

REQUEST FOR PROPOSALS

RFP Number: 3120001242

To Provide: Promotion Process for the MS Highway Safety Patrol

CLOSING LOCATION

Mississippi Department of Public Safety, Procurement Department
4th Floor, Room 402, 1900 E. Woodrow Wilson Boulevard
Jackson, MS 39216

PROPOSAL COORDINATOR

Betsy Toles or Sonya Toaster
Procurement Department

Telephone: 601-987-1467 or 601-987-1305

Fax: 601-987-1442

E-mail: btoles@dps.ms.gov or stoaster@dps.ms.gov

CLOSING DATE AND TIME

Proposals must be received by 10:00 A.M., September 20, 2017

SECTION 1

1.1 Proposal Acceptance Period

The original and 5 copies of the proposal, 6 copies total, shall be signed and submitted in a sealed envelope or package to Betsy Toles or Sonya Toaster, Mississippi Department of Public Safety, Procurement Department, 4th Floor, Room 402, 1900 East Woodrow Wilson Boulevard, Jackson, MS 39216 no later than the time and date specified for receipt of proposals. Timely submission is the responsibility of the respondent. The envelope or package shall be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt shall be indicated on the envelope or package by Procurement. Each page of the proposal 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 proposals. The Mississippi Department of Public Safety (MDPS) reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, the MDPS may request the respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1 Timeline

Task	Date
Advertisement Dates for RFP	September 1, 2017; September 8, 2017
Receive Questions for Clarification Dates	Starting 8:00 a.m., Friday, September 1, 2017 to Friday, September 8, 2017 at 5:00 p.m. Please email questions to btoles@dps.ms.gov or stoaster@dps.ms.gov
Respond in Writing to Clarification	September 15, 2017
Proposal Deadline	No later than 10:00 a.m., Wednesday, September 20, 2017
Evaluation of Proposals	Wednesday, September 20, 2017 or later
Notification to Proposal(s)	Wednesday, September 20, 2017 or later
Proposed Period of Performance	Anticipated Date: November 15, 2017 to November 14, 2018

Note: MDPS reserves the right to adjust the Procurement Schedule as it deems necessary.

1.1.2 Rejection of Proposals

Proposals which do not conform to the requirements set forth in this Request for Proposals may be rejected by the MDPS. Proposals may be rejected for reasons which include, but are not limited to, the following:

- 1) The proposal contains unauthorized amendments to the requirements of the Request for Proposals.
- 2) The proposal is conditional.
- 3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- 4) The proposal is received late.
- 5) The proposal is not signed by an authorized representative of the party.
- 6) The proposal contains false or misleading statements or references.
- 7) The proposal does not offer to provide all services required by the Request for Proposal.

1.2 Expenses Incurred Preparing Offerors

The MDPS accepts no responsibility for any expense incurred by the respondent in the preparation and presentations of an offer. Such expenses shall be borne exclusively by the respondent.

1.3 Proprietary Information

The respondent should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with the Mississippi Code Annotated §§ 25-61-9 and 79-23-1(1972, as amended). Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

1.4 Registration with Mississippi Secretary of State

By submitting a proposal, 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.

1.5 Debarment

By submitting a proposal, the respondent certifies that it is not currently debarred from submitting proposals 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 proposals for contracts issued by any political subdivision or agency of the State of Mississippi.

1.6 Competitive Proposals

Discussions may be conducted with respondents who submit proposal determined to be reasonably susceptible of being selected for award. Likewise, MS Department of Public Safety also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of proposed terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 Additional Information

Questions about this contract portions of the procurement document must be submitted in writing to Betsy Toles or Sonya Toaster at btoles@dps.ms.gov or stoaster@dps.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Betsy Toles or Sonya Toaster at btoles@dps.ms.gov or stoaster@dps.ms.gov. Answers to written questions or clarifications will be provided by email no later than 5:00 p.m. local time, Friday, September 15, 2017. If it is determined that an amendment to the RFP will be issued, it will be provided by email and upload into the MS's Accountability System for Government Information (MAGIC) with sufficient time to respond to the RFP. All written questions and clarifications will be provided to all vendors who has requested a copy of the RFP via email. It is the responsibility of the vendors to contact Betsy Toles or Sonya Toaster by September 15, 2017 to ensure that they have received all questions and answers. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.8 Type of Contract

Compensation for services will be in the form of a Firm-fixed price.

1.9 Written Proposals

All proposals shall be in writing.

SECTION 2

2.1 Purpose

The MDPS is seeking to establish a contract for a Promotion Process for the MS Highway Safety Patrol. It is understood that any contract resulting from 3120001242 requires approval by the Personal Service Contract Review Board. If any contract resulting from 3120001242 is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

2.2 Scope of Services

Part 1-Structured Examination

The vendor shall:

- Conduct job analysis for each of the three (3) rank levels of trooper-Master Sergeant, Lieutenant, Captain taking into account the four (4) respective areas-Enforcement, Mississippi Bureau of Investigation (MBI), Motor Carrier and Driver Services.
- Provide staffing resources necessary to appropriately staff all aspects of the test administration process.
- Arrange for appropriate facilities for all components of testing process.
- Follow applicable Commission on Accreditation for Law Enforcement (CALEA) and Mississippi Law Enforcement Accreditation Commission (MSLEAC) standards for promotional processes.
- Develop, administer and score a Multiple Choice Examination for Master Sergeant ONLY. Candidates for Lieutenant or Captain shall be exempt from multiple choice exam.
- Compute in the presence of each candidate on the day of exam, the Multiple Choice Exam score of candidates for Master Sergeant. Candidates must score 80 or higher on the Multiple Choice in order to continue in the merit promotion process. However, the Multiple Choice Exam score does not contribute to the candidate's overall promotional score. This shall merely be used as a pre-entrance for Master Sergeant Candidates. Candidates will be allowed to appeal or challenge the Multiple Choice Exam results or individual questions immediately after the exam by the methods described in Section 5.12.05.E of this policy. [CALEA 34.1.3(b)(e), MSLEAC 3.10(b)(e)]
- Respond with a final determination on site to the Multiple Choice Exam. This decision shall be final and non-greivable. [CALEA 34.1.3(e), MSLEAC 3.10(e)]
- Ensure that candidates for promotion to the ranks of Master Sergeant, Lieutenant, and Captain are evaluated based on three factors: (1) a Structured Examination including two components: the Written Exam and the Assessment Center; (2) an Administrative Interview; and (3) the Time and Education evaluation. The overall promotional score shall be calculated as follows: Structured Examination score, 50%; Administrative Interview score, 35%; and Time and Education, 15%.
- Develop and administer a Structured Examination with a weight of (50%), which shall include two parts: a Written Exam and an Assessment Center. The Structured Examination may include, but not be limited to, a multiple-choice examination, structured interview, work sample, role play, and/or job simulation. Candidates shall be required to achieve a scaled score of 80 or higher on the Structured Examination to continue with the promotional process.
- Provide to all candidates, appropriate information regarding the Structured Examination components and their weights as part of a Candidate Information Guide at least four (4) weeks prior to the administration of the Structured Examination. [CALEA 34.1.3(b), MSLEAC 3.10(b)]

- Compile, administer and secure all Structured Exam material. [CALEA 34.1.3 (h), MSLEAC 3.10 (h)] A separate Structured Examination will be created for each rank (Master Sergeant, Lieutenant, and Captain) within each of four (4) designated areas, (Enforcement, MBI, Motor Carrier, and Driver Services). In cases where job duties are common to all designated components, some similar content may be included on tests for those designated areas. [CALEA 34.1.3(b), MSLEAC 3.10(b)]
- Develop the Assessment Center portion of the Structured Examination, which involves but shall not be limited to a variety of interactive components, such as job simulations, and role plays. Candidate shall respond during in person standardized assessment based on job-related criteria. Panel shall interact with candidate in order to appropriately evaluate performance.
- Develop and administer training to panel of demographically diverse Highway Patrol Officers from other southeastern states, recruited by Mississippi Highway Safety Patrol (MHSP) who will observe, record, and evaluate the candidates.
- Monitor panels closely during evaluation process to ensure accuracy of ratings. Candidates shall be required to achieve a scaled score of 80 or higher on the Assessment Center to continue with the Promotional Process.
- Provide candidates with their individual scores within 5 business days. Candidates will be allowed to appeal or challenge any component of the Assessment Center or any evaluation based on his or her performance during the Assessment Center by the methods described in Section 5.12.05.E of this policy. [CALEA 34.1.3(c)(e), MSLEAC 3.10(c)(e)]

Part 2-Administrative Interview/Review

The vendor shall:

- Develop and provide screening and training for Administrative Interview Board members who shall evaluate and score candidates.
- Ensure that Board is comprised of a minimum of three (3) members of the next rank higher in the Chain of Command of the position for which the interview is being conducted. [CALEA 34.1.3(d) MSLEAC 3.10(d)]
- Develop interview questions and criteria for evaluating candidates' responses to the interview questions. [CALEA 34.1.3(d) MSLEAC 3.10(d)] (Internal Affairs will provide the candidate's 201 Profile for consideration during the Administrative Interview. This shall be used by the Interview Board strictly to familiarize the Board with the candidate.) [CALEA 34.1.3(d) MSLEAC 3.10(d)]
- Calculate Administrative Interview scores with a weight of (35%). Each candidate must obtain a scaled score of 80 or higher. All candidates will receive their individual scores in a timely manner. Candidates will be allowed to appeal or challenge any portion of the Administrative Interview by the methods described in Section 5.12.05.E of this policy. [CALEA 34.1.3(d)(e), MSLEAC 3.10(d)(e)]
- Provide upon request, an overview for candidate any part of the promotional process where the candidate did not have a scaled score of 80.

Part 3-Time & Education

The vendor shall:

- Add Time and Education points provided by Human Resources division in order to compute overall score with a weight of 15%.
- Deduct Conduct Deductions points provided by Internal Affairs (IA)/Human Resources division(s) in order to compute overall score.
- Develop and evaluate Appeal Procedure in order to respond to complaints by the candidates forwarded by Human Resources.
- Respond with a final determination within 5 business days of receiving the complaint. This decision shall be final and non-grievable. [CALEA 34.1.3(e), MSLEAC 3.10(e)]
- Calculate the overall scores for each of the three (3) levels of trooper-Master Sergeant, Lieutenant, Captain, within each of the four (4) designated areas of Enforcement, MBI, Motor Carrier and Driver Services. The calculation will be based on total scale =100%, with 50% derived from Structured Examination; 35% derived from Administrative Interview/Review, and remaining 15% from Time and Education.
- Provide written notification to each candidate, their final score approximately one (1) week prior to providing all scores to Human Resources.
- Compile for the ranks of Master Sergeant, Lieutenant, and Captain, separate promotional lists for the designated areas of Enforcement, MBI, Motor Carrier, and Driver Services consisting of candidates who applied for and passed the promotional process for these designated areas.
- Assure that ONLY candidates passing the promotional process (by earning 80 or higher on each phase) are placed on the appropriate promotional ranked list.
- Evaluate in the event of a tie, the candidate's placement on each list based on: (1) Seniority, (2) Structured Examination, (3) Administrative Interview, and (4) Education.
- Provide to Human Resources an electronic listing of successful candidates based on highest to lowest promotional score as determined by weight of the Assessment Center, Administrative Interview and Time and Education, (deducting for violations as needed), for each Rank in each of the four (4) designated areas of Enforcement, MBI, Motor Carrier, and Driver Services. This process must be completed within 10 days from conclusion of testing process.

2.3 Term

The term of the contract shall be for a period of 12 months. Upon written agreement of both parties at least 90 days prior to each contract anniversary date, the contract may be renewed by the MDPS for a period of 4 successive one-year periods(s) under the same prices, terms, and conditions as in the original contract subject to approval by PSCRB. The total number of renewal years permitted shall not exceed 4.

2.3.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.3.1.1 Requirements

- a) Establish a Promotion Process for MHSP.
- b) A unit price shall be given for each service, and that unit price shall be in the same throughout the contract.
- c) 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.
- d) 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.
- e) A multi-term contract may be awarded to the winning respondent of this request for solicitation whose proposal is deemed to be the most advantageous to the State after considering all evaluation factors including but not limited to, price.

SECTION 3

3.1 Insurance

The successful vendor shall maintain at least the minimum level of worker's compensation insurance, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence. All workers' compensation, comprehensive general liability or professional liability insurance, will provide coverage to the MDPS as an additional insured. The MDPS 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 vendor shall be prepared to provide evidence of required insurance upon request by the MDPS at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 4

4.1 Written Proposals 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.
- 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 contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time.
- 5) A plan giving as many details as is practical explaining how the services will be performed.

4.2 Evaluation Procedure

4.2.1 Step One:

Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

4.2.1.1 Responsive Respondent

Respondent must submit a proposal which conforms in all material respects to this Request for Proposals, 3120001242, as determined by the MS Dept. of Public Safety.

4.2.1.2 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 MDPS.

4.2.2 Step Two:

Proposal that satisfactorily complete Step One will be reviewed and analyzed to determine if the proposal adequately meets the needs of MDPS. Factors to be considered are as follows:

- 1) The plan for performing the required services; 25%
- 2) Ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; 20%
- 3) The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; 15%
- 4) A record of past performance of similar work; and, 25%
- 5) Price. 15% - Respondent must submit an itemized breakdown of cost along with the annual total price. The annual total price must be submitted in a way that clearly identify the annual total cost.

4.2.3 Step Three:

The Commissioner of the MS Department of Public Safety or his/her designee will contact the respondent with the proposal which best meets the MDPS needs (based on factors evaluated in Step Two) and attempt to negotiate an agreement that is deemed acceptable to both parties.

4.3 The following Response Format Shall Be Used for All Submitted Proposals:

- 1) **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
- 2) **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks.

- 3) **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.
- 4) **Personnel:** Attach resumes' of all those who will be involved in the delivery of service (from principals to field technicians) that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
- 5) **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person.
- 6) **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed.
- 7) **Additional data:** Provide any additional information that will aid in evaluation of the response.
- 8) **Cost data:** Estimate the annual cost of the service. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals. *Please note respondent should also include all information listed in 4.2.2 number 5.*

4.4 Nonconforming Terms and Conditions

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

4.5 Conditioning Proposal Upon Other Awards

Any proposal 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.

4.6 Award

Award shall be made to the responsible respondent whose proposal is determined in Writing, within five business days, to be the most advantageous to the State taking into

consideration price and evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation.

4.6.1 Notification

All participating vendors will be notified of the MDPS's intent to award a contract. In addition, the MDPS 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 Commissioner of the MDPS and a copy submitted to the Procurement Division 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 a legal representation present, the respondent must notify the Commissioner of the MDPS in writing and identify its attorney by name, address and telephone number. The MS Department of Public Safety will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General or a Representative of the MS Department of Public Safety's Legal Division 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 *Personal Service Contract 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 Request for Proposals may file a protest with the Proposal Coordinator, Betsy Toles or Sonya Toaster, Procurement Department. The protest shall be submitted on or before September 20, 2017 at 5:00 p.m. local time, in writing after such aggrieved person or entity know 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. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Proposal Coordinator, Betsy Toles or Sonya Toaster, Procurement Department, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after September 20, 2017 5:00 p.m. local time will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment B** and those required by the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.4 Optical Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment C** and those within the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.5 Mississippi Contract/Procurement Opportunity Search Portal

This Request for Proposals, and the questions and answers concerning this Request for Proposals, are posted on the Contract/Procurement Opportunity Search Portal.

5.6 Attachments

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

By signing below, the Company 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 Request for Proposals, 3120001242, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Proposals, 3120001242, and the attachments herein;
3. That the company agrees to all provisions of this Request for Proposals, 3120001242, 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 Request for Proposals.

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 contract(s):

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 proposal.

2. REPRESENTATION REGARDING GRATUITIES

The Respondent or 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 Mississippi Personal Service Contract Review Board Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The respondent certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

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

Printed Name: _____

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 proposal form may result in the proposal being rejected as nonresponsive. **Modifications or additions to any portion of this proposal document may be cause/or rejection of the proposal.***

*Failure to circle the applicable word or words and/or to sign the proposal form may result in the proposal being rejected as nonresponsive. **Modifications or additions to any portion of this proposal document may be cause/or rejection of the proposal.***

ATTACHMENT B

Required Clauses for Service Contracts Resulting from this Request for Proposals

1. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency 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, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
4. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.
5. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated § 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any

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

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; or
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such cancellation termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

6. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
7. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
8. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's proposal.
9. Representation Regarding Gratuities. 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*.

10. Stop Work Order.

- a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed. The Procurement Officer shall either:
 - i. *cancel the stop work order; or,*
 - ii. *terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.*
- b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if-
 - i. the stop work order results in an increase in the time required for, or in Contractors cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

11. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

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

12. Termination for Default.

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

by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

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

f. *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.

13. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency 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.
14. 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.
15. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated § 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

ATTACHMENT C

Additional Clauses for Use in Service Contracts Resulting from this Request for Proposals

16. Approval. It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
17. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure or information required by court or required by law.
18. 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 judgement with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction.
 - (3) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgement 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.
19. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay

caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

20. Ownership of Documents and Work Papers. Agency 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 Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, 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 Agency and subject to any copyright protections.
21. 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 State or any 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 retained by Contractor for three (3) years after final payment is made 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-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-year period, whichever is later.
22. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
23. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
24. Waiver. No delay or omission by either party to this agreement in excising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an

acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other part will imply, be construed as or require waiver of future or other defaults.