor. The State's Contract Manager for this project is:

Michael E. Balderson, Contract Manager
Strategic Planning Division
Office of Information Technology
Department of Budget and Management
45 Calvert Street
Annapolis, Maryland 21401
Telephone: 410-260-7549
Fax: 410-974-5615
Email: mbalders@dbm.state.md.us

DBM may change the Contract Manager at any time by written notice to the Contractor.

1.6 Pre-Bid Conference

A Pre-Bid Conference (Conference) will be held on May 4, 2005, beginning at 10:00 am (Local time), at the following location:

Department of Budget & Management
Office of Information Technology
45 Calvert Street, Room 164
Annapolis, MD 21401.

Attendance at the Pre-Bid Conference is not mandatory, but all interested bidders are encouraged to attend in order to facilitate better preparation of their bids. In addition, attendance may facilitate the bidder's understanding of the IFB requirements.

As promptly as is feasible subsequent to the Conference, a summary of the Pre-Bid Conference and all questions and answers known at that time will be distributed, free of charge, to all prospective bidders known to have received a copy of this IFB.

In order to assure adequate seating and other accommodations at the Pre-Bid Conference, it is requested that by May 3, 2005, all potential bidders planning to attend, e-mail or otherwise return the Pre-Bid Conference Response Form (Attachment E to this IFB). In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, it is requested that at least five days advance notice be provided. DBM will make reasonable efforts to provide such special accommodation.

1.7 Questions

The Procurement Officer, prior to the Pre-Bid Conference, will accept written questions from prospective bidders. To the extent possible and as appropriate, such questions will be answered at the Pre-Bid Conference. (No substantive question(s) will be answered prior to the Pre-Bid Conference.) Questions may be submitted by mail, facsimile, or preferably by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective bidders attending the Pre-Bid Conference. To the extent possible and as appropriate, these questions will be answered at the Pre-Bid Conference.

Questions will also be accepted subsequent to the Pre-Bid Conference. All post-Conference questions should be submitted in a timely manner to the Procurement Officer only. The Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be provided before the bid due date. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all prospective bidders who are known to have received a copy of the IFB.

1.8 Bids Due/Closing Date

An unbound original and two (2) copies of each bid must be received by the Procurement Officer, at the address listed in Section 1.5A., no later than **May 16, 2005, at 2:00 pm, Local Time**, in order to be considered. Requests for extension of this date or time shall not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, bids received by the Procurement Officer after the closing time and date will not be considered. Bids delivered by email or facsimile shall not be considered.

Bids will be opened May 16, 2005 at 2:00 pm, Local Time, in Room 164, 45 Calvert Street, Annapolis Maryland in accordance with the provisions of COMAR 21.05.02.11B. Bids will be made available for public inspection at or within a reasonable time after bid opening. Any material deemed confidential or proprietary by the bidder must be clearly marked and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.

1.9 Duration of Bid

Bids submitted in response to this IFB are irrevocable for 90 days following the closing date. This period may be extended at the Procurement Officer's request only with the bidder's written consent.

1.10 Revisions to the IFB

If it becomes necessary to revise this IFB, amendments will be provided to all prospective bidders that were sent this IFB or otherwise are known by the Procurement Officer to have obtained this IFB. Acknowledgement of the receipt of all amendments to the IFB must accompany the bidder's bid. Failure to acknowledge receipt does not relieve the bidder from complying with all terms of any such amendment.

1.11 Cancellations

The State reserves the right to cancel this IFB and to accept or reject any and all bids, in whole or in part, received in response to this IFB.

1.12 Incurred Expenses

The State will not be responsible for any costs incurred by a bidder in preparing and submitting a bid, or in performing any other activities relative to this solicitation.

1.13 Economy of Preparation

Bids should be prepared simply and economically, providing a straightforward, concise description of the bidder's compliance to the requirements of this IFB.

1.14 Protests/Disputes

Any protest or dispute related respectively to this IFB or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.15 Multiple or Alternate Bids

A bidder may not submit more than one bid. Multiple or alternate bids will not be accepted.

1.16 Access to Public Records Act Notice

A bidder should give specific attention to the clear identification of those portions of its bid that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 10, Subtitle 6, of the State Government Article of the Annotated Code of Maryland. Bidders are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information may be disclosed (see COMAR 21.05.08.01).

1.17 Bidder Responsibilities

The State will enter into contractual agreement only with the selected bidder. The selected bidder/Contractor shall be responsible for all products and services required by this IFB. Subcontractors, if any, must be identified and a complete description of their role relative to the bid must be included in the bid. If a bidder that seeks to perform or provide the services required by this IFB is a subsidiary of another entity, all information submitted by the bidder, such as, but not limited to, references and financial reports, must pertain exclusively to the bidder, unless the parent organization will provide guarantees for the performance of the subsidiary.

1.18 Mandatory Contractual Terms

By submitting a bid in response to this IFB, a bidder, if selected for award, shall be deemed to have accepted the terms of this IFB and any amendments thereto, and the State's Contract, attached as Attachment A.

1.19 Bid/Proposal Affidavit

A completed Bid/Proposal Affidavit shall accompany the bid submitted by a bidder. A copy of this Affidavit is included as Attachment B of this IFB.

1.20 Contract Affidavit

All bidders are advised that if a contract is awarded as a result of this IFB, the successful bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this IFB. This Affidavit need not be submitted with a bidder's bid but shall be provided within five (5) business days of notification of proposed contract award.

1.21 Arrearages

By submitting a response to this solicitation, the bidder represents that it is not in arrears in the payment of any obligations due to the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this contract if selected for the contract award.

1.22 Procurement Method

This contract will be awarded in accordance with the Competitive Sealed Bidding procurement method as described in Maryland Code of Regulations (COMAR) 21.05.02.

1.23 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible bidder whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this IFB is in another state submits the most favorable bid price; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement contract. The preference given shall be identical to the preference that the other state, through law, policy or practice, gives to its residents.

1.24 No Bid Statement

Vendors not responding to this solicitation are requested to submit the "Notice to Bidders" form, which includes company information and the reason for not responding (i.e. too busy, can not meet mandatory requirements, etc). This form is located in the IFB immediately following the Title Page.

1.25 Award Basis

The State reserves the right to award the contract to the responsive and responsible bidder submitting the most favorable bid price for providing the goods and services as specified in this IFB. The most favorable bid price will be determined by the highest percent (%) discount as bid in Attachment H – Bid Price Form.

In the event of a tie bid, the process documented in COMAR 21.05.02.14 shall apply.

1.26 Verification of Registration and Tax Payment

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore Maryland 21201. It is strongly recommended that any potential bidder complete registration prior to the due date for receipt of bids. A bidder's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful bidder from final consideration and recommendation for contract award.

1.27 False Statements

Bidders are advised that Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- a) In connection with a procurement Contract, a person may not willfully:
 - Falsify, conceal, or suppress a material fact by any scheme or device;
 - Make a false or fraudulent statement or representation of a material fact; or
 - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

1.28 Use of "e-Maryland Marketplace"

"e-Maryland Marketplace" is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM web site (<http://www.dbm.maryland.gov>) and other means for transmitting this IFB and associated materials, the solicitation and minutes of the Pre-Bid Conference, bidder questions and DBM responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

This means that all such information is immediately available to subscribers to e-Maryland Marketplace. Because of the instant access afforded by e-Maryland Marketplace, it is recommended that all bidders interested in doing business with Maryland State agencies subscribe to e-Maryland Marketplace.

1.29 Nonvisual Access Clause

The bidder warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and

hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent.

For purposes of this regulation, the phrase 'equivalent access' means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

1.30 Electronic Funds Transfer

By submitting a response to this IFB, the bidder agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected bidder/Contractor must register using the form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form (Attachment G). Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded at the following URL:
<http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>.

1.31 Contract Extended to - Other Non-State Governments or Agencies

Maryland county, municipal, and other non-state governments or agencies may purchase from the contractor products or services covered by this contract at the same prices chargeable to the State. All such purchases by non-State governments or agencies: (1) shall constitute contracts between the contractor and that government or agency; (2) shall not constitute purchases by the State or State agencies under this contract; (3) shall not be binding or enforceable against the State, and (5) may be subject to other terms and conditions agreed to by the contractor and the purchaser. The contractor bears the risk of determining whether or not a government or agency with which the contractor is dealing is a State agency.

1.32 Minority Business Enterprise Subcontract Participation Goal

A minority business enterprise subcontractor participation goal of zero (0) % has been established for this solicitation.

SECTION 2 – SCOPE OF WORK

2.1 Background and Purpose

The Department of Budget & Management (DBM) has a Novell Master License Agreement (MLA) that will begin July 1, 2005 and unless renewed expire on June 30, 2007 (w/two, 2-year renewal option available). The MLA describes the Novell products and services offered under the MLA. The MLA is attached hereto and made a part hereof as Attachment D.

The purpose of this solicitation is to procure a Contractor to serve as a Novell Authorized MLA Software Service Agent (SSA) to provide Novell software products at a fixed percentage discount off of the applicable Novell List Price that is in effect at the time of purchase

2.2 DBM's Role

- 2.2.1 SGA's (Agencies of the Executive Branch of the State) – All transactions involving the purchase of master software under this procurement require DBM's prior review and authorization to purchase.
- 2.2.2 SGA's (non- Executive Branch Agencies, i.e. Judiciary Branch) – no DBM approval required.
- 2.2.3 NSGA's (i.e. Maryland County Governments and Local entities) – no DBM approval required.

2.3 Transition of Current Novell Software Licenses

- 2.3.1 Since it is critical that coordination between the Contractor, Novell, and the SGA's and NSGA's occur seamlessly and efficiently, especially for the SGA's and NSGA's moving from the previous MLA to the current one, the Contractor shall ensure the following:
 - a. When the Contractor purchases the license from Novell at a given price; the Contractor implicitly transfers the license and all rights and obligations to the SGA or NSGA within five business days.
 - b. Each SGA/NSGA has to be established through a unique Application/Membership Number through Novell. The Contractor shall be responsible to ensure that the current Novell end-users existing under current enrollment with Novell (under prior Master License Agreement No. 125336 (M5Z167-000Z06) ("Prior MLA")) shall migrate that customer base to the new MLA agreement (Attachment D) without additional cost to the State or this contract. The customer shall be migrated to the new MLA agreement by or at the time of purchase of new products. In addition, the Contractor shall ensure that each Novell end-user from the original agreement shall retain their previous unique contract identifier number in accordance with the new MLA.
 - c. The Contractor shall be responsible for servicing and administering each new Novell Application/Membership Form; ensuring prompt processing of all enrollment forms and ensuring each enrollment is properly placed against the correct Master License Agreement.
 - d. The Contractor shall ensure the coordination between SGA's and NSGA's with Novell for any prior products and services acquired and prepaid under the prior MLA. The Contractor shall apply applicable credit to the new MLA for those prepaid products and services.

2.4 Novell Application/Membership

Each SGA and NSGA requesting to purchase Novell products via the new Novell Master License Agreement will complete a Novell Application/Membership Form. This form needs to be completed only once for each unique user. The Contractor is responsible for assisting with completion of this form as needed and its subsequent submission to Novell.

2.5 The MLA Order Form

- a. Each SGA and NSGA will complete a MLA Order Form to submit to the Contractor for each purchase of products and maintenance purchased under this procurement.
- b. A sample of the MLA Order Form is Attachment I to this solicitation and shall be the form utilized in purchase of Novell products. Novell may update the form from time to time, and the most current form shall be utilized at the time product is purchased.
- c. The MLA Order Form refers to product licenses and services. The approved discount through this contract only applies to the product licenses and the annual maintenance price(s) as approved through the new MLA. The MLA discount does not apply to product media or any optional services.

2.6 Optional Services

Although optional services can be purchased from Novell, this contract, its approved discounts, and subsequent purchases do not cover those optional services (i.e. Technical Support). NOTE: Premium Services are part of the MLA and are covered under the contract.

2.7 Contactor Personnel

- 2.7.1 The Contractor shall maintain a Novell Certified Salesperson that understands the State of Maryland's MLA with Novell at all times to ensure this response timeframe outlined within this IFB.
- 2.7.2 The Contractor shall have a Novell Certified Salesperson that is knowledgeable in the management and administration of the Novell Master License Agreement with the State. The representative shall be able to understand and present technologies, solutions, and licensing programs to State agencies utilizing MLA account. The name, address, telephone, and fax number and email address of this individual and the (any) person(s) utilized for backup shall be provided to DBM at the time of contract award. The Contractor shall ensure that the individual contact information remains current.

2.8 Fixed Percentage Discount

- 2.8.1 The Contractor shall apply the contracted Fixed Percentage Discount off of the Novell List Price for software and maintenance to all SGA's and NSGA's for the entire length of the base contract and any renewal option period(s) exercised by the State.
- 2.8.2 Novell publishes their List Price as the maximum prices for a 'Term.' 'Term' indicates the period of performance of the base contract period, and then each renewal option period. Each are considered 'Terms.'
- 2.8.3 During the MLA term, the Novell list price for available licenses or maintenance shall remain at the maximum price published by Novell the first month of such Term (or whenever the product first became published on the price list during the Term).

- 2.8.4 The Contractor's Fixed Percentage Discount shall be applied to the most current Novell List Price (for the Term), the price that is in effect at the time of each purchase of a product (for the Term). The most current Novell List Price that is in effect at the time of each 'purchase of a product' may be lower than the price set at the beginning of the Term. The Contractor shall honor that lower price, and may never exceed the Term Price or the lower current price for the dollar amount to which their approved Fixed Percentage Discount applies.
- 2.8.5 The Novell List Price minus the percentage of discount by the Contractor shall be used to determine the product cost. Novell media may be purchased by an SGA or NSGA at Term Price unless Novell offers a discount.
- 2.8.6 Unless specifically noted herein, other Novell Services are excluded from this contract; so therefore, not available for purchase under the contract and must be contracted with Novell directly under a separate procurement method.
- 2.8.7 The Contractor may apply an additional discount over and above what has been agreed to (approved) by this contract in their pricing to the customers; however, a discount less than the agreed to (approved) discount is not permitted under this contract.

2.9 Contractor Web Pages

- 2.9.1 The Contractor shall develop, within 30 days after contract award, and maintain during the life of this contract, an Internet Web page to provide access to Novell product and contract information to include:
- a. Product Number
 - b. Product Name
 - c. Archived List Price as of MLA start date
 - d. Applicable Current Novell List Price
 - e. Percentage Discount
 - f. Contract Price
 - g. Application/Membership Forms and Procedures
 - h. Contact Information (primary and secondary)
 - i. An "Announcement & Information Page" to include the most recent Contractor announcements and any information requested by DBM. This page shall include a formatted information form developed by the Contractor that identifies the specific information needed by the Contractor to respond to a specific request with accurate contract and price information.
 - j. A product number or a keyword search engine (requiring minimum mouse clicks)
 - k. A feature to allow downloads and printing of the entire price list, as well as pricing information for individual items or groups of items, in addition to all forms and procedures
 - l. A clear display of the last date the website was updated
 - m. Non-Visual Accessibility Standards for Web site: The Contractor shall ensure website compliance in any applicable support to the State of Maryland IT Non-Visual Access Standards. The standards should be incorporated to the fullest extent possible for Information Technology. These standards/policies may be revised from time to time and the Contractor shall comply with all such revisions. The Non-visual Access Clause noted in COMAR

21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations. See COMAR 17.06.02. The Non-Visual Accessibility Standards is attached hereto and made a part hereof as Attachment J.

2.10 Order Requirements and Process

2.10.1 The Contractor shall respond in writing (completing the Contractor's part of the MLA form) to customers within 24 hours of receiving an order from a customer.

2.10.2 The Contractor shall ensure that all orders submitted to Novell contain all Novell required data, on the MLA Order Form (Product Licenses, Media, & Maintenance) including:

Customer Name on MLA
MLA Contract Number
MLA Discount %
Purchase Order Number

2.10.3 The Contractor is responsible for providing guidance and information about the respective rights and responsibilities applicable to each MLA customer.

2.10.4 The Contractor shall provide product order fulfillment (receipt by customer) within five (5) business days after receipt of the order from a SGA or NSGA. For example, an order placed during the day of July 11, 2005 shall have product delivered to the customer by July 18, 2005 Close of Business (COB). The Contractor shall submit all orders to Novell. The Contractor shall place an order for the appropriate number and type of product requested Such as new licenses, maintenance or media. The Contractor shall ensure submission of accurate orders to Novell. The Contractor shall be responsible for the distribution and deployment of software masters and other deliverables as applicable to the order.

2.10.5 The Contractor shall provide all sales, support, management, and reporting services required to process and account for requests from Authorized Users for Novell software products via the applicable Agreement.

2.10.6 The Contractor shall provide written price quotations that include the applicable Archived List Price as of MLA start date, Applicable Current Novell List Price, percentage discount and contract price for each license, and /or maintenance requested.

2.10.7 Order Confirmation

- a. The Contractor is responsible for all invoicing directly with the MLA customers and in turn submit respective purchase order(s) to Novell Sales Operation in Provo, UT.

- b. The Contractor shall provide an electronic “Order Confirmation” for each order within forty-eight hours of the customer's submitted request on a MLA Order Form. This Order Confirmation shall be to the contact person noted on the MLA Order Form. This Order Confirmation shall include:

- Authorized User Name
- Authorized User's Purchase Order Number to the Contractor
- Contractor's Purchase Order Number to Novell
- Novell Master License Agreement Number
- Novell Master License Agreement Customer Number
- Novell License & Service
- Part Number
- Quantity Ordered
- List Price
- Date of Order
- Term of Maintenance (e.g., Beginning Date to End Date)

2.10.8 All Novell software licenses purchased under the contract shall be administered by the Contractor and warranted in accordance with the terms of the Novell Master License Agreement.

2.10.9 Novell Premium Service shall be administered by the Contractor and in accordance with the terms of the Novell Master License Agreement. Novell Premium Service is technical support allocated to customers & is based on the volume of Novell maintenance fees for the previous year under the MLA.

2.10.10 Example of the workflow in placing an Order - SGA & NSGA

- a. SGA's (Agencies of the Executive Branch of the State Only)- Required to send a copy of all master software orders along with the current Novell list price to DBM for prior written approval before an order can be placed with Contractor. If denied, no purchase allowed. If approved, submit order directly to Contractor.
- b. Within 24 hours of order receipt by Contractor, they will submit order to Novell.
- c. Novell shall responds to Contractor within 48 hours of receipt.
- d. Novell shall ship orders within 5 days or make available electronically.
- e. NSGA's – No DBM approval required. Submit order(s) directly to Contractor.

2.11 Annual Audit of MLA Customers

The Contractor shall work with the MLA customers annually to ensure the completion and submission of the required SSA annual self-audit form (See Novell Website at: <http://selfaudit.novell.com>).

2.12 Delivery and Returns

- 2.12.1 All shipments shall be accompanied by a packing list that includes the identification of the items shipped, quantities, Purchase Order number, and the contract number. Drop shipments shall contain packing lists with the same information. All packages shall have the Purchase Order number clearly marked on the outside of the packing or container. Shipments received without a packing list and/or Purchase Order number shown on the outside of the package may be refused and returned at the Contractor's expense.
- 2.12.2 All items are to be delivered Free On Board (F.O.B.) Customer-designated destination. Shipping charges are not permitted. Contractor shall be responsible for any loss and/or damages before acceptance of the shipment's product by Customers. All delivery instructions shall be designated on the MLA Order Form and the applicable Purchase Order(s), which may call for delivery to either a loading dock or a designated-inside-location. If delivery instructions are not included on the MLA Order Form and/or Purchase Order prior to shipping, the Contractor shall contact the Authorized User's Point-of-Contact for delivery instructions. If the Contractor is unable to contact the SGA that is a part of the Executive branch of the State, then the Contractor is to contact the Contract Manager noted for this contract in Section 1.5B.
- 2.12.3 The Contractor shall accept all unopened, damaged, or defective software products returned by the Authorized User for full credit or refund, to include all handling for product, media, etc. The Contractor shall not charge restocking fees to the users of this contract.
- 2.12.4 The Contractor shall also provide return authorization/asset recovery/exchange procedures for each order in the event that a product has been damaged, deemed defective during shipment, or incorrectly ordered.
- 2.12.5 The Contractor shall only invoice the SGA or NSGA after they have received acknowledgment of product delivery. The follow-on Product acceptance will not be unreasonably withheld by the SGA or NSGA. If the Contractor receives notification later that product was defective and the product was returned to them, the Contractor shall give credit in the form of some type of returned monies (in the manner pre-approved by the State, i.e. check, money order, electronic monies etc.) to the applicable SGA or NSGA within 30 days of notification.
- 2.12.6 The Contractor shall provide a means to document and keep 'product delivery' notification for all SGA's and NSGA's. The Contractor shall submit such evidence upon request by the State Contract Manager. The Contractor shall keep the records for product delivery for the complete term of the contract. Product delivery information shall include but not be limited to the same information required in Order Confirmation, or as additionally requested by the State Contract Manager.

2.13 Invoicing

2.13.1 The Contractor shall provide invoicing to each SGA or NSGA entity upon delivery.

2.13.2 Invoices shall be in accordance with the attached contract and itemized to separate the cost of the individual Novell products. Invoices submitted without clear, concise, readable, definitive information shall be returned for clarification, and may delay payment. Invoices shall include the Contractor's Federal Employer Identification Number (FEIN) and the State's Purchase Order Number. Invoices shall only be issued upon complete delivery of the items described in this IFB. Partial payments are not permitted. Payment for invoices shall be rendered according to the list of delivered products. If after the SGA's or NSGA's teams complete their inspections and acceptance of the items, and find that the items are incomplete and/or not acceptable, then the Contractor shall credit the State for those items already billed (invoiced) to the State on the next billing cycle.

2.14 Acceptance of Product

2.14.1 After receipt of the product(s), the State user (SGA/NSGA) shall install and test the product per their internal procedure. If the product(s) perform per the product's specifications, then the State user (SGA or NSGA) shall acknowledge acceptance by signing and dating the bottom of the copy of the MLA Order Form in the Comments Area, writing 'Accepted,' and writing the applicable 'Purchase Order Number.' At minimum, a copy of this signed page shall be faxed to the Contractor. This signed copy shall be retained by the SGA's and the Contractor for the term of the contract. At any time of request by the State's Contract Manager, the user and the Contractor shall supply a copy. In addition, the Contractor shall submit a copy of each accepted (signed) MLA Order Form with the Contractor's applicable quarterly reports.

2.14.2 Products that do not receive State acceptance after testing or implementation shall be returned to the Contractor within -90- days notification of receipt of product. The Contractor shall issue full credit as for product returned within the -90- days. If the SGA's or NSGA's notify the Contractor in writing within -90- days that the -90- days is not a long enough time for adequate testing in their IT and business environment, then the Contractor shall grant an extension up to an additional -30- days; however, SGA's or NSGA's acceptance will not be unreasonably withheld. If the Contractor has not received acceptance information by the end of the extension period, then the Contractor is under no obligation to provide credit. If the Contractor does receive acceptance information prior to the end of the extension period, and the product is not acceptable, then the Contractor shall provide full credit to the State as previously noted.

2.15 Reports

2.15.1 The Contractor shall provide an electronic (by email) and hard copy of each "Quarterly Activity Report" to the DBM Contact Manager by the 15th of October, January, April, July each year or upon request of the Contract Manager that includes:

- a. MLA Number;
- b. Authorized User Name;
- c. Authorized User Agreement Number & Date;

- d. Authorized User's Contact Name, Address, Telephone & Fax Numbers, email address;
- e. Product Number;
- f. Product Name;
- g. Archived List Price as of MLA start date
- h. Applicable Current Novell List Price;
- i. Percentage Discount;
- j. Contract Price;
- k. Quantity;
- l. Any 'Maintenance' Start Date and End Date;
- m. A subtotal of dollars and quantities ordered by SGA's and NSGA's (Subtotals shall be for each Fiscal Year's quarter: July thru September (due October 15); October thru December (due January 15); January thru March (due April 15); April thru June (due July 15));
- n. A Total of dollars and quantities ordered by SGA's and NSGA's (Subtotals shall be for each Fiscal Year's quarter: July thru September (due October 15); October thru December (due January 15); January thru March (due April 15); April thru June (due July 15));
- o. A cumulative total of dollars and quantities ordered by SGA's and NSGA's fiscal year-to-date (a total Fiscal Year of the state is the Fiscal State Year of July 1 through June 30 each year);
- p. An electronic copy of the signed MLA Order Forms (The customers should sign for receipt, but his requirement is for a copy of the signed 'Acceptance'). The Contractor shall obtain the format requirements for submission from the State Contract Manager at the beginning of the Contract. Format may need to change during the lifetime of the Contract after notification by the State Contract Manager, but the Contractor shall provide the copies and submissions as requested with no additional charge to the State.

2.16 Conditions for Subcontracting and Approvals

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Contractor may not assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Any such subcontract or assignment shall include the terms of Sections 9 through 24 of the Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

SECTION 3 – BID FORMAT

3.1 General

- 3.1.1 Bidders must use Attachment H. Do not change or alter this Attachment or alter any other State Attachments otherwise your bid will be rejected.
- 3.1.2 Bidders agree to comply with each and every section, subsection and addendum of this solicitation. Failure to comply will result in the rejection of the bid.

3.2 Preparation/Submission of Bids

- 3.2.1 Bids must be submitted to the Procurement Officer identified at the address identified in IFB Section 1.5A.
- 3.2.3 Bids must be delivered on time, on or before the due date and time specified in Section 1.8.
- 3.2.4 Bids must be submitted in a sealed envelope clearly labeled as follows:
- a. “Sealed Bid - Maryland Department of Budget & Management, Novell Software Reseller, Project #050R5800203”
 - b. the Bid Due Date and Time; and
 - c. the Name of the bidder.
- 3.2.5 Prepare and submit an unbound original and two (2) paper copies to include:
- a. Attachment H - Bid Sheet. Completed and signed by an individual who is authorized to bind the bidder to the services and prices contained in the bid.
 - b. Acknowledgement the receipt of all addenda to the IFB, if any.
 - c. A detailed return procedures for products that are damaged or defective.
 - d. Proof of bidder’s Novell’s authorization to perform/fulfill the SSA requirements of this IFB.
 - e. Bid/Proposal Affidavit - Attachment B
 - f. Statement of Fiscal Integrity. Bidders shall provide documentation that addresses the bidder’s financial solvency that may include, but not be limited to, one or all of the following:
 - a current balance sheet
 - a certified financial statement
 - Dunn and Bradstreet rating;
 - Line of credit;
 - Successful financial track record;
 - Evidence of adequate working capital.
 - h. Legal Action Summary. A statement as to whether there are any outstanding Novell related legal actions, or potential claims against the bidder and a brief description of any such action, including:
 - A brief description of any settled or closed legal actions or claims against the bidder over the past five (5) years.
 - A description of any judgments against the bidder within the past five (5) years, including the case name, number, court, and what the final ruling or determination was from the court.
 - In instances where litigation is ongoing and the bidder has been directed by the court not to disclose information, the name of the judge and location of the court.
 - i. Certificate of Insurance
 - A copy of the bidder's current certificate of General Liability insurance which, at a minimum, should contain the following:
 - Carrier (name and address)
 - Type of insurance

- Amount of coverage
- Period covered by insurance
- Exclusions

j. References

Bidders shall provide references from current and/or previous customers who are capable of documenting experience in providing the same or similar services. DBM reserves the right to request additional references and conduct performance background checks. Each reference shall include:

- Name of client organization.
 - Name, title, and telephone number of point of contact for client organization.
 - Value, type, and duration of contract(s), the services provided, scope of the contract, geographic area supported, etc.
 - An explanation of why the bidder is no longer providing the services to the client organization, if the bidder is no longer serving this client.
- k. Identify all subcontractors, if any, and a complete description of their role relative to the work to be performed in the any resulting contract.
- l. An electronic version of the paper submission copy on a diskette or CD with the bid. The diskette or CD shall be clearly labeled with the Bid Date, Bid Title and bidder's name. This version may consist of a variety of software files (eg: jpg, pdf, doc, xls, etc.) as determined by the bidder.

ATTACHMENTS

ATTACHMENT A - The State's Contract

ATTACHMENT B - Bid/Proposal Affidavit

ATTACHMENT C - Contract Affidavit

ATTACHMENT D – Novell Master License Agreement

ATTACHMENT E - Pre-Bid Conference Response Form.

ATTACHMENT F – Vendor Electronic Funds (EFT) Registration Request Form

ATTACHMENT G - Directions to the Pre-Bid Conference

ATTACHMENT H - Bid Price Instructions and Form

ATTACHMENT I - MLA Order Form

ATTACHMENT J – Information Technology Non-Visual Access Standards

ATTACHMENT A – Contract

THIS CONTRACT (“Contract”) is made this _____ day of _____, 2005 by and between _____ (“**Contractor**”) and the **STATE OF MARYLAND (“State”)**, acting by and through the **DEPARTMENT OF BUDGET AND MANAGEMENT (“Department”)**.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.2 “Department” means the Department of Budget and Management.
- 1.3 “Effective Date” means the date on which the State signs and executes this Contract.
- 1.4 “Procurement Officer” means William M. Bowser.
- 1.5 “IFB” means the Invitation for Bids for Novell Software Reseller, Project No. 050R5800203.
- 1.6 “State” means the State of Maryland.
- 1.7 “Contract Manager” means Michael Balderson.
- 1.8 “MLA” means the Novell Master License Agreement – State of Maryland (April 2005), attached to and made a part of the IFB as Attachment I and incorporated into this Contract by this reference as if fully set forth herein.
- 1.9 “SSA” means a Novell-certified Software Services Agent, as defined in Section 2.18 of the MLA.

2. Scope of Work

2.1 The Contractor shall provide software, maintenance and other administrative services as described in the IFB. These services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A - Invitation for Bids -Project No. 050R5800203, dated April 26,2005
- Exhibit B - Contractor’s Bid-Project No. 050R5800203, dated _____

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor

shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance. The term of this Contract commences on the Effective Date of the Contract and expires on June 30, 2007. The State, at its sole option, shall have the unilateral right to extend the Contract for two (2) additional successive two-year terms.

4. Consideration and Payment

4.1 The consideration for Novell products and services provided by the Contractor shall be in accordance with Sections 2.2, 2.3 and 2.4 of this IFB. Payments will be made as specified in Sections 2.3 and 2.4 of this IFB. Each invoice must include the Contractor's Federal Tax Identification Number which is_____. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices should be submitted to the individual or office designated on the respective purchase order.

4.2 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

5. Rights to Records

The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with the State of Maryland shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Notwithstanding the foregoing, the parties acknowledge and agree that Contractor shall pass through or otherwise transfer and/or assign licenses to any and all Novell software products provided by Contractor to the State hereunder, subject to the terms of the MLA.

6. Patents, Copyrights, Intellectual Property

6.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such software or services furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party's patent, copyright, trademark, or trade secret, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the State

(i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.

6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item. Contractor shall immediately notify the State's Procurement Officer and the State's Contract Manager, in writing, of the possibility of any claim of infringement arising hereunder.

6.4 The provisions of this Section 6 shall be applicable to Contractor only in the event:

- a) Novell has not agreed to undertake each and every obligation specified in Subsections 6.1 through 6.3; or
- b) a claim, suit, or action under this Section 6, or the need to undertake action on behalf of the State and the Department under this Section 6 is attributable, in whole or in part, to Contractor.

7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

8. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. To the extent the Contractor is or becomes actively involved with the installation of any Novell software, the Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

9. Non-Hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee includes matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

10. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute or regulation, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

11. Maryland Law

- 11.1** This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 11.2** The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or the software licenses acquired hereunder.

12. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

13. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

14. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not

amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

15. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

16. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

17. Delays and Extensions of Time

The Contractor acknowledges and agrees that time is of the essence with respect to its duties and obligations under this Contract. The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

18. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

19. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

20. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

21. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Sections 14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. Retention of Records

Notwithstanding anything to the contrary, the Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after Contract closeout and final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

23. Warranties

The Contractor hereby represents and warrants that:

- A. It is a certified SSA, and as such, has full authority to pass through or otherwise transfer and/or assign the Novell licenses to the Novell software products obtained through Contractor hereunder, subject to the terms of the MLA, and that it has made such contractual agreements with Novell that are required for Contractor to fully discharge each and every obligation of Contractor under the IFB and this Contract. Nothing for which the Contractor is responsible under this Contract will cause the State's use of the software to infringe on the intellectual property rights of any person or entity.
- B. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- C. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- D. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- E. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
- F. It will at no time during the term of this Contract or any renewal thereof do anything that will place the State in actual or prospective breach of its obligations to Novell under the MLA.

24. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current. Notwithstanding anything to the contrary contained in the IFB or elsewhere, Contractor acknowledges and agrees that: (i) Novell has agreed, as specified in Section 6.2 of the MLA, to limit price increases to its price list during any "Term", as "Term" is defined in the MLA; and (ii) that in applying its percentage discount to the Novell List Price, Contractor shall be bound by such limitations and it shall apply its percentage discount only to the Novell List Prices that are in effect at the commencement of the applicable "Term" during which orders are placed.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Contractor may not assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Any

such subcontract or assignment shall include the terms of Sections 9 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Administrative

26.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

26.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Department of Budget and Management
Office of Information Technology
Strategic Planning Division
45 Calvert Street, 4th Floor
Annapolis, Maryland 21401
Attention: Michael Balderson

If to the Contractor: _____

27. Indemnification

27.1 The Contractor shall indemnify the State from and against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

27.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

28. Limitation of Liability

28.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 6 ("Patents, Copyrights, Intellectual Property") of this Contract;

B. Without limitation for damages for bodily injury (including death), damage to real property and tangible personal property, and for damages and/or charges claimed by Novell against the State which are attributable, in whole or in part, to Contractor's failure to undertake and complete its duties, obligations and responsibilities hereunder;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability per claim shall be limited to the greater of three (3) times the aggregate dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim, or US \$200,000. Third party claims arising under Section 27 ("Indemnification"), of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 27 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 27.

29. Orderly Termination

Contractor agrees that, except as expressly provided otherwise in the IFB, at the commencement of this Contract it shall have ready and available such systems, processes, and sufficient levels of qualified personnel to be able to promptly, diligently, efficiently and completely prosecute the requirements of this Contract.

Upon the expiration or earlier termination of this Contract, Contractor shall:

- (i) promptly, diligently, efficiently and in good faith work with any successor contractor and the State to transition services over to the successor contractor;
- (ii) during the transition period, continue to be subject to all of the terms and conditions of the Contract, including, by way of example only, those that govern the rates, fees and other charges that Contractor may be permitted to charge the State under the Contract, and under no circumstances shall the Contractor be entitled to raise any such rates, fees and/or other charges during the transition period; and,
- (iii) at the end of the transition period, provide the State with a summary report of the transition that, among other things, contains a certification signed by an officer of the Contractor who is authorized to legally bind Contractor, that states that all actions necessary to successfully transition the services to the successor contractor have been completed, or if they have not been completed, why they have not been completed. The State shall be entitled to withhold any final payment(s) otherwise due Contractor until it receives the summary report and certification specified in this subsection.

31. Guarantee of Performance by _____ . (If determined to be applicable by the State)

[corporate name of parent corporation] hereby guarantees absolutely the full, prompt and complete performance by "[subsidiary/the Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[corporate name of parent]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which the State may withhold or condition in its sole and absolute subjective discretion. "[corporate name of parent]" further agrees that if the State brings any claim, action, suit or proceeding against "[subsidiary/the Contractor]", "[corporate name of parent]" may be named as a party, in its capacity as Absolute Guarantor.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND
By: DEPARTMENT OF
BUDGET AND MANAGEMENT

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Ellis Kitchen
Title: State Chief Information Officer

Witness: _____

Witness: _____

Approved for form and legal sufficiency this _____ day of _____, 2005.

Alan W. Kempske
Assistant Attorney General

Approved by the
Board of Public Works:

Date

BPW Item #

ATTACHMENT B—Bid/Proposal Affidavit

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____

and the duly authorized representative of [business] _____

_____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business]:

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

- (a) been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (b) been convicted of any criminal violation of a state or federal antitrust statute;
- (c) been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§1961, et seq., or the Mail Fraud Act, 18 U.S.C. §§1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
- (d) been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (e) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;
- (f) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (g) admitted in writing or under oath, during the course of an official investigation or other proceeding, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmation cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment]:

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds for the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds for the debarment or suspension]:

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

1. The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
2. The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows [indicate the reason(s) why the affirmations cannot be given without qualification]:

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

1. Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

2. In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price of the bidder or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§ 14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

1. Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.
2. By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by § 2(b), above;
- (h) Notify its employees in the statement required by § 2(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the Contract Officer within 10 days after receiving notice under 2(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under § 2(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §§ 2(a) - (j), above.

3. If the business is an individual, the individual shall certify and agree as set forth in § 4, below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

4. I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under, COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.06.

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

1. The business named above is a (domestic ____) (foreign ____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____
Address: _____

[If not applicable, so state].

2. Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the contractor to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this agreement.

M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposals shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

ATTACHMENT C - Contract Affidavit

COMAR 21.07.01.25

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the _____
(title)

and the duly authorized representative of

(business)

and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic _____) (foreign _____) corporation registered in accordance with Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessment and Taxation is:

Name: _____

Address: _____

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposals Affidavit dated _____, 20____, and

executed by me for the purposed of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATE: _____

BY: _____
(Signature)

(Authorized Representative and Affidavit)

ATTACHMENT D - Novell Master License Agreement

**This document is an e-file entitled,
“050R5800203 Attachment D – Novell MLA.pdf”**

ATTACHMENT E - Pre-Bid Conference Response Form

Project No. 050R5800203

Project Title: Novell Software Reseller

A Pre-bid Conference will be held at **10:00 AM (Local Time), on May 4, 2005, at:**

Department of Budget & Management
45 Calvert Street, Room 164
Annapolis, MD 21401

For directions to the meeting site, See Attachment F-Directions to the Pre-Bid Conference or you may contact William M. Bowser via e-mail or phone 410-260-7683.

Please e-mail, Fax or return this **form by 4:00 pm on May 3, 2005** advising whether or not you plan to attend this Conference.

E-mail or return this form to the Procurement Officer:

William M. Bowser
Department of Budget & Management
Office of Procurement Analysis & Administration
45 Calvert Street, , Room #110
Annapolis, MD 21401
Phone: (410) 260-7683
Fax # (410) 974-3274
e-mail: bbowser@dbm.state.md.us

Please indicate:

_____ **Yes, the following representatives will be in attendance:**

- 1.
- 2.
- 3.

_____ **No, we will not be in attendance.**

Company/Firm/Vendor Name

Telephone

Contact Name

ATTACHMENT F - Directions To Pre-Bid Conference

Department of Budget & Management
45 Calvert Street
Annapolis, MD

From points North of Annapolis: Take I-97 South towards Annapolis/Bay Bridge. Take the US-50 East/US-301 North exit towards Annapolis/Bay Bridge. Take Exit #24 (MD-70 Rowe Blvd/Bestgate South) towards Annapolis/State Offices. Bear Right on the exit ramp toward “South/Annapolis”. Continue on Rowe Blvd through two (2) lights. After crossing the College Creek Bridge, turn Right at the third (3rd) light onto Calvert Street. The first building on the right is 45 Calvert Street.

From points South and West of Annapolis: Take US-50 East/US-301 North towards Annapolis/Bay Bridge. Take Exit #24 (MD-70 Rowe Blvd/Bestgate South) towards Annapolis/State Offices. Bear Right on the exit ramp toward “South/Annapolis”. Continue on Rowe Blvd through two (2) lights. After crossing the College Creek Bridge, turn Right at the third (3rd) light onto Calvert Street. The first building on the right is 45 Calvert Street.

From points East of Annapolis: Take US-50 West towards Annapolis. Take Exit #24A (Rowe Blvd/MD-70 South) towards Annapolis/State Offices. Continue on Rowe Blvd through three (3) lights. After crossing the College Creek Bridge, turn Right at the fourth (4th) light onto Calvert Street. The first building on the right is 45 Calvert Street.

PARKING: There is on-street metered parking along Calvert Street. There is a parking garage on Clay Street, which is the first street on the right immediately past the 45 Calvert Street State Office Building. There is also a parking garage on the left side of Calvert Street just past the 45 Calvert Street State Office Building. Parking is limited so allow adequate time to find parking.

ATTACHMENT G - Electronic Funds Transfer (EFT) Form
State of Maryland
Comptroller of Maryland
Vendor Electronic Funds Transfer (EFT) Registration Request Form

Date of request _____

Business identification information (Address to be used in case of default to check):

Business name _____

Address line 1 _____

Address line 2 _____

City _____ State _____

Zip code:

Business taxpayer identification number:

Federal Employer Identification Number:

(or) Social Security Number:

Business contact name, title, and phone number including area code. (And address if different from above).

Financial institution information:

Name and address

Contact name and phone number (include area code)

ABA number:

Account number:

Account type: Checking Money Market

A VOIDED CHECK from the bank account must be attached.

Transaction requested:

1. ___ Initiate all disbursements via EFT to the above account.
2. ___ Discontinue disbursements via EFT, effective _____
3. ___ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account must be attached.

I am authorized by

* _____ (hereinafter Company) to make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company’s account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

*Name of registering business entity

 Signature of company treasurer, controller, or chief financial officer and date

Completed by GAD/STO

Date Received

GAD registration information verified _____ Date to
 STO _____

STO registration information verified _____ Date to
 GAD _____

R*STARS Vendor No. and Mail Code Assigned:

_____/_____/_____

State Treasurer's Office approval date

General Accounting Division approval date

To Requestor:

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller's and Treasurer's Offices to process your request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

Please submit form to: EFT Registration, General Accounting Division
Room 205, P.O. Box 746
Annapolis, Maryland 21404-0746

COT/GAD X-10

ATTACHMENT H - Bid Price Instructions & Form

1. In order to assist bidders in the preparation of their bids and to comply with the requirements of this solicitation, Attachment H - Bid Price Instructions & Form, has been prepared. Bidders must submit their bids using Attachment H- Bid Form and in accordance with the instructions on the form and as specified herein.
2. The Bid Form is to be completed, signed and dated by an individual who is authorized to bind the bidder to percentage discount bid. Enter all information in the spaces provided.
3. Bidders shall record the percentage discount to be applied to the Novell List Price for Standard Products & Services for each referenced type of Novell License Agreement. The Novell List Price for the physical media that contains the respective software product(s) is excluded from this requirement.
4. For evaluation purposes, the percentage discount (%) to be applied to the Novell List Price is the basis for establishing the best bid. The bidder with the highest percent discount for MLA products & services will be the best bid and, if responsive and responsible, will be recommended for recommendation for award.
5. The State reserves the right, at its sole discretion, not to purchase any product or service provided under this IFB.
6. Bidders are required to record the percentage discount bid.
 - a. Percentage discount must be clearly typed or written in ink and extended to two (2) decimal places, e.g., 45.23%.
 - b. Percentage discount must be the actual minimum percentage reduction that will be applied to any item ordered from the selected bidder and applied to the current published Novell List Price and may not be contingent on any other factor or condition in any manner.
 - c. Except as instructed on the form, nothing shall be entered on the form that alters or proposes conditions or contingencies on the percentage discount.
7. No taxes, surcharges, or fees of any type, kind, or amount whatsoever may be added to the Discount Price.

ATTACHMENT H –Bid Form

The Authorized Signature block must be signed by an individual who is authorized to bind the Bidder to all statements, including services and discount, contained in the bid.

Table 1: Standard Products & Services

Novell Price List MLA Percent (%) Discount Bid
%

AUTHORIZED SIGNATURE

TITLE

TYPED NAME

FEDERAL EMPLOYER IDENTIFICATION #

NAME OF BIDDER (COMPANY)

ADDRESS

PHONE NO.

FAX NO.

DATE

ATTACHMENT I - MLA Order Form
This document is an e-file entitled
“050R5800203 Attachment I MLA Order Form.pdf”

ATTACHMENT J – Information Technology Non-Visual Access Standards

**This document is an e-file entitled,
“050R5800203 Attachment J – IT Non-visual Access Standards.pdf”**