

ITS *Mississippi Department of Information Technology Services*

RFP No. 3162

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **June 15, 2000 @ 3:00 p.m.** local time for acquisition of the products/services described below for Governor's Task Force for Classroom Technology:

For the acquisition of 6,000 to 12,000 personal computers and related services to support Governor Musgrove's initiative of placing an Internet-accessible computer in every public elementary and secondary classroom in Mississippi by the end of 2002.

Vendor must submit proposals and direct inquiries to:

Cheryl C. Yelverton
Technology Consultant
Information Technology Services
301 N. Lamar Street, Suite 508
Jackson, MS 39201-1495
(601) 359-2401
yelverton@its.state.ms.us

To prevent opening by unauthorized individuals, all copies of your proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO
RFP NO. 3162
due June 15, 2000 @ 3:00 p.m.,
ATTENTION: Cheryl C. Yelverton.

David L. Litchliter
Executive Director, ITS

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SECTION I
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (“**ITS**”), should **contact for questions and/or clarifications**.

Name _____ Phone # _____
Address _____ Fax # _____
_____ E-mail _____

By submitting a proposal **AND** signing in the space indicated below, Vendor certifies that the company represented in the proposal acknowledges and accepts the terms and conditions outlined in this Request for Proposal (“RFP”). Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

_____/_____
Original signature of Officer in Bind of Company/Date

Name (typed or printed) _____
Title _____
Company Name _____

CONFIGURATION SUMMARY

Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

SECTION II PROPOSAL SUBMISSION REQUIREMENTS

Vendors are strongly encouraged to carefully read each and every section of the RFP. Do not assume that because you have responded to previous RFPs issued by **ITS** that no changes have been made. **The Vendor must acknowledge and, where applicable, submit short responses to each of the following statements:**

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in Vendor's proposal that is not presented under the appropriate outline according to these instructions, and in the proper location.
3. Vendor must complete Section I through Section VII and respond to each and every Exhibit as directed.
4. Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened.
5. Proposals or alterations by fax, e-mail or phone will not be accepted.
6. The Vendor is required to submit 10 identical copies of the complete proposal, including all sections and exhibits, in three-ring binders.
7. Original signatures are required on each copy of the Submission Cover Sheet and Configuration Summary as well as on each copy of Section VI: *Contract Addendum*.
8. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
9. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
10. It is highly desirable for the Vendor to obtain an electronic copy of this document and to intersperse responses into each section, as appropriate, in preparing the proposal. The Vendor should use a combination of indents, unique fonts, or other word processing devices to allow the response to be easily distinguished from the original RFP text. To obtain an electronic copy of this document, follow the instructions provided in the RFP advertisement.

Note: Vendor must **not** type in or otherwise alter or rekey this RFP. If it is determined that any part of this RFP has been altered by the Vendor, the State may, in its sole discretion,

disqualify the Vendor from further consideration. The RFP issued by ITS is the official version and will supersede any conflicting RFP language submitted by the Vendor.

In any event, the Vendor must conform to the following standards in the preparation of the Vendor's proposal:

1. Number each page of the proposal.
2. Respond to the sections and exhibits in the same order as this RFP.
3. Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
4. Respond to each point in all sections and exhibits, including the standard contract attached as Exhibit C, with the information requested.
5. Label and respond to each outline point in each section and exhibit as it is labeled in the RFP.
6. The Vendor must respond with "ACKNOWLEDGED", "WILL COMPLY" or "AGREED" to each point in each section within this RFP, including the standard contract attached as Exhibit C, with which the Vendor can comply.
7. If Vendor cannot respond with "ACKNOWLEDGED", "WILL COMPLY", or "AGREED", then Vendor must respond with "EXCEPTION". (See Section IV, item OO., for additional instructions regarding Vendor exceptions)
8. Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE".
9. Where an outline point asks a question or requests information, Vendor must respond with the specific answer or information requested.
10. When an outline point/attachment is a statement provided for Vendor's information only, Vendor need only acknowledge that he has read that point by responding "ACKNOWLEDGED."
11. Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
12. If the Vendor understands, accepts, and will comply with all items in a section, Vendor may respond to that section *in toto* by stating:

(Put the correct, full, legal company name here) understands, accepts, and will comply with all items in this section.

11. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs which are not clearly identified will be borne by the Vendor.** The Vendor must complete Exhibit A: *Cost Information Summary* in this RFP which outlines the minimum requirements for providing cost information. Vendor should supply supporting details as described in Exhibit A: *Cost Information Summary*.
12. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal.
13. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
14. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
 1. A clarification to a proposal which includes a newly-announced product line or service with additional capability to be provided at or less than the proposed price will be considered.
 2. Information provided must be in effect nationally and have been formally and publicly announced through a news medium which Vendor normally uses to convey customer information.
 3. Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 4. Vendor must follow procedures outlined herein for submitting updates and clarifications.
 5. Vendor must submit a statement outlining the circumstances for the clarification.
 6. Vendor must submit 10 copies of the clarification.
 7. Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).

SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information necessary to successfully respond to the RFP. The Vendor must acknowledge and, where applicable, submit short responses to each of the following statements:

15. **Vendor's Responsibility to Examine RFP**
Vendors must examine all documents, forms, specifications, standard provisions and instructions.
16. **Evaluation as Public Record**
Any information in a proposal pertinent to the defined evaluation criteria, may be incorporated by **ITS** staff into a written presentation to the **ITS** Board. Board minutes comprise the record of a public meeting and, as such, become the property of **ITS**, who has the right to reproduce or distribute Board minutes without notification.
17. **Proposal as Property of State**
All written proposal material becomes the property of the State of Mississippi.
18. **Written Addenda to RFP**
Any interpretation of an **ITS** RFP will be made by written addendum only. A copy of any addendum will be posted on the **ITS** internet site. Persons who received the RFP by mail will be mailed or otherwise delivered a copy of any addendum. The State will not be responsible for any other explanation of this RFP.
19. **Oral Communications Not Binding**
Only transactions which are in writing from **ITS** may be considered official. No negotiations, decisions or actions shall be executed by any Vendor as a result of any discussions with any state employee.
20. **Vendor's Responsibility for Delivery**
Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or E-mail.
21. **Evaluation Criteria**
It is the intent of an **ITS** RFP to receive responses in order to award a contract to the lowest and best responsible Vendor who meets specifications, price and other considered factors. More specific information concerning evaluation criteria is presented in Section VII: *Technical Specifications*. Factors other than cost and technical merit that are considered in the evaluation process include, but are not limited to:

1. Vendor's past performance on contracts,
 2. Vendor's ability to provide service, maintenance and training, and
 3. Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification regarding products or services offered in the submitted proposal.
22. **Multiple Awards**
ITS reserves the right to make multiple awards.
23. **Right to Award in Whole or Part**
ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.
24. **Right to Use Proposals in Future Projects**
The State reserves the right to use the awarded Vendor's proposal, including all products and services proposed therein, at a cost equal to or less than that specified in this proposal, for future projects upon the mutual written agreement of the Vendor and **ITS**, if it is deemed to be in the best interest of the State to do so. A decision concerning the utilization of the awarded Vendor's proposal for future projects is solely at the discretion of the State and will be based upon such criteria as: (1) business requirements; (2) elapsed time since the award of the original project; and/or (3) market research on changes in the Vendor and technical environments since the initial award.
25. **Price Changes During Award or Renewal Period**
A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.
26. **References**
Vendor must provide at least 3 references which the State may contact. Required information includes name, address, telephone number and length of time the account has been a reference. Forms for providing reference information are included in Exhibit B: *References* to this RFP.
- References should be able to provide the following information from both management and technical viewpoints:
1. The reference installation must be similar in function and size to the agency/institution for which this RFP is issued.
 2. The reference installation product/service must be configured similarly or identically to this RFP, and
 3. The reference installation must have been operational for at least December 31, 2000.

27. **Subcontractors**

Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and 3 references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included in Exhibit B: *References* to this RFP.

28. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

29. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

30. **Additional Information to be Included**

In addition to answering each specification within this RFP, Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

31. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of this section is to provide Vendors with information necessary to successfully complete a contract or agreement with **ITS**. The Vendor must acknowledge and, where applicable, submit short responses to, each of the following statements.

32. **Minimum Requirements**

The terms and conditions set out in this RFP and in the standard contract attached in Exhibit C are minimum mandatory requirements that will be incorporated into any contract resulting from this RFP.

33. **Consequence of Responding “Acknowledged”**

It should be understood that responding with “ACKNOWLEDGED”, “WILL COMPLY” or “AGREED”, as described in Section II: *Proposal Submission Requirements*, to any item in the RFP, contractually obligates the Vendor to comply with that item.

34. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the standard contract attached as Exhibit C, shall contractually obligate the Vendor to comply with that item.

35. **Acknowledgment Precludes Later Exception**

Vendors who acknowledge any point in this RFP, any section of this RFP in its entirety as described in Section II: *Proposal Submission Requirements*, or the standard contract attached as Exhibit C, may not later take exception to any of these points during contract negotiations.

36. **Contract Documents**

The following documents will normally be included in all contracts between **ITS** and the Vendor:

1. The Exception Summary signed by **ITS** and the Vendor;
2. The Contract Addendum;
3. Contracts which have been signed by the Vendor and **ITS**;
4. **ITS** Request for Proposal, including all addendums;
5. Official written correspondence from **ITS** to the Vendor;
6. Official written correspondence from the Vendor to **ITS** when clarifying the Vendor’s proposal, and
7. Vendor’s proposal response to the **ITS** RFP.

37. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

38. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

39. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software and services (Section 25-53-1, et seq., of the Laws of the State of Mississippi).

40. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

41. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes **before** the Executive Director of **ITS** signs.

42. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring state entity and are contingent upon receipt by winning Vendor of a purchase order from the acquiring state entity.

43. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions which by policy have been delegated to state entities.

44. **Time For Negotiations**

All contractual issues must be successfully negotiated within fifteen (15) working days from notification of award, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of Vendor's response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately, or pursue any other option.

45. **Prime Contractor**

The selected Vendor shall be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal, and for the fulfillment of the contract with the State.

46. **Sole Point of Contact**

ITS will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

47. **ITS Approval of Subcontractor Required**
Unless provided in the contract, no subcontract shall be made by the Vendor with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor because of unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.
48. **Inclusion of Subcontract Agreements**
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
49. **Negotiations with Subcontractor**
In order to protect the State's interest, the State reserves the right to attempt to resolve contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
50. **References to Vendor to Include Subcontractor**
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
51. **Authority to Sell**
Vendor must acknowledge each of the following items, certifying that each is true and correct:
1. Vendor is an authorized dealer in good standing;
 2. Vendor is authorized to sell and able to deliver all items proposed, and
 3. Vendor is able to deliver proposed items and services in the time frame specified.
52. **Certification of No Conflict of Interest**
Vendor must acknowledge this statement, certifying that there exists no possible conflict of interest in the sale of items proposed to the State entity for which this RFP is issued. Mississippi law prohibits direct or indirect conflict of interest of a company or its employees in selling to the State.
53. **Pending Legal Actions**
Vendor must identify any lawsuits or other legal proceedings against Vendor which pertain to any of the software, hardware or other materials and/or services which are part of Vendor's proposal. Vendor must attach a copy of, and specify the current status of, any such proceedings.
54. **Equipment Condition**
Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.
55. **Delivery Intervals**

Vendor's proposal must specify, in Exhibit A: *Cost Information Summary* and in response to any specific instructions in Section VII: *Technical Specifications*, delivery and installation intervals after receipt of order.

56. **Pricing Guarantee**

The Vendor must explicitly state, in Exhibit A: *Cost Information Summary* and in response to any specific instructions in Section VII: *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in **ITS** specifications, pricing must be guaranteed through June 30,2001.

57. **SAAS Information**

Vendor must either furnish the **ITS** assigned Statewide Automated Accounting System (SAAS) Vendor code or a signed copy of the IRS W-9 form with the proposal.

SAAS Vendor Code: _____ OR

Signed W-9 Form Attached: _____

58. **Order and Remit Addresses**

Vendor must specify both an **order** and a **remit** address:

Order Address:

--

Remit Address (if different):

--

59. **Amortization Schedule**

Contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

60. **Vendor Contracts**

The Vendor must submit sample copies of all applicable purchase, lease, lease-purchase, maintenance, software or other contracts. Contracts must be modified to comply with terms outlined in this Section IV of this RFP.

61. **Ownership of Developed Software**

In instances where tailored software is developed for the State, the Vendor must be prepared to offer the State, at no additional cost, an application software license entitling the State to solely own, use, alter or distribute the software without restriction. These requirements apply to source code, object code and documentation.

62. **Ownership of Off-the-Shelf Software**

For specifications requesting software, the Vendor must specify ownership rights of each software package in the proposal.

63. **Year 2000 Compliance**

1. The Vendor represents and warrants that all hardware and software proposed (hereinafter referred to as "Products") are Year 2000 compliant. That is, the Vendor warrants that the Products as delivered to and unmodified by the State, and as used in accordance with their associated documentation, will accurately process date/time data including, but not limited to, calculating, comparing and sequencing from, into and between different centuries and leap year calculations, provided that all third-party products (e.g., hardware, software, firmware) used in combination with the Products also properly exchange data with them. If there is a breach of this warranty by the Vendor, the Vendor shall within thirty (30) calendar days after receipt of notice of the breach, at its expense and option, either repair the Products so as to make them compliant with this warranty or replace the Products with Products which are compliant with this warranty. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this RFP with respect to defects other than Year 2000 performance.

64. **Negotiating with Next Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

65. **Disclosure of Proposal Information**

All disclosures of proposal information will be made in compliance with **ITS** policies and procedures established in accordance with the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code.

66. **Proposal Bond**

The proposal **must** be accompanied by an acceptable security in the amount of \$50,000. The security must be in the form of a bond, irrevocable letter of credit, certified check, or cashiers' check (hereinafter, "security") payable to the Mississippi Department of Information Technology Services, and must be placed in the front of the Vendor's proposal. The submission of an acceptable security is a condition precedent to a valid proposal, and the amount of the security is not negotiable or contestable. **Any proposal received without the security will be rejected and returned to the Vendor without further consideration.**

The security binds the Vendor to the commitments made in writing in the Vendor's proposal. The security will be forfeited in the event the awarded Vendor, at any time during

the contract negotiation process, refuses to honor commitments made in its proposal, reneges on pricing, takes exception to any term or condition that was not addressed in the Vendor's written proposal, or fails to execute a contract as anticipated in the RFP and the Vendor's proposal, including documented exceptions, within fifteen (15) working days after the Vendor has received a letter of intent from **ITS** to award the contract.

As stated in the RFP, the Vendor may take exception to any point without incurring any liability to provide items to which an exception has been taken. Likewise, the State has no obligation to accept any proposed exception. Should the State decide, at its sole discretion and at any point in the process, that an exception is NOT acceptable, the State will reject the Vendor's proposal and return the Vendor's security.

The Vendor's security will be returned promptly after **ITS** and the successful Vendor have executed a contract or within ninety (90) days after opening the proposals if no letter of intent to award a contract has been sent. In the event that the successful Vendor fails to accept and sign the mutually negotiated contract, that Vendor shall be disqualified and **ITS** shall initiate negotiations with the next ranked Vendor until a contract is successfully negotiated or **ITS** elects to cancel the procurement. The securities of all remaining Vendors will be returned when a contract has been successfully negotiated and executed or when the procurement is canceled.

67. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** internet site (Procurement Handbook) or from **ITS** upon request.

68. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within seven (7) calendar days of the mandatory Vendor's conference or the date posted on any written clarifications issued as a result of the mandatory Vendor's conference, whichever is later. The outside of the envelope must be marked "Protest" and must specify the RFP number 3162 .

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the amount of \$5,000,000.00. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond, and shall identify a contact person to be notified in the event the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest

has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the State of Mississippi. Prior to approval of the protest bond, the State reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, or fail to be submitted within the prescribed time limits or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

69. **Risk Factors to Be Assessed**

The State will assess the risk factors that are believed to exist in a given project. The following mechanisms may, at the State's sole discretion, be employed by the State in mitigating these risks: performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

70. **Performance Bond/Irrevocable Bank Letter of Credit**

As a condition precedent to the formation of the customer agreement, the Vendor may be required to procure and submit to **ITS**, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi, or (b) an irrevocable bank letter of credit that is acceptable to **ITS**. The performance bond or the irrevocable letter of credit shall be for the total amount of the contract or an amount mutually agreed upon by **ITS** and the successful Vendor and shall be payable to Mississippi State Department of Education. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the irrevocable letter of credit/performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period and shall not be released until completion of the contract or until the warranty period, if any, has expired, whichever occurs last. Vendor must specify the cost of the performance bond or letter of credit as a separate line item in Exhibit A: *Cost Information Summary*. The final decision on whether to require a Performance Bond/Irrevocable Bank Letter of Credit is at the sole discretion of the State.

71. **Responsibility for Behavior of Vendor Employees/Subcontractors**

Vendor will be responsible for the behavior of all of its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor

acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

72. **Exceptions**

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted as mandatory, as long as the following are true:
 - 1.Proposal still meets the intent of the RFP;
 - 2.The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specifications, and
 - 3.An Exception Summary (see Section V: *Proposal Exception Summary*) is included with Vendor's proposal.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of following actions:
 - 1.Vendor will withdraw the exception and meet the specification in the manner prescribed, or
 - 2.**ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception, or
 - 3.Neither of the above actions is possible and **ITS** withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted. The Proposal Exception Summary, with those exceptions signed and approved by **ITS**, will become a part of the contract.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. Prior to taking any exceptions to this RFP, **ITS** requests that, to the extent possible, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

**SECTION V
 PROPOSAL EXCEPTION SUMMARY**

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	

SECTION VI CONTRACT ADDENDUM

This addendum contains contractual information for all Vendors. Each Vendor must deliver 10 originals (original signatures) with a proposal submission. The contract addendum must be signed by the principal Vendor or general agent. **PLEASE SIGN THIS DOCUMENT. DO NOT SCAN OR REKEY.** The contract addendum shall be incorporated into all contracts arising from this RFP and shall take precedence over all contracts. Any proposal not accompanied by the signed Contract Addendum will be invalid.

Vendors taking exception to any term within this Contract Addendum must indicate each exception in their Section V: *Proposal Exception Summary* in compliance with the instructions in Section IV: *Legal and Contractual Information, Item OO: Exceptions*. Vendor must still sign this Addendum with exceptions duly noted.

If the Vendor includes third-party financing in the proposal submission, or if multiple Vendors submit a joint proposal, the principal or general agent of each company, including the financing company, must sign this addendum.

73. Mandatory Contractual Requirements

1. The following terms supersede any contradictory terms in the contract documents into which this addendum is incorporated.
 - 1.This contract is governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
 - 2.This contract is cancellable at the end of any fiscal period in the event funds are not appropriated by the funding authority. Notice requirements to Vendor cannot exceed sixty (60) days.
 - 3.The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
 - 4.The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with Vendor, Vendor agents or subcontractors or assignees.
 - 5.The Vendor is advised to refer to the Mississippi Code of 1972 (as amended), Sections 27-65-105 and 27-67-7 for statutes exempting state institutions from state sales and use taxes. The Vendor is solely liable for all taxes, including, but not limited to, use, excise, personal property and sales tax.
 - 6.Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall

not disclaim implied warranties of merchantability and implied warranties of fitness for a particular purpose.

7. The Vendor shall have no limitation on liability for claims related to the following items:

- (1) infringement issues;
- (2) bodily injury;
- (3) death;
- (4) physical damage to tangible personal and/or real property;
- (5) failure of the equipment or software to be Year 2000 compliant, and
- (6) the intentional and willful or negligent acts of the Vendor and/or Vendor's employees or subcontractors.

8. The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated.

9. All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.

10. The State shall not pay attorney's fees or costs of court to or for the Vendor.

11. This contract is contingent upon availability of funds and receipt of a valid purchase order from the acquiring agency/institution.

74. Remedies

1. In the event Vendor fails to furnish products/services agreed upon in the final contract documents, **ITS**, at its sole discretion, may:

1. Cancel the contract by giving written notice to Vendor, or

2. Require Vendor to modify the system to accommodate the products services.

2. Either option above (B.1 items i and ii) will be at Vendor's sole expense.

3. Exercise of the modification option shall not be considered a waiver of the State's right to thereafter cancel.

75. Board Approved Contracts

Contracts which are subject to **ITS** Board approval are not final prior to seven (7) calendar days after the award of contract, as stipulated in the **ITS** Protest Procedure and Policy.

Board approved contracts protested in compliance with this Policy are not final prior to resolution of the protest.

76. Incorporation into Contract

This **ITS** Contract Addendum shall be incorporated into all contracts pertaining to or arising from this RFP by reference as if it were fully set out therein, as between the Department of Information Technology Services on behalf of the Governor’s Task Force for Classroom Technology and _____ who was selected as lowest and best Vendor in response to RFP No. 3162, **ITS** file No. 32162.

Vendor: By: _____ Original Signature of Principal or General Agent	Vendor: _____ Original Signature of Principal or General Agent	State of Mississippi: _____
Date:		
(Please legibly print the following:) *** Name:		David L. Litchliter
Title:		Executive Director
Company:		Dept. of Information Technology Services

*** Vendor inserts name of signee, title and name of business in this space

SECTION VII TECHNICAL SPECIFICATIONS

1. GENERAL

The State of Mississippi seeks to acquire 6,000 to 12,000 personal computers and related services to support Governor Musgrove's initiative of placing an Internet-accessible computer in every public elementary and secondary classroom in Mississippi by the end of 2002. The State wishes to, in cooperation with the awarded Vendor(s), purchase additional computers on behalf of individual schools within the state. The number of additional computers is unknown and is dependent upon the available funds of individual schools.

Mississippi has laid a strong foundation for education and desires to continue to take sound and innovative measures to strengthen the schools within our state. Technology and the world wide web offer exceptional educational resources for Mississippi's school children and teachers. The public and private sectors, working together, have the capability to make technology and the world wide web resources available to Mississippi's school children and teachers by placing an Internet-accessible computer in every public elementary and secondary classroom in Mississippi.

2. PROCUREMENT SCHEDULE

The schedule for this project follows. All references to time are Central Standard Time.

Release of the RFP	05/23/2000
Vendor Questions Received by 12:00 Noon	05/31/2000
Formal Answers to Vendor Questions Released by 5:00 PM	06/06/2000
Proposals Received by 3:00 PM	06/15/2000
ITS Board Presentation	07/21/2000
ITS Award Announcement	07/21/2000
Contract Signed	07/28/2000
Project Initiation	08/01/2000

3. COST PROPOSAL AND PAYMENT TERMS

1. The Vendor must include and complete all parts of the cost proposal forms in a clear and accurate manner. **Inadequate details in the required levels of the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal.**

2. The Vendor must submit a complete dollar cost for all Hardware and Services requested in this RFP. The Vendor must also submit cost for each category provided in Exhibit A, providing a total cost per the categories of Hardware, Software, Professional Services, and Other Costs.
2. The Vendor must quote the change order rates for additional installation services performed after initial product installation. All cost factors, including, but not limited to, rate, travel, and per diem must be included in the change order rates. Rates must be provided as indicated in Exhibit A.
3. The Vendor must supply one price per unit. While the State recognizes that inventories of the model and specification required may be limited and the Vendor may offer a model and specification that is equal or better as a substitution, the Vendor should provide one price per unit for all models and specifications offered.
3. Cost information must be provided by the Vendor in a way that shows any discounts for quantity. The State expects the cost per unit to decrease as quantity increases. Please provide pricing in thousand unit increment ranges and show the appropriate discounts corresponding with each quantity. Vendor should provide such cost figures to the largest quantity amount the Vendor is willing and able to provide. Exhibit A, Cost Information Summary provides an example of the desired cost breakdown structure.

4. REQUIREMENTS

1. Statement of Understanding
 1. The State is most interested in quantity discounts to make optimal use of available funds. Therefore a single award may occur, but the State reserves the right to make multiple awards if it is in the best interest of the overall project.
 2. The State encourages Vendors to utilize local resellers with appropriate resources to perform the required installation services.
 3. The State guarantees, with this acquisition, the purchase of a minimum of 6,000 Internet-accessible personal computers to be installed by March 31, 2001. In the event of multiple awards, awards will be made in no less than 1,000 unit increments.
 4. The State will acquire up to an additional 6,000 Internet-accessible personal computers by December 31, 2002.
 5. Additionally, the State will acquire Internet-accessible personal computers on behalf of individual schools possessing available funds. The total number of computers to be acquired is unknown and dependent on the available funds of individual schools.

6. The State reserves the absolute right to re-negotiate with any or all awarded Vendor(s) or produce additional RFP(s) or contract(s) for this acquisition of Internet-accessible computers at the end of each state fiscal year.
 7. The awarded Vendor(s) will deliver and install computers on a quarterly basis. Vendor(s) should be prepared to supply computers at an approximate rate of 2000 personal computers per quarter for the first three quarters of State Fiscal Year 2001.
 8. The awarded Vendor(s) must complete installation of each and every computer within 10 working days of the school's receipt of said computer(s). A "working day" is defined by the school calendar and will be those days when NEED WORDING FROM DEPT. OF EDUCATION.
 9. The State and the awarded Vendor(s) will mutually agree upon an installation schedule for the initial acquisition of 6,000 computers and such schedule will be included as part of the contract negotiations.
 10. The State and the awarded Vendor(s) will mutually agree upon an installation schedule for the acquisition of any additional computers for individual schools possessing available funds on a per school basis.
 11. The State will remit payment for any hardware and services described in the RFP and contract after receipt of invoice and the expiration of a 10 working day approval period. Invoices may be submitted to the State by the Vendor on a monthly basis or as negotiated in the contract.
 12. The State expects the Vendor(s) to pass on any discounts provided them by the manufacturer(s).
 13. The State expects the Vendor(s) to provide upward substitutions for any model, part, and/or specification no longer available.
 14. This acquisition does not include patch cables. Each school will be responsible for providing such cables.
4. Vendor Requirements
1. To be considered responsive to the RFP, the vendor must substantiate to the satisfaction of the State that its company has sufficient resources to complete the project successfully. The vendor must supply staff of sufficient types and numbers as necessary, to accomplish the successful completion of the project.
 2. Vendor must be an authorized dealer in good standing of the products/services included in the proposal. Vendor must provide certification documentation in RFP response.

3. Vendor must provide a tentative installation plan for the initial 6,000 computer acquisition to be installed by March 31, 2001.
4. Vendor must be able to deliver all items proposed in the time frame specified in Vendor's response to this RFP.
5. Vendor must substantiate its financial ability to provide the hardware, warranty, sales support and services demanded in this RFP.
6. Vendor must submit a certified copy of the vendor's financial statement for each of the last three (3) years. A copy of the annual report is also required and must include, at a minimum a balance sheet and an income statement. Vendor must clearly indicate Vendor's legal tax status (e.g., individual, partnership, corporation, sole proprietorship).
7. Vendor must submit information related to its corporation or business background. The Vendor's background section must include the Vendor and any subcontractor, background details regarding the corporation, and details of corporate experience relevant to the proposed contract.

The background details of the Vendor's firm, size and resources must include:

- 1.Date established;
- 2.Company structure and ownership (e.g., public company, partnership, subsidiary, sole proprietorship), including the officers, board members, or primary shareholders and the name and address of its registered agent;
- 3.Number of employees;
- 4.Number of contract workers;
- 5.Standard & Poor credit rating.

C. Hardware Requirements

1. **ITS** Enterprise Systems

It is highly preferable that proposed systems be rated at "**ITS** Enterprise Systems" as defined by Mississippi Department of Information Technology Services (**ITS**). **ITS** Enterprise Systems are systems from manufacturers or dealers of manufacturers with a ¹Gartner Group "Enterprise-" or "Middle-Tier" rating (branded commercial offerings only).

The **ITS** Enterprise List for desktop manufacturers (non-portables) are:

- 1.Acer
- 2.Compaq

¹Gartner Group is an independent provider of research and analysis on the information technology industry. (203) 316-1244

- 3.Dell
- 4.Gateway
- 5.Hewlett-Packard
- 6.IBM
- 7.Micron
- 8.NEC (Packard Bell-NEC) * *Gartner Problem Watch*
- 9.Samsung/AST * *Gartner Problem Watch*

The Gartner “Enterprise-Tier” and “Middle-Tier” rated Non-Portable Enterprise offerings must be branded as commercial. Examples of non-commercial offerings include A-Open, Compaq Presario and Prosignia, Dell Dimension, Gateway 2000 G Series, and IBM Aptiva.

2. Non-**ITS** Enterprise Systems

A vendor proposing other than the manufacturers named in Section C.1 above, must substantiate the quality of the manufacturer’s system by submitting the following information:

1.Provide Financial and Operational Information regarding the manufacturer. Include information substantiating:

1. History of profitability and growth, cash positive;
2. Two years minimum in commercial PC business.

2.Describe the quality assurance and testing performed by the manufacturer for the proposed product(s). Include details as to how the manufacturer provides or exceeds the following:

1. Regulatory approvals (e.g., Federal Communications Commission);
2. Certifications (e.g., Microsoft NT and Windows 95/98, Novell);
3. Dedicated network testing, preferably minimum 25-node on-site or testing by a qualified third party (simulated load testing may suffice);
4. Dedicated component validation and testing;
5. Minimum three-hour standard burn-in;
6. Temperature, humidity and shock/vibration testing;
7. ISO certifications established/pending.

3.Describe the service and support offered by the manufacturer for the proposed product(s):

1. Support/enabement of standards (e.g., Year 2000 compliance);
2. Must demonstrate consistent component supply from leading suppliers;
3. Must be able to ensure modicum of product/model consistency and availability (preferably a minimum of three months);

4. Three-year warranty program with enhancement options;
5. Online support capabilities (i.e., World Wide Web and bulletin board services);
6. Documented problem/resolution escalation process;
7. Options for third-party warranty support, maintenance and on-site service;
8. Dedicated technical support organization/function for commercial customers;
9. Minimum one-year experience in technical support with training in all major client operating systems and hardware technologies.

4. Provide any additional justification or documentation substantiating the quality of any Non-**ITS** Enterprise System.

4. Technical Specifications

Specifications listed below are minimum and may be exceeded

1. Intel Pentium III with 100 MHz front side bus
2. 512k L2 cache or 256k Advanced Transfer Cache
3. Speed: 500MHz
4. Base RAM: 64MB 100MHz SDRAM System must be capable of expanding to 128MB without replacing existing RAM. Total RAM expandability must be 256MB minimum. 133MHz SDRAM acceptable
5. Base Video RAM: 4MB dedicated with minimum 8MB total (dynamic/shared OR AGP dedicated)
6. Hard Drive Size & Controller: 6GB (formatted) ATA 33
7. OS: Windows 98. System must be NT compatible with school responsible for any upgrade cost
8. CRT Monitor: 17" color monitor with .28 mm dot pitch supporting resolutions up to 1024 x 768 in noninterlaced mode. This resolution should be the manufacturer recommended/optimal (flicker-free) resolution, not necessarily the maximum.
9. Network Card (NIC): 10/100 fast ethernet
10. Internal CD- ROM 32x ATAPI
11. Internal 1.44MB 3.5" diskette drive
12. One parallel port, one serial port, and two USB ports
13. Motherboard must have a minimum of 2 ISA/PCI vacant expansion slots after full base configuration.
14. 104-key heavy-duty keyboard
15. 2 button high resolution mouse
16. SoundBlaster compatible 16-bit sound card, speakers and applicable software. Speakers with AC power supply and applicable software must be capable of sufficient power output to broadcast sound throughout a normal size classroom without degradation or damage to the units at optimal volume levels.
17. Components must be FCC Class B certified
18. System or its family must be Novell certified. This requirement is waived for systems classified as a **ITS** Enterprise System.

Vendors must propose systems which are configured with all components provided by the base manufacturer, with the possible exception of monitors, speakers, NICs, which may be supplied by 3rd party when not available by base manufacturers. The only acceptable 3rd party NICs are 3COM, Allied Telesyn, Intel or SMC.

4. Warranty Requirements

1. A 3 year warranty must be provided by the proposing vendor.
2. The 1st year warranty must be on-site and include parts and labor.
3. The 2nd and 3rd year warranty must include parts and labor.
4. Warranty must include system, monitor, and all peripherals, regardless of manufacturer's warranty.
5. The vendor may optionally propose the cost of upgrading the warranty to 4 years, with the 1st on-site including parts and labor and the 2nd through 4th year warranty for parts and labor.
6. The vendor may optionally propose the cost of upgrading the warranty to 5 years, with the 1st on-site including parts and labor and the 2nd through 5th year warranty for parts and labor.

5. Installation Requirements

1. Installation must include uncrating and setting up the base system, including software value-adds.
2. Vendor must ensure that the proposed equipment is fully operational, according to the specifications, and performs properly.
3. Installation does not include network configuration.
4. Delivered FOB destination to school
19. The requested base system with selected options must be fully configured prior to shipment.
20. Operating system media and all support driver media and manuals must be provided.

6. Software Value-Adds

1. Anti-virus software.
2. Multi-function office package such as Microsoft Office or Corel Office Suite.
3. Indicate which browser, if any, is included.

5. PURCHASING OPTIONS

Vendors may optionally provide price and purchasing information for:

1. A lease/purchase;
2. A lease with a three year refresh option.

6. EVALUATION OF PROPOSALS

1. Introduction

It is the intent of the State of Mississippi to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. The purpose of this evaluation will be to select the proposal that ranks the highest overall in terms of combined technical and cost factors.

As such, the evaluation process is structured to ensure that the most effective solution for the State's application needs is selected. The objective is to secure a solution that:

1. Includes the best hardware and services solution according to the requirements set forth in this RFP.
2. Provides skilled and experienced Vendor personnel for all project functions.
3. Has a Vendor corporate strength guarantee sufficient to assure full, effective implementations and ongoing support.
4. Is financially affordable.

The evaluation will be conducted in four stages:

- Stage I Selection of Responsive Proposals
- Stage II Evaluation of Proposals
- Stage III Evaluation of Cost Proposals
- Stage IV Selection of the Successful Vendor

7. Evaluation Committee

A committee composed of State personnel assigned to **ITS** and the Governor's Task Force for Classroom Technology will review and evaluate all proposals. This evaluation will include reference checks. The State is under no obligation to contact Vendors for clarification of issues raised during the review of their proposals, but reserves the right to do so. All proposals must be submitted in complete form. The points following each criterion indicate the weight to be placed on the evaluation factors by the State.

The Evaluation Committee will review all evaluations and Cost Proposals and make recommendations to the Governor's Task Force for Classroom Technology. The final recommendation will be presented by the Office of the Governor to the **ITS** Board for approval.

2. Evaluation Stages, Criteria, and Points

1. State I - Selection of Responsive Proposals

Stage I will then be used to determine whether each proposal meets the specifications of this RFP and is sufficiently responsive to the RFP to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, vendor experience, number of copies, and timely delivery. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may

result in rejection of the proposal. If the State determines that a vendor has only a few minor points requiring clarification, additional information may be requested.

The goal of this acquisition is the acquisition and installation of Internet-accessible personal computers to satisfy requirements defined in this RFP. The vendor must be sure that the treatment given in the firm's proposal to each of these components is sufficiently extensive.

2. Stage II - Evaluation of Proposals

Maximum Base Value — _____ Points

The evaluation of Proposals will involve the scoring of each proposal according to criteria defined by the Evaluation Committee.

The evaluation of Proposals will involve the scoring of each proposal according to criteria defined by the Evaluation Committee.

During the Stage II evaluation, the Evaluation Committee members will individually review each proposal, identify areas that require clarification, and preliminarily score the responses. Subsequent to these individual reviews, the team will meet to identify questions requiring clarifications.

The State will notify vendors in writing of questions or issues requiring clarification. Vendors must respond in writing within ten (10) calendar days.

The evaluation criteria for the technical proposals is as follows:

1. Qualifications of the firm

Maximum value — _____ points

The proposal (and references contacted - see Section II and Exhibit B) indicates that the firm is solvent and has a record of prior successful experience in the successful fulfillment of similar acquisitions, the firm has technical resources, other than the individuals to be assigned to the project, that would be available for the project should the need arise. The Proposal may be deemed non-responsive if the State, after reasonable effort, cannot contact references provided.

2. Understanding of requirements

Maximum value — _____ points

The proposal indicates that the firm has a good understanding of the requirements presented in Section VII. The Vendor has demonstrated that he has sufficient knowledge and resources to accomplish the requirements as defined in this RFP.

Only vendors receiving at least _____ of cumulative Stage II points will move to Stage III.

3. Stage IV - Evaluation of Cost Proposals

Maximum Value - _____ Points

The Evaluation Committee will examine the eligible cost proposals to determine whether they are consistent with their proposal and calculations are correct. At this point the committee may request more information or correction of errors. Any proposal that does not meet these criteria or for which a fixed dollar proposal amount cannot be precisely determined will not be considered a responsive proposal and will be rejected.

Cost will be an important criterion for selecting among Vendors, but will not be the sole determining factor.

Costs will be evaluated according to the following formulas:

- Fixed cost points will be calculated using the following formula:

$$(1-(B-A)/A)*C$$

A - lowest proposed fixed cost within threshold limits

B - proposal's fixed cost

C - fixed cost points (60)

- Change order rate points will be calculated using the following formula:

$$(1-(B-A)/A)*C$$

A - lowest proposed average change order rate

B - proposal's average change order rate

C - change order rate points (5)

- Total cost points = fixed cost points + hourly change order rate points

1. Stage IV - Selection of the Successful Vendor

Only those proposals found to be responsive in Stages I through II will move to Stage IV. The State may submit a list of detailed comments, questions, and concerns to one or more vendors for response.

In Stage IV, the Evaluation Committee will total the scores assigned each Vendor in Stages II and III and make its recommendation to the Governor's Task Force for Classroom Technology. The State may choose to negotiate on one or more products at a time and/or with one or more vendors at a time. The State maintains the right to reject any and all proposals.

Total points will be reviewed and verified. The State will then select the apparent successful vendor(s) whose total points is the highest as determined by the Evaluation Committee. The selection will be presented to the **ITS** Board for approval.

The State will then enter negotiations with the selected vendor(s). Should negotiations not be successful within a reasonable amount of time, the State may discontinue negotiations and begin negotiations with the vendor that provides the next most competitive proposal.

After the negotiation process is complete, an agreement may be signed with the successful vendor(s).

If no signed contract is received from the successful vendor within thirty (30) working days of the successful vendor(s) receipt of the contract, the State, at its option, may make another selection.

If a vendor desires notification of the winning vendor, a stamped, self-addressed envelope must be included for this purpose.

**EXHIBIT A
 COST INFORMATION SUMMARY**

Vendors must propose all applicable project costs in the matrix which follows. The matrix must be supplemented by: cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, deliverable. Any cost not listed in this section may result in vendor providing those products or services at no charge to the State or face disqualification.

HARDWARE COST	HARDWARE MAINTENANCE EXTEND. WARRANTY	SOFTWARE COST	SOFTWARE SUPPORT EXTEND. WARRANTY	PROFESSIONAL SERVICES	ALL OTHER COSTS (Complete all that apply)
Purchase	Amount/Increment	Purchase License	Monthly rate	Fixed Price	Freight
Lease Purchase	OR	Monthly License/Term (36, 48, 60 mos/Perpetual)	Annual rate	Deliverable Price	Installation
Term/Increment (60 mos/5 years)	Year #1	Annual License/# of Years		Hourly rate/# of Hours	Training
Interest Rate	Year #2				Supplies
Rate Factor	Year #3				Conversion
Lease/Rent	Year #4				Travel
Term/Increment	Year #5				Per Diem
Interest Rate					
Rate factor					

EXHIBIT B REFERENCES

Complete 3 Reference Forms.

Contact Name:
Company Name:
Address:
Phone #:
Email:

Description of product/services/project, including start and end dates:

--

Note: The contact person must be someone who was directly involved in the project. The State must be able to contact each reference with reasonable effort. If the contact cannot be reached, the reference will be eliminated from consideration. Referenced projects must be relevant to size, scope, and vendor's proposed hardware and services.

SUBCONTRACTORS

Complete a separate form for each subcontractor proposed.

Contact Name:
Company Name:
Address:
Phone #:
Email:

Scope of services/products to be provided by subcontractor:

Complete 3 Reference Forms for each Subcontractor.

Contact Name:
Company Name:
Address:
Phone #:
Email:
Description of product/services/project, including start and end dates:

**EXHIBIT C
PROJECT NUMBER 32162
PURCHASE AGREEMENT
BETWEEN**

**AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
THE GOVERNOR'S TASK FORCE FOR CLASSROOM TECHNOLOGY**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between Name of Awarded Vendor, a State of Incorporation corporation having its principal place of business at Business Address of Awarded Vendor (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for The Governor's Task Force for Classroom Technology located at the Office of the Governor, P.O. Box 139, Jackson, MS 39205 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

WHEREAS, Purchaser, pursuant to Request for Proposals ("RFP") No.3162, requested proposals for the acquisition of certain equipment and software (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein;

WHEREAS, Seller was the successful proposer in an open, fair and competitive procurement process;

NOW THEREFORE, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 TERM OF AGREEMENT

This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on June 30, 2001, or within such other period as may be agreed to by the parties.

ARTICLE 2 FURNISHING OF EQUIPMENT

2.1 Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing through June 30, 2001. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

2.2 The Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3162 and the Seller's Proposal in response thereto.

ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION AND ACCEPTANCE

3.1 Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

3.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

3.3 Seller shall complete installation of the Products pursuant to the requirements set forth in RFP No. 3162. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

3.4 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, etc. caused by its personnel and operations during the installation, subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

3.5 Seller shall be responsible for installing all equipment, cable and materials in accordance with all State, Federal and industry standards for such items.

3.6 Purchaser shall accept the Products provided by Seller after a 10 day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3162. Purchaser shall notify Seller in writing of its acceptance of the Products.

3.7 In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within 10 working days, correct the defects identified by Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense and to cancel this Agreement.

ARTICLE 4 TITLE TO EQUIPMENT

Title to the equipment provided under this Agreement shall pass to Purchaser upon its acceptance of the equipment.

ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT

5.1 Once the Products have been accepted by Purchaser as prescribed in Article 3 herein, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including

final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

5.2 Acceptance by the Seller of the last payment from the Purchaser shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under this Agreement.

ARTICLE 6 WARRANTIES

6.1 Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

6.2 Seller represents and warrants that Purchaser shall acquire good and clear title to the equipment purchased hereunder, free and clear of all liens and encumbrances.

6.3 Seller represents and warrants that each unit of equipment delivered shall be delivered new and not as "used, substituted, rebuilt, refurbished or reinstalled" equipment.

6.4 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the equipment.

6.5 Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of Warranty Period proposed???? from the date of acceptance of each item of equipment, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller can not repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment.

6.6 Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3162 and Seller's Proposal in response thereto.

6.7 Seller represents and warrants that all software furnished shall be free from material defects for a period of Warranty Period proposed???? after acceptance and will function in accordance with the specifications as stated in RFP No. 3162 and the Seller's Proposal in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for same.

6.8 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

6.9 Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus.

6.10 Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

ARTICLE 7 YEAR 2000 WARRANTIES

7.1 Seller represents and warrants that the Products delivered pursuant to this Agreement are designed to be used during and after the calendar year 2000 A.D., and that they shall operate during each such time period without error relating to date data, (including, but not limited to, calculating, comparing and sequencing) specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century.

7.2 If there is a breach of this warranty by Seller, Seller shall within thirty (30) days after receipt of notice of the breach, at its expense and option, either modify/repair the Products to make them Year 2000 Compliant, including date century recognition, calculations which accommodate same century and multi-century formulas and date values and date data interface values that reflect the century or replace the Products with Products that are compliant with this warranty. As used in this Agreement, "Year 2000 Compliant" shall mean the ability of the system to provide the following functions:

- A.** It will consistently handle date information during and after January 1, 2000, including but not limited to accepting date input, providing date output, and performing calculations on dates or portions of dates;
- B.** It will function accurately in accordance with the specifications and without interruption during and after January 1, 2000, without any change in operations associated with the advent of the new century;
- C.** It will respond to two-digit date input in a way that resolves any ambiguity as to century in a disclosed, defined and predetermined manner, and
- D.** It will store and provide output of date information in ways that are unambiguous as to century.

7.3 Seller further represents and warrants that the Products delivered are and will continue to be Year 2000 Compliant. All date processing by the Products will include Four Digit Year Format and recognize and correctly process dates for Leap Year. Additionally, all date sorting by the Products that includes a "year category" shall be done based on the Four Digit Year Format code.

7.4 The foregoing is in addition to the other representations and warranties set forth in this Agreement.

ARTICLE 8 INFRINGEMENT INDEMNIFICATION

Seller represents and warrants that neither the hardware, replacement parts nor software, their elements or the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the hardware or software provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against Purchaser. If, in any such suit arising from such claim, the continued use of the Products for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such Products, or upon failing to procure such right; (b) modify or replace them with non-infringing Products, or upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

ARTICLE 9 EMPLOYMENT STATUS

9.1 Seller shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

9.2 Seller represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

9.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

9.4 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

ARTICLE 10 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

ARTICLE 11 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 12 ASSIGNMENT AND SUBCONTRACTS

12.1 Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

12.2 Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

12.3 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

12.4 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Seller and the Purchaser, where such dispute affects the subcontract.

ARTICLE 13 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 14 TERMINATION

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

ARTICLE 15 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

ARTICLE 16 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement.

ARTICLE 17 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 18 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Agreement.

ARTICLE 19 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 20 THIRD PARTY ACTION NOTIFICATION

Seller shall give Purchaser prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Seller by any entity that may result in litigation related in any way to this Agreement, and/or which may affect the Seller's performance under this Agreement.

ARTICLE 21 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 22 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their business address listed herein. ITS's address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Purchaser's address for notice is: SPECIFY NAME, TITLE, AGENCY NAME & ADDRESS FOR PURCHASER. The Seller's address for notice is: SPECIFY NAME, TITLE, COMPANY NAME & ADDRESS. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 23 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to any of the Seller's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Seller's office where such records are kept during Seller's normal business hours. All records relating to this Agreement shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 24 INSURANCE

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

ARTICLE 25 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 26 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 27 CONFLICT OF INTEREST

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate this Agreement.

ARTICLE 28 SOVEREIGN IMMUNITY

By entering into this Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 29 CONFIDENTIAL INFORMATION

Seller shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential to the extent that confidential treatment of same is required under federal and/or state law and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Seller following any termination or completion of this Agreement.

ARTICLE 30 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Seller on the basis of draftsmanship or preparation hereof.

ARTICLE 31 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

ARTICLE 32 NON-SOLICITATION OF EMPLOYEES

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Purchaser and the Seller and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 33 ENTIRE AGREEMENT

33.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software. The ITS Contract Addendum, RFP No. 3162 and Seller's Proposal in response to RFP No. 3162 are hereby incorporated into and made a part of this Agreement.

33.2 The Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. The ITS Contract Addendum;
- B. This Agreement signed by both parties, and all attachments;
- C. RFP No. 3162 and written addenda, and
- D. Seller's Proposal, as accepted by Purchaser, in response to RFP No. 3162.

33.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. The ITS Contract Addendum") and the lowest document is listed last ("D. Seller's Proposal").

ARTICLE 34 SURVIVAL

Articles {list the article numbers which pertain to "warranties"; "yr.2000 warranties"; "infringement indemnification"; "governing laws"; "hold harmless"; "record retention"; "sovereign immunity"; "confidential information"; "ownership of documents", and "non-solicitation of employees"} and all

other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement.

ARTICLE 37 LIQUIDATED DAMAGES

It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Purchaser. In the event of a delay as described herein, Seller shall pay Purchaser, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of SPECIFY DOLLAR AMOUNT dollars (\$INSERT #) per day for each calendar day of delay caused by Seller. Purchaser may offset amounts due it as liquidated damages against any monies due Seller under this Agreement. Purchaser will notify Seller in writing of any claim for liquidated damages pursuant hereto on or before the date Purchaser deducts such sums from money payable to Seller. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Purchaser.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of
Information Technology Services, on
behalf of The Governor's Task Force
For Classroom Technology**

Name of Awarded Vendor

**By: _____
Authorized Signature**

**By: _____
Authorized Signature**

Printed Name: David L. Litchliter

Printed Name:

Title: Executive Director

Title:

Date: _____

Date: