

REQUEST FOR QUALIFICATIONS

RFQ Number: 3140001387

To Provide: Bond and Tax Counsel Services for General Obligation or Revenue Bonds of the State of Mississippi.

Issue Date: May 4, 2018

CONTACT:

Belinda Russell, Assistant Director,

Bond Advisory Division

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DUE DATE AND TIME

Qualifications must be received by 2:00 PM CST, 05/25/2018

SECTION 1

1.1 Qualifications and Cost Proposal Acceptance Period

The statement of qualifications, shall be signed and submitted in a sealed envelope(s) or package(s) as described in Sections 4.5.2 and Section 4.5.3 of this Request for Qualifications (hereinafter “the RFQ”) no later than the time and date specified for receipt on the title page of this RFQ. Timely submission is the responsibility of the respondent. Statements of qualifications received after the specified time shall be rejected and returned to the respondent unopened. The envelope(s) or package(s) shall be marked with the name of the respondent, the services to be provided (as listed on the title page of this RFQ) and the number of the RFQ. The time and date of receipt shall be indicated on the envelope or package by the Mississippi Department of Finance and Administration (hereinafter the “DFA”) Bond Advisory Division. Each page of the statement of qualifications and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the statement of qualifications. The DFA on behalf of the State Bond Commission reserves the right to decide, on a case-by-case basis, whether to reject a statement of qualifications with modifications or additions as non-responsive. As a precondition to statement of qualifications acceptance, the DFA may request the respondent to withdraw or modify those portions of the statement of qualifications deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

For more information regarding the procedures for delivery and the required format of the statement of qualifications and cost proposal, refer to Sections 4.5.2 and 4.5.3 of this RFQ.

1.1.1 Timeline

May 4, 2018 RFQ Number 3140001387 issued.

May 14, 2018 Deadline for questions related to RFQ (2:00 PM CST).

May 17, 2018 Deadline for responses to all questions related to RFQ.

May 25, 2018 Closing date for RFQ. (2:00 PM CST).

May 30, 2018 RFQ responses evaluated.*

June 19, 2018 State Bond Commission makes selection of bond counsel.*

June 22, 2018 Notification of selection letters issued.*

(*) – Dates are estimated and are subject to change.

1.1.2 Late Submissions

A statement of qualifications received at the place designated in the solicitation for receipt of statements of qualifications after the exact time specified for receipt will not be considered unless it is the only statement of qualifications received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of statements of qualifications. It must be determined by the DFA that the late receipt was due solely to mishandling by the DFA after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late statement of qualifications is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Respondents should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for opening of statements of qualifications is the time and date stamp of that office on the statement of qualifications wrapper or other documentary evidence of receipt used by that office.

1.2 Expenses Incurred in Preparing Statement of Qualifications

The DFA accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of a statement of qualifications. Such expenses shall be borne exclusively by the respondent.

1.3 Registration with Mississippi Secretary of State

By submitting a statement of qualifications, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.4 Debarment

By submitting a statement of qualifications, the respondent certifies that it is not currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government, and that it is not an agent of a person or entity that is currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi.

1.5 Additional Information

Questions about this RFQ should be directed to Belinda Russell at 501 N. West Street, Suite 1300-A, Jackson, MS 39201 or to Belinda.Russell@dfa.ms.gov. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.6 Type of Contract

Compensation for services will be in the form of an indefinite quantity agreement.

1.7 Written Statement of Qualifications

All statements of qualifications shall be in writing.

1.8 Release of Information

Neither the State Bond Commission nor DFA will release information submitted in response to this RFQ during the proposal evaluation process or prior to an engagement award. After all respondents have been notified of the engagement award (as described in Section 4.6.1 of this RFQ), respondents' statement of qualifications will be available for public review.

1.9 Non-Discrimination

There shall be no discrimination as to race, sex, color, creed, national origin or disability in the operations proposed to be conducted under any engagement arising out of the responses to this RFQ.

1.10 Joint Proposals

Although it is the desire of the Commission that the Respondent is able to provide all services required of bond counsel and tax counsel, the Commission may entertain joint proposals as long as such services are primarily performed in Mississippi.

1.11 Supplementation

Each Respondent must supplement its response to this RFQ within seven (7) days of any material change to the information contained in its response.

1.12 Contract Administrator

The contracts resulting from the State's RFQ process will be administered by DFA. The contract administrator will be Laura D. Jackson, Executive Director, Department of Finance and Administration, P.O. Box 267, Jackson, Mississippi 39205, telephone: 601-359-5022 or 601-359-5745.

1.13 Terms of Contract

The terms of any contract resulting from a response to this RFQ will contain, by reference, the terms of this RFQ and the Respondent's response thereto.

1.14 Obligation to Employ Bond Counsel

By this RFQ, the Commission has not committed itself to employ a bond counsel for any or all of the matters described in this RFQ, nor does the suggested scope of services or term of agreement require that a bond counsel be employed for any of those purposes.

SECTION 2

2.1 Compensation for Services

The compensation for services will be negotiated with the respondent that is determined to be the most qualified. If the DFA and most qualified respondent are unable to agree on the compensation, DFA may move to the next most qualified respondent and negotiate the compensation. The selection of the most qualified respondent and negotiation of compensation are both subject to ratification and approval of the State Bond Commission.

2.2 Purpose

The DFA on behalf of the State Bond Commission (hereafter “the Commission”) is seeking to receive statement of qualifications from legal firms to provide bond and tax counsel services related to the issuance of various forms of indebtedness of the State of Mississippi (hereafter “the State”).

The State is an issuer, from time to time, of tax-exempt and taxable general obligation bonds, general obligation notes and revenue bonds, either for new money projects or to refund (advance and current) outstanding prior obligations of the State, secured by a pledge of the full faith, credit, and taxing power of the State or by a tax revenue pledge. Such bonds bear various call features, maturities, and interest rate contracts. In the past, such bonds have been issued to finance or refinance capital improvements, schools, colleges, universities, and economic development programs and loans. In the State, all debt must be authorized by specific legislation providing for the specific programs or projects to be financed. Such legislation provides the Commission with the authority to approve and authorize the sale and issuance of such bonds.

The Commission is seeking to engage a Respondent as outlined in this RFQ to provide specific legal and tax expertise and related services to the Commission regarding new or prospective bond issuances for the State, as well as for such services, as needed, for issues arising in connection with currently outstanding indebtedness of the State, including synthetically hedged bonds and services as may be required in connection with any audit of previously issued bonds of the State.

The Commission is comprised of the Governor of the State as Ex officio Chairman, the Attorney General of the State as Ex officio Secretary, and the State Treasurer of the State as an Ex officio Member.

2.3 Scope of Services

The Respondent selected by the Commission will be required to perform all legal services and duties customarily and usually performed by bond and tax counsel with respect to the issuance of general obligation bonds, revenue bonds, limited tax obligation bonds, refunding general obligation bonds, and other valid evidences of indebtedness, including variable rate borrowing structures and short-term debt instruments. These services will be required from time to time on an ongoing and continual basis during the term of this engagement. The following are to be included in the specific tasks to be performed with respect thereto. However, this shall in no way be considered as a complete list of tasks.

- (a) Preparation of all resolutions, indentures, and other bond security documents for consideration and adoption by the Commission;
- (b) Preparation of all notices of sale, bid forms, and other materials necessary to market the bonds;
- (c) Assistance in the preparation of the State's preliminary official statement and final official statement, including, but not limited to, those sections related to the legality and tax-exempt status of the interest on the bonds;
- (d) Assistance in continuing disclosure compliance responsibilities;
- (e) Assistance in structuring of the bonds, i.e., maturities, terms, etc.;
- (f) Delivery of opinions with respect to the bonds to the effect that (i) such bonds constitute valid obligations of the State, (ii) interest on the bonds is excluded from gross income for federal income tax purposes under existing statutes, regulations, rulings, and court decisions (for federal tax-exempt bonds), and (iii) in their participation in the preparation of the preliminary official statement and the final official statement related to the bonds, nothing has come to their attention that would give them a reason to believe that such documents (except for the financial statistical data included therein as to which no view need be expressed) contained any untrue statement of a material fact or omitted to state any material fact that was required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they were made, misleading;
- (g) Preparation of the form of the bonds;
- (h) Assist with the verification of bids and computation of yields;
- (i) Preparation of all closing documents, including tax and arbitrage certificates, and refunding escrow agreements, as applicable, and assistance in the execution thereof;
- (j) Preparation of closing transcripts;
- (k) Regular communication with the Commission, DFA, the Office of the Attorney General, the Office of the State Treasurer, and other State staff as required both prior to and following the issuance and sale of the bonds;

- (l) The study of applicable federal and state laws and local resolutions to assure that the Commission has the legitimate power to authorize such indebtedness and the associated compliance therewith;
- (m) The review of those same laws and resolutions to certify that the Commission indeed has the authority to issue bonds of which interest on the bonds is includable in or exempt from taxation to the purchasers of those securities as appropriate;
- (n) Drafting and examination of documents and procedures related to the bond issue to maintain compliance with all relevant laws dictating proper procedures;
- (o) Participation in activities associated with rating agency review of documentation;
- (p) Assistance to the Commission in preparing its resolutions and indentures for, among other things, rating agency review requests and other special needs;
- (q) Assistance to the Commission, its financial advisor, and underwriters in other matters as necessary to ensure the successful marketing, sale, and closing of the bonds; and
- (r) Handling of post issuance compliance matters, including any audits by the Internal Revenue Service.

2.4 Term

The term of the engagement shall be for a period of three years commencing on July 1, 2018 and ending on June 30, 2021.

2.4.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for legal services may be entered into for a period of time not to exceed three years. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.4.1.1 Requirements

- a) A unit price shall be given for each service, and that unit price shall be the same throughout the engagement.
- b) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.

- c) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
- d) A multi-term contract may be awarded

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SECTION 3

3.1 Insurance

The successful firm must carry a level of malpractice insurance, including deductible, and appropriate to the magnitude of each issue, to cover errors and omissions, improper judgements, or negligence. The DFA 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. The successful firm shall be prepared to provide evidence of required insurance upon request by the DFA at any point during the engagement period and should consult with legal counsel regarding its obligations.

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SECTION 4

4.1 Written Statements of Qualifications Shall Contain the Following Minimum Information

- 1) The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed contract;
- 2) The age of the respondent's business and average number of employees over a previous period of time, as specified in the RFQ;
- 3) The qualifications, including licenses, certifications, education, skills and experience of all persons who would be assigned to provide the required services; and
- 4) A listing of other engagements under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFQ.

4.2 Minimum Qualifications

To be eligible to respond to this RFQ, a certification by the Respondent is required to each of the following requirements:

- a. Must be listed in the section entitled "Municipal Bond Attorneys" in the Mississippi section of the most recent edition of The Bond Buyer's Municipal Marketplace;
- b. Must have given solo validity and tax opinions in municipal financing transactions since passage of the federal Tax Reform Act of 1986 or must have served as co-counsel in giving validity and tax opinions in at least four separate municipal financing transactions since passage of the federal Tax Reform Act of 1986;
- c. In instances for which specialized tax advice beyond normal bond counsel services may be required, must have attorneys who practice full-time in the area of public finance tax law or must be able to identify a sufficient alternative to providing competent specialized tax advice;
- d. In instances for which specialized securities law services beyond normal bond counsel services may be required, must have attorneys who practice full-time in the area of municipal securities law or must be able to identify a sufficient alternative to providing competent specialized municipal securities law advice;
- e. Must have no relationships or activities that might present a conflict of interest for the State;
- f. The lawyer(s) who will be primarily responsible for providing the legal services necessary (i) must be licensed or admitted to practice law in Mississippi, (ii) must satisfy the requirements of (b) above, and (iii) must agree to primarily perform the legal service requested in Mississippi; and

- g. Must carry a level of malpractice insurance, including deductible, to cover errors and omissions, improper judgment, or negligence appropriate for the magnitude of the issue.

4.2.1 Responsive Respondent

Respondent must submit statement of qualifications which conforms in all material respects to this RFQ, as determined by the DFA.

4.2.2 Responsible Respondent

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by the DFA.

4.3 Nonconforming Terms and Conditions

A statement of qualifications that includes terms and conditions that do not conform to the terms and conditions in the RFQ is subject to rejection as non-responsive. The DFA reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its statement of qualifications response prior to a determination by the DFA of non-responsiveness based on the submission of nonconforming terms and conditions.

4.4 Conditioning Statement of Qualifications Upon Other Awards

Any statement of qualifications which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.5 Evaluation Procedure

The DFA, together with representatives of the Commission, will evaluate all statements of qualifications that are received on or before the stated due date and time. Those responses that satisfy the Minimum Qualifications (See Section 4.2) will be further evaluated and assigned a score in accordance with the Evaluation Factors (See Section 4.5.1) for this RFQ.

During the evaluation process, the DFA and/or the Commission may request certain of the Respondents make oral presentations before the DFA and/or the Commission. If so, those Respondents will be given not less than three (3) business days' notice, along with the date, time, and place for the oral presentation.

The Respondents' Statement of Qualifications (See Section 4.5.3) and oral presentation (if applicable) will be the basis for the Respondents' score. The Respondent with the highest total score will be considered the most qualified respondent. DFA will negotiate the compensation related to the services requested in this RFQ with the most qualified respondent. If the DFA and most qualified respondent are unable to agree on the compensation, DFA may move to the next most qualified respondent and negotiate the compensation. The authority to make the final selection of a Respondent under this RFQ resides solely with the Commission. The Commission reserves the right to reject any and all responses to this RFQ, with or without cause.

4.5.1 Evaluation Factors

Responses will be evaluated using the following scoring:

Expertise doing state financings	30%
Tax expertise	25%
Availability and experience of lawyers	30%
Experience in handling IRS audits	5%
Experience of lawyers in handling VRD financings, hedges, and derivatives	<u>10%</u>
Total	<u>100%</u>

4.5.2 Procedures for Delivery of Qualifications

The respondent shall submit seven (7) copies of its statement of qualifications in an envelope(s) or package(s) marked "Statement of Qualifications Package" (see Section 4.5.3 of this RFQ). The envelope or package shall also be clearly labeled with the name of the respondent, the services to be provided (as listed on the title page of this RFQ) and the number of this RFQ (RFQ #:3140001387).

The statement of qualifications are due by the time and date listed on the title page of this RFQ. Any responses received by DFA after the due time and date set for receipt will be considered late and shall not be considered for award.

Qualifications shall be mailed or hand delivered to:

Attn: Belinda Russell
Bond Advisory Division
Mississippi Department of Finance and Administration
501 North West Street, Suite 1300-A
Jackson, MS 39201

The parties submitting qualifications are responsible for ensuring that the sealed qualifications and sealed cost proposals are delivered by the required time and to the required location. The submitting parties assume all risks of delivery. No facsimile or e-mailed responses will be accepted.

4.5.3 Statement of Qualifications Submission Format

As previously stated, seven copies of the respondent's statement of qualifications shall be submitted in an envelope or package marked "Statement of Qualifications Package".

The DFA requests that each page of the printed response that the proposer considers confidential be conspicuously marked by being printed on a different color paper than non-confidential pages and be marked in the upper right hand corner of each page with the word "CONFIDENTIAL." Confidential information may be identified by alternate font color and/or type on electronic

copies of the proposal. Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being released subject to a public records request. Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being released subject to a public records request per Mississippi Code Annotated §25-61-1 et seq. and §79-23-1

The first page of the statement of qualifications should be a title page which is clearly marked with the name of the Respondent, the services to be provided (as stated on the Title Page of this RFQ), the RFQ number and the due date of the response. Thereafter, statement of qualifications must include the following information and should be labeled and tabbed as follows::

TAB 1 – Signed Confirmations

- a. A signed copy of this RFQ. See page 18 of this RFQ for signature line.
- b. A signed copy of any amendments to this RFQ, if applicable.
- c. A signed copy of the Certifications and Assurances certificate included as *Attachment A* of this RFQ.
- d. Certification that the respondent meets each of the minimum qualifications that are required to respond to this RFQ (see Section 4.2 “Minimum Qualifications” of this RFQ).

TAB 2 – Firm’s Attorneys Information

- a. The name of the respondent, the location of the respondent’s principal place of business and, if different, the place of performance of the proposed engagement.
- b. The age of the respondent’s business, the average number of employees over the previous four (4) years and the current number of attorneys practicing in the area of public finance.
- c. The name, telephone number and email address of the person(s) responsible for the response to this RFQ who may be contacted in the event of questions or notifications.
- d. The name of the attorney(s) who will be primarily responsible for any engagement resulting from this RFQ. Please provide the qualifications, including the state(s) licensed to practice in, certifications, education, skills, and experience of the attorney(s) who will be primarily responsible for providing the required services. Also, list at least two (2) separate municipal financing transactions in which the primary attorney(s) provided solo validity and tax opinions for since the passage of the Tax Reform Act of 1986. If no solo validity and tax opinions have been given, list at least four (4) separate municipal financing transactions in

which the primary attorney(s) served as co-counsel in giving validity and tax opinions since the passage of the federal Tax Reform Act of 1986;

- e. The name of the attorney(s) who will assist the primary attorney(s). Please provide the qualifications, including licenses, certifications, education, skills, and experience of the attorney(s) who will assist the primary attorney(s) with providing the required services.
- f. The name of the attorney(s) who will be providing tax counsel services. If the qualifications of the attorney(s) providing tax counsel services has not been previously described under the response to paragraphs eight (8) and nine (9) of this section, please include tax counsel's qualifications in response to this paragraph. Include licenses, certifications, education, skills, and experience of the respondent's tax counsel. **Note:** If the attorney(s) providing tax counsel services will be outsourced from another firm, the name and location of the firm must also be included along with the tax counsel's qualifications.
- g. The name of the attorney(s) who will be providing securities law services. If the qualifications of the attorney(s) providing securities law services has not been previously described under the response to paragraphs eight (8) and nine (9) of this section, please include the securities law counsel's qualifications in response to this paragraph. Include licenses, certifications, education, skills, and experience of the respondent's tax counsel. **Note:** If the attorney(s) providing securities law counsel services will be outsourced from another firm, the name and location of the firm must also be included along with the securities law counsel's qualifications.

TAB 3 – Experience

- a. A listing of other engagements, including but not limited to underwriter's counsel, under which services similar in scope, size, or discipline to the required services were performed or undertaken within the previous four (4) years.
- b. Details of all bond issues for which primary and assisting lawyers acted as sole bond and tax counsel **in the last four (4) years** for bonds issued by or on behalf of the State and its political subdivisions in excess of \$50,000,000.00.
- c. Details of Public Finance experience concerning variable rate demand bond structures and derivative products used in connection with municipal bond hedges, and dedication to federal tax expertise related to municipal obligations. As part of the response to this item, include a list of the variable rate demand obligation transactions and derivative products for which the primary and/or assisting attorneys have served as counsel for during the previous four years.

- d. Information concerning the audits by the Internal Revenue Service that your firm has handled for clients during the preceding four (4) years.

TAB 4 – Insurance and Malpractice Litigation

- a. The type of malpractice insurance the firm carries, the name of the carrier, and the limits of coverage for bond and tax counsel work.
- b. A list of all malpractice litigation or claims made against your firm, within the past five (5) years, and the disposition of same.

TAB 5 –References

- a. A list, including name(s), address(es), and telephone number(s), for references of investment bankers who have underwritten bond issues for which the firm has provided bond counsel and tax opinions or served as underwriter’s counsel in the last four (4) years.

TAB 6 – Firm Resources, Organization, Availability and Quality Control

- a. Description of resources available within the firm to assist with providing technical arbitrage yield calculations and bid verifications.
- b. Description of how the firm is organized to facilitate coordination of the various specialists who will be performing the several aspects of the required legal services.
- c. Description of the availability of the assigned individuals to the staff of DFA and the Commission or its representatives as needs and questions arise both before and after the sale and issuance of the bonds.
- d. Description of the quality control and due diligence policies and procedures of the firm.

TAB 7 – Conflicts of Interest

- a. Information on relationships and/or activities that might present a conflict of interest for the State.

TAB 8 – Additional Information

- a. Any additional information which you feel would be of assistance in evaluating your firm’s ability to serve as bond and tax counsel.

4.6 Award

The engagement will be awarded by written notice, within sixty days of the close of this RFQ, to the highest ranked respondent whose statement of qualifications meets the requirements and criteria set forth in this RFQ with successful negotiation of fees, subject to ratification and approval of the State Bond Commission.

4.6.1 Notification

All participating vendors will be notified of the Commission’s intent to award the

engagement. In addition, the DFA will identify the selected vendor. Notice of award is also made available to the public.

SECTION 5

5.1 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Executive Director of the DFA within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Executive Director of the DFA in writing and identify its attorney by name, address, and telephone number. The DFA will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the *Public Procurement Review Board's Rules and Regulations*.

5.2 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the RFQ may file a protest with the RFQ Coordinator, Belinda Russell, Assistant Director, Bond Advisory Division. The protest shall be submitted within seven (7) calendar days after the contract is awarded and receipt of notice of the award in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Coordinator, Belinda Russell, Assistant Director, Bond Advisory Division, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after seven (7) calendar days after the contract is awarded and receipt of notice of the award will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a respondent shall be in the form of and include the terms and conditions found in the contract in **Attachment B**.

5.4 Mississippi Contract/Procurement Opportunity Search Portal

This RFQ, and the questions and answers concerning this RFQ, are posted on the Contract/Procurement Opportunity Search Portal. www.dfa.ms.gov/bid-rfp-notices/.

5.5 Attachments

The attachments to this RFQ are made a part of this RFQ as if copied herein in words and figures.

By signing below, the Firm Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this RFQ and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this RFQ and the attachments herein;
3. That the company agrees to all provisions of this RFQ, and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this RFQ.

Printed Name: _____

Signature/Date: _____

ATTACHMENT A

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the offer 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 engagement(s) by circling the applicable word or words in each paragraph below:

1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has/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 statement of qualifications.

2. REPRESENTATION REGARDING GRATUITIES

Contractor represents that it **has/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 Public Procurement Review Board Rules and Regulations.

3. REPRESENTATION REGARDING CONFLICT OF INTEREST

Contractor represents that it **does/does not** have any relationships or activities that present a conflict of interest.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's statement of qualifications that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Name/Title: _____

Signature/Date: _____

***Note:** Please be sure to circle the applicable word or words provided above. Failure to circle the applicable word or words and/or to sign the statement of qualifications form may result in the statement of qualifications being rejected as nonresponsive. Modifications or additions to any portion of this statement of qualifications document may be cause for rejection of the statement of qualifications.*

ATTACHMENT B

**Required Contract Form, Terms and Conditions for Service
Contracts Resulting from this RFQ**

**CONTRACTUAL AGREEMENT
FOR LEGAL SERVICES**

THIS AGREEMENT made and entered into this the ____ day of _____, 20__, by and between the (agency name) an agency of the State of Mississippi, and (specific attorney(s) and/or law firm, as the case may be) at (address), for the performance of legal services of attorneys and employees of said law firm, hereinafter individually and collectively referred to as ("Attorney") and/or ("Law Firm" as the case may be).

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:** The (Attorney and/or Law Firm) will review relevant documents, meet with any and all officials, witnesses, and representatives as deemed necessary for representation of (agency or individual named in litigation) regarding the case of (style of case). The (Attorney and/or Law Firm) will copy the Attorney General's designee(s) with all correspondence during the term of this Agreement, including, but not limited to, dispositive motions/pleadings and memoranda in support thereof. **(For non-litigation matters, no case style is needed. This paragraph may be altered as needed to describe services to be provided).**

The (Attorney and/or Law Firm) shall prepare all necessary court documents as authorized by the Attorney General to preserve the interests of the taxpayers and State of Mississippi.

- II. PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on (effective date of contract) and shall expire on (termination date of contract).

- III. COORDINATION OF SERVICES:** The (Attorney and/or Law Firm) shall coordinate the performance of the services to be provided hereunder through counsel for (agency name) and through the Office of the Attorney General and consult with them on specific courses of action which should be pursued.

- IV. RELATIONSHIP OF PARTIES:** It is expressly understood and agreed that (Attorney and/or Law Firm) is an independent contractor and that the purchase of legal services is not based on an employer-employee relationship.

- V. SPECIFIC ATTORNEYS:** The Attorney and/or Law firm shall utilize its staff and attorneys to perform the services required by this Agreement. **(If appropriate in a particular case, name the particular attorneys to be used.)**

VI. PAYMENT TERMS: As full and complete compensation for the services to be provided hereunder, the (agency name) will pay the (Attorney and/or Law Firm) at the rates listed below:

\$ _____ per hour blended rate for time expended by attorneys.

\$ _____ per hour for time expended by paralegals.

(May be different hourly rates for partners, associates, etc.; blended rate is not required)

The total amount of this contract shall not exceed \$ (total contract maximum), unless agreed and approved in writing by (agency name), the Office of the Attorney General, and the Mississippi State Personnel Board.

Each month, (Attorney and/or Law Firm) shall submit to the Office of the Attorney General and to counsel for (agency name) an invoice for payment of attorneys' fees and all authorized expenses, which shall be paid following approval by the Office of the Attorney General and counsel for (agency name).

VII. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the obligation of the (agency name) 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 (agency name), the (agency name) 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 (agency name) of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

VIII. EQUAL OPPORTUNITY: In connection with the performance of work under this contractual Agreement, (Attorney and/or Law Firm) agrees not to discriminate in any manner whatsoever, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and condition of employment against any person otherwise qualified because of race, creed, color, religion, sex, age, national origin, disability, ancestry or political affiliation.

- IX. NON-ASSIGNMENT AND SUBCONTRACTING:** The (agency name) will not be independently obligated or liable under this Agreement to any party other than the (Attorney and/or Law Firm) named herein. Said (Attorney and/or Law Firm) understands and agrees that it shall not assign, transfer, delegate or subcontract with respect to any of its rights, benefits, obligations, interests or duties under this Agreement without the prior written consent of the Office of the Attorney General.
- X. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
- XI. MODIFICATION OR AMENDMENT:** Modifications or amendments to this Agreement may be made upon mutual Agreement of the parties, in writing signed by the parties hereto and approved as required by law.
- XII. TERMINATION:** Any party may terminate this Agreement at any time, with or without cause, by giving written notice to the other parties of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of such termination, (Attorney and/or Law Firm) shall be entitled to receive just and equitable compensation for any specific services completed in a satisfactory manner prior to the date of termination.
- XIII. NON-WAIVER OF BREACH:** No assent, expressed or implied, by the parties hereto to the breach of the conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of the Agreement.
- XIV. APPLICABLE LAW:** The Agreement 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 of Mississippi. The Agreement shall comply with applicable federal, state and local laws and regulations.
- XV. COMPLIANCE WITH MISSISSIPPI EMPLOYMENT PROTECTION ACT (MEPA):** (Attorney and/or Law Firm) represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) 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. (Attorney and/or Law Firm) agrees to maintain records of such compliance and, upon request of the State of Mississippi 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. (Attorney and/or Law Firm) further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Attorney/ Law Firm understands and agrees that any breach of these warranties may subject (Attorney and/or Law Firm) to the following: (a) 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, or (b) the loss of any license, permit, certification or other document granted to (Attorney and/or Law Firm) by an agency, department or governmental entity for the right to do business in

Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, (Attorney and/or Law Firm) would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of (effective date of contract).

(agency name and address)

(Attorney and/or Law Firm and address)

By: _____
(title)

By: _____
(title)

APPROVED:

OFFICE OF THE ATTORNEY GENERAL

By: _____ Date: _____
JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

MISSISSIPPI STATE PERSONNEL BOARD

By: _____ Date: _____
EXECUTIVE DIRECTOR (if contract total is less than \$75,000.00)
CHAIRMAN (if contract total is \$75,000.00 or greater)