Cisco Systems, Inc.
Public Sector Operations
13635 Dulles Technology Drive
Herndon, VA 20171

June 16, 2010

Jackie Colbert
Purchasing Manager
University Purchasing
Virginia Commonwealth University
10 South 6th Street, Suite 200
P.O. Box 980616
Richmond, VA 23298-0616

Re: Cisco VASCUPP RFP response clarifications

Dear Ms. Colbert:

Thank you for the opportunity to clarify our proposal in response to the Cisco products solicitation. It was good to speak with you and further understand your needs as we work toward a new agreement. Cisco's goal is to continue the strong relationship we've cultivated together.

Attached are our replies to each of the items we discussed on April 22, 2010. For each item, we include the location of the item from our original proposal, the original requirement and Cisco response, the clarification request you've raised, and our response to each. This response will be sent per your instructions via email by noon April 29, 2010 with a hardcopy original to follow.

Update, June 16, 2010: Based on our discussions, attached are additional clarifications from our April 29 submission, highlighted in red and with an updated signature below. We again appreciate the opportunity to clarify our proposal. Based upon these clarifications, the initial contract term will be through June 30, 2011 with optional 1 year extensions to follow as prescribed in the RFP.

We hope this response brings us to a final agreement. If it does not, we invite discussion on any of the topics. Please contact Jay Horman at 703-484-1549 or Debbie Everling at 804-314-9158.

Sincerely,

Dana Giampetroni
Director, Finance
Cisco Systems, Inc.
June 16, 2010

RFP Requirement: IV Statement of Needs, Part B.
Page: 4

Original RFP requirement and response dated March 30th 2010:

Requirement

B. It is anticipated that the price offers for equipment and maintenance shall be expressed as a percentage discount off the Cisco Systems, Inc. Global Product and Price List. The discounted price shall include all associated costs for equipment including the freight terms F.O.B. Destination/Prepaid with inside delivery. Contract discounts shall be considered the minimum discounts for the duration of the contract terms including any renewals.

Cisco Response:

Cisco agrees and has presented our pricing as a minimum discount from our GPL (Global Product and Price List). The discount provided includes FOB destination and will include inside delivery when installation is also purchased.

VCU request April 22, 2010:

Remove the last caveat "when installation is also purchased," add "prepaid" and generally confirm that Cisco will comply with the requirement as stated.

Cisco Response April 29, 2010:

Cisco changes our response to "read and understood"

Cisco Additional Response June 16, 2010:

Inside Delivery means delivery that is into a secure, inside area. This is distinct from "Desktop Delivery" where the buyer may specify the precise indoor location for final delivery.

RFP Requirement: B. Specific Proposal Requirements, Part 3, requirement e
Page: 13

Original RFP requirement and response dated March 30th 2010:

Requirement

e. Provide an implementation schedule indicating how long after the award of the contract it shall take your company to begin accepting orders from authorized users of the contract and delivering Cisco products.

Cisco Response:

Approximately 1 week.

Prior to award, Cisco will prepare subcontracts for potential contract partners. The partners will also be vetted.

Upon award, Cisco will issue subcontracts electronically to all qualified partner companies. Upon the first partner's final acceptance of the subcontract, Cisco can begin accepting orders on the contract via that partner. We generally give partners 1 week to respond – and anticipate that most should be signed up by that point. The new subcontracts will be virtually identical to the old with the exception of new language reflecting the addition of partner services to the contract.

Although a partner or two may sign immediately and be ready to sell the day the subcontract is made available, our preference is that we don't "go live" until we have a majority of anticipated partners signed up. We expedite the process by making the subcontracts as "click-to-accept" online contracts not requiring time-consuming things like notarization.

VCU request April 22, 2010:

Confirm that Cisco will have most partners up and running within 10 days of award to ensure the contract is ready upon the close of the posting period following a potential notice of intent to award.

Cisco Response April 29, 2010:

Please replace the phrase "Approximately 1 week" to "Cisco will be prepared to go live with many of our partners signed up by the end of the posting period, 10 days after the notice of intent to award." The remainder of the response remains unchanged.

RFP Requirement: General **Page:** General
Original RFP requirement and response dated March 30th 2010: N/A
VCU request April 22, 2010: Please clarify that Tandberg products, managed services, Smartcare and other future Cisco offerings and acquisitions are within the scope of this contract and may be included either at the final contract price or at some mutually agreed price.
Cisco Response April 29, 2010: Cisco agrees that the intent of the this contract is to be inclusive of current and future Cisco offerings and acquisitions, and as such will include such future offerings as soon as possible at either at the final contract price or at some mutually agreed price.

RFP Requirement: General Terms and Conditions, Requirement X **Page:** 41
Original RFP requirement and response dated March 30th 2010: **Requirement** X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. Vendors are strongly encouraged to register prior to submitting a bid or offer. Firms will be required to register in eVA prior to award. 1. eVA Basic Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse. 2. eVA Premium Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all the benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments. 3. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order. 4. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is: a) DMBE-certified Small Businesses: 1%, capped at $500 per order. b) Businesses that are not DMBE-certified Small Businesses: 1% capped at $1,500 per order **Cisco Response:** Cisco agrees to the eVA $25 Annual Fee plus a transactional fee of 1 percent per order, with a maximum transactional fee of $500 per order. Please note that Cisco subcontractors will pay the transaction fee of 1 percent per order when fulfilling orders under any final contract.
VCU request April 22, 2010: Fix include the $1500 fee for non-DMBE companies and clarify that Cisco will comply as stated.
Cisco Response April 29, 2010: Please change the Cisco response from "Cisco agrees to the eVA $25 annual fee plus a transactional fee of 1% per order, with a maximum transactional fee of $500 per order" to "read and understood." The remainder of the Cisco response remains unchanged.

RFP Requirement: Special Terms and Conditions, Requirement R
Page: 46-47

Original RFP requirement and response dated March 30th 2010:

Requirement:

R. eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract will result in multiple purchase order(s) with the eVA transaction fee specified below assessed for each order.

1. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.
2. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
   a) DMBE-certified Small Businesses: 1%, capped at $500 per order.
   b) Businesses that are not DMBE-certified Small Businesses: 1% capped at $1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

Cisco Response:

Cisco agrees to the eVA $25 Annual Fee plus a transactional fee of 1% percent per order, with a maximum transactional fee of $500 per order. Please note that Cisco subcontractors will pay the transaction fee of 1 percent per order when fulfilling orders under any final contract.

VCU request April 22, 2010:

Fix include the $1500 fee for non-DMBE companies and clarify that Cisco will comply as stated.

Cisco Response April 29, 2010:

Please change the Cisco response from "Cisco agrees to the eVA $25 annual fee plus a transactional fee of 1% per order, with a maximum transactional fee of $500 per order" to "read and understood." The remainder of the Cisco response remains unchanged.

RFP Requirement: Special Terms and Conditions, Requirement Z
Page: 50

Original RFP requirement and response dated March 30th 2010:

Requirement:

Z. WARRANTY AGAINST SHUTDOWN DEVICES: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU references, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

Cisco Response:

Cisco respectfully takes exception to the warranty against shutdown devices provision.

VCU request April 22, 2010:

Clarify that the Cisco products will not be shut down for business reasons, such as insufficient licenses, and provide any information necessary about any conditions under which the Cisco products do shutdown.

Cisco Response April 29, 2010:

Please change our response to:

"Cisco warrants that it will

1. Not provide products with malicious viruses, worms or other similar destructive code as per the warranty provided with each product.
2. Not engage or threaten to engage in any Self Help Mechanism that would render any of Customer's network, systems or features inoperable. "Self Help Mechanisms" means Cisco's intentional act of: (i) failing to provide Customer with codes or keys that without such code or key any portion of Software that was previously operable would be rendered inoperable; or (ii) remotely disabling any Software, Product, or functions without prior notice to Customer. "Self Help Mechanisms" do not include: (i) Software that, when first delivered, acts in accordance with Documentation by restricting the number of users, sessions, servers, CPUs, ports, or issued and outstanding IP addresses to the number licensed under the Agreement, or (ii) Software features as listed in Documentation if used in the provision of Services at Customer's request."

RFP Requirement: Cisco's Proposed Original Terms and Conditions
Page: 52

Original RFP requirement and response dated March 30th 2010:

PROPOSED ADDITIONAL TERMS AND CONDITIONS

Cisco requires the following additional terms and conditions in any final agreement between Cisco and the Purchasing Agency:

3. Limitation of Liability. Notwithstanding anything else in these terms of sale to the contrary, all liability of Cisco, its affiliates, officers, directors, employees, agents, and suppliers collectively for claims under these terms of sale or otherwise howsoever arising shall be limited separately for products and services purchased to the money paid to Cisco for products or for services, separately and as applicable, under these terms of sale during the 6-month period preceding the event or circumstances first giving rise to such liability. This limit of liability for products and services is cumulative and not per-incident.

4. Consequential Damages Waiver. Except for liability arising out of or in connection with the Purchasing Agency's breach of section (proprietary rights and software licensing) or (end user license agreement) or amounts due for products and services purchased or software used or transferred with respect to the payment of which no bona fide dispute exists, in no event shall either party, its respective affiliates, officers, directors, employees, agents, or suppliers be liable for any special, incidental, indirect or consequential damages, or lost revenue, lost profits, or lost or damaged data, whether arising in contract, tort (including negligence), or otherwise, even if such party has been informed of the possibility thereof.

VCU request April 22, 2010:

Rescind these requirements and pull the negotiated limitation of liability and consequential damages language from the current contract to continue into this potential contract.

Cisco Response April 29, 2010:

Please change the Cisco response for these two items to the language from page 43 of contract #UCP-835381JC, which reads as follows:

3. Limitation of Liability.

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CISCO AND ITS SUPPLIERS UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO CISCO UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMIT SHALL NOT APPLY TO LIABILITY ARISING FROM CISCO'S NEGLIGENCE OR WILLFUL MISCONDUCT WHICH DIRECTLY RESULTS IN DEATH, PERSONAL INJURY OR DAMAGE TO TANGIBLE PERSONAL PROPERTY (NOT INCLUDING LOST DATA). ALL LIABILITY UNDER THIS AGREEMENT IS CUMULATIVE AND NOT PER INCIDENT.

4. Consequential Damages Waiver.

EXCEPT FOR LIABILITY ARISING OUT OF OR IN CONNECTION WITH CISCO'S LIABILITY ARISING FROM THE NEGLIGENCE OR MISCONDUCT OF CISCO WHICH DIRECTLY RESULTS IN DEATH, PERSONAL INJURY OR DAMAGE TO TANGIBLE PERSONAL PROPERTY, OR the PURCHASING AGENCY'S BREACH OF SECTION 23 ("CONFIDENTIALITY") AND/OR BREACH OF SECTION 31 ("TERM OF SOFTWARE LICENSE") OF THIS AGREEMENT, TO THE EXTENT SUCH DAMAGES ARE CHARACTERIZED AS CONSEQUENTIAL DAMAGES BY A COURT OF COMPETENT JURISDICTION, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE SUPPLIERS, BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES, ARISING OUT OF ANY BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

RFP Requirement: XI. Pricing Schedule, Part B
Page: 52-53

Original RFP requirement and response dated March 30th 2010:

Requirement

B. Express the percentage discount offered off the Cisco Systems, Inc. Global Products and Price List on the blank line for each category and provide the discounted total by category.

	Expenditures	% Discount	Discounted Total
Cisco Products, Software and Services on the Price List	$1,200,000. less	35% =	$780,000.00
First Year SMARTNet NBD Maintenace	$220,000. Less	100% =	$0
All Subsequent Years SMARTNet NBD Maintenance	$425,000. less	30* % =	$297,500.00
Total Section B			$1,077,500.00

Cisco Response:

Please see the discounts indicated above.

*Note that the "All subsequent years" SMARTnet NBD pricing is for educational institutions only, to include VCU and all VASCUPP Member Entities. Other buyers will receive 15 percent.

VCU request April 22, 2010:

- Clarify that the SMARTnet pricing offered at 30% is for ALL SMARTnet offerings, not just NBD, and for all subsequent years.
- Clarify that the SMARTnet pricing will be for any educational institution, including K-12s.
- Requesting the 30% for all subsequent years SMARTnet be changed to 40% as a cost control for VCU and VASCUPP institutions.
- Requesting an improvement to the 35% offer based on market research, volume and commitments.

Cisco Response April 29, 2010:

- The SMARTnet pricing offered at 30% is for ALL SMARTnet offerings, not just NBD.
- The SMARTnet pricing will be for any educational institution, including K-12s.
- Cisco offers additional discounts for pre-paid multiyear SMARTnet purchases, and may offer transactional discounts on a case by case basis. We will leave the 30% offering as the baseline pricing.
- 35% is a competitive offering, representing pricing that is equal to our WSCA offering applicable to buyers in 11 states (including California), and is better than New York, Ohio and many other large concentrations of buyers. Further, these States do not get the advantage of the included first year SMARTnet coverage, which Cisco calculates as an average of 8% of the price of Cisco products. This results in a net blended discount of about 43% to buyers on this contract – much deeper than the 35% offered buyers in WSCA states, the 32% offered in the State of New York and the 30% in Ohio. Cisco will continue to offer deeper discounts where warranted on a transactional basis but maintains our 35% offering.

Cisco Additional Response June 16, 2010:

The Cisco offering in this contract is the best pricing we're offering to any Customer under the following conditions:

- For a "term contract", meaning a contract that is a discount applied over time, not to a particular purchase
- For a contract open to other buyers beyond the signing Customer
- For a Higher-Ed customer
- For a contract that does not include volume or other purchase commitments.

Since the formation of the Cisco Public Sector Theater in August 2008, we have endeavored to bring

controls and standard practices to our market approach, including contracts. While we do not know of a contract with better pricing under similar term and conditions, it is possible (though unlikely) that such a contract may have been signed prior to the formation of this Theater and is unknown to us now. If we discover such a contract, we will inform VCU.