

Commonwealth of Virginia



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virginia lottery

Invitation for Sealed Bids

Title: NetScout Mastercare and VAAS Maintenance

Due Date: October 15, 2020

Contact Information:

Kita Ashurst
Strategic Sourcing Specialist
kashurst@valottery.com

Invitation for Bids (IFB) #:PR0005109KA

IFB Issue Date:.....September 28, 2020

Contract Term:1 Year

Bid Due Date and Time:October 15, 2020; 1:00PM EST

Electronic submissions will not be accepted

The Virginia Lottery does not discriminate against faith-based organizations or against a Bidder because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment. The Virginia Lottery encourages firms to provide for the participation of small businesses and businesses owned by minorities and women through partnerships, joint ventures and subcontracting opportunities.

Complete Legal Name of Bidder's Firm: _____

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I. **PURPOSE:**

The purpose of this Invitation for Bid is to solicit firm, fixed price bids from qualified suppliers to provide NetScout Mastercare Support and Visibility as a Service (VaaS) .

II. **BACKGROUND:**

The Virginia Lottery owns several NetScout appliances and requires annual support to maintain these appliances.

III. **PRODUCT AND/OR SERVICE REQUIREMENTS:**

Bidder shall provide annual Mastercare Support and Visibility as a Service (VaaS), monitoring for the following NetScout products. Support shall be provided for the period listed in the start date and end date columns. Please review requirements in table below:

Product Number	Product Description	QTY	Serial Number	Start Date	End Date
MasterCare					
2910/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port Gigabit Config	1	NS4140191169	10/20/2020	10/19/2021
2995/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160384041	10/20/2020	10/19/2021
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-1	10/20/2020	10/19/2021
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXAZI-2	10/20/2020	10/19/2021
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-A3RK1AZI-2	10/20/2020	10/19/2021
3903NAPC3100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-63BKXA2I	10/20/2020	10/19/2021
3903NAPC3100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-A3RKP AZI	10/20/2020	10/19/2021
4595/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160991041	10/20/2020	10/19/2021
I-02695-VSHABSUPP-MSTC	Mastercare Support for InfiniStreamNG Appliance, 4-Port 10G/1G Confi	1	NS6180291005	10/20/2020	10/19/2021
91F50L SUPP-MSTC	Mastercare Support for nGeniusONE - Full (50) - Software - (Linux)	1	4000098485	10/20/2020	10/19/2021
VaaS					
2910/DS-VAAS	InfiniStream Appliance, 4-Port Gigabit Config	1	NS4140191169	10/20/2020	10/19/2021
2995/DS-VAAS	InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160384041	10/20/2020	10/19/2021
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-1	10/20/2020	10/19/2021
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXAZI-2	10/20/2020	10/19/2021
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-A3RK1AZI-2	10/20/2020	10/19/2021
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91F50L-VAAS	nGeniusONE - Full (50) - Software - (Linux)	1	4000098485	10/20/2020	10/19/2021

IV. SPECIAL TERMS AND CONDITIONS:

A. ADVERTISING:

In the event a Contract is awarded for supplies, equipment, or services resulting from this solicitation, Contractor expressly agrees that any reference to any or all goods and services provided under resulting contract shall not be used in any product literature, advertising, media releases, professional journals, social media, or in any other way disclosed to the public in a general or directed manner, whether in response to a request for a reference or in relation to an interview, without the express consent of the Virginia Lottery Director. The Contractor may request permission from the Virginia Lottery Procurement Manager for approval to be used as a professional reference.

B. AUDIT:

The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Lottery, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

C. AWARD:

The Virginia Lottery will make the award on a grand total basis to the lowest responsive and responsible Bidder. The Purchasing Office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Virginia Lottery also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed, in the sole opinion of the Virginia Lottery, to be in its best interest.

D. BID ACCEPTANCE PERIOD:

Any bid in response to this solicitation shall be valid for 180 days. At the end of the 180 days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the program is canceled.

E. CANCELLATION OF CONTRACT:

The Lottery reserves the right to cancel and terminate any resulting

contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

F. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:

The Contractor assures that information and data obtained as to personal facts and circumstances related any resulting contract will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the Lottery's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the Lottery of any breach or suspected breach in the security of such information. Contractors shall allow the Lottery to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

G. CONTINUITY OF SERVICES:

The Contractor recognizes that the services under this contract are vital to the Lottery and must be continued without interruption and that, upon contract expiration, a successor, either the Lottery or another Contractor, may continue them. The Contractor agrees:

1. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
2. To make all Lottery owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
3. That the Lottery Contracting Specialist shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

The Contractor shall, upon written notice from the Contract Specialist, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Specialist's approval.

The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under

this contract. All phase-in/phase-out work fees must be approved by the Contract Specialist in writing prior to commencement of said work.

H. COPYRIGHT LIABILITY

The Contractor shall hold and save harmless the Commonwealth of Virginia and the Virginia Lottery, the Lottery Board and its officers, retailers, and employees, from liability of any nature or kind arising out of a claim or suit for or on account of the use of any copyrighted or uncopyrighted composition, software, trademark, service mark, secure process, patented invention, article, or appliance furnished or used in the performance of any contract resulting from the solicitation. Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental thereto, subject to the right of the Commonwealth of Virginia to provide additional legal counsel at the Commonwealth's own expense.

I. EXTRA CHARGES NOT ALLOWED:

The bid price shall be for complete installation ready for the Lottery's use and shall include all applicable freight and installation charges; extra charges will not be allowed.

J. IDENTIFICATION AND DELIVERY OF BID:

The cover page of this solicitation will indicate whether bids will be accepted as sealed or unsealed. If this solicitation indicates "sealed" bids will be received for this procurement, all bids received must be enclosed in an envelope or package and identified as follows:

Name of Bidder
Due Date and Time
Bidder's complete address
IFB No.
IFB Title

IF BID IS MAILED: Bidder must mail bid to the Virginia Lottery, Attention: Kita Ashurst, 22nd Floor Purchasing Office, 600 East Main Street, Richmond, Virginia 23219.

If a bid is not identified as outlined above the Bidder takes the risk that the bid may be inadvertently opened and the information compromised, which may cause the bid to be disqualified. No other correspondence or other bids should be placed in the envelope.

IF BID IS HAND DELIVERED (INCLUDING COURIER): Bid must be delivered to 600 East Main Street, Richmond, Virginia 23219. Due to increased building security, Bid will not be accepted unless delivered to the Security Guard Station located on the Main Street entrance of the Lottery Headquarters, Main Street Center Building (address above). However, the Security Guard is not responsible for identifying the date and time a bid is received; only a Virginia Lottery employee can make that

determination. The Security Guard will contact an appropriate Lottery employee for bid receipt; this process could take 30 minutes or more – Bidders should not wait to submit bids at the last minute.

Late bids will not be accepted.

Note: The Lottery does not conduct public openings.

K. INDEMNIFICATION:

Contractor agrees to indemnify, defend and hold harmless the Commonwealth, the Lottery, their officers, directors, agents and employees (collectively, “Commonwealth’s Indemnified Parties”) from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “Claim” and collectively, “Claims”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of the Contractor, (ii) any act or omission of any employee, agent, or subcontractor of the Contractor, (iii) breach of any representation, warranty or covenant of the Contractor contained herein, (iv) any defect in the Contractor-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Contractor-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies, the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth.

In the event that a Claim is commenced against any of Commonwealth’s Indemnified Parties alleging that use of the Contractor-provided products or services, including any components thereof, or that the Contractor’s performance or delivery of any product or service under this Contract infringes any third party’s intellectual property rights and the Contractor is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Contractor shall immediately notify the Lottery in writing, via certified mail, specifying to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Commonwealth’s Indemnified Parties and secure a continuance to permit the Lottery to appear and defend their interests in cooperation with the Contractor as is appropriate, including any jurisdictional defenses the Lottery may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Contractor-provided Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or Contractor's performance, and in addition to all other obligations of the Contractor in this Section, the Contractor shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof; or (b) replace or modify such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof, with non-infringing Deliverables, Products, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, satisfactory to the Lottery. And in addition, the Contractor shall provide any the Lottery with a comparable temporary replacement products and/or services or reimburse the Lottery for the reasonable costs incurred by the Lottery in obtaining an alternative product or service, in the event the Lottery cannot use the affected Deliverable, Product, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, or any component thereof. If the Contractor cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then the Contractor shall accept the return of the infringing Deliverables, Products, Software, Services, Solution, Solution Component, Application and Licensed Services, as applicable, or any component thereof, along with any other components rendered unusable by the Lottery as a result of the infringing component, and refund the price paid to the Contractor for such components.

L. LIMITATION OF LIABILITY:

To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

M. PERFORMANCE, CONTRACTOR:

Contractors providing goods and services to the Lottery are required to perform in accordance with the terms and conditions of their contract. When contractual requirements are not met, the following actions may be taken (at the Lottery's option):

1. Contractor Complaint Form:

If a Contractor fails to perform in accordance with the terms and conditions of the contract, the Lottery will prepare a Contractor Complaint Form and forward to the Purchasing Office. This form will be sent to the Contractor for a corrective action plan.

2. Default:

If the Contractor is non-responsive to the complaint form or does not satisfy the corrective action plan submitted in the complaint form or provides an unsatisfactory corrective plan, as determined by the Lottery, the Contractor may, at the Lottery's discretion, be placed in default and notified via Contractor Complaint Form.

3. Ineligible for Award:

Once placed in default, the Contractor will be ineligible to do business with the Lottery for purchases exceeding \$5,000 for a period of **three 3 years**.

4. Re-procurement of Goods and Services:

In addition to a Contractor's ineligibility for award of programs over \$5,000, the Lottery may procure the goods and/or services from other sources and hold the Contractor responsible for the price difference of the original contract amount and the amount of the new contract. The Lottery will follow competitive principles as outlined herein for the re-procurement.

The vendor will remain in default until the re-procurement costs have been paid to the Lottery. The vendor is still subject to the three (3) year ineligibility based on the default regardless as to when the re-procurement cost is paid.

5. Number of Complaints:

a) For Term Contracts: if the Contractor has received three (3) or more complaints within the initial contract period as documented by Contractor Complaint Forms, the Contractor may, at the Lottery's discretion, be ineligible to submit a bid/proposal if the goods/services are re-solicited at expiration of contract. Ineligibility shall apply even though a satisfactory resolution to all complaints occurred.

b) For a Renewal Period: if the Contractor has received three (3) or more complaints within a renewal period as documented by Contractor Complaint Forms, the Contractor may, at the Lottery's discretion, be ineligible to submit a bid/proposal if the goods/services are re-solicited at expiration of contract. Ineligibility shall apply even though a satisfactory resolution to all complaints occurred.

c) For Spot Purchases: if the Contractor has received three (3) or more complaints within a period of one (1) year as

documented by Contractor Complaint Forms, the Contractor may, at the Lottery's discretion, be ineligible to do business with the Lottery for purchases exceeding \$5,000 for a period of one (1) year after the issuance of the third Contractor Complaint Form. Ineligibility shall apply even though a satisfactory resolution to all complaints occurred.

N. PRIME CONTRACTOR RESPONSIBILITIES:

The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

O. RENEGOTIATION OF CONTRACT:

The Lottery reserves the right, at any time during the Contract term or any renewals of the term, to renegotiate with the Contractor a reduction in the compensation paid to the Contractor that is less than the compensation initially agreed to by the Contractor and the Lottery at the time of Contract execution. The Lottery may initiate such negotiations whenever the Lottery determines that it is in the Lottery's best fiscal interests to do so. Notwithstanding any other provision of this Contract to the contrary, the Lottery may terminate this Contract immediately and without penalty if the Lottery is unable to renegotiate the compensation with the Contractor to an amount which the Lottery determines to be appropriate.

P. SMALL BUSINESS, WOMAN-OWNED, AND MINORITY-OWNED (SWAM) BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

It is the goal of the Lottery that 50% of purchases are made from SWAM businesses. This includes discretionary spending in prime contracts and subcontracts. Unless the Bidder is registered as a DMBE-certified SWAM business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such subcontracting opportunities to DMBE-certified SWAM businesses. No Bidder or subcontractor shall be considered a SWAM Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids. If SWAM business subcontractors are used, the prime Contractor agrees to report the use of SWAM business subcontractors by providing the purchasing office at a minimum the following information: name of SWAM business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

Will there be any subcontracting to SWAM Business for the performance of this contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If so, please provide the SWAM Business Name and DMBE certification Number:	Name: DMBE Certification #:

V. GENERAL TERMS AND CONDITIONS:

A. ANTI-DISCRIMINATION:

By submitting their bid, Bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Virginia Lottery.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

The Contractor will include the provisions of 1. above in every

subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. ADDENDA:

Any changes or supplemental instructions to this Invitation for Bid shall be in the form of written addenda. Each Bidder is responsible for determining that all addenda issued have been received and shall acknowledge receipt of all addenda in the space provided within the Pricing Schedule or by returning a copy of each signed addendum. Failure to do so may result in rejection of the bid. All addenda so issued shall become part of the IFB and any resulting contract documents.

C. ANNOUNCEMENT OF AWARD:

Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, Lottery will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov).

D. ANTITRUST:

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

E. APPLICABLE LAWS AND COURTS:

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations including Virginia Lottery Law § 58.1-4000 et seq. and the Virginia Lottery Purchasing Manual.

F. ASSIGNMENT OF CONTRACT:

A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Lottery.

G. AVAILABILITY OF FUNDS:

It is understood and agreed between the parties herein that the Lottery shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

H. BID PRICE CURRENCY:

Unless stated otherwise in the solicitation, Bidders shall state bid/offer prices in US dollars.

I. CHANGES TO THE CONTRACT:

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Lottery may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Lottery a credit for any savings. Said compensation shall be determined by one of the following methods:

By mutual agreement between the parties in writing; or

By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Lottery's right to audit the Contractor's records and/or to determine the correct number of units independently; or

By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Lottery with all vouchers and records of expenses incurred and savings realized. The Lottery shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Lottery within thirty (30) days from the date of receipt of the written order from the Lottery. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Lottery's Purchasing Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Lottery or with the performance of the contract generally.

J. CLARIFICATION OF TERMS:

If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should contact the buyer whose name appears on the face of the solicitation no later than five

working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

K. DEBARMENT STATUS:

By submitting their bid, Bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

L. DEFAULT:

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Lottery, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Lottery may have.

M. DRUG-FREE WORKPLACE:

During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

N. ETHICS IN PUBLIC CONTRACTING:

By submitting their bid, Bidders certify that their bid are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or

greater value was exchanged.

O. IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By entering into a written contract with the Lottery, the Contractor certifies that they so not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

P. INFORMATION SECURITY REVIEW:

Should the Contractor's obligations involve creating, collecting, or storing Lottery information which is deemed sensitive by the Virginia State Lottery Department, said Contractor shall participate in an annual information security review conducted by the Virginia Lottery Information Security Administrator to ensure that information protection policies and practices of the Contractor are sufficient for the Lottery information being created, collected and/or stored.

Q. INSURANCE:

By signing and submitting a bid under this solicitation, the Bidder certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Bidder further certifies that the Contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

Minimum Insurance Coverages and Limits Required for Most Contracts:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.

R. MANDATORY USE OF LOTTERY DOCUMENT:

Failure to submit a bid on this official Invitation for Bids document shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Lottery reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Lottery may, in its sole discretion, request that the Bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

S. NONDISCRIMINATION OF CONTRACTOR:

A Bidder or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Bidder employs ex-offenders unless the Lottery, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

T. PAYMENT:

1. To Prime Contractor:

- a) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the Lottery contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days,

however.

- c) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
- d) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Lottery shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within 30 days of notification. The provisions of this section do not relieve the Lottery of its prompt payment obligations with respect to those charges which are not in dispute.

2. To Subcontractors:

- a) A Contractor awarded a contract under this solicitation is hereby obligated:
 - i. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Lottery for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - ii. To notify the Lottery and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless

otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Lottery, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Lottery.

3. The Lottery encourages contractors and subcontractors to accept electronic and credit card payments.

U. PERSONNEL SECURITY CLEARANCES:

Section 58.1-4008 of the *Code of Virginia* (Virginia Lottery Law) requires that all Board members, officers and employees of any vendor of lottery online or instant ticket goods or services working directly on a contract with the Virginia Lottery for such goods or services shall be subject to a criminal background search to be conducted by the chief security officer of the Virginia Lottery. Additionally, Lottery Regulation 5-20-410 extends this to include any parent or Subsidiary Corporation of the vendor, and any shareholder of 5% or more of the vendor, its parent or Subsidiary Corporation.

No person who has been convicted of a felony, bookmaking or other form of illegal gambling, or of a crime involving moral turpitude, shall be employed on Contracts with vendors described in this section.

No Board member, officer, or employee of a vendor to the Virginia Lottery of online or instant ticket goods or services working directly on a Contract for such goods or services, or any person residing in the same household of such Board member, officer or employee, shall purchase a lottery ticket or share, or receive a prize paid on a ticket purchased by or transferred to such person.

V. PRECEDENCE OF TERMS:

The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

W. QUALIFICATION OF BIDDER:

The Lottery may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the

services/furnish the goods and the Bidder shall furnish to the Lottery all such information and data for this purpose as may be requested. The Lottery reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The Lottery further reserves the right to reject any bid if the evidence submitted by, or investigations of, such Bidder fails to satisfy the Lottery that such Bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

X. TAXES:

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

Y. USE OF BRAND NAMES:

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Lottery to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the Bidder clearly indicates in its bid that the product offered is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.

VI. METHOD OF PAYMENT AND INVOICING:

Invoices shall be rendered directly to:

Virginia Lottery
Attention: Accounts Payable
600 East Main Street
Richmond, VA 23219
vlap@valottery.com

Invoice must contain the following information:

- Virginia Lottery's contract number;
- description of the goods and services;
- date goods and services were provided;

- invoice total;
- Contractor's Federal Identification Number or Federal Employer's Number.

If this information is not contained in the invoice, the invoice may be returned to the Contractor.

VII. DISCOUNT FOR PROMPT PAYMENT:

Discount for prompt payment at: ____%/Net ____ days (see Discount for Prompt Payment requirement herein). This Discount will not be calculated in determining low bid amount(s).

VIII. PRICING:

The Bidder agrees to furnish the goods as specified herein, and in compliance with the terms and conditions of this Invitation for Bids at the following price(s):

Product Number	Product Description	QTY	Serial Number	Start Date	End Date	Extended Price
2910/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port Gigabit Config	1	NS4140191169	10/20/2020	10/19/2021	\$
2995/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160384041	10/20/2020	10/19/2021	\$
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-1	10/20/2020	10/19/2021	\$
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-2	10/20/2020	10/19/2021	\$
3900NBQC9100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-A3RK1AZI-2	10/20/2020	10/19/2021	\$
3903NAPC3100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-63BKXA2I	10/20/2020	10/19/2021	\$
3903NAPC3100 SUPP-MSTC	Mastercare Support for nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-A3RKPAZI	10/20/2020	10/19/2021	\$
4595/DS SUPP-MSTC	Mastercare Support for InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160991041	10/20/2020	10/19/2021	\$
I-02695-VSHABSUPP-MSTC	Mastercare Support for InfiniStreamNG Appliance, 4-Port 10G/1G Confi	1	NS6180291005	10/20/2020	10/19/2021	\$
91F50L SUPP-MSTC	Mastercare Support for nGeniusONE - Full (50) - Software - (Linux)	1	4000098485	10/20/2020	10/19/2021	\$
2910/DS-VAAS	InfiniStream Appliance, 4-Port Gigabit Config	1	NS4140191169	10/20/2020	10/19/2021	\$
2995/DS-VAAS	InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160384041	10/20/2020	10/19/2021	\$
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-1	10/20/2020	10/19/2021	\$
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-63BKXA2I-2	10/20/2020	10/19/2021	\$
3900NBQC9100-VAAS	nGenius 3900 Series P40-Blade - 12 x QSFP+ (4	1	PA4BQH3P-K7NNLXXZ-A3RK1AZI-2	10/20/2020	10/19/2021	\$
3903NAPC3100-VAAS	nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-63BKXA2I	10/20/2020	10/19/2021	\$
3903NAPC3100-VAAS	nGenius 3900 Series Packet Flow Switch - 3903	1	PA4BQH3P-K7NNLXXZ-A3RKPAZI	10/20/2020	10/19/2021	\$

Product Number	Product Description	QTY	Serial Number	Start Date	End Date	Extended Price
4595/DS-VAAS	InfiniStream Appliance, 4-Port 10 Gigabit Con	1	NS4160991041	10/20/2020	10/19/2021	\$
I-02695-VSHAB-VAAS	InfiniStreamNG Appliance, 4-Port 10G/1G Confi	1	NS6180291005	10/20/2020	10/19/2021	\$
91F50L-VAAS	nGeniusONE - Full (50) - Software - (Linux)	1	4000098485	10/20/2020	10/19/2021	\$
Grand Total						\$

IX. **ADDENDA:**

Bidder hereby acknowledges receipt of and incorporation of all requirements of any addenda issued for this Invitation for Bid:

Addendum No. _____ Dated _____
 Addendum No. _____ Dated _____
 Addendum No. _____ Dated _____

X. **SIGNATURE AND BIDDER PROFILE SHEET:**

All bids must be signed below in order to be considered.

All prices shall be F.O.B. to the delivery address(s) as specified herein. Freight, delivery costs, and incidental charges shall be included in the bid price(s).

In compliance with this Invitation for Bid #PR0005109KA and subject to all conditions thereof, the undersigned offers and agrees to furnish any or all items and/or services upon which prices are quoted, at the price quoted as specified.

Complete Legal Name of Firm	
Address	
Remit To Address	
Authorized Signature	Date
Print Name	
Title	FIN #
Email	Telephone
Bidder Profile: Bidder shall indicate whether they are <i>certified</i> with the Virginia Department of Minority Business Enterprises as a (check all that apply)	
<input type="checkbox"/> Small Business <input type="checkbox"/> Minority-Owned Business <input type="checkbox"/> Woman-Owned Business	
Certification Number:	Expiration Date:
Definitions and information on how to become certified may be obtained at www.dmbc.virginia.gov	
Contact person regarding this Bid	
Check here to use above contact <input type="checkbox"/> or provide name below:	
Name:	
Email	Phone

XI. **BIDDERS CHECKLIST:**

The intent of the checklist is to assist the Bidder in providing a responsive bid. It may not include all the requirements necessary to submit a responsive bid. It is the responsibility of the Bidder to read the entire solicitation.

<input type="checkbox"/>	Bidder has clear understanding of goods/services requested
<input type="checkbox"/>	Bidder understands and agrees to all Special and General Terms & Conditions
<input type="checkbox"/>	Any tables/boxes within the Special Terms and Conditions must be completed by the Bidder (Bidder must write in these tables/boxes).
<input type="checkbox"/>	Bidder understands when Bid is due
<input type="checkbox"/>	Bidder understands where to mail or deliver bid
<input type="checkbox"/>	Bidder understands that once a bid is opened it is a binding document
<input type="checkbox"/>	Bidder signed and provided all information requested on IFB Signature Page
<input type="checkbox"/>	Bidder understands that contact with the Contract Specialist is encouraged if any questions arise prior to submitting a bid
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	