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	Buyer Name Kathryn Lyles (FAC-DMPS)		

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Section 10
General Information

10.000 Purpose

The Master Plan for Education Technology for the Commonwealth of Kentucky (on the KDE Web site at www.kde.state.kv.us) was originally adopted by the State Board for Elementary and Secondary Education in May 1992 and is updated every two years. This plan for technology is consistent with the underlying tenets of the Kentucky Education Reform Act. The Master Plan addresses the need to ensure equitable access to education technology by establishing a state standard for the level and type of technology within each school. This means equity in price and support response rates for a school no matter how wealthy/poor, big/small or its location (rural/urban). The price given for a product on this contract to a large/wealthy school or school district shall be the same as the small/poor one. This means once a vendor quotes a price for a product on this contract to a single school or school district that is below the current KETS price, the price will then change statewide for every school, school district and KDE.

Section 20
General Specifications

20.000 Minimum Requirements

The company shall be maintain their status as a Novell Certified MLA Reseller during the term of the contract in order to comply with the requirements of the contract:

20.010 General Procedures For Ordering From The Contacts

Districts must fill out the KETS Master Agreement order forms for the items they want to purchase. They must describe the cost of each unit (A), total number of each unit (B), and total cost (A*B). They must also have their financial and technology coordinators sign this form. The District then sends the KETS purchase order form to the vendor. The vendor shall ask for both forms before completing any order.

Negotiation of Price. Districts can and are encouraged to negotiate a better price with KETS vendors for only the specific items listed on the KETS Master Agreement. However, once a lower price has been negotiated with one district, it becomes the new statewide price for that item for the duration that particular item is on the KETS contract. Typically, vendors have special offers to quickly get rid of inventory that didn't sell well as anticipated or is outdated. If a vendor offers a special price for any time period (e.g. Offer ends 12 August), that price for that item for all districts does not end on 12 August. Instead, it has now become the new price for the duration that the item is on contract. Example: If a large district like Jefferson County negotiates a lower price for a specific

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item from a vendor, it now becomes the new price for every district statewide for that item from that vendor. The Commonwealth shall make other districts aware of any new or special price offerings as they change during this competitive process.

This contract should offer the most current version of software license along with legal "downgrade rights" for the various versions of software that the agencies are using. In addition, prior versions of CD-media and documentation should also be offered through this contract.

Example: If NetWare 6 is the most current version, NetWare 5 products should still be offered through this contract.

Upgrades. We encourage vendors to upgrade their product lines as quickly as possible. If a vendor wants to upgrade to a new product version they must submit a request and pricing to the Division of Material and Procurement Services (DMPS) and to the Office of Education Technology (OET) with the newly proposed version number, specifications, and price.

Vendors shall maintain their own Web site accessible to all districts where they can easily/quickly view the latest software licenses, CD-media and any other items offered through the resulting master agreements along with prices offered on the KETS contract. This information must be easily accessible and easily recognized as "KETS Master Agreement" pricing. Districts should not have to spend an extraneous amount of time on the vendor's website searching for this information.

If the vendor is throwing in free items (freebies), the vendor shall notify DMPS and KDE so we can ensure all other districts get the same freebies. The vendor cannot offer freebies for a certain time only or to only a certain district or school. Once freebies are offered, they become a statewide standard for anyone purchasing that item from the KETS contract until that item is no longer available.

Vendor Responsibilities. The vendor shall name a person that will be the single point of contact (SPOC) for contract issues. The vendor shall insure that this person and all salespersons of their product will be knowledgeable in:

- 1) All the details of the KDE (KETS) Novell MLA contract.
- 2) The Kentucky school, district office and KDE customer base.
- 3) The most current KETS Master Plan on our Web site and year round current events in KETS. Many times the field staff, corporate main office or agent has no idea what requirements were in the original bid.

The SPOC must be aggressive each day in sharing information or presenting a point of view with the selling staff and the manufacturer of the KETS software. To "stay in touch" with the Kentucky customer and the requirements of this contract, this SPOC will be

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required to be present at least once a week at OET in Frankfort or anywhere else in Kentucky where their services are needed by our customers.

Besides keeping each other informed, this face-to-face interaction minimizes the probability of small issues becoming big ones in a short period of time. It is reassuring to see the vendor's representative on a weekly basis. Instead of this being just another contract to your company, we must feel that you are making a commitment to be a contributing and well-informed member of our KETS Project team. If any issues with the contract are at hand for a particular vendor, it is nice to be able to inform this person face-to-face of the problem and know that results are coming soon since they know we will see them again face-to-face the next week.

In a nutshell, having a "local" one-stop shop for all needs fills that void of dealing with large companies whom typically have large corporate offices out of state and cannot provide the personal touch for contract management that is needed with a contract of this size. Having an office in Kentucky also demonstrates partnership with multiple manufacturers and commitment to resources and the needs of Education in Kentucky. We shall have a complaint desk at OET and on our Web site so our customers can quickly document vendors that are failing to meet the requirements of the bid. Vendor's contracts can be suspended or terminated based upon these complaints.

20.020 Deliverables

CD and Evaluation License: Vendors shall provide the KDE CD-media and associated licenses to be evaluated at OET (Office of Education Technology) on every evaluation workstation and server at no charge. All workstation and file server contract holders are required to provide an evaluation unit of every workstation and file server to the OET. The establishment of this contract shall require that a license be made available, at no charge to the KDE, for all Novell products for evaluation purposes. KDE currently has 3 Intel workstation vendors, 1 Apple workstation vendor and 3 file server vendors.

20.030 Universal Service Fund

Vendor, manufacturer or contractor recognizes that all Kentucky schools and the Kentucky Department of Education are participating in the Universal Service Fund Program (E-Rate) and guarantees that any approved discounts for internal connections, to include any product or service procured as a result of this contract, be honored throughout the whole life of this contract award including any and all extensions.

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Section 40
Terms and Conditions

40.000 Scope of Contract

This Master Agreement is for the purchase and delivery of licenses, books, media and Premium Services associated with a Novell MLA for the Kentucky Education Technology System and the Kentucky Department of Education.

40.010 Contract Period

The term of the contract shall be from the date of award through June 30, 2005, with the option to renew for one (1) additional two (2) year period.

The optional renewal of this contract shall be formalized by mutual agreement between the Commonwealth and the vendor. However, the Commonwealth's agreement to extend shall depend on past performance, the reliability of delivered products, the responsiveness of warranty services, and the current contract item pricing. Also important shall be the past demonstrations of willingness of the vendor to amend the contract in response to the continuing industry trend of better technology at lower prices.

40.020 Agencies To Be Served

This contract shall be for use by the Commonwealth of Kentucky for the following:

- **DEPARTMENT OF EDUCATION**
- **LOCAL SCHOOLS AND SCHOOL DISTRICTS**

Delivery of software shall be made only as authorized by receipt of an official purchase order as set forth in the contract provisions.

40.025 Contract Category Discount Percentages

Novell MLA Category	Discount Percentage
Network Operating Systems	40%
Advanced Network Services	40%
Internet/Intranet Security	40%
Internet/Intranet Access	40%
TCP/IP and UNIX Connectivity	40%
Directory Services	40%

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Network Management (NetWare and Windows NT)	40%
Web Application Development	40%
Novell Premium Service	10%
Professional Resource Suite	40%
Novell Product Toolkits	40%
Software Evaluation Library (SEL)	40%
Support Resource Library	40%

40.030 Basis of Price Quotations

Unless otherwise specified, the price discounts established by the contract shall be firm for the contract period. However, it does not preclude the buyer from negotiating a more advantageous price.

PRICE ADJUSTMENTS are subject to the following:

Price Decreases: The contract price shall be reduced to reflect any price decreases afforded other clientele. The contract holder is required to furnish the Division of Material and Procurement Services with notice of any price decreases, as soon as such decreases are available.

Price Increases: No decrease to the discount percentage is allowable on this contract. If undue hardship results, the contract holder must request in writing that the contract be terminated thirty (30) days prior to the effective date. The Division of Material and Procurement Services may honor the request and the contract shall be terminated.

Extended Contract Periods: If contract renewal option is exercised, a price adjustment may be granted at that time in line with the industry.

40.050 Basis Of Shipments

All unit prices be FOB Destination. The vendor shall be fully responsible for all shipments and freight charges involved in delivery to the ordering entity.

40.060 Quantity Basis Of Contract

Any and all quantities mentioned are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

40.070 Reporting Based On Quantity

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The contractor is required to furnish the Commonwealth with quarterly reports of how many units are sold per District. Reports must include product name, unit cost, date of purchase, PO number and District/School name for all units purchased from the KETS contract.

40.080 Delivery Time

The vendor shall maintain or have available an inventory sufficient to make shipment of the complete purchase order within 30 calendar days from the receipt of the purchase order. Those that don't supply 100% of items ordered within 30 calendar days of receipt of purchase order are subject to shipping penalties, contract suspension or termination. The 30 day clock starts on either (1) the day electronic or paper mail receipt of the district's purchase order by the vendor or (2) the date on the district's registered mail return receipt, whichever is sooner. Delivery time(s) in excess of thirty (30) calendar days after receipt of order may result in penalties, suspension or termination of contract.

Penalties. Delivery penalties will be applied at a rate of 5% for each 7-day calendar week **for total value of purchase order** not delivered within 30 calendar days of receipt of purchase order. **The penalty shall apply to the entire value of the purchase order. Partial shipments do not reduce the original value of the purchase order or penalty assessment.**

40.100 Addition Or Deletion Of Items

The Division of Material and Procurement Services reserves the right to add to any contract additional or new items. ONLY THE DIVISION OF MATERIAL AND PROCUREMENT SERVICES MAY ISSUE AUTHORIZATION FOR SUCH ADD-ON. The Division of Material and Procurement Services shall determine if any item usage warrants such an addition to a contract.

Discount Percentage off of MLA Price adjustments. MLA price submissions will occur on or about the 1st of the calendar month. DMPS will apply the vendor's Discount Percentage to the appropriate Product Category on the MLA price sheet received from the manufacturer. The vendor cannot lower their Discount Percentage for any Product Category during the initial term of the contract. For example, if the vendor bid 47% off of MLA for a particular Product Category, they cannot reduce that Discount Percentage to 35% off of MLA during the initial contract term in an attempt to fluctuate the customer cost of the item. If a vendor attempts to fluctuate the price of a particular model by lowering the Discount Percentage toward the end of the calendar month and then raising the Percentage on their next monthly submission, the DMPS and OET will consider the vendor in violation of their contract and the vendor may have their contract suspended and or terminated.

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Should an addition be in agreement with the Division of Material and Procurement Services and the contractor, the Division of Material and Procurement Services shall issue a Modification to the Master Agreement. Until such time as the vendor receives the Modification, the vendor shall not accept any order from any agency for items not on the Master Agreement.

40.110 Items Other Than Contract Items

The vendor may accept orders only for items listed on contract. Any vendor that is found to accept and ship items other than those listed on their contract, against their Master Agreement number, risk cancellation of contract. Such shall not only be grounds for cancellation, but also removal of the vendor from the bid list.

40.120 Post Contract Meetings And Agreements

The contract shall constitute the entire agreement between the state and the vendor. Unless contractually provided, those authorized to use this contract shall not be required to enter into or sign further agreements, company orders or other documents to complete or initiate the terms of a contract. Any such documents so obtained shall be non-binding on the state and be cause for breach of contract.

The vendor shall meet with OET in Frankfort, KY on a quarterly basis. The vendor shall prepare a report on a quarterly basis and deliver it to OET in paper or electronic format as stated earlier. The vendor shall prepare to discuss and present report information as well as any contractual issues, successes, lessons learned, performance measurements, product information, and pricing.

The Commonwealth may periodically request review of invoices of KETS delivered items. When requested a KETS vendor shall provide actual purchase invoices from the manufacturer for items delivered over a specified period of time sold against their contract. The invoices will be used by the Commonwealth in calculating the percent of price over cost being applied to the schools of Kentucky.

40.130 Cancellation Clause

The Commonwealth may cancel the contract by giving written notice, 30 (thirty) days prior to the effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification from the Division of Material and Procurement Services canceling the contract.

40.150 Orders And Payments

All purchase orders to the contractor shall be mailed to the order addresses stated on the Master Agreement, regardless of any differences stated by the sales representative

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or stated on the invoice.

40.160 Invoices

Invoices for items ordered, delivered and accepted by state agencies shall be submitted by the vendor directly to the agency receiving delivery, unless otherwise stated on the contract. All invoices shall show the Master Agreement number. Prices charged cannot exceed the contract price. The Commonwealth of Kentucky is only responsible for payment when the purchaser is a state agency.

40.170 Payment

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

Initial invoice period shall commence upon date accepted by the ordering agency. After items have been received and invoices submitted to the using agency, it shall be the responsibility of the using agency to make payment. Any questions concerning payment should be addressed to the ship-to agency listed on the agency purchase order. Do not submit invoices, past due statements, etc. to the Division of Material and Procurement Services.

40.180 Assignment

The Contractor shall not assign this Contract in whole or in part to another Contractor at any time during the initial or optional renewal terms of the contract. Any purported assignment shall be null and void.

40.190 Subcontracts

The awarded vendor shall make no contract with any other party for furnishing any of the commodities or services contracted herein. Should the Division of Material and Procurement Services be provided evidence of the vendor making such an arrangement, the contract shall be immediately cancelled. This provision will not be taken as requiring the approval of contracts of employment between the bidder and personnel assigned for services hereunder.

40.200 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$250,000. The Contractor shall comply with

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all terms and conditions of the Act. A copy of the EEO forms may be obtained by downloading them from the Division of Material and Procurement Services' web site given above. Direct coordination with the EEO Office is approved to discuss EEO requirements and forms. Their phone number is (502) 564-2874 and fax (502) 564-1055.

40.230 Governing Law

This Solicitation shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Solicitation shall be brought in state or federal court in Franklin County, Kentucky.

ALL PROVISIONS OF THIS SOLICITATION, S-03439551, SHALL BE PART OF ANY RESULTING CONTRACT