



REQUEST FOR QUALIFICATIONS (RFQ)

INTEGRATED MARKETING PLAN TWO MISSISSIPPI MUSEUMS AND OTHER MUSEUM SITES OPERATED BY MDAH

RFx: 3140003700

Issue Date: November 21, 2023

Closing Date: December 6, 2023

Contact for this RFQ:

Attn: Joey Roberts
Finance Department
Mississippi Department of Archives and History
200 North Street
Jackson, MS 39201
601-576-6862

GENERAL

The Mississippi Department of Archives and History is a comprehensive state agency, established in 1902 to collect, preserve, and provide access to the state's historical resources, including archival records, historic objects, archaeological artifacts, and historic sites and structures. MDAH operates the Two Mississippi Museums—the Mississippi Civil Rights Museum and the Museum of Mississippi History—which opened in Jackson in 2017 and have attracted more than half a million visitors. MDAH also operates the Eudora Welty House & Garden in Jackson and the Grand Village of the Natchez Indians in Natchez.

SCOPE OF WORK

MDAH is looking for a media/marketing/advertising vendor to develop and implement an integrated marketing plan for museum sites overseen by MDAH. These include the Two Mississippi Museums—the interconnected Mississippi Civil Rights Museum and the Museum of Mississippi History—the Eudora Welty House & Garden, and the Grand Village of the Natchez Indians. The vendor will create and place print, digital, social, billboard, radio, and television advertisements for evergreen promotion and to promote exhibits and events at MDAH sites to increase visitor traffic from the Jackson Metro area, the state of Mississippi, and surrounding states. This RFQ includes development of marketing strategies, advertising creation and production, ad placement, media planning, regular analysis and reporting, and billing and invoicing. The contract term for this service is three years with an optional fourth year. The total cost of the contract may not exceed \$500,000 per year.

The successful vendor, or offeror, will work closely with MDAH staff, primarily the MDAH marketing director. The offeror will be expected to develop detailed marketing plans, including budgets, for MDAH sites. Once these marketing plans are approved by MDAH staff, the offeror will implement them by working directly with newspapers, magazines, television, radio, outdoor, and digital outlets to place content and handle all billing and invoicing for all services including advertising.

The offeror must demonstrate expertise in navigating the challenges inherent in creating aesthetically pleasing and culturally sensitive marketing for sites that are connected to Native American groups and enslaved persons.

IMPORTANT DATES

November 21, 2023	RFQ issued
November 30, 2023	Questions due to MDAH by 5 p.m. CST
December 1, 2023	Response to questions to be posted by 5 p.m. CST
December 6, 2023	RFQ submission deadline by 2 p.m. CST
December 6, 2023	RFQ opening at 2:15 p.m. CST
December 8, 2023	Anticipated posting of Notice of Intent to Award
January 3, 2023	Anticipated date for PPRB for approval
January 16, 2024	Anticipated date Contract will be awarded
February 1, 2024	Project begins

MINIMUM QUALIFICATIONS

MDAH will evaluate the following qualifications (see Attachment C) on a pass/fail basis the following criteria,

- eight (8) years in business,
- three (3) positive reference accounts similar in scope or size.

If the offeror does not meet these minimum qualifications, then their submission will not be reviewed.

SELECTION PROCESS

MDAH reserves the right for discussions to be conducted with offerors who submit qualifications determined to be reasonably susceptible of being selected for award, but that qualifications may be accepted without such discussions.

Evaluation criteria for this RFQ shall be as follows (100-point scale):

Technical factors (total 35 points):

- Does the offeror's proposal or qualification demonstrate a clear understanding of the scope of work and related objectives? (15 points)
- Has the past performance of the offeror's proposed methodology been documented? (10 points)
- Does the offeror's proposal or qualification use innovative technology and techniques? (10 points)

Cost factors (35 points):

- Total price of offer submitted relative to other offerors. (35 points)
Formula: $A/B \times 35$ (where A equals lowest cost received, B equals offeror's cost)
Pricing must be provided for year 1, year 2, year 3, and optional year 4.
Pricing must include development of a three year marketing plan, creative development, media placement including ad costs, and project management (reporting, analytics, and billing).

Management factors (30 points):

- How well does the proposed scheduling timeline meet the needs of the soliciting agency? (10 points)
- Is there a project management plan? (10 points)
- Documentation of experience in performing similar work by employees and when appropriate, subcontractors. (10 points)

QUESTIONS AND ANSWERS

Questions should be directed to marketingrfq@mdah.ms.gov with a subject line: "Questions—Marketing RFQ." Questions must be received no later than 5 p.m. CST, on November 30, 2023, to ensure a response by MDAH. Responses to questions will be posted to the MDAH procurement page on the website at <https://www.mdah.ms.gov/Marketing-RFQ> and sent to all potential offerors known, as an amendment to the RFQ on December 1, 2023.

ACKNOWLEDGEMENT OF AMENDMENTS

MDAH reserves the right to amend this RFQ at any time. Should an amendment to the RFQ be issued, it will be posted to the MDAH procurement page on the website at [https://www.mdah.ms.gov/ Marketing-RFQ](https://www.mdah.ms.gov/Marketing-RFQ), <https://www.transparency.ms.gov/>, and sent to all potential offerors known. Offerors must acknowledge receipt of any amendment to the RFQ by signing and returning the amendment. The acknowledgment must be included in the RFQ submission. Please monitor the website for amendments to the RFQ. MDAH responses to questions will be treated as amendments to the RFQ and will require acknowledgment.

SUBMISSIONS

Any individual, firm, or corporation desiring to provide services, must submit the following in digital format via flashdrive or email to the Mississippi Department of Archives in History in **duplicate**.

- **SIGNED ATTACHMENTS:** Attachment B, Attachment C, and Questions and Answers posted on December 1

Three separate proposals are required—one for Technical, one for Cost, and one for Management.

Technical factors

EVALUATED BLIND* No names, logos or other identifying information may be included.

- Past Experience: Include descriptions experience with similar projects (scope, size, market) and/or government entities within the past seven (7) years.
- Project Vision: Include a written and graphic narrative of your vision for this project that encompasses a) a basic evergreen marketing plan for the Two Mississippi Museums, and b) a marketing plan for a temporary exhibit or event at a different MDAH site. Illustrate these plans plan with basic sketches and examples from your company's portfolio.
- At least three (3) samples of past print, outdoor, or social media marketing campaigns. Make sure samples cover more than one market type.

Cost factors

EVALUATED BLIND* No names, logos or other identifying information may be included.

- The following phases should be separated out with a cost listed for each (include breakdowns on each cost for years 1, 2, 3 and optional year 4):
- Development of three-year integrated marketing plan
- Creative development
- Media placement including ad costs
- Project management (reporting, analytics, and billing)

Management factors

- Project Plan: Include a general project plan for proposed scope of work, milestones, and timeline with overall schedule from development of three-year integrated marketing plan to media placement to reporting, analytics, and billing.
- Project Team (including subcontractors): Include the abilities, qualifications, and experience of all persons proposed be assigned to the project.

***BLIND EVALUATION NOTE**

Identifying information including, but not limited to, any prior, current, and future names or addresses of the offeror, any names of incumbent staff, any prior, current and future logos, watermarks, and company colors, any information which identifies the offeror as an incumbent, and any other information, which would affect the blind evaluation of technical must not be included in the Technical or Cost proposals. It is the responsibility of the offeror to ensure no such identifying information is included in the Technical and Cost proposals. MDAH reserves the right to reject any proposals containing identifying information in the Technical and Cost proposals, to redact identifying information from Technical and Cost proposals, and/or to return the Technical and Cost proposals to the offeror to be redacted. It is within the sole discretion of MDAH how to address any identifying information found in the Technical and Cost proposals. be redacted from the technical section.

RELEASE OF PUBLIC INFORMATION

Offerors shall provide an electronic, single document version of proposals redacting those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Miss. Code Ann. § 25-61-9 (1972, as amended) and other applicable state and federal laws, if any. Offerors should be aware that the un-redacted version of their proposals is considered a public record and is subject to release by MDAH pursuant to and in accordance with Miss. Code Ann. § 25-61-1, et seq. (1972, as amended).

The redacted copy shall be considered public record and immediately released, without notification, pursuant to any request under the Mississippi Public Records Act, Miss. Code Ann. §§25-61-1 et seq. and Miss. Code Ann. §79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by MDAH, including but not limited to, submission to the PPRB, posting to Transparency Mississippi website, etc.

In the event that either party to the executed Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by state law. This provision shall survive termination or completion of the executed Contract. The parties agree that this provision is subject to and superseded by Miss. Code Ann. § 25-61-1, et seq. (1972, as amended) regarding Public Access to Public Records.

RFQ SUBMISSION

Mailed thumb drive submissions may be submitted to MDAH no later than 2:00 P.M. Central Standard Time (CST), December 6, 2023 at the following address:

Attn: Joey Roberts
RFx: 3120002731
Finance Department
Mississippi Department of Archives and History
200 North Street
Jackson, MS 39201

Emailed submissions may be sent to the following email address no later than 2:00 P.M. Central Standard Time (CST), December 6, 2023:

marketingrfq@mdah.ms.gov

Timely submission of the RFQ package is the sole responsibility of the offeror. Qualifications received after the specified time will be rejected and shall remain unopened in the procurement file. The offeror assumes all risk regarding delivery of the bid. MDAH will not be responsible for delivery delays, packages which are lost in the delivery process, or other delivery errors. MDAH reserves the right to have discussion with offerors who submit qualifications that are reasonably susceptible to being selected for award.

EXPENSES INCURRED IN PREPARING BID

MDAH accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

RESTRICTIONS ON COMMUNICATION

At no time shall any bidder or its personnel contact, or attempt to contact, MDAH staff regarding this RFQ except the contact person as set forth and in the manner prescribed under RFQ Submission.

REQUEST FOR CORRECTIONS

MDAH reserves the right to waive or ask offerors to correct minor informalities in their submission.

Procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of submissions but before award:

- During Discussions, Prior to Best and Final Offers: Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct

any mistake by modifying or withdrawing the proposal or qualification until the time and date set for receipt of best and final offers;

- Minor Informalities: Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.
- Correction of Mistakes: If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if: (1) the mistake and the intended correct offer are clearly evident on the face of the proposal or qualification; or, (2) the mistake is not clearly evident on the face of the proposal or qualification, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

RIGHT TO REJECT, CANCEL AND/OR ISSUE ANOTHER RFQ

MDAH specifically reserves the right to reject any or all submissions received in response to this RFQ, cancel the RFQ in its entirety, or issue another RFQ.

NOTICE OF INTENT TO AWARD

Upon the determination of the highest score after interviews, a written Notice of Intent to Award will be issued via email to all offerors with a Delivery Receipt requested.

The Notice of Intent to Award will also be posted to the MDAH website and <https://www.mdah.ms.gov/Marketing-RFQ>; <https://www.transparency.ms.gov/>.

A contract will be entered into based on this RFQ, its amendments, the offeror's qualification and the best and final offer.

POST-AWARD VENDOR DEBRIEFING

Participants in this procurement opportunity have the right to request a debriefing regarding MDAH's selection for the notice of intent to award. Requests for a debriefing should be emailed to marketingrfq@mdah.ms.gov with preferable time and date. The deadline to request a debriefing is Wednesday, December 13, 2023. A vendor debriefing is a meeting and not a hearing, therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify MDAH and identify its attorney.

ATTACHMENT A: Office of Personal Service Contract Review Rules and Regulations Required Clauses

APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

PAYMODE

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. MDAH may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of MDAH to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDAH, MDAH shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to MDAH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

COMPLIANCE WITH LAWS

Contractor understands that MDAH is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

STOP WORK ORDER

(1) **Order to Stop Work:** The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- a) cancel the stop work order; or,
- b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

(2) **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
- b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(4) **Adjustments of Price:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein,

“status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one year or, both.
- (3) In the event of such cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

TRANSPARENCY

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq., and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor’s bid or proposal.

REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

ACKNOWLEDGMENT OF AMENDMENTS

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by MDAH by the time and at the place specified for receipt of bids.

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's bid or proposal that such Contractor has/has not (use applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

ATTACHMENT B: Certifications & Assurances

As an authorized signatory for _____,
I make the following certifications and assurances as a required element of the bid(s) to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s), by circling the applicable word or words in each paragraph below:

1. *REPRESENTATION REGARDING CONTINGENT FEES*: Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

2. *REPRESENTATION REGARDING GRATUITIES*: The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

3. *CERTIFICATION OF INDEPENDENT PRICE DETERMINATION*: The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

4. *PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES*: The prospective Contractor represents as a part of such Contractor's bid or proposal that such Contractor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

5. *NON-DEBARMENT*: This certification is a material representation of fact relied upon by the Contracting Agencies. If it is later determined that the Contractor did not comply with 2 C.F.R. part 180, subpart C, and 2 C.F.R. part 3000, subpart C, in addition to remedies available to DFA and other Contracting Agencies, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

6. *REGISTRATION WITH MISSISSIPPI SECRETARY OF STATE*: By submitting qualifications, the offeror certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by MDAH that it has been awarded a contract.

7. Bidder certifies that it can provide services in the entire region for each region on which it has submitted a bid.

8. Bidder certifies that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids, the attachments hereto, and any amendments.

Name: _____ Title: _____

Signature: _____ Date: _____

Modifications or additions to any portion of this document may be cause for rejection of the bid.

Attachment C

Name of offeror _____

Location of offeror's principal place of business and, if different, the place of performance of the proposed contract

Age of the offeror's business

Average number of employees over the past three (3) years

Three reference accounts similar in scope or size

Contact (name) for offeror

Contact information

Signature of offeror's representative

ATTACHMENT D: Contractual Agreement

MISSISSIPPI Department *of* ARCHIVES & HISTORY

CONTRACTUAL AGREEMENT FOR INDEPENDENT CONTRACTOR

THIS AGREEMENT made and entered into by and between the Mississippi Department of Archives & History, an agency of the State of Mississippi (the “Department”),

and, _____


whose Vendor # is _____,

and whose address for mailing is _____,
hereinafter individually and collectively referred to as ("Contractor").

WITNESSETH:

In consideration of the mutual covenants contained herein, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

I. SCOPE OF SERVICES: (Please include an attachment for lengthy descriptions titled Attachment A and notate below *Please see Attachment A for detailed Scope of Services*)



II. PERIOD OF PERFORMANCE:

The term of this Agreement shall commence on _____

and shall expire on _____.

III. COORDINATION OF SERVICES: Contractor shall coordinate the performance of the

services to be provided hereunder through _____,

director of _____ division,
or his/her designee and consult with said director on specific courses of action which should be
pursued.

IV. INDEPENDENT CONTRACTOR STATUS: Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Department, and the Department shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Department shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Department shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

V. PAYMENT TERMS: In full consideration for the performance of the Services hereunder, and for any rights granted or relinquished by the contractor under this Agreement, the Department shall pay Contractor as follows (mark as applicable):

_____ on a time and materials basis at the following rates: _____

or

_____ a fixed fee (the "Fee") in the amount of \$ _____ payable in installments as

follows: _____

Payments shall be preceded by an invoice from Contractor (to be submitted monthly), which the Department shall then pay in the ordinary course.

Upon approval, Department will reimburse Contractor for reasonable and necessary expenses incurred in the performance of the Services; provided, however, any necessary travel will be based on a mileage allowance for use of automobile at the maximum rate permitted by the Internal Revenue Service. Any airline travel will be at coach rates.

Total contract, including fringe, travel, and other expenses related to carrying out this

Agreement, shall not exceed \$ _____.

Contractor acknowledges and agrees that, except as provided herein, it shall not be entitled to, and the Department shall not be obligated to pay, any monies or other compensation for the Services provided and rights granted under this Agreement.

VI. RETIREE: Is Contractor drawing retirement benefits from the Public Employee's

Retirement System (PERS)? _____ YES or _____ NO

If yes, Contractor represents that it has separated from State service with Mississippi and all covered employers after retirement for a ninety (90) day separation period. Contractor represents that it has received an approval notification from PERS and included it as an attachment to this contract.

VII. E-PAYMENT: Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq..

VIII. PAYMODE: Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State, may at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

IX. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the obligation of the Department to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Department, the Department shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Department of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

X. APPLICABLE LAW: The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

XI. PROCUREMENT REGULATIONS: The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

XII. REPRESENTATION REGARDING CONTINGENT FEES: Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

XIII. REPRESENTATION REGARDING GRATUITIES: The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

XIV. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION: It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

XV. COMPLIANCE WITH LAWS: Contractor understands that the Department is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

XVI. E-VERIFICATION: If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other

successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- (3) both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

XVII. ANTI-ASSIGNMENT/SUBCONTRACTING: Contractor shall not assign, subcontract or otherwise transfer this agreement, in whole or in part, its rights or obligations under this contract without prior written consent of the Department. Any attempted assignment or transfer without said consent shall be void and of no effect.

XVIII. SEVERABILITY: If any term or provision of this contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this contract shall not be affected thereby and each term and provision of this contract shall be valid and enforceable to the fullest extent permitted by law.

XIX. MODIFICATION OR RENEGOTIATION: This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the Department revisions of any applicable laws or regulations make changes in this agreement necessary.

XX. CHANGE IN SCOPE OF WORK: The Department may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the contract signed by the Department and the Contractor.

If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the Department in writing of this belief. If the Department believes that the particular work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

XXI. TERMINATION FOR CONVENIENCE:

- (1) *Termination.* The Agency Head or designee may, when the interests of the Department so require, terminate this contract in whole or in part, for the convenience of the Department. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the Department. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

XXII. TERMINATION FOR DEFAULT:

- (1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar

to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

(5) *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

(6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

XXIII. TERMINATION UPON BANKRUPTCY: This contract may be terminated in whole or in part by the Department upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

XXIV. STOP WORK ORDER:

(1) *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

(2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
- (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work*: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) *Adjustments of Price*: Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

XXV. NON-WAIVER OF BREACH: Failure by the Department, at any time, to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Department to enforce any provision at any time in accordance with its terms.

XXVI. COPYRIGHT: Copyright to all work products regardless of physical format-including, but not limited to, photographs, software, source code, research notes and compilations, draft and finished written works, and published materials – produced by Contractor in the scope of their contract with the Department belongs to the Department.

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

XXVIII. TRANSPARENCY: This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

XXIX. ENTIRE AGREEMENT: This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes or replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto.

XXX. AUTHORIZATION: Both parties hereto represent that they have authority to enter into this contract and that the individuals executing this contract are authorized to execute it and bind their respective parties.

XXXI. APPROVAL CLAUSE: It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the commencement date outlined in Clause II.

Independent Contractor

Department of Archives & History

By: _____

By: _____

(name of representative, title, co. name)

Katie Blount, Director, MDAH

Date: _____

Date: _____