

Request for Proposals

**Emergency Fuel
RFP # 3120002221**

**Mississippi Department of Finance and Administration
Office of Purchasing, Travel and Fleet Management
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501 North West Street
Jackson, Mississippi 39201**

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Due Date:

**Sealed Proposals
MAIL or HAND DELIVERY ONLY
Friday, June 04, 2021
2:00 PM Central Standard Time**

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1.0 Introduction

This Request for Proposals (RFP) for the procurement and distribution of fuel in emergency situations for the State of Mississippi, its agencies and governing authorities is issued in accordance with the authority granted to the Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (OPTFM) pursuant to Mississippi Code Ann. § 31-7-1, et seq.

The purpose of this RFP is to create the mechanism necessary for the State of Mississippi, Office of Purchasing, Travel and Fleet Management (OPTFM) to select and enter into a contract or contracts with Contractors for the purpose of the acquisition and distribution of fuel during emergency situations. The OPTFM is seeking to secure professional and specialized services to assist in the procurement, storage, distribution and recording of fuel for state agencies and governing authorities of this State during emergency situations, and at the agreement of the Contractor, also for state agencies and local governing authorities of other States.

The OPTFM currently has a contract for normal fuel needs. During emergency situations, the State desires a contract to provide adequate assurance that the State would receive priority allocation of fuel. It is the intention of the OPTFM to have the proper quantities of fuel in locations that are reasonably acceptable to the agencies so they can fulfill their assigned missions. The State would need to not only have the fuel in the proper locations, but also be able to dispense it into vehicles and potentially portable tanks to fill generators, as needed. The OPTFM is attempting to determine if there are ways that would provide the State with greater assurance of adequate supplies and/or transportation of fuel under emergency conditions.

The OPTFM will receive proposals and will evaluate the proposals to determine which Offeror has proposed the best opportunity for the State to be guaranteed access to adequate quantities of fuel while limiting the costs and risks to the State. **The chosen Offeror will be required to enter into a contract which is in substantial compliance with the sample contract attached as Appendix B.**

While the OPTFM does not intend to tell Offeror's how to provide these services, several potential options, or portions thereof, are presented herein. It is OPTFM's belief that the private sector may have more creativity and, thus may be able to improve on this plan or present a totally different plan.

Potentially, an Offeror could enter into a contract with one or more fuel terminals with which to provide up to 2 million gallons of fuel and diesel, as well as some propane, for the express use of the State. They would, of course, rotate this stock, but would always have at least this quantity available to the State. The Offeror could also enter into contracts with one or more distributors that would guarantee availability of trucks and drivers in case of an emergency (hurricane, earthquake, flood, ice storm, etc.) for the distribution of the fuel from the terminal to locations throughout the state which would be determined at the time of the emergency by specified State employees. The Offeror could also enter into a contract or contracts with one or more firms that would guarantee access to multiple non-manned units for dispensing of fuel to individuals holding the State's Fuel Cards. These units would be mobile and would be placed at locations agreed to by the Offeror and the State. The State could pay for all fuel at the time of usage at a cost of OPIS, plus a fee and documented transportation costs, or transportation

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costs could be included in the fee. It is possible that the State may desire to have such arrangements at more than one terminal, as limiting to a single location may cause problems should that area be impacted by the emergency.

One potential scenario could be the Offeror proposes a guarantee of 100% of the fuel specified with a set monthly or annual fee for this guarantee. The State would then pay for the fuel if and when it is actually ordered. If this concept is used it may be beneficial to also offer a sliding scale wherein the Offeror could propose to guarantee amounts less than the 100% for a reduced monthly fee. For example: a guarantee of 100% of the fuel could cost \$100 per month, a guarantee of 90% could cost \$95 per month, and so on. This would allow the State to determine, during the evaluation and contracting phase, the amount of cost the State is willing to take on while having a clear view of the potential risks involved. While the State is willing to consider any proposal for the method of payment, at this time, this "monthly or annual fee" appears to be the preferred method. It is possible that the State may choose not to contract for all of the duties listed in Section 2.1 and/or the different duties may be paid for by different agencies, therefore it may be advantageous for the Offeror to provide prices on each of the duties individually and as a group.

Another possible scenario could be for the State to hold a large fuel reserve and use a sliding scale to price the fee based on the size of the reserve. The larger the reserve, the smaller the storage fee. This could allow for the purchase of the fuel at a fixed price and guarantee its availability. If offered, the Contractor should describe storage location(s) and method of assuring fuel availability and freshness. Contractor shall detail all aspects of the purchase of an emergency fuel reserve, including pricing or margin based on a third party (such as OPIS) verified rack price.

There are many options that could give the State the robust emergency fuel plan it desires. Once again, it is the State's goal to have immediate access to fuel when needed while reducing costs and risks as much as possible.

The OPTFM seeks submittal of proposals from qualified firms to secure professional services with which to accomplish these goals.

1.1 General Instructions

Proposals shall be submitted as set forth in Section 4.1.

1.2 Project Description

The Project Description is set forth in the Introduction.

2.0 Scope of Work

The awarded Contractor(s) shall provide the customary activities and services associated with providing fuel and transportation of fuel during emergency situations.

2.1 Duties of the Contractor

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1. Prior to potential emergency situation, and at the direction of the Mississippi Emergency Management Agency's Logistics Chief ("state representative"), the Contractor will position tanks and equipment that would form five (5) fueling facilities to be used for emergency event response in a location or locations whereby the tanks will be able to be moved to strategic locations and made operable immediately upon notification of safe conditions and clear roads. Each fueling site shall have a minimum capacity of 3500 gallons of diesel and 3500 gallons of gasoline, and be equipped for use as temporary fuel stations capable of dispensing and metering fuel to vehicles or other tanks. These facilities shall be self-sustaining in case there is no electricity available, and equipped for night use. The tanks should be double walled, UL listed, with appropriate containment systems, equipped with industry approved vents and fill openings. These tank systems shall also allow for the recording of fuel using the state fuel card system transaction information. The State will provide the location, as well as, security and an onsite individual to record usage. Alternatively, the Contractor can provide its proposed fee for providing such security and onsite personnel.

Contractor is to provide storage and deployment services for small tanks so they remain ready for service and out of the weather.

2. After the occurrence of an emergency situation, as soon as conditions are deemed safe and the roads are adequately cleared, and at the direction of the state representative, move up to five (5) mobile tank facilities to locations designated by the state representative.

3. Guarantee the availability and delivery of fuel to the mobile tank facilities for 15 days. With 5 tanks having a capacity of 7,500 gallons of gasoline and 7,500 gallons of diesel, this would be about 562,500 gallons of gasoline and about 562,500 of diesel. The specific sites and quantities will be as specified by the state representative. Fuel is not to be delivered, unless requested by the state representative.

4. As requested by the state representative, guarantee the availability and delivery of up to 2 million gallons of fuel (gasoline, diesel and/or propane) to state and county locations, over a 15 day period. The specific sites and quantities will be as specified by the state representative. Fuel is not to be delivered, unless requested by the state representative.

5. If requested by the state representative, move the mobile tank facilities to new sites as designated by the state representative.

6. Provide fuel transportation (including drivers and all personnel required to pump fuel) through the use of tankers, bobtails (with the ability to dispense fuel directly into vehicles), and skids as requested by the state representative.

7. Provide fuel rotation services, if requested, by state facilities that have on-site fuel storage.

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8. Provide an adequate number of trucks with tanks and fueling capabilities that could be used by a county to fuel generators throughout the county. The Contractor would be responsible for filling the tank(s) as needed over a 15 day period. The specific sites and quantities will be as specified by the state representative. Fuel is not to be delivered, unless requested by the state representative.

2.2 Duties of the Office of Purchasing, Travel and Fleet Management

The specific responsibilities of OPTFM are as stated below:

1. Receive proposals.
2. Evaluate proposals to develop a contract or contracts that will ensure the state agencies of an adequate supply of fuel in emergency situations.
3. Conduct negotiations with the best Offeror or Offeror's, as necessary.
4. Prepare contract for signatures.
5. Establish methods for payment.

2.3 Selection Procedure

1. Of the proposals received, an evaluation will be conducted to determine that the required information set forth in 4.1 has been submitted and that the minimum qualifications, as set forth in Section 3.2, have been met.
2. All proposals will be evaluated by an evaluation team consisting of state representatives. This evaluation will be made based upon the specific needs and a comparison of the various proposals/qualifications, taking into consideration; proposed plan (35 points), prior related experience (10 points), personnel (10 points), resources (10 points), and cost (35 points).

3.0 Qualifications

The OPTFM reserves the right to reject any and all proposals, to request and evaluate "best and final offers" from some or all of the respondents, to negotiate with the best proposed offer to address issues other than those described in the proposal, to award a contract to other than the low Offeror, or not to make any award if it is determined to be in the best interest of the OPTFM.

3.1 Required Information

The information set forth in Section 4.1 must be provided.

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3.2 Minimum Qualifications

The minimum qualifications are as follows:

- The Contractor and all proposed subcontractors must maintain any and all licenses to do the proposed business in the State of Mississippi.
- The Contractor must be able to provide proof of minimum insurance coverage as herein provided.

3.3 Questions regarding this RFP should be in writing and directed to Billy Beard, Director, Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management, 501 North West Street, Suite 701-A, Jackson, MS 39201.

4.0 Format and Procedures for Delivery of the Request for Proposals

4.1 Proposal Organization

The proposal shall consist of three parts:

- **Part I**
 - Proposal Transmittal Form (Appendix A)
- **Part II**
 - Executive Summary (Limited to 15 pages)
 - Provide a summary of the Offeror's proposed plan, as well as, area(s) of expertise and resource capabilities that highlight your company as superior or unique in addressing the needs of the State
 - Qualifications and Experience –
 - Provide a brief history and organizational structure of the company (Limited to 1 page).
 - Past performance in similar activities. (Limited to 5 pages) List projects similar in scope and size. Title and brief description of each project to include:
 - Client Name, include contact person, address, telephone number and fax number
 - Nature of work involved in each project
 - Dates of agreement
 - Total value of contract
 - Briefly explain the process and methods used to minimize costs and risks, if applicable.
 - Qualifications of Personnel (Limited to 5 pages)
 - Listing of the individuals and details of qualifications of individuals to be assigned under this agreement:
 - ✓ Individual's resume

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- ✓ An outline of the proposed function(s) of the individual in the proposed engagement
 - ✓ Individual's office location
 - List current litigation, outstanding judgments and liens
 - Listing of any subcontractors, their location(s), and the proposed function(s) of the subcontractors in the proposed engagement
 - A copy of any applicable license
 - A copy of existing insurance or a statement indicating that such will be provide upon awarding of a contract
 - List any potential risks to the OPTFM or the Contractor related to this contract, as well as, the methods that will be used to minimize risks to all parties.
- **Part III Fee Schedule (Limited to 3 pages)**
 - The proposed fee schedule shall include the following:
 - Any proposed fees or costs to the state to be charged by the Contractor
 - Offerors may submit different pricing proposals, thus allowing the state to choose the plan that is most advantageous to the State
 - Offerors should price the mobile tank units (500 to 10,000 gallon tankers, bobtails with dispensing ability, skids, etc) separately as the State may choose another method of acquiring these units.
 - Offerors should submit pricing for labor rates for drivers
 - Offerors should price each of the duties listed in Section 2.1 separately as the State may choose to not contract for all services and/or different agencies may be required to pay for the different services.
 - List any other costs OPTFM may anticipate relating to the services to be provided
 - List any additional anticipated categories and/or costs associated with the tasks

Offeror must use the designated forms or formats, as instructed. **Failure to respond in the format and context prescribed by the OPTFM may result in disqualification of the proposal.**

OPTFM reserves the right to reject any or all proposals.

4.2 Procedures for Delivery of Proposal

Proposals for this RFP must be submitted with Parts I, II, III clearly tabbed. Five (5) copies of the written proposal, which must be in sealed packages that are clearly identified as **RFP Emergency Fuel RFP #3120002221**, must be received by 2:00 p.m. Central Standard Time, on **Friday, June 4, 2021.**

Failure to respond in the format and context prescribed by the OPTFM may result in disqualification of the Offeror.

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Proposals must be mailed or hand delivered to:

**Billy Beard, Director, Bureau of Fleet Management
REQ: Emergency Fuel
RFP #3120002221
Mississippi Department of Finance and Administration
501 North West Street, Suite 701-A
Jackson, Mississippi 39201**

As the proposals are received, the sealed proposals will be date-stamped and recorded by OPTFM. The parties submitting proposals are responsible for ensuring that the sealed competitive proposal is delivered by the required time and to the required location and the parties assume all risks of delivery. No facsimile proposals will be accepted in the OPTFM. The proposal must be signed by a company official authorized to bind the Offeror to the proposal provisions.

Proposals and modifications thereof received by OPTFM after the time set for receipt or at any location other than that set forth above will be considered late and shall not be considered for award.

4.3 Force Majeure

If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids (or the receipt of sealed proposals) at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening (or deadline to receive sealed proposals), as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening is set forth herein. The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid or competitive sealed proposal, where applicable, by the agency prior to the new date and time of the bid opening.

4.4 Acceptance of Proposals

The OPTFM reserves the right, in its sole discretion, to waive minor informalities in proposals. A minor informality is a variation in the proposal that does not affect the cost of the proposal or gives one Offeror an advantage or benefit not enjoyed by other Offerors or that adversely impacts the interests of the State. Waivers, when granted, shall not excuse the Offeror from full compliance with the RFP specifications and other

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contract requirements if the Offeror is awarded a contract.

4.5 Rejection of Proposals

Any proposal may be rejected, in whole or in part, when it is determined to be in the best interest of the State. Reasons for a possible rejection include, but are not limited to:

1. The proposal contains unauthorized amendments to the requirements of the RFP;
2. The proposal is conditional;
3. The proposal is incomplete or contains irregularities that make the proposal indefinite or ambiguous;
4. An authorized representative of the party does not sign the proposal;
5. The proposal contains false or misleading statements or references;
6. The Offeror is determined to be a non-responsible vendor;
7. The proposal ultimately fails to meet the announced requirements of the OPTFM in some material aspect;
8. The proposal price is clearly unreasonable;
9. The proposal is not responsive, i.e., does not conform in all material respects to the RFP;
10. The supply or service item offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFP;
11. The Offeror does not comply with the Procedures for Delivery of Proposal as set forth in Section 4.2; or
12. The Offeror is currently indebted to the State.

4.6 Disposition of Proposals

All submitted proposals become the property of the OPTFM and will not be returned to the Offeror.

4.7 Conditions of Solicitation

The release of this RFP does not constitute an acceptance of any offer, nor does such release in any way obligate the OPTFM to execute a contract with any other party. The OPTFM reserves the right to accept, reject, or negotiate any or all offers submitted. The final decision to execute a contract with any party rests solely with

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the OPTFM.

The Offeror shall assure compliance with the following conditions of solicitation:

1. Any proposal submitted in response to the RFP shall be in writing;
2. The OPTFM will not be liable for any costs incurred by any party which are associated with the proposal process, including, but not limited to, preparation of proposals, required on-site interviews, if necessary, and negotiations of a contract.
3. The award of a contract for any proposal is contingent upon the following;
 - a) Favorable evaluation of the proposals;
 - b) Favorable on-site interviews and presentations with the potential winning Offeror(s);
 - c) Favorable evaluation of "best and final offers" should the OPTFM request the submission of a "best and final offer" from the potential leading Offerors. The OPTFM reserves the right to request a "best and final offer", however, the OPTFM is under no obligation to request or evaluate "best and final offers" and Offerors are encouraged to present their best offering in their initial response to this RFP;
 - d) Approval of the proposal by the OPTFM and successful negotiation of a contract;
4. The OPTFM reserves the right to accept any proposal as submitted for contract award without substantive negotiation of offered terms, services, or prices. Contractors shall be required to enter into a contract which is in substantial compliance with the sample contract attached as Appendix B.
5. All parties are advised to propose their most favorable terms initially. The OPTFM reserves the right to conduct discussions with Offerors who substantively meet the qualifications for the purpose of clarification to ensure full understanding of and responsiveness to the requirements and the budget summary submitted. However, as stated above, proposals may be accepted without any such discussions or clarifications;
6. Contracted parties will be required to assume full responsibility for all specified services and may subcontract only as specified in the RFP;
7. Offerors must designate those portions of the proposal that contain trade secrets or other proprietary data that remain confidential in accordance with §25-61-9 and §79-23-1 of the Mississippi Code of 1972, Annotated. Unless so designated, all information shall become public information upon contract award. Offerors should refer to Section 5.7 of this RFP. Any information

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considered to contain trade secrets or other proprietary data shall be on colored paper that is easily identifiable;

8. The OPTFM reserves the right to cancel this solicitation, with or without cause, when it is determined to be in the best interest of the State;
9. Any proposal received after the time and date set for receipt of proposals is late. Any withdrawal or modification of a proposal received after the time and date set for receipt of proposals at the place designated for receipt is late. No late proposal, late modification, or late withdrawal will be considered, unless receipt would have been timely but for the action or inaction of State personnel;
10. Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment page with the offer, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgement must be received by the OPTFM by the time and at the place specified for receipt of proposal. The offer may be rejected if the acknowledgement of any amendment is not received;
11. The Offeror certifies that the fee(s) proposed in response to the solicitation has/have been arrived at independently and without any consultation, communication, or agreement with any other Offeror or competitor relating to the intention to submit a proposal, or the methods or factors used to calculate the fee(s). The Offeror is required to certify this in writing on the Proposal Transmittal Form found in Appendix A;

5.0 Standard Terms and Conditions for Contract

Certain terms and conditions are required for contracting. Therefore, the Offeror shall assure agreement and compliance with the following Standard Terms and Conditions:

5.1 Access to Records

The Contractor agrees that the OPTFM or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Contractor shall keep such records for a period of five (5) years after final payment under this agreement. Contractor agrees to refund to the OPTFM any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 5-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

5.2 Applicable Law

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

5.3 Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without prior written consent of the OPTFM, which the OPTFM may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligations of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

5.4 Authority to Contract

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

5.5 Availability of Funds

It is expressly understood and agreed that the obligation of State Agencies and Governing Authorities to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and 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 are 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 state, the state shall have the right upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the state of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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5.6 Change in Scope of Work

The OPTFM 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 the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the OPTFM and the Contractor.

If the 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 the Contractor, the Contractor must immediately notify the OPTFM in writing of this belief. If the OPTFM believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

5.7 Confidential Information

"Confidential Information" shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the OPTFM. Each party to this agreement agrees to protect all confidential information provided by one party to the other; to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of OPTFM and shall result in the immediate termination of this agreement.

In the event that either party to this agreement 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 law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by Mississippi Code Annotated §§25-61-1.

Offeror and the OPTFM shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is

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released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on Confidential Information; (e) is or later becomes part of the public domain or may be lawfully obtained by the OPTFM or the Offeror from any non-party, or (f) is disclosed with the Disclosing Party's prior written consent.

5.8 Copyrights

Contractor agrees that the OPTFM shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Contractor hereby grants to the State a royalty free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or (copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion or full final settlements of this agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

5.9 Compliance With Laws

The Contractor understands that the OPTFM 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 the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The 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.

5.10 Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the OPTFM, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the OPTFM's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the OPTFM. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the OPTFM shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the OPTFM's concurrence, which the OPTFM shall not unreasonably withhold. In the event the

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Contractor fails to comply with the dictates of this section, the OPTFM shall have the right to seek any legal remedy that may be available.

5.11 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 OPTFM. Nothing contained herein shall be deemed or construed by the OPTFM, the 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 OPTFM and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the OPTFM or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the OPTFM and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the OPTFM. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the OPTFM; and the OPTFM shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The OPTFM shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the OPTFM shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the OPTFM for its employees.

5.12 Legal and Technical Support

The Contractor shall utilize its knowledge and understanding of applicable legal standards and comply with recognized professional standards and general accepted measurement principles, applicable assessments and uses of the type described in this RFP, including but not limited to standards relating to validity and reliability. The Contractor shall consult with the OPTFM concerning its implementation of the requirements of the section. In the event of a challenge in which the validity or reliability of the use of any instrument provided or developed under this contract is an issue (other than a challenge based on infringement of copyright or other proprietary rights of a third party), the Contractor shall cooperate with the OPTFM in the defense of the instrument and shall provide reasonable technical and legal support with regard to the Contractor's activities under this contract without additional charges to the OPTFM.

5.13 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 and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.

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5.14 Ownership of Documents and Work Papers

The OPTFM shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal Project correspondence. The Contractor shall deliver such documents and work papers to the OPTFM upon termination or completion of each engagement under the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the OPTFM and subject to any copyright protections.

5.15 Patents and Royalties

If the Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work. The Contractor covenants to save, defend, keep and hold harmless, and indemnify the OPTFM and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost - including court costs and attorney's fees, charges, liability, and exposure, however caused - for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the OPTFM.

5.16 Price Adjustment

1. Price Adjustment Methods. Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:
 - a. by agreement on a fixed price adjustment before commencement of the additional performance;
 - b. by unit prices specified in the contract;
 - c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
 - d. by the price escalation clause.
2. Contractor shall provide cost or pricing data for any price adjustments.

5.17 Procurement Regulations

The contract shall be governed by the applicable provisions of the Mississippi Procurement Manual, a copy of which is available at <https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>.

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5.18 Representation Regarding Contingent Fees

The 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 the Contractor's bid or proposal.

5.19 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 Personal Service Contract Procurement Regulations*.

5.20 Right to Audit

The Contractor shall maintain such financial records and other records as may be prescribed by the State or by applicable federal and State laws, rules, and regulations. The Contractor shall retain these records for a period of five (5) years after final payment, or until they are audited by the State of Mississippi or any of its duly authorized representatives, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent 5-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

5.21 Right to Inspect Facility

The OPTFM may at reasonable times, inspect the place of business of a Contractor or any subcontractor that is related to the performance of any Contract awarded by the OPTFM.

5.22 Stop Work Order

1. *Order to stop work.* The OPTFM, may by written order to the Contractor at any time, and without notice to any surety, require the 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 the 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, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to 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 OPTFM 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.

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2. *Cancellation or Expiration of the Order.* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the 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 results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (b) The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the OPTFM 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 cancelled 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 administrative fee calculations made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

5.23 Termination for Default

1. *Default.* If the 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 OPTFM may notify the Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer specified in writing by the OPTFM, the OPTFM may terminate the 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 OPTFM may procure similar supplies or services in a manner and upon terms deemed appropriate by the OPTFM. The 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 OPTFM, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the OPTFM has an interest.

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3. *Compensation.* Payment for completed services delivered and accepted by the OPTFM shall be at the contract price. The State may withhold from amounts due the Contractor such sums as the OPTFM 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 OPTFM 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 OPTFM 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 OPTFM 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 DFA, 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.

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5.24 Termination for Convenience

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

5.25 Insurance

Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$1,000,000.00. All general liability, professional liability and fidelity bond insurance will provide coverage to the [agency] as an additional insured. The [agency] reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

5.26 Debarment and Suspension

Contractor certifies to the best of its knowledge and belief, that it:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
2. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

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3. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
5. has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

5.27 Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: *Name, Title, Contractor, Address*

For the OPTFM: Billy Beard
Director, Bureau of Fleet Management
billy.beard@dfa.ms.gov
601-359-5171
Mississippi Department of Finance & Administration
Purchasing, Travel and Fleet Management
701-A Woolfolk Building
501 North West Street
Jackson, Mississippi 39201

5.28 Certification of Independent Price Determination

The Offeror 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 offeror or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices proposed.

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5.29 E-Payment and Paymode

The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The OPTFM agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.

Payments by state agencies using the Statewide Automated 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 the Contractor's choice. The State may, at its sole discretion, require the 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.

5.30 E-Verification

If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (1972, as amended), and will register and participate in the status verification system for all newly hired employees. 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. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following:

1. termination of this Agreement 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 the Contractor by an agency, department or

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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, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.

5.31 Acknowledgment of Amendments

Offerors 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 the OPTFM by the time and at the place specified for receipt of bids or proposals.

5.32 Termination upon Bankruptcy

This contract may be terminated in whole or in part by DFA 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.

5.33 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.

5.34 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 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

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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.

6.0 Timeframe for Performance of Service

The contract will begin upon signing of the contract and will be in force for a period of three (3) years with options to renew for up to two (2) additional 12 month periods.

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Appendix A - Proposal Transmittal Form

Name of Offeror:	
Contact Person and Title:	
Location of Principal Place of Business:	
Location of place of performance if different from above:	
Phone:	
Age of Offeror's Business:	
Average number of employees for each of the last three years:	(1) (2) (3)
Fax:	
Mailing Address:	
E-mail Address:	

IMPORTANT

Attach the following (see Section 4.1):

- **Summary page (limited to 15 pages)**
- **History and organizational structure (limited to 1 page)**
- **Summary of past projects**
- **Listing of individuals, individuals resumes, proposed functions and office location**
- **Listing of any subcontractors**
- **Listing of current litigation, outstanding judgments and liens**
- **Copy of license (if applicable)**

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- **Fee Schedule**

Contingency:

I represent that as a part of our bid or proposal that the Offeror **has / has not** (circle applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Authority to Bind Offeror:

By my signature below, I hereby represent that I am authorized to and do bind the Offeror to the provisions of the attached proposal. The undersigned offers and agrees to perform the specified personal and professional services in accordance with provisions set forth in the Request for Proposals. Furthermore, the undersigned fully understands and assures compliance with the Conditions of Solicitation and Standard Terms and Conditions contained in the RFP. The undersigned is fully aware of the evaluation criteria to be utilized in awarding the contract.

The Offeror certifies that the fee(s) proposed in response to the solicitation has been arrived at independently and without any consultation, communication, or agreement with any other Offeror or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the fee(s) stated herein.

Authorized Signature

Date

Proposal Due: Friday, June 4, 2021 no later than 2:00 PM Central Standard Time

US MAIL OR HAND DELIVERED

Billy Beard
Director, Bureau of Fleet Management
REQ: Emergency Fuel
RFP #3120002221
Mississippi Department of Finance and Administration
Purchasing, Travel and Fleet Management
701-A Woolfolk State Office Building
501 North West Street
Jackson, Mississippi 39201

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Appendix B Sample Contract

Emergency Fuel Agreement
Between the
Mississippi Department of Finance and Administration
Office of Purchasing, Travel and Fleet Management (DFA)
And the
(NAME OF CONTRACTOR)

This Emergency Fuel Contract is made by and between the Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management ("DFA" or "OPTFM") whose address is 501 North West Street, Suite 701-A Woolfolk Building, Jackson, Mississippi, 39201, and the (NAME OF CONTRACTOR) (the "Contractor"), whose address is (ADDRESS OF CONTRACTOR), on the _____ day of _____, 2016, under the following terms and conditions:

1. **Scope of Services**

2. **Contract Term**

3. **Consideration**

4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.

5. **Paymode** Payments by state agencies using the Statewide 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 the Contractor's choice. The State, may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

6. **Availability of Funds** It is expressly understood and agreed that the obligation of the DFA 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 DFA, the DFA shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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7. **Record Retention and Access to Records** Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the Contractor agrees that the DFA or any of its duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
8. **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 said state. The Contractor shall comply with applicable federal, state, and local laws and regulations.
9. **Anti-Assignment/Subcontracting** Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Agreement without prior written consent of the DFA, which DFA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without said consent shall be null and void. No such approval by DFA of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DFA in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
10. **Compliance with Laws** The Contractor understands that the DFA 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 the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The 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.
11. **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 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

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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.

12. **E-Verification** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (1972, as amended), and will register and participate in the status verification system for all newly hired employees. 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. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following:

- (1) termination of this Agreement 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 the 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, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.

13. **Independent Contractor Status** The 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 DFA. Nothing contained herein shall be deemed or construed by DFA, 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 DFA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DFA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. DFA 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, DFA shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by DFA for its employees.

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14. **Modification or Renegotiation** This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the DFA revisions of any applicable laws or regulations make changes in this Agreement necessary.

15. **Procurement Regulations** The contract shall be governed by the applicable provisions of the *Mississippi Procurement Manual* available at at <https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>.

16. **Representation Regarding Contingent Fees** The Contractor represents that it has not retained a person to solicit or secure a DFA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.

17. **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 Personal Service Contract Review Board Rules and Regulations*.

18. **Termination for Convenience**

(1) Termination. The DFA may, when the interests of the DFA so require, terminate this contract in whole or in part, for the convenience of the DFA. The DFA shall give written notification of the termination to the Contractor specifying the part of the contract terminated and when the termination becomes effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The DFA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the DFA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

19. **Termination for Default**

(1) *Default.* If the 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 within this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the DFA may notify the Contractor in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the DFA, the DFA may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the DFA may procure similar supplies or services in a manner and upon terms deemed appropriate by the DFA. The Contractor shall continue performance of the

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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 DFA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the DFA has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the DFA shall be at the contract price. The DFA may withhold from amounts due the Contractor such sums as the DFA deems to be necessary to protect the DFA against loss because of outstanding liens or claims of former lien holders and to reimburse the DFA 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, the 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 the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the DFA 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 make progress, and if such failure arises out of causes similar to those set forth above, the 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 the Contractor to meet the contract requirements. Upon request of the Contractor, the DFA 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, the 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 DFA 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 the 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 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 DFA, 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 under this clause are in addition to any other rights and remedies provided by law or under this contract.

20. **Stop Work Order**

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(1) *Order to stop work.* The DFA, may by written order to the Contractor at any time, and without notice to any surety, require the 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 the 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, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to 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 DFA 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 cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the 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 the Contractor's cost properly allocable to, the performance of any part of this contract; and,
- (b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the DFA 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 cancelled 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.

21. Price Adjustment

(1) *Price Adjustment Methods.* Any adjustment in contract price pursuant to a clause in this contract, shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the contract; or
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

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(2) *Submission of Cost or Pricing Data.* The contractor shall provide cost or pricing data for any price adjustments.

22. **Oral Statements** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the DFA and agreed to by the Contractor.

23. **Ownership of Documents and Work Papers** The DFA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the DFA upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the DFA and subject to any copyright protections.

24. **Indemnification** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

25. **Third-Party Action Notification** The Contractor shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this Agreement.

26. **Notices** All notices required or permitted to be given under this Agreement must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

Name
Title
Address
City, State, & Zip Code

For the DFA:

Billy Beard
Director, Bureau of Fleet Management
701-A Woolfolk State Office Building, 501 N West St
Jackson, Mississippi 39201

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27. **Priority** The contract consists of this agreement, the request for proposal [number] (hereinafter "RFP" and attached as Schedule []), and the response proposal by [Contractor] dated [date] (hereinafter "Proposal" and attached as Schedule []). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Schedules [] or [] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

28. **Change in Scope of Work** The DFA 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 the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the DFA and the Contractor.

If the 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 the Contractor, the Contractor must immediately notify the DFA in writing of this belief. If the DFA believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

29. **Contractor Personnel** The DFA shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Contractor. If the DFA reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the DFA in a timely manner and at no additional cost to the DFA. The day-to-day supervision and control of the Contractor's employees and Subcontractors is the sole responsibility of the Contractor.

30. **Recovery of Money** Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the DFA, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the amount of any loss or damage suffered by the DFA on account of the acts or omissions of the Contractor.

31. **Failure to Enforce** Failure by the DFA 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 DFA to enforce any provision at any time in accordance with its terms.

32. **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.

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33. **Termination Upon Bankruptcy** This contract may be terminated in whole or in part by DFA 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.

WITNESS our signatures, on the date first written.

(NAME OF CONTRACTOR)

By: _____
(Name and Title of authorized contractor representative)

Date: _____

Mississippi Department of Finance and Administration
Office of Purchasing, Travel and Fleet Management

By: _____
Aubrey Leigh Goodwin, Director, Office of Purchasing, Travel and Fleet Management

Date: _____