Science Applications International Corporation ("SAIC")

Request for Quotation

Purchase of Server Hardware

RFQ # SAIC CoM 2012 – KCB R15152

Issue Date: September 7, 2012

Response Date: September 18, 2012

City of Memphis Purchase of Server Hardware

RFQ # SAIC CoM 2012 – KCB R15152

Response Accepted At: ATTN: SAIC Procurement

c/o City of Memphis, ITS

5125 Elmore Road, Ste. 6

Memphis, TN 38134

E-Mail Inquiries and Responses Accepted At: City_of_Memphis_Bids@saic.com

INTRODUCTION

SAIC invites vendors to submit quotes for purchase of Server Hardware for the City of Memphis, in accordance with the Scope of Work set forth in Attachment 1.

Definitions used in this RFQ:

> "Bidder" or "Bidders" refers to an individual entity or person, or the group of organizations or persons, responding to this RFQ.
>
> "City" means the City of Memphis, TN
>
> "Proposal" is Bidder's response to this RFQ.
>
> "RFQ" means Request for Quotation.
>
> "SAIC" means Science Applications International Corporation.

1) STATEMENT OF WORK; COMPLETENESS

Although SAIC has made every reasonable effort, there is no representation made regarding the completeness of the requirements. The City has selected specific hardware components that are compatible with the devices already in the environment. The Bidder is expected to review the requirements and price the specific hardware stated. Any required services, products, or equipment not specified in the Bidder's submittal, but required to complete the Statement of Work, are Bidder's responsibility, and should be specified by Bidder.

2) SCHEDULE OF ACTIVITIES

RFQ Timeline

The estimated timeline for this RFQ is set forth below. SAIC reserves the right to modify or update this schedule at any point in time. SAIC asks that Bidder make personnel available to participate in the evaluation processes, and any contract negotiations who have authority to bind Bidder.

SAIC may conduct interviews with finalists. However, SAIC is not obligated to interview finalists.

In no event shall the deadline for submission of the proposal be changed except by written modification by SAIC, which will be published in the same manner as this RFQ. Late submissions will not be considered.

Activity	
Distribution of RFQ	September 7, 2012
Deadline for Questions	September 11, 2012
Answered Questions Posted	September 13, 2012
Submittal Due (Mandatory) by 2:00 CT	September 18, 2012

RESPONSES TO THIS RFQ MUST BE RECEIVED BY SAIC NO LATER THAN 2:00 PM CENTRAL TIME ON THE DATE IDENTIFIED AS "SUBMITTAL DUE (MANDATORY)" IDENTIFIED ABOVE. Bidders are encouraged to plan on early submittal, to ensure compliance. Bidders who do not meet the deadline will be

disqualified. Proposals submitted after the deadline or which state that information will be provided 'at a later date', or which are otherwise incomplete or fail to comply with the requirements set forth in this RFQ will be disqualified from participation. Proposals may not be amended after the submission deadline.

Question Submission

Bidder may submit questions based on its review of this RFQ, by sending them via email by **September 11*, 2012 by 5:00 pm CT***. Questions received after that time and date will not be answered. The email should be sent to the individual(s) described below as "Principal Contact," with the subject heading: "***[Your company's name]*** **–SAIC RFQ # SAIC CoM 2012 – KCB R15152 RFQ Questions**." SAIC will post the responses to the questions on the City's web site **September 13, 2012 by 5:00 pm CT, in the same manner as this RFQ was posted**. To ensure the fair and consistent distribution of information, no individual answers will be given. The only official answer or position of SAIC will be the one posted via the City's website.

Principal Contact

Karin Bergener, Subcontracts Manager, SAIC, is the single point of contact (the "Principal Contact") for **all matters relating to this RFQ. Bidder should direct all inquiries to the Principal Contact at: City_of_Memphis_Bids@saic.com**

Bidders should not, under any circumstances, contact any City or other SAIC personnel (including senior SAIC or City management or SAIC or City employees with whom Bidder has an existing business or personal relationship) to discuss this RFQ without the Principal Contact's prior, written consent. Utmost discretion is expected of Bidder and all other RFQ recipients. Any recipient attempting to circumvent this process may be disqualified.

Response Format

PROPOSAL SUBMISSION AND DUE DATE

Bidders may submit Proposals in soft form or printed copy. All submissions must be made on or before **2:00 PM CENTRAL TIME ON THE DATE IDENTIFIED AS "SUBMITTAL DUE (MANDATORY)" ABOVE.**

Soft copies should be submitted by email to **City_of_Memphis_Bids@saic.com**,

or one (1) printed copy to the address below.

SAIC
Attn: Karin Bergener, Subcontracts Manager
c/o City of Memphis
5125 Elmore Road, Suite 6
Memphis, TN, 38134

The label on printed submissions, or Subject line on Proposals submitted electronically, should identify the contents as: Response to **SAIC RFQ # SAIC CoM 2012 - KCB R15152.** If Bidders submit their proposals in soft form, they should send the emails with return receipt, to ensure they have proof of delivery to SAIC.

Notwithstanding any legends on the proposal or any other statements to the contrary, all materials submitted in connection with Bidder's response to this RFQ will become the property of SAIC and may be returned only at SAIC 's option.

All documents should be presented in a native Microsoft office format (e.g., word, excel, PowerPoint, project) or PDF. Pricing must be provided in an excel document. The folders and files should be organized and formatted to ensure on-line viewing and printing in a form consistent with Bidder's printed copy of its proposal. Each document and fie name should clearly show the name of Bidder.

3) RESPONSE CONTENT

It is the responsibility of the Bidder submitting the bid to be completely familiar with the specifications. Glossy formats or promotional materials are discouraged. The information contained in the Proposal should provide facts suited to allow SAIC to make an informed choice among Bidders.

Content – The Proposal should include the following sections:

a) **Cover Letter** – Including: The Bidder Name, RFQ Title, and Date of Submission

This section shall be no longer than four (4) pages, including name and address of the entity or person submitting the proposal and the name, address and telephone number of the person(s) authorized to represent the entity or person. If the proposal is being submitted by or on behalf of more than one entity, all entities represented must be clearly identified.

Bidder must provide a brief company description, history and financial status. In addition, Bidder should submit the following information:

i) Name. The name under which the Bidder is licensed to do business.

ii) Address. The address of the Bidder's headquarters office.

iii) Local Address. The address of the Bidder's local office responsible for the proposed work, if different from the headquarters office.

iv) Local Officers. Names, titles and telephone numbers of local officers or representatives of the Bidder.

v) Years of Local Service Experience. The number of years the Bidder has actively participated in work in Shelby County and its neighboring counties similar to that described in this RFQ.

vi) Size of Staff. The number of Bidder's employees: internationally, nationally and locally. Information must include the total number of employees in Shelby County and its neighboring counties; in particular, the number of technical and support staff presently supporting similar service, their qualifications and length of service.

vii) Record with the City. Description of current and past Bidder experience in delivering similar goods or services to the City.

viii) Warranties. Description of warranties available from or through the Bidder, including manufacturer's warranties on components.

ix) Current Contract Obligations. Existing Bidder contractual commitments of similar scope and priority and their estimated impact on the Bidder's ability to service this contract, if awarded.

x) Provide Manufacturers reseller certificate showing that you are authorized to resell the requested products. .

xi) Other. Other general information, as determined by the Bidder to be of importance in evaluating the Bidder.

b) **Pricing**

Bidder shall provide pricing in the form of a firm, fixed price, completing the Pricing Table in Attachment 1. Bidders are strongly encouraged to submit their pricing in this format, in an excel spreadsheet, with the Proposal. Failure to provide pricing in this format will disqualify Bidders.

c) References

Names, address and telephone numbers of at least three (3) customers, preferably city, county, or state entities, for which the Bidder provides the same or substantially similar services as those requested under this RFQ, within the last twelve (12) months and which SAIC may contact. References may be contacted to describe their experience with the Bidder, including the quality of the Bidder's technical support and maintenance. Particular attention will be paid to the number of Shelby and neighboring county customers and the quality of service rendered to those customers.

Bidder shall provide project descriptions and verifiable references for at least three (3) of Bidder's customers that, to the extent possible, are local (or state) governments, have similar geographic footprints and, including contact information for the references.

d) **EBO Forms**

Bidder shall complete the applicable EBO forms, attached.

e) **Compliance response**

Bidder shall provide a compliance response to the Insurance requirements as specified in this RFQ. Bidders should also provide a copy of their current certificate of insurance. SAIC recognizes that Bidders may be required to obtain insurance in addition to that they currently carry if they are awarded work under this RFQ.

f) **Additional information**

Bidders should provide any additional information that is specific to the RFQ and that the Bidder considers pertinent.

g) **Objections**

Bidders must raise any objections to any requirement of this RFQ. Any objections not raised in Bidder's response will be deemed waived.

h) **Annual Report**.

The Bidder's most recent annual report or current audited financials must be provided. The financial stability of the Bidder and the Bidder's length of time in business will be

closely evaluated. The annual report or audited financials may be provided as an appendix to the Bidder's response.

4) Price

Bidder must provide a firm, fixed price for all of the services. No additional expenses or other costs will be allowed, in excess of the amounts quoted. SAIC's goal is to provide the best service possible with the best and lowest price.

5) Living Wage Requirements

In accordance with Ordinance No. 5185, Amendment No. 5257, commonly referenced as the Living Wage Ordinance, any contractor or subcontractor holding a service agreement with the City of Memphis must pay a living wage to each of its employees in the amount of $10.27 per hour with health benefits for employees and their dependents or $12.32 per hour without health benefits. Proof of such compensation must be evidenced by payroll reports in accordance with the Living Wage Ordinance, attached hereto and incorporated by reference as Attachment 3.

6) GENERAL INFORMATION

a) Protests

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address: City of Memphis Purchasing Agent: 125 North Main, Room 354, Memphis, Tennessee 38103.

b) Right to Reject

SAIC reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFQ, the process used for evaluation, and the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider. SAIC reserves the right to waive any informality in submittals and to negotiate changes in the scope of services to be provided.

c) RFQ Terms

The terms of this RFQ are attached as Exhibit A, and apply except as explicitly altered by Sections 1 through 8 of this RFQ.

d) No Representations Or Warranties

SAIC makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFQ or otherwise provided by SAIC through the RFQ process. Bidder is responsible for making its own evaluation of information and data contained in this RFQ or otherwise provided by SAIC, and for preparing and submitting responses to the RFQ.

e) Proposal Preparation Costs

Bidder will be responsible for all costs it incurs in connection with this RFQ process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

f) Ownership And Intellectual Property

SAIC will own all of the intellectual property contained within Bidder's solution, but solely for the use of the City.

g) Ambiguity, Conflict, Or Other Errors In The RFQ

SAIC has attempted to validate the information provided in this RFQ, but it is possible that Bidder may detect what it believes is an ambiguity, conflict, discrepancy, omission, error or inconsistency ("Error"). If a Bidder believes it has identified an Error should use the information provided on an "as-is" basis for its Proposal and secondarily identify them in its questions or in an appendix to its Proposal. Bidder is also requested to immediately notify, in writing by e-mail, SAIC of such error, requesting modification or clarification of the document. The Bidder shall include the RFQ number, page number and the applicable paragraph title. SAIC will post any revisions to the RFQ on the City's website (www.memphistn.gov) where this RFQ was posted. Information regarding the City and the project or initiative described in this RFQ may be revised or updated, and republished for inclusion in a final response.

h) Acceptance or Rejection of Proposals & Failed Competition.

SAIC reserves the right to accept or reject, in whole or in part, any or all proposals submitted. SAIC shall reject the proposal of any Bidder that is determined to be non-responsive. Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area be received in response to the RFQ. A competition is considered failed if only one responsive proposal is received. If a competition has been declared failed, SAIC then has the option to reopen the procurement or enter into a non-competitive procurement.

i) Withdrawing Or Amending A Proposal

At any time prior to the scheduled deadline for receipt of proposals, the Bidder may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted to the individual and address to whom/which the proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

j) Informalities/Minor Irregularities

SAIC reserves the right to waive minor irregularities or informalities in a Bidder's proposal when SAIC determines that it will be in SAIC's best interest to do so. Any such waiver shall not modify any remaining RFQ specifications or excuse the Bidder from full compliance with the RFQ specifications and other contract requirements if the Bidder is awarded the contract.

k) Vendor Indebted To The City

No contract will be knowingly awarded to any organization which, is in arrears to the City of Memphis with regard to any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous

contract with the City of Memphis.

l) City Tax Exempt

The City of Memphis is exempt from federal excise, state and local taxes on all purchases. SAIC will provide tax exemption certificates, upon request, for each order actually placed.

7) PARTICULAR REQUIREMENTS

Bidders' attention is drawn to the following requirements included in Attachment 4, Memphis 9-932-001 Purchase Order (Rev. City of Memphis 01-01-2012) and conditions applying to them. Bidders must provide any comments or objections to Attachment 4 in their responses, by the date identified as Submittal Due (Mandatory) or they will be deemed to have agreed to all provisions of Attachment 4.

a) Indemnity, Insurance Provisions

Bidder will be required to enter into a contract with SAIC and must be able to meet the following insurance requirement:

b) Indemnification:

Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, liabilities, damages, losses, causes of action, lawsuits, costs and expenses, including reasonable attorneys' fees and litigation costs incurred in connection therewith and regardless of legal theory (hereinafter referred to as "claims"), occasioned wholly or in part by any act or omission of Seller or any of its subcontractors or suppliers at any tier, or their employees, agents or representatives, arising out of or relating to this Order. Notwithstanding the foregoing, Seller's obligations under this Section shall not apply to any claims which are finally determined by a court of competent jurisdiction to be occasioned solely by the negligence or willful misconduct of Buyer.

c) Insurance:

In accordance with subparts (i) and/or (ii) below, upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage's are in force and providing not less than thirty (30) days notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

(i) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

Workers Compensation: in accordance with the statutory requirements and limits of the State of Tennessee Employer's Liability $100,000 Each Accident $500,000 Disease – Policy Limit $100,000 Disease – Each Employee. , including a waiver of subrogation obtained from the carrier in favor of Buyer;

Commercial General Liability: Comprehensive General Liability Insurance, covering Bodily Injury and Property Damage on an "occurrence" basis. . The coverage shall be provided on ISO occurrence Form CG 00 01 07 98 (or substitute form for providing equivalent or greater

coverage) and include Premises and Operations, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage, including Premises/Completed Operations, and Personal Injury liability, with employee and contractual exclusions deleted. General Aggregate $1,000,000 Products – Completed Operations $1,000,000 Personal & Advertising $1,000,000 Each Occurrence $1,000,000 (Bodily Injury & Property Damage) Fire Damage (any one fire) $50,000 Medical Expense (any one Person) $5,000 ; Buyer, its officers and employees shall be included as Additional Insured's and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;

Automobile Liability: in an amount no less than $1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insured's on the policy;

Professional Liability: if seller is performing any professional services, coverage for damages (including financial loss) caused by any acts, errors and omissions arising out of Seller's performance of professional services with limits of not less than $1,000,000 per claim and $2,000,000 in the aggregate. All-Risk Property Insurance in an amount adequate to replace property, including goods covered by this Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or goods furnished by Buyer.

(i) To the extent that Seller is providing products under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on its own equipment and shall require all subcontractors to do likewise.

Commercial General Liability as described above in Section 7 (c) (i);

Products Liability in an amount no less than $1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products is not excluded in (i), this requirement does not apply;

All-Risk Property Insurance (as described above in Section 7 (c) (i) in an amount adequate to replace property of Buyer and/or Buyer's customer, including goods covered by this Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or goods furnished by Buyer.

d) **Proof of Coverage**. Bidder shall ensure that proof of such insurance satisfactory to SAIC is delivered to the following on or before the effective date of this Agreement:

ATTN: SAIC Procurement
c/o City of Memphis, ITS
5125 Elmore Road, Ste. 6
Memphis, TN 38134

City of Memphis Risk Management Office
2714 Union Extended, Suite 200
Memphis, TN 38112

Such evidence shall specifically identify this Agreement and shall contain express conditions that SAIC is to be given written notice at least thirty (30) days in advance of any material change or termination of any program of insurance. Work shall not commence until proper proof is received.

e) **Primary Coverage/SAIC and City as Additional Insured.** Such Bidder insurance shall be primary to and not contributing with any other insurance maintained by SAIC, and shall name both the City and SAIC as additional insured on the Commercial General Liability, Business Automobile Liability, and Excess Umbrella Liability policies, and as loss payees on the Property and Commercial Crime Insurance policies.

f) **Eligible Providers:** All such insurance shall be issued by a company that is licensed to do business in the State in which the work is being performed and that has a rating equal to or exceeding A- from A.M. Best.

g) **Right to Modify:** SAIC shall have the right to include additional requirements or modify the current requirements at any time during the term of the subcontract agreement as it becomes necessary.

h) **Failure to Procure Insurance:** Failure on the part of Bidder to procure or maintain the required insurance shall constitute a material breach and default of this Agreement upon which SAIC may terminate or suspend this Agreement. If coverage is canceled, terminates, or lapses and is not replaced with similar coverage, SAIC has the right to go out and purchase insurance. The Bidder will be responsible for all costs and deductibles associated with the purchased insurance.

i) **Claims Procedure:** The Bidder agrees to notify SAIC immediately of any claim that may involve SAIC or the City of Memphis. Notification should be sent to the SAIC address set forth above.

8) EBO Requirements

In Vendor's Proposal, Bidder shall provide a complete participation plan or well documented good faith efforts. See the following pages for descriptions and forms.

Equal Business Opportunity Program

This contract will be subject to the requirements of the City of Memphis Ordinance #5384 which establishes the Equal Business Opportunity ("EBO") Program. It is up to the Respondent to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City's website at www.memphistn.gov under "Doing Business". The intent of the EBO Program is to increase the participation of locally owned minority and women owned business enterprises ("M/WBE") in the City's purchasing activities. Toward achieving this objective, the M/WBE participation goal for this solicitation is **35**%. The percentage of M/WBE participation is defined by the dollar value of subcontracts awarded to certified minority and/or women business enterprises divided by the total proposed base amount.

Participation Plan

The Participation Plan must include: (1) level and dollar amount of participation your firm anticipates to achieve in the performance of contract resulting from this RFQ; (2) the type of work to be performed by the M/WBE participation; and (3) the names of the M/WBEs the Vendor plans to utilize in the performance of the contract resulting from this RFQ.

Good Faith Efforts Documentation

If a Vendor proposes an M/WBE percentage less than the established goal, the Vendor must, at the time of the response, submit a Good Faith Efforts statement accompanied by the appropriate documentation justifying its submitted M/WBE percentage. The ability of the Vendor to perform the work with its own work force will not in itself excuse the Vendor from making good faith efforts to meet participation goals. The determination of whether a Vendor has made a good faith effort will be made by the City's Contract Compliance Officer, Director of Finance and the Purchasing Agent, prior to the award of the project.

Eligible M/WBE Firms

To qualify as an M/WBE firm, per the requirements of City of Memphis Ordinance #5384, a firm must be included on the City's list of certified M/WBE firms (see Exhibit 5: **EBO IT List**). One or a combination of several M/WBEs may be utilized to meet the established goal of **35%**. A list of the City's eligible MWBE firms is included in the specifications.

Requests for verification must be submitted to the City's Contract Compliance Office listed below:

City of Memphis

Contract Compliance Officer

125 North Main Street, Suite 546

Memphis, TN 38103

Phone: (901) 576-6210

Fax: (901) 576-6560

Email: Mary.Bright@memphistn.gov

CITY OF MEMPHIS

EQUAL BUSINESS OPPORTUNITY PROGRAM COMPLIANCE FORM

PROJECT TITLE: Purchase of Server Hardware

Project M/WBE GOAL: 35 %

The following sections must be completed by Vendor. A certified subcontractor or supplier is defined as a firm from the list of certified firms provided with this specification.

_____

Bidder's Name

Section A - If the Vendor is a certified firm, so indicate here with a check mark.

_____ MBE _____ WBE

Section B - Identify below those certified firms that will be employed as subcontractors or suppliers on this project. By submitting this bid, the Vendor commits to the use of the firms listed below.

$ = Show the dollar value of the subcontract to be awarded to this firm

% = Show the percentage this subcontract is of your base bid

M/WBE = Show by inserting an M or W whether the subcontractor is an MBE or WBE

$ / %	M/WBE	SERVICE	CERTIFIED SUBCONTR. NAME, ADDRESS, TEL. #

Total	$	%
MBE		
WBE		

THIS FORM and SUPPORTING DOCUMENTATION MUST BE SUBMITTED WITH THE BID OR THE BID WILL BE CONSIDERED NON-CONFORMING.

CITY OF MEMPHIS
GOOD FAITH EFFORT DOCUMENTATION FORM

To The Honorable Mayor City of Memphis, Tennessee
From:

VENDOR NAME _____

PROJECT TITLE: **Purchase of Server Hardware**

Enclosed please find the required documents:

Said Bidder ____did / or ____ did not attend the project pre-bid meeting.

***Copies of all written notification to City of Memphis M/WBE listed firms. (Please attach list of all firms notified, detail how they were notified and when).**

Said Bidder _____did / or ____ did not select economically feasible portions of the work to be performed by M/WBE firms.

***List all M/WBE firms with which negotiations took place. (Attach list. If no negotiations were held, please state so.) Provide names, addresses, and dates of negotiations.**

***Statement of efforts to assist M/WBE firms, with bonding, insurance, financing, or with document review. (Attach list. If no assistance was provided, please state so.)**

The Bidder____ did / or ____ did not use all M/WBE quotations received. If the Bidder did not use all M/WBE quotations received, list on attached sheets, as required as to the reasons those quotes were not used.

***List (on attached sheets as required) all M/WBE firms contacted that the Vendor considered not to be qualified, and a statement of the reasons for the Vendor's conclusions. If no firms were found to be non-qualified, please state so.**

THIS SIGNED FORM AND REQUESTED DOCUMENTATION (noted by an asterisk '*') MUST BE SUBMITTED WITH THE BID IF THE BIDDER DOES NOT MEET THE REQUIRED M/WBE PROJECT GOAL. IF REQUESTED DOCUMENTATION IS NOT SUBMITTED THE BID WILL BE CONSIDERED NON-CONFORMING.

_____
Contractor's Name

_____ _____
Signature Printed or Typed Name and Title

Exhibit A

REQUEST FOR QUOTATION/PROPOSAL (RFQ/P) General Provisions

WE WOULD LIKE TO TAKE THIS OPPORTUNITY TO REMIND SUPPLIERS OF OUR COMMITMENT TO CONDUCT BUSINESS WITH UNCOMPROMISING INTEGRITY. THIS COMMITMENT IS CLEARLY ESTABLISHED IN SAIC'S CODE OF CONDUCT SAIC.COM SAIC EXPECTS SUPPLIERS TO CONDUCT THEMSELVES IN A MANNER CONSISTENT WITH THE PRINCIPLES OF OUR CODE OF CONDUCT. IN ADDITION, WE STRONGLY ENCOURAGE OUR SUPPLIERS TO HAVE PROACTIVE AND MEANINGFUL ETHICS PROGRAMS ESTABLISHED WITHIN THEIR ORGANIZATIONS. WE WANT OUR SUPPLIERS TO UNDERSTAND, FOSTER, AND MIRROR THE ETHICAL CONDUCT WE EXPECT FROM OUR EMPLOYEES IN ALL BUSINESS TRANSACTIONS. IF YOU BELIEVE THAT SAIC OR ANY OF ITS EMPLOYEES OR AGENTS HAS ACTED IMPROPERLY OR UNETHICALLY, PLEASE REPORT SUCH BEHAVIOR TO THE SAIC ETHICS HOTLINE (800) 435-4234.

1: PREPARATION OF OFFERS

(a) All information shall be in ink or electronically prepared. Mistakes may be crossed out and corrections inserted before submission of your offer. The person signing the offer shall initial corrections in ink.

(b) An authorized officer of the offeror shall sign all offers.

(c) All offers shall include the RFQ/P number shown.

2: LATE OFFERS

Formal offers, amendments, or requests for withdrawal of offers received after the date specified for submittal may not be considered.

3: ALTERNATE PROPOSALS

In addition to the offer solicited herein, the offeror is invited to submit an alternate proposal, which may be advantageous to Science Applications International Corporation (“SAIC” or “Buyer”).

4: COMPLETENESS

All information required by RFQ/P must be supplied to constitute a responsive bid. Non-responsive offers may not be considered.

5: BRAND NAMES

(a) Brand names and part numbers, when used, are for reference to indicate the performance or quality desired.

(b) Equal items will be considered provided that the offeror describes the article. Offers for equal items shall state the brand name and part number, or level of quality. The determination of the Buyer as to what items are equal shall be final and conclusive.

(c) When brand name, part number, or level of quality is not stated by the offeror, it is understood the offer is exactly as specified.

6: COUNTERFEIT PRODUCTS

For purposes of this clause, Goods are any tangible items, including without limitation the lowest level of separately identifiable items, such as parts, articles, components, and assemblies. "Counterfeit Goods" are Goods that are or contain items misrepresented as having been designed, produced, and/or sold by an authorized manufacturer and seller, including without limitation unauthorized copies, replicas, or substitutes. The term also includes authorized Goods that have reached a design life limit or have been damaged beyond possible repair, but are altered and misrepresented as acceptable.

Offeror agrees and shall ensure that Counterfeit Goods are not delivered to SAIC. Goods delivered to SAIC or incorporated into other Goods and delivered to SAIC shall be new and shall be procured directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. If requested by SAIC, Bidder shall provide OCM/OEM documentation that authenticates products. Offeror shall report suspected or confirmed counterfeit items into the Government-Industry Data Exchange Program (GIDEP).

7: NET PRICES

Offered prices, unless otherwise specified, must be net, including transportation and handling charges, which shall be set forth as a separate line item on quotation/proposal. Transportation charges must be fully prepaid by offeror to destination, and subject only to cash discount for prompt payment of invoices.

(a) Prices should be quoted as “Unit” prices; do not quote “Lot” prices.

(b) Provide pricing schedule based on specified price breaks, if any.

(c) If applicable, furnish published price list with offer.

8: EVALUATION

Buyer reserves the right: (1) to award on the basis of individual items, or groups of items, or on the entire list of items; (2) to reject any or all offers, or any part thereof; (3) to waive any informality in the offers; and (4) to accept the offer that is in the best interest of SAIC. The Buyer's decision shall be final.

9: NO BID

In the event an offer cannot be submitted for the specified requirements as set forth in the RFQ/P, please provide an explanation as to why you are unable to bid on these requirements.

10: TAXES

Buyer may be exempt from the payment of any federal excise or any state sales tax. The price offered must be net, exclusive of taxes. However, when under established trade practice, any federal excise tax is included in the list price; offeror may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by Buyer.

11: AWARD

The order will be awarded to the lowest responsible and responsive offeror complying with all the provisions of the RFQ/P, provided the offered price is reasonable and is in the best interest of Buyer. The Buyer reserves the right to reject the offer of an offeror who has previously failed to perform properly or complete on time, contacts of similar nature, or the offer of an offeror who, under investigation shows is not in position to perform the order.

12: ACCEPTANCE

A written award mailed (or otherwise furnished) to the successful offeror shall be deemed to result in a binding contract without further action by either party.

13: SERVICE LIFE

When applicable, all offerors will state their company policy regarding the return of defective and unserviceable items or products as well as the minimum service life of the offered item or product.

14: DELIVERY

When applicable, all shipments are to be made F.O.B. to a specific destination as specified, or prepaid. Collect shipments can be accepted only with proper advance notification, and only with specific approval from the Buyer. If required delivery date is not specified in the RFQ/P, the offeror shall advise the best possible delivery as days ARO.

15: PACKING SLIPS OR DELIVERY TICKETS

When applicable, all shipments or deliveries shall be accompanied by Packing Slips or Delivery Tickets in duplicate and shall contain the following information for each item delivered:

- Purchase Order Number
- Item Number
- Description or Part Number
- Quantity Ordered
- Quantity Shipped
- Name of the Supplier

The above requirement is extremely important when accepting shipments. Offerors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

16: LIABILITY

The Offeror shall hold Buyer, its officers, agents, servants, and employees, harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted compositions; secret process, patented or unpatented invention; articles or appliances furnished or used under this bid, and agrees to defend, at Offeror's expense, any and all actions brought against Buyer, or itself because of the unauthorized use of such articles.

17: GENERAL

Any Purchase Order or Subcontract issued as a result of this Request for Quote/Proposal is subject to Buyer's Terms and Conditions regardless of offeror's terms and conditions submitted with the proposal. Specific exceptions are to be noted as part of offeror's proposal and if incorporated into Buyer's Purchase Order or Subcontract will become binding on the parties.

18: TERMS and CONDITIONS

This prospective order is subject to the following attachments as checked:

COMMERCIAL

- ☐ SAIC Commercial Purchase Order Standard Terms and Conditions Fixed Price – Goods
- ☐ SAIC Commercial Purchase Order Standard Terms and Conditions Fixed Price – Services
- ☐ SAIC Subcontract Terms and Conditions (Firm-Fixed Price)
- ☐ SAIC Subcontract Terms and Conditions (Time & Materials/Labor Hour)
- x Other: 9-932-001 Standard Terms and Conditions (Rev. City of Memphis 01/01/12)

GOVERNMENT

- ☐ SAIC Purchase Order Standard Terms and Conditions
- ☐ SAIC Terms and Conditions for Commercial Items (Government)
- ☐ SAIC Schedule A Subcontract Specific Terms and Conditions
- ☐ SAIC Schedule B Part I U.S. Government Terms and Conditions
- ☐ SAIC Schedule B Part II (Agency)
- ☐ SAIC Schedule B Part III (FAR Part 12 Subcontracts)
- ☐ Solicitation/prime special terms and conditions

If a U.S. Government Contract is indicated, you are required to follow the provisions of DPAS 15 CFR 700 and all other applicable regulations and orders of the U.S. Department of Commerce in obtaining products, materials and services needed to fill this order. This order is certified for national defense under DPAS, if a rating is shown.

U.S. Government Solicitation/Contract:

No.

DPAS Rating:

19: GRATUITIES

By acknowledgment of response to this RFQ/P, the offeror hereby certifies that no gratuities were offered by the offeror or solicited by any SAIC employee either directly or indirectly. Any situation where a gratuity is solicited should be reported immediately to the SAIC Chief Procurement Officer at 703-676-6180.

20: BID SECURITY

The following bid security (if any) is applicable as outlined below:

21: VALIDITY PERIOD

The Offeror's offer shall remain valid for a period of calendar days from the Buyer's due date (or other period of time as mutually agreed upon in writing by the parties).

Attachment 1

RFQ # SAIC CoM 2012 – KCB R15152

Purchase of Server Hardware

Scope of Work Requirements

The Bidder shall supply pricing for the following (additional detail is provided in the following sections). The City does not guarantee that all items listed will be purchased.

Vendor shall supply the following in accordance with the defined requirements/specifications.

1. ESXi Host – Dell PowerEdge R720 Server, in accordance with the following requirements/specifications:
- 3.5" chassis with up to 4 hard drives/software RAID
- 2 Intel Xeon E5-2643 4 Core 3.30GHz CPUS
- 128 GB RAM (8x16GB 1333MHz RDIMMs)
- S110 RAID Controller
- 2x100GB SSD SATA 2.5in Hot-plug Hard Drives
- Broadcom 5720 QP 1Gb Network Daughter Card
- Brocade 825 Dual Port 8GB HBA
- Dual Hot Plug Redundant Power Supply 750W
- 2x6.5 feet C13 to C14 PDU style power cord
- Performance BIOS setting
- ReadyRails Sliding Rails w/o Cable Management Arm
- DVD ROM, SATA, Internal
- 3Yr Basic Hardware Warranty Repair: 5x10 HW-Only, 5x10 NBD Onsite

2. ESXi Host – Dell PowerEdge R720 Server, in accordance with the following requirements/specifications:
- 3.5” chassis with up to 4 hard drives/software RAID
- 2 Intel Xeon E5-2643 4 Core 3.30GHz CPUs
- 160 GB RAM (10x16GB 1600MHz RDIMMs)
- RAID 1 for S220 Software RAID Controller
- 2x500GB 7.2k RPM SATA 3.5in Hot-plug Hard Drives
- Broadcom 5720 QP 1Gb Network Daughter Card
- Brocade 825 Dual Port 8GB HBA
- Dual Hot Plug Redundant Power Supply 750W
- 2x6.5 feet C13 to C14 PDU style power cord
- Performance BIOS setting
- ReadyRails Sliding Rails w/o Cable Management Arm
- DVD ROM, SATA, Internal
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

3. Oracle RAC Nodes – Dell PowerEdge R720 Server, in accordance with the following

requirements/specifications:

- 35" chassis with up to 4 hard drives/software RAID
- 2 Intel Xeon E5-2643 4 Core 3.30GHz CPUs
- 128 GB RAM (8x16GB 1600MHz RDIMMs)
- RAID 5 for S110 Software RAID Controller
- 3x500GB 7.2k RPM SATA 3.5in Hot-plug Hard Drives
- Broadcom 5720 QP 1Gb Network Daughter Card
- Brocade 825 Dual Port 8GB HBA
- Dual Hot Plug Redundant Power Supply 750W
- 2x6.5 feet C13 to C14 PDU style power cord
- Performance BIOS setting
- ReadyRails Sliding Rails w/o Cable Management Arm
- DVD ROM, SATA, Internal
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

4. EPM Found Svcs Server – Dell PowerEdge R720, in accordance with the following requirements/specifications:

- 3.5" chassis with up to 4 hard drives/software RAID
- 2 Intel Xeon E5-2643 4 Core 3.30GHz CPUS
- 32 GB RAM (8x4GB 1333MHz RDIMMs)
- S110 RAID Controller
- 2x500GB 7.2k RPM SATA 3.5in Hot-plug Hard Drives
- Broadcom 5720 QP 1Gb Network Daughter Card
- Dual Hot Plug Redundant Power Supply 495W
- 2x6.5 feet C13 to C14 PDU style power cord
- Performance BIOS setting
- ReadyRails Sliding Rails w/o Cable Management Arm
- DVD ROM, SATA, Internal
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

5. EPM ESSBASE/Planning/HFM Server – Dell PowerEdge R720, in accordance with the following requirements/specifications:

- 3.5" chassis with up to 4 hard drives/software RAID
- 2 Intel Xeon E5-2643 4 Core 3.30GHz CPUS
- 16 GB RAM (4x4GB 1333MHz RDIMMs)
- S110 RAID Controller
- 2x500GB 7.2k RPM SATA 3.5in Hot-plug Hard Drives
- Broadcom 5720 QP 1Gb Network Daughter Card
- Dual Hot Plug Redundant Power Supply 495W
- 2x6.5 feet C13 to C14 PDU style power cord
- Performance BIOS setting
- ReadyRails Sliding Rails w/o Cable Management Arm
- DVD ROM, SATA, Internal
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

6. Storage Array – Dell PowerVault MD3600f, in accordance with the following

requirements/specifications:

- 4X SFP, Fibre Channel 8, 8 GB
- 12x600GB SAS 3.5in Hard Drives
- Replication License
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

7. Storage Expansion Array – Dell PowerVault MD1200, in accordance with the following requirements/specifications:

- 12x600GB SAS 3.5in Hard Drives
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

8. Fibre Channel Switch – Brocade 300, in accordance with the following requirements/specifications:

- 16 ports activated
- 16x8Gb SFPs
- Manufacturer's minimum three (3) year extended warranty

9. Load Balancer – Kemp LM-3600, in accordance with the following requirements/specifications:

- 8 Gigabit Ports
- 3.4Gbps L4 Load Balancing
- Layer 7 Content Switching
- SSL Acceleration is ASIC to 5000 TPS
- IP and Layer 7 Persistence
- High Availability Configuration
- 3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Warranty

10. Red Hat Enterprise Linux License for two (2) Sockets with Support
11. Red Hat Enterprise Linux License for four (4) Sockets with Support
12. Microsoft Windows Server 2008 R2 Standard Edition x64
13. VMware vSphere 5 Enterprise for one (1) Processor with 64GB vRAM entitlement per processor.

OTHER REQUIREMENTS FOR ORDER

- All shipping/handling/unloading costs will be covered by the Vendor.
- Vendor shall include the specific warranty requested for each device listed
- Vendor must be an authorized reseller of the requested equipment and must provide a copy of applicable manufacturer's resell certificate.

Purchase of Server Hardware

Pricing Table

Pricing for this RFQ is to be Firm, Fixed Unit Pricing to include all requirements as specified above

ITEM	DESCRIPTION	QTY	EA $	EXTENDED $
01	ESXi Host – Dell PowerEdge R720 Server	2		
02	ESXi Host – Dell PowerEdge R720 Server	6		
03	Oracle RAC Nodes – Dell PowerEdge R720 Server	4		
04	EPM Found Svcs Server – Dell PowerEdge R720	2		
05	EPM ESSBASE/Planning/HFM Servers – Dell PowerEdge R720	6		
06	Storage Array – Dell PowerVault MD3600f	2		
07	Storage Expansion Array – Dell PowerVault MD1200	2		
08	Fibre Channel Switches – Brocade 300	2		
09	Load Balancer – Kemp LM-3600	4		
10	Red Hat Enterprise Linux License for 2 Sockets (with Self Support)	3		
11	Red Hat Enterprise Linux License for 2 Sockets (with Standard Support)	2		
12	Red Hat Enterprise Linux License for 2 Sockets (with Premium Support)	2		
13	Red Hat Enterprise Linux License for four (4) Sockets (with Standard Support)	10		
14	Red Hat Enterprise Linux License for four (4) Sockets (with Premium Support)	10		
15	Microsoft Windows Server 2008 R2 Standard Edition x64	14		
16	VMware vSphere 5 Enterprise for one (1) Processor with 64GB vRAM entitlement per processor	18		
			TOTAL $	

Attachment 2

RFQ # SAIC CoM 2012 – KCB R15152

EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM

This Contract will be subject to the requirements of the City of Memphis Ordinance #5384 which establishes the Equal Business Opportunity ("EBO") Program. It is up to the Bidder to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City's website at www.memphistn.gov under "Doing Business". The intent of the EBO Program is to increase the participation of locally owned minority and women owned business enterprises ("M/WBE") in the City's purchasing activities. Toward achieving this objective, the M/WBE participation goal for this solicitation is **35%.** The percentage of M/WBE participation is defined as the dollar value of subcontracts awarded to certified minority and/or women business enterprises divided by the total proposed base bid amount.

Participation Plan

The Participation Plan must include: (1) level and dollar amount of participation your firm anticipates to achieve in the performance of contract resulting from this RFQ; (2) the type of work to be performed by the M/WBE participation; and (3) the names of the M/WBEs the Bidder plans to utilize in the performance of the contract resulting from this RFQ.

Eligible M/WBE Firms

To qualify as an M/WBE firm, per the requirements of City of Memphis Ordinance #5384, a firm must be included on the City's list of certified M/WBE firms. One or a combination of several M/WBEs may be utilized to meet the established goal of **35%** A list of the City's eligible MWBE firms is included in the specifications.

Requests for verification must be submitted to the City's Contract Compliance Office listed below:

Mary Bright

City of Memphis

Contract Compliance Office

125 North Main Street, Suite 546

Memphis, TN 38103

Phone: (901) 576-6210

Fax: (901) 576-6560

Email: mary.bright@memphistn.gov

Good Faith Efforts Documentation

If a Bidder proposes an M/WBE percentage less than the established goal, the Bidder must, at the time of the response, submit a Good Faith Efforts statement accompanied by the appropriate documentation justifying its submitted M/WBE percentage. The ability of the Bidder to perform the work with its own work force will not in itself excuse the Bidder from making good faith efforts to meet participation goals. The determination of whether a Bidder has made a good faith effort will be made by the City's Contract Compliance Officer, Director of Finance and the Purchasing Agent, prior to the award of the project.

LIVING WAGE ORDINANCE

RFQ # SAIC CoM 2012 – KCB R15152

Purchase of Server Hardware

See Next Page

ORDINANCE NO: 5257

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE XI, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ADD AN ANNUAL ADJUSTMENT TO THE LIVING WAGE

WHEREAS, the Memphis City Council along with the Administration recognizes that the living wage should be adjusted annually in accordance with the Poverty Level Index.

NOW, THERFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Article XI, Code of Ordinances, City of Memphis be amended as follows:

Sec. 2-416. Annual adjustment of living wage.

(a) The living wage rate shall be modified July 1, 2008 to incorporate the update, if any, made to the federal poverty level income for a household size of four (4) by the Secretary of the Department of Health and Human Services.

(b) The living wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.

(c) In the case of contract renewals, the living wage rate applicable as of the date of the renewal shall be the effective living wage rate.

(d) The Director of the Division of Finance shall report to the Memphis City Council no later than the first meeting in April 2009 the impact, if any, to the City's FY 2009 O&M budget.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller and become effective as otherwise provided by law.

BILL MORRISON

JANIS FULLILOVE
MYRON LOWERY
Council Members

SCOTT MCCORMICK
Chairman of the Council

Attest:

Patrice Thomas, Comptroller.

THE FOREGOING ORDINANCE
5257 PASSED
1st Reading 3-18-08
2nd Reading 4-1-08
3rd Reading 4-15-08

Approved Scott M. Cole
Chairman of Council

Date Signed: 05-06-2008

Approved:
Mayor, City of Memphis

Date Signed: 5/14/08

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Snipes
Comptroller

Sample A

ORDINANCE NO: 5185

AN ORDINANCE TO AMEND CHAPTER 2, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ESTABLISH A LIVING WAGE

WHEREAS, under the leadership of Councilman Joe Brown the Living Wage issue was introduced to the Memphis City Council and as it is important to the health and welfare of all residents of the City of Memphis that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

WHEREAS, the purpose of this ordinance is to ensure that businesses receiving service contracts from the City pay a living wage.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Code of Ordinances, City of Memphis, be amended so as to create the following:

Chapter 2
Administration

Art. XI Living Wage **2-407 --- 2-425**

ARTICLE XI – Living Wage

Section 2-407. Definitions:

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

City - means the City of Memphis, including those city departments which exercise independent control over their expenditure of funds.

Contractor - means any person that enters into a service contract with the city.

Employee - means any person who is employed full-time, part-time or on a temporary basis as a service employee of a contractor or subcontractor on a city service contract.

Employer - means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501 (C)(3) of the Internal Revenue Code of 1954, 226 U.S.C. 501 (C)(3) shall be exempted as to all employees other than child care workers.

Person – means any individual, business entity, corporation, partnership or joint venture.

Service Contract - means a contract awarded to a contractor by the city primarily for the furnishing of services to or for the city (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of government.

21

Subcontractor – means any person not an employee that enters into a contract (and that employs employees for such purpose) with a contractor to assist the contractor in performing service contracts.

Section 2-408. Payment of minimum compensation to employees.

All employees employed and work performed as part of a service contract with the city shall receive an hourly wage no less than that set under the authority of this article. The minimum hourly wage shall be as defined by the University of Memphis Fogleman College of Business for the Memphis area, which today is at least $10 per hour with health benefits for employees and their dependents or $12 per hour without health benefits.

Section 2-409. Monitoring and Enforcement.

a. The comptroller shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The Mayor or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the Mayor and the City Council summarizing and assessing the implementation of and compliance with this new law during the preceding year.

Section 2-410. Required records – payroll reports.

(a) Contractor to submit.

The service contractor shall submit 2 complete copies of the payroll reports and the payrolls of each subcontractor, consecutively numbered, not later than 14 days from the end of their respective payroll periods, 1 copy to be sent to the contracting agency, the other to the Comptroller where the same will be available for public inspection during regular business hours.

(b) Contents.

The payrolls shall contain:

(1) the name of the prime service contractor and any subcontractor, if any:

(2) a designation of the project and location;

(3) the name, Social Security Number, and occupation of each employee;

(4) the classification in accordance with the classification fixed in the contract;

(5) the number of hours worked daily by the service worker at straight time and overtime and the hourly wage rate for each;

(6) the gross wages paid to the service worker per pay period; and

(7) such other data as may be required by the Comptroller from time to time.

(c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

(d) Signed statement of compliance.

Each copy of the payroll shall be accompanied by a statement signed by the contractor or the subcontractor, as the case may be, indicating:

(1) that the payroll is correct;

(2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract;

(3) that the classification set forth for each service worker conforms with the work that the service worker performed; and

(4) that the service contractor has complied with the provisions of this article.

Section 2-411. Article applicable to new service contracts.

The provisions of this article shall apply to:

(1) A service contract consummated after the effective date of this article.

(2) A service contract amendment consummated after the effective date of this article.

Section 2-412. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this law, or who seeks or communicates information regarding rights conferred by this law in circumstances where he or she in good faith believes this law applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities . Any covered employee subjected to any action that violates the subsection may pursue administrative remedies or bring a civil action in a court or competent jurisdiction.

Section 2-413. Penalties.

(a) Debarment for 2 years.

In the event the Comptroller determines, with approval from the full Council, that any service contractor has failed to pay the living wage rate or has otherwise violated the provisions of this article and that such failure was intentional, no contract shall be awarded to such service contractor, or to any person in which such service contractor has an interest until 2 years have elapsed from the date of such determination.

Section 2-414. Collective Bargaining.

Parties subject to this article may, by collective bargaining agreement, provide that such agreements shall supersede the requirements of this article.

Section 2-415. Exemptions.

The following are not covered employees for purposes of this article:

(1) A person who provides solely volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; and

(2) A person employed in construction work that is subject to the provisions pursuant to the Prevailing Wage ordinance; and

(3) Any and all Employees in the Hospitality industry, including, but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.

Sections 2-416 – 2-425. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller, and become effective as otherwise provided by law.

TAJUAN STOUT MITCHELL
Chairman of the Council

Attest:
Patrice Thomas, Comptroller.

THE FOREGOING ORDINANCE
5185 **PASSED**
1st Reading 10-03-2006
2nd Reading 11-01-2006
3rd Reading 11-21-2006
Approved Tajuan S. Mitchell
Chairman of Council
Date Signed: 12-5-06
Approved:
Mayor, City of Memphis
Date Signed: 12-11-06

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Comptroller

$^{C}_{R}4^{C}_{R}$

Attachment 4

RFQ # SAIC CoM 2012 – KCB R15152

Purchase of Server Hardware

SAIC terms and conditions

PURCHASE ORDER

Standard Terms and Conditions (Rev. City of Memphis 01/01/12)

This is a Purchase Order between Science Applications International Corporation, hereafter referred to as "Buyer," and Seller identified on the face of this Purchase Order, hereafter referred to as "Seller." This purchase order is referred to as "Order."

SECTION 1: ACCEPTANCE and MODIFICATION of TERMS

Acceptance of this Order by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

SECTION 2: GENERAL RELATIONSHIP

The Seller is not an employee of SAIC for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

The Seller shall be solely responsible for the withholding and remittance or payment of any tax or similar levy imposed under the federal revenue statutes and social insurance legislation and the laws of any state or political subdivision with respect to wages or income paid to or on behalf of the Seller or Seller's employees, unemployment, disability insurance and other payroll taxes with respect to Seller or Seller's employees, including contributions from them when and as required by law. Neither Seller nor its employees shall be deemed eligible to participate in any of the benefit plans or programs that SAIC maintains for its employees

SECTION 3: SUBCONTRACTS and ASSIGNMENTS

This Subcontract and task orders may not be assigned, novated or otherwise transferred by operation of law or otherwise by either party without the other parties' prior written consent, which consent shall not be unreasonably withheld, provided, however, that SAIC may deny consent where it is in SAIC's best interest to do so. Notwithstanding the foregoing, Seller hereby consents to SAIC's assignment of this Agreement and any task orders hereunder to the City of Memphis, or any third party that succeeds SAIC in providing services to the City of Memphis.

Additionally, Seller agrees to obtain SAIC's approval before subcontracting this Subcontract or any order or any portion thereof; this limitation shall also apply to the purchase of standard commercial goods or raw materials.

SECTION 4: RESPONSIBILITY for PROPERTY

In the case of any tools, dies, jigs, fixtures, patterns, equipment, facilities or other property (hereafter "property") of Buyer and/or Buyer's customer, which may be in the possession, or control of Seller in

connection with this Order, Seller shall use such property only in performance of and as specifically authorized by this Order. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller. Such property shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be the responsibility of Seller. Seller shall indemnify, defend and hold harmless Buyer from any loss or damage to such property, which is caused by, or results from any act or omission on the part of Seller or its agents, employees or subcontractors. If Seller acquires or manufactures any property in connection with this Order and charges Buyer therefore, Buyer may, at its option upon completion or termination of this Order, elect to take title to such property and, upon receiving notice of such election; Seller shall deliver such property to Buyer.

SECTION 5: RESPONSIBILITY for GOODS; Risk of Loss

Seller shall bear the risk of loss of, or damage to, the goods covered by this Order, until delivered to the delivery location designated on the face of this Order and accepted by Buyer, including any defective, non-conforming or rejected goods.

SECTION 6: INTERCHANGEABILITY

All items furnished pursuant to this Order under the part number specified shall be fully interchangeable with and equal in function and quality to items heretofore furnished under the same part number.

SECTION 7: PACKAGING AND SHIPPING

Any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of Buyer, and in all cases, to comply with carrier's regulations. All charges for packing, crating and transportation are included in the price for the goods set forth herein and will be paid by Seller. A Packing List shall accompany each box or package shipment showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count, weight or other measure of Buyer shall be final and conclusive. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

SECTION 8: CHANGES AND SUSPENSION

Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to this Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

SECTION 9: NOTICE of DELAYS

Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to the Buyer.

SECTION 10: COMPLIANCE with LAWS

Seller shall comply with the applicable provisions of any federal, state or local law or ordinance and all orders, rules and regulations issued there under.

SECTION 11: DELIVERY

Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's plant or other specified location (FOB Destination), unless otherwise specifically noted herein. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted.

SECTION 12: INSPECTION

All goods supplied and services performed shall be subject to inspection and test by Buyer, its agents and its customers at all reasonable times and places, whether during or after manufacture as to goods, or performance as to services, and notwithstanding the terms of delivery or payment or, as to goods, that title has not yet passed to Buyer or its customers. In the event goods or services are not in accordance with the specifications and instructions of Buyer, Buyer may require prompt correction, repair, replacement or re-performance thereof at Buyer’s option and Seller's sole expense. If Seller is unable to accomplish the foregoing, then Buyer may procure such goods or services from another source and charge to Seller’s account all costs, expenses and damages associated therewith. After Seller is notified of the foregoing defects or non-conformances, all risk of loss with respect to such goods shall be the responsibility of Seller and Seller shall pay all packing and shipping charges in connection with such defective or non-conforming goods. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations hereunder.

SECTION 13: ACCEPTANCE

Acceptance of any part of the Order shall not bind Buyer to accept future shipments or performance of services nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to the Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages.

SECTION 14: PRICE; PAYMENT

Prices may not exceed the prices set forth herein. Invoices shall be submitted in duplicate and shall contain the following information: order number, item number, description of articles, sizes, quantities,

unit prices and extended totals. Invoices submitted hereunder will be paid Net forty-five (45) Days after receipt of proper invoice or acceptance of delivered items by the Buyer, whichever occurs later. Before payment, Buyer may make any adjustments to Seller's invoices to accommodate shortages, late delivery, rejections, or other failure to comply with the requirements of this Order. Cash discounts will be taken from the date of final acceptance of delivered items, or the date of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller. Note: "Seller may select Automated Clearing House Credits ("ACH funds transfer"), as the means of settlement. With regard to such ACH funds transfer, a payment from Buyer to Seller shall be considered timely with respect to any payment due to date contained herein if the ACH funds transfer is completed no later than four (4) business days after such payment due date. Buyer shall not be in breach of these terms and conditions, or suffer any loss of discount or other penalty, with respect to an ACH funds transfer that was initiated properly and timely by Buyer to the extent its completion is delayed because of failure or delay by the ACH funds transfer system, the operation of an ACH funds transfer system rule which could not be anticipated by Buyer, or rejection by the Seller's bank."

SECTION 15: WARRANTY

Seller represents and warrants that: (1) all goods delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (2) all goods will conform to applicable specifications, drawings, and standards of quality and performance, and all items will be free from defects in design and suitable for their intended purpose; (3) the goods covered by this Order are fit and safe for consumer use, if so intended; and (4) that any services performed hereunder shall be performed in accordance with the specifications and instructions of Buyer, and with that degree of skill and judgment exercised by recognized professional firms performing services of a similar nature and consistent with best practices in the industry. All representations and warranties of Seller shall run to Buyer and Buyer's customers. Remedies under this warranty shall include, without limitation, at Buyer's option and at Seller's sole expense, prompt repair, replacement, re-performance, or reimbursement of the purchase price. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.

SECTION 16: COUNTERFEIT PARTS

For purposes of this clause, Goods are any tangible items delivered under this Order, including without limitation the lowest level of separately identifiable items, such as parts, articles, components, and assemblies. "Counterfeit Goods" are Goods that are or contain items misrepresented as having been designed, produced, and/or sold by an authorized manufacturer and seller, including without limitation unauthorized copies, replicas, or substitutes. The term also includes authorized Goods that have reached a design life limit or have been damaged beyond possible repair, but are altered and misrepresented as acceptable.

Seller agrees and shall ensure that Counterfeit Goods are not delivered to Buyer. Goods delivered to Buyer or incorporated into other Goods and delivered to Buyer shall be new and shall be procured directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

In the event that Work delivered under this Agreement constitutes or includes Counterfeit Goods, Seller shall, at its expense, promptly replace such Counterfeit Goods with authentic Goods conforming to the requirements of this Agreement. Notwithstanding any other provision in this Agreement, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Goods, including without limitation Buyer's costs of removing Counterfeit Goods, of reinserting replacement Goods, and of any testing necessitated by the reinstallation of Goods after Counterfeit Goods have been exchanged. Seller shall include equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Goods to Buyer.

SECTION 17: TERMINATION for CONVENIENCE

(a) SAIC shall have the right to terminate this Order, in whole or in part, at any time, without cause, by providing twenty (20) days written notice to Seller. Upon receiving notice of such termination, Seller shall

(i) stop all work on this Order on the date and to the extent specified;

(ii) place no further contracts hereunder except as may be necessary for completing such portions of the Order as have not been terminated;

(iii) terminate all contracts to the extent that they may relate to portions of the Order that have been terminated; and

(iv) protect all property in which SAIC has or may acquire an interest.

(b) Within twenty (20) days from such termination, Seller may submit to SAIC its written claim for termination charges in the form prescribed by SAIC, it being understood and agreed that only Seller's actual cost incurred and no profit shall be allowed for quantities terminated pursuant to this clause. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all SAIC's liability arising out of such termination.

(c) SAIC reserves the right to verify claims hereunder and Seller shall make available to SAIC, upon its request, all relevant books and records for inspection and audit. If Seller fails to afford SAIC its rights hereunder, Seller shall be deemed to have relinquished its claim.

SECTION 18: TERMINATION for DEFAULT

(a) Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances:

(i) Seller fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or

(ii) Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of the circumstances specified in this subpart (a)(ii) does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure;

(iii) Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or

(iv) Seller fails to provide Buyer, in writing, within the time specified by Buyer, adequate assurances of performance by Seller.

(b) If this Order is so terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar goods or services.

(c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.

(d) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligations to Seller in respect to the terminated part of this Order except as herein provided. Buyer's rights as set forth herein shall be in addition to any other rights in case of Seller's default.

(e) Seller shall not be liable for damages resulting from default due to causes beyond Seller's control and without Seller's fault or negligence, provided, however, that if Seller's default is caused by the default of a subcontractor or supplier at any tier, such default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the goods or services to be furnished by the subcontractor or supplier were not obtainable from other sources.

SECTION 19: TAXES

The price(s) set forth herein shall include all applicable Federal, State and local taxes and duties.

SECTION 20: ADVERTISING

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the goods or services hereunder, or disclose any of the details connected with this Order to any third party, except as may be required to perform this Order.

SECTION 21: INSURANCE

In accordance with subparts (a) and/or (b) below, upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage's are in force and providing not less than thirty (30) days notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

(a) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

Workers Compensation: in accordance with the statutory requirements and limits of the State of Tennessee Employer's Liability $100,000 Each Accident; $500,000 Disease - Policy Limit; $100,000 Disease - Each Employee, including a waiver of subrogation obtained from the carrier in favor of Buyer;

Commercial General Liability: Comprehensive General Liability Insurance, covering Bodily Injury and Property Damage on an "occurrence" basis. . The coverage shall be provided on ISO occurrence

Form CG 00 01 07 98 (or substitute form for providing equivalent or greater coverage) and include Premises and Operations, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage, including Premises/Completed Operations, and Personal Injury liability, with employee and contractual exclusions deleted. General Aggregate $1,000,000 Products - Completed Operations $1,000,000 Personal & Advertising $1,000,000 Each Occurrence $1,000,000 (Bodily Injury & Property Damage) Fire Damage (any one fire) $50,000 Medical Expense (any one Person) $5,000 ; Buyer, its officers and employees shall be included as Additional Insured's and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;

Automobile Liability: in an amount no less than $1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insured's on the policy;

Professional Liability: if Seller is performing any professional services, coverage for damages (including financial loss) caused by any acts, errors and omissions arising out of Seller's performance of professional services with limits of not less than $1,000,000 per claim and $2,000,000 in the aggregate. All-Risk Property Insurance in an amount adequate to replace property, including goods covered by this Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or goods furnished by Buyer.

(b) To the extent that Seller is providing products under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on its own equipment and shall require all subcontractors to do likewise.

(i) **Commercial General Liability** as described above in Section 21 (a);

(ii) **Products Liability** in an amount no less than $1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in (i), this requirement does not apply;

(iii) **All-Risk Property Insurance** (as described above in Section 21 (a) in an amount adequate to replace property of Buyer and/or Buyer's customer, including goods covered by this Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or goods furnished by Buyer.

SECTION 22: CONFIDENTIALITY AND USE OF BUYER FURNISHED ITEMS/INFORMATION

Seller agrees that it will keep confidential and not disclose, disseminate or publish the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer programs and software or other technical or proprietary information furnished, loaned or bailed by Buyer hereunder (hereinafter collectively referred to as "Items/Information", and use such Items/Information only in the performance of this Purchase Order or, if authorized, other orders from Buyer and not otherwise, without Buyer's prior written consent. Notwithstanding any other provision herein, Buyer and Seller shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property. All such Items furnished, loaned or bailed by Buyer hereunder, or fabricated, manufactured, purchased, or otherwise acquired by Seller for the performance of this Purchase Order and specifically charged to Buyer, are the property of Buyer. Upon completion, expiration or termination of this Purchase Order, Seller shall return all such Items in good condition, reasonable wear only

excepted, together with all spoiled and surplus Items to Buyer, or make such other disposition thereof as may be directed or approved by Buyer. Seller agrees to replace, at its expense, all such Items not so returned. Seller shall make no charge for any storage, maintenance or retention of such Items. Seller shall bear all risk of loss for all such Items in Seller's possession.

Seller also agrees to use any designs or data contained or embodied in such Items in accordance with any restrictive legends placed on such Items by the Buyer or any third party. If Buyer furnishes any material for fabrication hereunder, Seller agrees: (i) not to substitute any other material for such fabrication without Buyer's prior written consent, and (ii) that title to such material shall not be affected by incorporation in or attachment to any other property.

SECTION 23: PATENTS AND DATA

(a) If any experimental, developmental or research work is performed hereunder, Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to make, have made, use and sell any invention, improvement or discovery (whether or not patent-able) that Seller conceives or first actually reduces to practice in the performance of this Order.

(b) Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and disclose, and to authorize others to do so, for any purpose, (i) any copyrighted or copyrightable material delivered or incorporated into any deliverable hereunder; and (ii) all or any part of any deliverable hereunder, including without limitation, any reports, drawings, blueprints, data, software and technical information.

SECTION 24: INDEMNIFICATION

Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, liabilities, damages, losses, causes of action, lawsuits, costs and expenses, including reasonable attorneys' fees and litigation costs incurred in connection therewith and regardless of legal theory (hereinafter referred to as "claims"), occasioned wholly or in part by any act or omission of Seller or any of its subcontractors or suppliers at any tier, or their employees, agents or representatives, arising out of or relating to this Order. Notwithstanding the foregoing, Seller's obligations under this Section shall not apply to any claims which are finally determined by a court of competent jurisdiction to be occasioned solely by the negligence or willful misconduct of Buyer.

SECTION 25: INFRINGEMENT INDEMNITIES

Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the goods or services, or any part

thereof, furnished under this Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such goods or services or use thereof are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

SECTION 26: NON-WAIVER of RIGHTS

The failure of Buyer to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Any rights and remedies specified under this Order shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or equity. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts thereof.

SECTION 27: EXPORT CONTROL COMPLIANCE for FOREIGN PERSONS

Seller shall comply with all applicable U.S. export laws and regulations, including International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). The subject technology of this Subcontract (including data, services, software and hardware provided hereunder, defined as "Controlled Technology") may be controlled under these laws and regulations and may not be exported or re-exported without prior authorization in accordance with ITAR and EAR. Access to Controlled Technology by Foreign Persons as defined by 22CFR120.16 may require an export authorization. SELLER shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligations under this Subcontract.

SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).

SECTION 28: Standards of Business Ethics & Conduct

SAIC believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. These characteristics make it imperative that SAIC employees adhere to a particularly high ethical standard. Buyer's expectation is that Seller also will conduct its business fairly, impartially and in an ethical and proper manner. If Seller has cause to believe that Buyer or any employee or agent of Buyer has acted improperly or unethically under this agreement/order, Seller shall report such behavior to the SAIC Ethics Hotline (800) 760-4332. Copies of The Science Applications International Corporation (SAIC) code of Ethics and contacts for such reports are available at www.saic.com/about/corporate-responsibility/about/.

SECTION 29: CONFLICT OF INTEREST AND ANTI-KICKBACK

Seller shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with SAIC's or SAIC's customer's best interests in connection with this Order. This obligation shall apply to the activities of Seller's employees and agents in their relations with SAIC's employees, their families, vendors and third parties arising from this Order and accomplishing work hereunder. Seller's efforts shall include, but shall not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans, kickbacks or other considerations for any purpose whatsoever. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. Seller agrees to indemnify, defend, and hold Buyer harmless from and against any losses, liabilities, offsets and expenses (including reasonable attorney's fees) arising out of or relating to Seller's failure to comply with the provisions of this provision.

SECTION 30: ORDER of PRECEDENCE

In the event of an inconsistency or conflict between provisions of this Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. Purchase Order and any purchase descriptions contained therein.
2. Purchase Order Standard Terms and Conditions (9-932-001 Rev. City of Memphis 01/01/12) and Exhibits thereto.
3. Specifications and/or drawings.
4. Other provisions when attached.

SECTION 31: GOVERNING LAW

This Order shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to its conflict or choice of law provisions.

SECTION 32: DISPUTES

Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to this Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of San Diego, State of California. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

SECTION 33: TRANSPORTATION CHARGES

All goods are shipped F.O.B. destination unless delivery terms are specified otherwise in bid. All shipping costs must be included in the fully burdened item price. No separate shipping costs will be paid.

SECTION 34: EQUAL EMPLOYMENT

Supplier agrees to comply fully with the equal requirements of Title VII of the Civil Rights Act of 1964, and with Title VI of the Civil Rights Act of 1964 and all other applicable federal, state or local laws prohibiting discrimination. No person will be excluded from participation in or be denied benefits of, or be otherwise subjected to discrimination in the performance of this purchase order, or in the employment practices of the Supplier. In the event Supplier fails to comply with the nondiscrimination requirements, SAIC may cancel, terminate or suspend, in whole or in part, this order. SAIC encourages participation of small and minority businesses in the purchasing process.

SECTION 35: PUBLIC RECORDS

Supplier acknowledges that purchases hereunder are subject to the terms and conditions of the Tennessee Open Records Act.

SECTION 36: AUDIT

At any time before final payment and for three (3) years thereafter and upon reasonable prior notice to the Supplier, SAIC shall have the right to audit Seller's books and records. The Supplier shall make and keep as the same accrue, full and complete records and books as account of revenue and income, costs

and expenses that specifically relate to performance under this purchase order. Records and books of accounts together with any and all other memoranda pertaining thereto that may be kept, maintained or possessed by the Supplier, shall be open to examination during regular business hours by SAIC or its representatives for the purpose of inspecting, auditing, verifying or copying the same or making extracts there from. The Supplier shall make and keep said records and books of accounts for a period of three years from the completion of the purchase order obligations or the final payment under the purchase order, whichever is later.

SECTION 37: EMPLOYMENT OF ILLEGAL IMMIGRANTS

The Supplier hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Supplier shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event Supplier fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this order may be canceled, terminated or suspended in whole or in part by SAIC, and Supplier may be prohibited from contracting to supply goods and/or services to SAIC or the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with SAIC.

SECTION 38: BUSINESS LICENSE

Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to SAIC issuing a properly executed purchase order or entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Service's; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

SECTION 39: CITY'S RIGHTS

SAIC and Supplier understand and agree that this Agreement is entered into for the benefit of the City of Memphis, Tennessee and that the City of Memphis is hereby expressly made a third party beneficiary of this Agreement. All goods or services purchased hereunder are for resale to the City of Memphis, to which Supplier hereby consents. This Agreement and all of SAIC's rights and obligations hereunder may be assigned to the City of Memphis, whereupon SAIC shall have no further interests herein.

SECTION 40: LIVING WAGE, OTHER LOCAL LAWS

Supplier is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). Supplier shall promptly notify SAIC of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

SECTION 41: ENTIRE AGREEMENT

This Order, including all documents incorporated herein by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.