



**State of Mississippi**  
Bond Commission

**Request for Proposals**  
for  
**Financial Advisory Services**

RFP Number 3120001052

The Honorable Phil Bryant, Governor  
The Honorable Lynn Fitch, Treasurer  
The Honorable Jim Hood, Attorney General

## **I. INTRODUCTION AND PURPOSE OF THE RFP**

The State of Mississippi (the "State") by and through its Executive Agency, the Department of Finance and Administration's Bond Advisory Division (hereinafter "DFA"), is soliciting proposals from qualified firms interested in providing financial advisory services to the State's Bond Commission (the "Commission") through direct coordination with the DFA. The DFA's intent is to hire a Financial Advisor for assistance in connection with potential financings for the State as well as enlisting those services on other financial matters between each issuance. The term of any contract resulting from this Request for Proposal (the "RFP") shall end on June 30, 2019 with three (3) optional one (1) year renewals, contingent upon acceptable performance by the selected contractor. Firms responding to the Request for Proposals ("RFP") are required to prepare and submit their proposals in accordance with directions contained in this document.

In support of their proposals, respondents may be required to make an oral presentation or participate in an oral interview with the DFA or its designees not more than one calendar week after the DFA has requested a respondent to do so. Failure to be prepared to make an oral presentation or participate in an oral interview within this time frame may prevent the respondent's proposal from receiving further consideration. The main point of contact proposed in the respondent's proposal must be present during these interviews.

Joint proposals will not be accepted. The firm selected to serve as financial advisor for the State under this RFP will not be eligible to serve as an underwriter on any of the contemplated transactions during the contract period.

**Direct any questions regarding this RFP or the selection process via email to:**

**Steven McDevitt, Bond Advisory Director, Department of Finance and Administration at [steven.mcdevitt@dfa.ms.gov](mailto:steven.mcdevitt@dfa.ms.gov),**

who is the procurement officer for this RFP. Questions must be submitted via email and received before 12:00 p.m. CST on Thursday, March 16, 2017. Oral questions are not permitted. If the questions or inquiries pertain to a specific section of the RFP, the page and section number(s) must be referenced. No firm submitting a proposal may make inquiries with respect to this RFP to any other employee or agent of the Office of the Governor, the office of the Attorney General, the Office of the State Treasurer, the Department of Finance and Administration, other state agencies, or any state authority until final selections have been determined. Failure to adhere to this provision may result in disqualification.

A copy of this RFP, including any subsequent amendment(s), along with a copy of all questions from vendors and responses to those questions, will be posted on DFA's website at [www.dfa.ms.gov](http://www.dfa.ms.gov) under the heading "Bid and RFP Notices". It is the

proposer's sole responsibility to monitor the website for responses to questions, and also for any amendments to the RFP.

## **II. SCOPE OF SERVICES**

The scope of services to be provided by the financial advisor at the request of the State will include, but not be limited to, the following:

- Provide advice on the overall approach to the State's financings by working with the Department of Finance and Administration, the Office of the State Treasurer, the Office of the Attorney General, bond counsel, underwriters, and other professionals involved in the State's financings;
- Assist the State in the preparation of the financing schedule, distribution list, meeting agendas, the preliminary/final offering statements, and other documents related to the financing;
- Assist with the preparation for meetings and conference calls with the State Bond Commission, the DFA and/or the Working Group;
- Assist the State in negotiated financings (including advice on market factors, syndicate policies, issue price, and structure);
- Assist the State in competitive financings (including the use of electronic bidding and publication methods, communication with the underwriter syndicates, and verification of the bids);
- Monitor and evaluate proposals on new products, refunding opportunities, and other financing ideas;
- Provide a transaction summary outlining pricing performance, investor participation, orders and allocations, market dynamics, sources and uses of funds, and other relevant data;
- Provide market information and general financing information on a regular basis;
- Assist the State with regulatory issues to ensure compliance for all municipal related transactions, presentations, or any other issue related to current or future financings for the State;
- Assist the State in special projects relating to debt issuance, debt management, and debt reporting as assigned;
- Provide advice on the management of the State's debt including, but not limited to, refunding opportunities, the analysis of derivative products, investment of

bond proceeds, and other strategies related to the management of the State's existing debt portfolio;

- Assist the State with special projects as determined by mutual agreement;
- Provide updates to the Commission and/or its staff with regard to any rule changes, additions, etc. made by the MSRB or any other municipal securities governing agency;
- Assist with tasks as required by the State of Mississippi's Debt Management Policy located at [www.dfa.ms.gov/dfa-offices/bond-advisory-division/](http://www.dfa.ms.gov/dfa-offices/bond-advisory-division/).

### III. PROPOSAL EVALUATIONS

All proposals received in response to this RFP by the stated deadline will receive a comprehensive, fair, and impartial evaluation. The evaluation of any proposal(s) may be suspended and/or terminated at the State's sole discretion at any point during the evaluation process at which the State determines that said proposal(s) and/or proposer(s) fails to meet any of the mandatory requirements as stated in this RFP, the proposal(s) is determined to contain fatal deficiencies to the extent that the likelihood of selection for contract negotiations is minimal, or the State receives reliable information that would make contracting with the proposer impractical or otherwise not in the best interest of the State of Mississippi. An evaluation committee will evaluate the proposals in the following three-phase process:

**Compliance Phase** - In this phase of the evaluation process, all proposals received will be reviewed to determine if the following mandatory requirements of this RFP have been satisfied:

- Proposal submission deadline met
- Minimum vendor requirements met
- Required format followed
- Original proposal, requested number of copies of proposal, and electronic copy of proposal in Microsoft Word® format on compact disk or flash drive
- Signed Statement of Compliance provided and high degree of acceptance of contract terms provided
- Signed Acknowledgement of RFP Amendments (if amendments have been posted)
- Complete responses to the proposal (Section V)

- Duration of proposal requirement met
- Required proposal attachments provided

Failure to comply with the mandatory requirements may result in the proposal being eliminated from further consideration. This phase is a pass/fail evaluation. Those vendors passing the Compliance Phase will be evaluated further. The State reserves the right to waive minor informalities in a proposal in this phase of the evaluation.

**Analysis Phase** - In this phase of the evaluation process, the evaluation committee will judge responses received relative to the following evaluation factors. Areas are listed in order of their relative importance:

#### **IV. EVALUATION CRITERIA**

Each proposal will be screened for compliance with the respondent's qualifications and mandatory requirements. Failure to meet these qualifications and requirements will constitute an irregular proposal thus eliminating the proposal from further consideration. To insure full consideration, proposers should study carefully the instructions, which contain required information for submission.

Each proposal will be reviewed and evaluated by the DFA according to the following criteria:

##### **1. Proposer Qualifications and Staffing**

**40 Points**

- Capability of the firm to perform the required scope of services, including:
  - i. Quantitative analytical ability of the firm and professionals assigned.
  - ii. Demonstrated understanding of the State of Mississippi (including, but not limited to, its credit, capital structure, financing plans, economy, legal constraints, legislative process, and other relevant factors).
  - iii. Knowledge of and experience in the Mississippi and national municipal bond markets.
- Experience of the firm serving as financial advisor to other large issuers (including the firm's understanding and level of competence in evaluating/structuring debt offerings and in developing/evaluating innovative or alternative financing strategies).
- Qualifications, education, and relevant experience of the individual(s) to be assigned (including prior financial advisory experience).

- Resources and ability to provide a full scope of services with in-house personnel.
- Compliance with applicable federal and state laws and regulations.
- Overall quality of the written proposal, and oral presentation, if any.

## **2. Work Management Plan**

**35 Points**

- The firm's approach plan and approach to providing financial advisory services during and between bond issuances.
- Availability of assigned personnel to the Bond Commission, the DFA and/or the Working Group members throughout the issuance period (including the period between issuance for other relevant advisory assistance).

## **3. Cost/Fees**

**25 Points**

**Total**

**100 Points**

Financial Advisory Services to the State shall be awarded on the basis of recognized competence, integrity, and overall cost. This award will be made to the firm whose proposal is most advantageous to the State.

**Finalist Phase** - In this phase of the evaluation process, references will be contacted and service provision verified. During the reference verification, the evaluation committee will seek to verify demonstration of an acceptable level of performance for programs of a similar size and complexity as the State. This phase may also include finalist presentations, if deemed necessary by the State. Finalist presentations will include technical interviews to be conducted in Jackson, Mississippi, to allow finalists the opportunity to showcase their services. Likewise, the DFA, consultants, and staff may use this opportunity to verify information provided by the proposer in the submitted proposal.

Subsequent to approval by the State to enter into contract negotiations with the selected vendor, all proposing vendors will be notified of the contract award.

## **V. INFORMATION TO BE PROVIDED BY RESPONDING FIRMS**

### **Executive Summary**

This section should include a summary of the respondent's qualifications and ability to meet the State's overall requirements. It must include specific authorization to contact all references, employers, or customers for whom the company or proposed staff referenced in the proposal have performed work. It should include a positive statement of agreement to comply with the terms and conditions of the draft contract. If the

proposer cannot comply with any of the contract terms, an explanation of each exception must be supplied.

**Place of Incorporation or Formation and Years of Experience**

The proposer must provide the firm's date and state of incorporation or formation, years in business, and years of firm's experience (not the individual employees' or managers' experience) as a financial advisory firm. Firms must be listed in the Fall 2016 Edition, or will be listed in the Spring 2017 Edition, of "The Bond Buyer's Municipal Marketplace Directory".

**Qualifications and References**

The respondent must describe the firm's qualifications and experiences that demonstrate its capability to serve as the financial advisor for the State. Provide a list of five (5) references, identifying a lead contact with a telephone number, who may be contacted regarding the firm's abilities, integrity, and professional reputation in acting as financial advisor to a debt issuer similar to the State.

Governmental contracts from 2012 through present, as well as any other information that would demonstrate the firm's understanding and experience in providing financial advice on the subject of governmental debt issuance, should be identified. The respondent shall provide documentation that proves they have experience with large issuers over a certain amount (i.e. issues of \$100M or greater in the last three years).

Any issuers of municipal or public debt within the State for whom the firm currently serves as underwriter or financial advisor should be listed, along with a brief description of the firm's role for such issuers as well as the anticipated length and activity level of the firm's future involvement with those issuers.

In addition, the respondent must describe the firm's understanding of the State including, but not limited to, its credit, capital structure, financing plans, economy, legal constraints, legislative process, and other relevant factors.

**Registration**

The respondent must be registered with both the SEC and the MSRB and provide documentation as proof to its registration.

**Organization of Firm/Department and Professional Staff**

The respondent must provide a description of how the firm or a specific department that will provide financial advisory services is organized. Detailed information must be provided about the experience and qualifications of the staff who will be assigned to act for the firm in providing financial advisory services to the DFA as well as the functions to be performed by each staff member. Full resumes of each person, including names, positions, education, and public finance experience should be included. Identify and describe fully all family or business relationships any employee or manager of the firm may have or has had with employees or elected officials of the State or local governmental entities in Mississippi.

**Research and Technical Support**

The respondent must describe the firm's internal ("in-house") capabilities relative to research and technical support in the public finance area that would be used in connection with the requested services to be provided. Include information regarding the availability of the following types of expertise or backup as applicable: economist, trading staff or information, location of offices in financial centers, electronic data processing capabilities and staff, research staff and facilities, legal department and any other resources the respondent determines to be relevant to providing the State with financial advisory services. If any of the identified research and technical support capabilities will be provided by sources external to the firm, such outsourced services should be clearly identified.

**Rating and Ranking**

The respondent must list any ratings or rankings (both as to dollar volume and as to total number of issues) of the firm during the last five (5) years as a provider of financial advisory services, including any given by Securities Data Company, Inc.

**Criminal Proceedings/Investigations/Securities Law Violations**

The respondent must give a brief description of any criminal proceeding, criminal investigation, or other oversight entity's investigation of alleged securities laws violations involving the firm or any professionals in the firm who may be involved in providing the services. Additionally, the respondent must provide a brief description of any complaints registered with the Mississippi Secretary of State's Office. The description of any such investigations or complaints should include the current status of and result of the matter.

**Work Management Plan**

This section must summarize the firm's plan and approach to providing the services, including a statement and timetable (if appropriate) of how the work would be organized, managed, and implemented, and a timetable, if appropriate. An explanation of the firm's technical and computer capabilities (hardware and software) should be included along with an explanation of how those capabilities would be utilized in performing the services.

This section should also contain information regarding the availability of assigned personnel to the Bond Commission, the DFA and/or the Working Group members throughout the bond issuance period (as well, as the period between issuances for other relevant advisory assistance).

## VI. SUBMISSION OF RESPONSES

### Minimum Requirements:

Proposals must be submitted in writing and must be received in the DFA's - Bond Advisory Division in Jackson, Mississippi by **2:00 PM CST, Friday, March 24, 2017**. Any proposal received after the deadline will not be considered and will be returned unopened to the proposer. **Proposals submitted by facsimile or by electronic mail will not be accepted.** Proposals shall be delivered as follows:

**Steven McDevitt, Bond Advisory Director  
Mississippi Department of Finance and Administration  
Bond Advisory Division  
501 North West Street, Suite 1300 (Woolfolk Building)  
Jackson, MS 39201**

1. **IMPORTANT!** The offeror/proposer should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Mississippi Code Annotated §§ 25-61-9 and 79-23-1 (1972, as amended). **Each page of the proposal that proposer considers confidential shall be on a different color paper than non-confidential pages and be marked in the upper right hand corner with the word "CONFIDENTIAL."** Please see **Mississippi Public Records Act/Confidentiality of Proposals, found in Section XII-14.**
2. The vendor is required to submit one clearly marked original response with signed proposal cover sheet, signed Statement of Compliance, and signed Acknowledgement of RFP Amendments (only if amendment is posted).

Interested firms must respond to this RFP in all respects. Responses are strictly limited to a total of ten (10) pages, not including attachments (which should be included in an appendix). Please reference the specific section of the RFP to which you are responding.

The firm's proposal must be bound in one (1) volume. For consideration, a complete copy of the response must be provided as follows: six (6) bound hard printed copies, one (1) unbound hard copy, and one (1) electronic copy on compact disc (the CD must contain copies of the proposal in Microsoft Word and PDF formats).

3. The front cover of the firm's proposal should include the firm's name, proposal title of **"State of Mississippi Bond Commission Financial Advisor RFP"**, RFP # 3120001052, and due date. Each response shall be accompanied by a signed transmittal letter, no longer than two pages, setting forth the pertinent aspects of the Statement of Qualifications.

4. To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package marked, **"Proposals – Do Not Open"**. A label containing the information from the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.

Number each page of the proposal.

Label and tab the responses to each Section and exhibit, using the corresponding headings from the RFP.

If the vendor does not agree with any item in any Section, then the vendor must list the item on the *Statement of Compliance*. (See **Appendix B-CERTIFICATION STATEMENT**)

5. Duration of Proposal within the introduction Section of the proposal, you must state that the proposal is valid for a period of at least 90 days subsequent to the date proposals are due. The proposal shall become part of the contract in the event that the contract is awarded to your organization.

Respondents should allow sufficient mail and internal delivery time to ensure timely receipt by the DFA's Bond Advisory Division. Any Statement of Qualifications and/or unsolicited amendments to a Statement of Qualifications arriving after the closing date and time specified above will not be considered. Statements of Qualifications may not be submitted by facsimile or email. Respondents may provide an additional copy of their Statement of Qualifications by email if they so choose, but this will not satisfy the submission procedures outlined above, including the submission deadline.

As a guideline, the DFA anticipates the following tentative timetable for the selection of a Financial Advisor:

<u>Date</u>	<u>Activity/Event</u>
March 6, 2017	Request for Proposals Issued
March 16, 2017	Deadline for Questions (12:00 p.m. CST)
March 24, 2017	Proposals Due Prior to Deadline (2:00 p.m. CST)
April 10, 2017	Evaluations Completed by Evaluation Committee
April 20, 2017	Award Contract (pending Bond Commission Approval*)

\*Estimate only; subject to change.

## Duration of Proposal

Within the introduction Section of the proposal, you must state that the proposal is valid for a period of at least 90 days subsequent to the date proposals are due. The proposal shall become part of the contract in the event that the contract is awarded to your organization.

## VII. THE DFA TERMS AND CONDITIONS

- i. The DFA is not required by law to conduct this RFP and reserves the right to cancel or withdraw this RFP at any time and for any reason.
- ii. The expectations, plans, and requests expressed in this RFP are not to be considered a commitment or contract in any way.
- iii. The DFA retains the discretion to not utilize the services of any selected firm or the right to suspend or terminate any selection or service in whole or in part with or without cause. The Commission will determine which services, if any, will be used based on the recommendations of the DFA.
- iv. **Firms submitting a proposal may not make any inquiries with respect to this RFP to any other agency, governmental employee, or official other than to Steven McDevitt, the Bond Advisory Director of the Department of Finance and Administration, 501 North West Street, Suite 1300 (Woolfolk Building), Jackson, MS 39201.** The DFA reserves the right to contact firms on an as needed basis if the DFA determines it is in the best interest of the State to do so.
- v. Statements of Qualifications may not be submitted by facsimile or email.
- vi. Statements of Qualifications delivered after the specified time and date will not be considered.
- vii. The DFA reserves the right to request additional information or clarification of information from firms responding to this RFP and to effect any agreement deemed by the DFA to be in the States best interest with one or more of the firms responding. Additionally, upon reviewing the Statements of Qualifications, the DFA reserves the right to require certain firms to make oral presentations.
- viii. By submitting a proposal, respondents accept in all respects the conditions of this RFP, including that all Statements of Qualifications will become the property of the DFA and will not be returned.
- ix. All materials submitted by respondents will be subject to the Public Records Law of the State of Mississippi after the notice of intent to award or not to award is

announced. This information will be available for public inspection at the DFA. No Statement of Qualifications submitted to the DFA can be marked as confidential, and any material so marked will be considered public record, pursuant to Mississippi law.

- x. The DFA is not liable for any costs incurred by respondents related to the preparation of Statements of Qualifications or oral interviews.
- xi. A firm may withdraw and resubmit a Statement of Qualifications prior to the deadline. However, no withdrawals or re-submissions will be allowed after the deadline.
- xii. The DFA reserves the right to negotiate the terms of the engagement with any selected respondent prior to commencing services. If negotiations cannot be concluded successfully with any selected respondent(s), the DFA may negotiate with other respondents.
- xiii. The DFA reserves the right to accept or reject any or all Statements of Qualifications in response to this RFP. The determination of whether a condition listed in this RFP is substantive shall reside solely with the DFA. Any Statement of Qualifications deemed by the DFA to be unresponsive to the RFP requirements or that fails to fully disclose requested information may, in the DFA's sole discretion, be rejected.
- xiv. The DFA will accept neither joint nor multiple statements of qualifications.
- xv. A firm that is qualified pursuant to this RFP and subsequently chosen to provide services to the Commission is prohibited from engaging in activities in connection with services for the Commission which will produce direct or indirect financial gain for the firm, other than for the agreed upon compensation, without the Commission's written consent after being fully informed of such activities in writing.
- xvi. A firm providing financial advisory services to the DFA will not be permitted to underwrite any bond issue sold by the State for which the services of the financial advisor were utilized.
- xvii. The DFA reserves the right to select a firm that will best meet the Commission's needs. The DFA will evaluate fees once firms are determined to be qualified to provide the services.
- xviii. The DFA reserves the right to consider information about a firm in addition to the information submitted by the firm pursuant to the RFP.

## **VIII. COMPENSATION**

Firms responding to this RFP shall propose a fee structure to include the following:

- A fee per series for the sale of bonds. This amount should be based on a per thousand dollar (\$1,000) quote and should contain a minimum and maximum fee per series. This quote should also contain an aggregate not to exceed fee amount per State fiscal year (July 1<sup>st</sup> – June 30<sup>th</sup>).

This fee shall be inclusive of all expenses. The DFA, with the approval from the Commission, may adjust the fee schedule to reflect additional work associated with refunding issuances or other special circumstances/projects that increase the volume or complexity of the work performed. Such fee adjustments will be made in accordance with the terms of any contract that results from this RFP.

## **IX. FINAL SELECTION**

The DFA will make a recommendation to be approved by the Commission. Upon approval by the Commission, a formal announcement of the selected firm will be made, and all proposers will be notified. Contract negotiations should begin by the date listed in the Calendar of Events. The successful firm will be expected to sign the contract.

## **X. REMOVAL FROM SERVING AS FINANCIAL ADVISOR**

The firm may be removed or suspended for reasons, which include, but are not limited to, the following:

- 1.) Unacceptable performance in any assignment determined by an evaluation completed by the DFA;
- 2.) Disqualification because of legal proceedings, including actions, settlements or judgments, disciplinary actions by state or federal regulatory agencies, criminal indictments or convictions, and claims of fraud whether criminal or civil;
- 3.) Filing for protection under federal or state bankruptcy laws; or
- 4.) Failure to submit continuing disclosure reports, if applicable.

## **XI. CERTIFICATION STATEMENT**

Please carefully review the Certification Statement found in **Appendix B**. At least one (1) copy of the proposal must contain the original signature of a company official or agent duly authorized to sign proposals or contracts on behalf of the organization, using

the Certification Statement in Appendix B. Failure to submit a signed Certification Statement may result in your proposal being eliminated from further consideration.

## **XII. ADDITIONAL INFORMATION REGARDING THE RFP**

- 1) News releases pertaining to the RFP or any part of the RFP shall not be made without prior written approval from the DFA.
- 2) The DFA is committed to diversity and equal employment opportunities among its contractors, including financial advisors. The DFA encourages all firms, including firms that are minority-owned or women-owned, to submit responses to the RFP.
- 3) Right of Negotiation: Discussions and negotiations regarding price and other matters may be conducted with proposer(s) who submit proposals determined to have reasonable likelihood of being selected for award, but proposals may be accepted without such discussions. The State reserves the right to further clarify and/or negotiate with the proposer evaluated best following completion of the evaluation of proposals but prior to contract execution, if deemed necessary by the State. The State also reserves the right to move to the next best proposer if negotiations do not lead to an executed contract with the best proposer. The State reserves the right to further clarify and/or negotiate with the proposer(s) on any matter submitted.
- 4) Acknowledgement of RFP Amendments: Should an amendment to the RFP be issued, it will be posted on DFA's website at [www.dfa.ms.gov](http://www.dfa.ms.gov) under "Bid and RFP Notices". Further, proposers shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgment must be received by the DFA by the time and at the place specified for receipt of proposals. It is the proposer's sole responsibility to monitor the website for amendments to the RFP.
- 5) Certification of Independent Price Determination: By submission of a proposal, the proposer certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other proposer or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices proposed.
- 6) Corrections and Clarifications: The State reserves the right to request clarifications or corrections to proposals. Any proposal received which does not meet the "Instructions to Proposers" in **Section I.7 Instructions to Proposers**, or the minimum vendor requirements in **Section V Minimum Vendor Requirements**, or comply with other proposal requirements of this RFP,

including clarification or correction requests, may be considered to be “non-responsive” and may be eliminated from further consideration.

- 7) **Withdrawal of a Proposal:** A proposer may withdraw a submitted proposal by submitting a written notification for its withdrawal to the State, signed by the proposer, and faxed, e-mailed, or mailed to the State at the address provided in **Section I Introduction** of this RFP. The State shall not accept any amendments, revisions, or alterations to proposals after the due date unless requested by the State.
- 8) **Cost of Proposal Preparation:** All costs incurred by the proposer in preparing and delivering its proposal, making presentations, and any subsequent time and travel to meet with the State regarding its proposal shall be borne solely at the proposer's expense.
- 9) **Post-Award Vendor Debriefing:** Pursuant to PSCRB Rules and Regulations Sections 7-112 through 7-112.07, you may request a post award vendor debriefing, in writing, by U. S. mail or electronic submission. The request must be made within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. Should you prefer to have legal representation present, you must notify the DFA and identify your attorney. The DFA shall be allowed to schedule and/or suspend and reschedule the debriefing at a time when a representative of the Office of the Mississippi Attorney General can be present. For additional information regarding the process and procedure for the Post Award Vendor Debriefing, please refer to the PSCRB Rules and Regulations Sections 7-112 through 7-112.07 that may be found at:  
<http://www.mspb.ms.gov/personal-service-contract-review-State/pscrb-rules-regulations.aspx>
- 10) **Right to Consider Historical Information:** The State reserves the right to consider historical information regarding the proposer, whether gained from the proposer's proposal, conferences with the proposer, references, or any other source during the evaluation process. This may include, but is not limited to, information from any state or federal regulatory entity.
- 11) **Right to Reject, Cancel and/or Issue another RFP:** The State specifically reserves the right to reject any or all proposals received in response to the RFP, cancel the RFP in its entirety, or issue another RFP.

### **XIII. REQUIRED CONTRACT CLAUSES**

This RFP and any subsequent Contract entered into as a result of this RFP 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 Street, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at

<http://www.mspb.ms.gov>. The sample contract located in Appendix C is submitted in substantial form.

### **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 State 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 State, the State 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 State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **3) Compliance with Laws**

The vendor understands that the State is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the vendor agrees during the term of the agreement that the vendor will strictly adhere to this policy in its employment practices and provision of services. The vendor 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) Consideration**

The State agrees to compensate the selected vendor for services approved by the State and performed by the vendor as follows:

A fee per series for the sale of bonds. This amount should be based on a per thousand dollar (\$1,000) quote and should contain a minimum and maximum

fee per series. This quote should also contain an aggregate not to exceed fee amount per State fiscal year (July 1<sup>st</sup> – June 30<sup>th</sup>).

#### **5) E-Payment**

The vendor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," 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.

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

#### **7) Employee Status Verification System**

If applicable, Vendor 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. Vendor 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, Vendor agrees to provide a copy of each such verification. Vendor 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 Vendor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

- (2) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- (3) both. In the event of such cancellations/termination, Vendor 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.

#### **8) Indemnification**

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

#### **9) 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 Street, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at <http://www.mspsb.ms.gov>.

#### **10) Prospective Contractor's Representation Regarding Contingent Fees**

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

#### **11) Representation Regarding Contingent Fees**

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

## **12) Representation Regarding Gratuities**

By submission of a proposal, the bidder, offeror, or vendor 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.

## **13) Stop Work Order**

**(a) Order to Stop Work:** The Procurement Officer, may, by written order to the vendor at any time, and without notice to any surety, require the vendor 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 Contractor's 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.

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

#### **14) Mississippi Public Records Act/Confidentiality of Proposals**

Any proposal, including accompanying attachments, will be available for review by State of Mississippi personnel, the State, members and staff of the Legislature and oversight States, and the State's consultants. The proposal is further subject to the "Mississippi Public Records Act of 1983," codified as § 25-61-1 et seq., of the Mississippi Code Annotated and exceptions found in § 79-23-1 of the Mississippi Code Annotated. The State understands that the proposer may consider some of the information provided in the proposal to be proprietary.

**The State requests that each page of the proposal that proposer considers confidential be on a different color paper than non-confidential pages and be marked in the upper right hand corner with the word "CONFIDENTIAL."**

"Mississippi Public Records Act of 1983," codified as § 25-61-1 et seq., Mississippi Code Annotated and exceptions found in § 79-23-1 of the Mississippi Code Annotated provides that proposer can request that, prior to the release of any information that the proposer designates as trade secrets or confidential commercial or financial information, that proposer will be notified by the State of the request for the information and given sufficient time to seek protection from the appropriate court. If proposer does not obtain protection from the appropriate court, all information supplied whether marked confidential or not, may be released. The State will accept no additional restrictions on the release of information contained in your proposal.

#### **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 Vendor 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.

**16) Trade Secrets, Commercial and Finance 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.

**(Remainder of the page is intentionally left blank.)**

## **Appendix A - The State of Mississippi Bond Commission**

### **Overview**

The State of Mississippi Bond Commission was created in 1966 by the Mississippi State Legislature to centralize the administration and management of the State's debt. The legislation establishes the composition and duties of the Commission.

The legislation established the membership of the Commission to consist of the Governor, the Attorney General and the State Treasurer. The Governor is designated as the chair, the Attorney General as the secretary to the Commission and the Treasurer shall serve as the treasurer of the Commission. Any successive incumbents in the three offices will succeed their predecessors in the respective positions and assume the duties upon the completion of the oaths of office.

The Commission conducts business based on the majority of its members. The Commission may also delegate to their respective staff members the powers and duties as deemed necessary and adopt rules for the conduct of business.

### **Powers and Duties**

The Commission issues debt on behalf of the State of Mississippi and, upon request, local governments. The Commission acts as the issuing agent for all bonds authorized and prescribed by the Mississippi Legislature. It advertises and accepts bids, negotiates the sale of bonds, issues and sells bonds, pays fees incurred during the issuance and other things necessary during the sale of bonds. The Commission also has the authority to retire bonds and refund or advance refund outstanding bonds.

### **Commission Staff**

The Commission staff and Working Group consist of members from the respective offices of the three elected officials mentioned above. They work closely with each other on a daily basis to ensure the Commission acts on the most accurate and timely information available. Each office has staff members assigned specifically to the bond process. There are representatives from the Governor's office, the Department of Finance and Administration's Bond Advisory Division, the Attorney General's office staff attorneys assigned to DFA and the State Treasurer's office bond specific staff dedicated to the process.

## Appendix B – Certification Statement

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposal (RFP), including attachments.

### Official Contact

The State requires that the proposer designate one person to receive all documents and the method in which the documents are best delivered. Identify the Contact name and fill in the information below:

Date: \_\_\_\_\_

Official Contact: \_\_\_\_\_

Name: \_\_\_\_\_

A. Phone Number with area code: (\_\_\_\_) \_\_\_\_\_

B. E-mail Address: \_\_\_\_\_

C. US Mail Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Proposer certifies that the above information is true and grants permission to the State to contact the above named person or otherwise verify the information I have provided.

By its submission of this proposal and authorized signature below, proposer certifies that:

- (1) The information contained in its response to this RFP is accurate;
- (2) Proposer complies with each of the mandatory requirements listed in the RFP and will meet or exceed the requirements specified therein;
- (3) Proposer accepts the procedures, evaluation criteria, mandatory contract terms and conditions, and all other administrative requirements set forth in this RFP;
- (4) Proposer's fee and expense quote is valid for at least 90 days from the date of submission of proposal;

(5) Proposer understands that if selected as the successful proposer, he/she will have five (5) business days from the date of delivery of the final contract in which to execute the final contract document.

(6) Proposer provides authorization for the State to verify work performed for prior clients of the proposer.

(7) Proposer represents as a part of such proposal that such Proposer has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Authorized Signature: \_\_\_\_\_

Typed or Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

## Appendix C: Sample Contract

### **THIS CONTRACT IS BEING SUBMITTED IN SUBSTANTIAL FORM. ONLY SECTION 3. CONSIDERATION IS NEGOTIABLE**

#### PERSONAL SERVICE CONTRACT

This Personal Service Contract is made by and between the Department of Finance and Administration, a state agency, (the "DFA") whose address is 501 North West Street, Suite 1301 Woolfolk Building, Jackson, Mississippi 39201 and \_\_\_\_\_, (the "Contractor") whose address is \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, under the following terms and conditions:

1. **Scope of Services:** *(Insert the scope of services to be performed by Contractor)*  
The Contractor will provide services as specified in the *(Request for Proposal, Invitation for Bid, etc...)* (hereinafter referred to and attached as Exhibit "A"), and the *(Proposal Bid, etc...)* by Contractor dated *(insert date)* (hereinafter referred to and attached as Exhibit "B").
2. **Contract Term:** *(May be entered into for a period of time, not to exceed four (4) years, with an option to renew for one (1) year.)*
3. **Consideration:** *(Insert payment amount, schedule of payments, etc...)*
4. **E-Payment:** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode:** Payments by state agencies using the Statewide Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State, may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds:** It is expressly understood and agreed that the obligation of the DFA to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of

the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DFA, the DFA shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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

handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the Agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

11. **Transparency:** This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated § 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
12. **E-Verification:** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (1972, as amended), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following:

(1) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public;

(2) the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,

(3) both. In the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.

13. **Independent Contractor Status:** The Contractor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by the DFA, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the DFA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the DFA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the DFA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the DFA. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DFA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The DFA shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the DFA shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the DFA for its employees.
14. **Modification or Renegotiation:** This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the Agreement if federal, state and/or the DFA revisions of any applicable laws or regulations make changes in this Agreement necessary.
15. **Procurement Regulations:** The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi 39201, for inspection or downloadable at [www.mspb.ms.gov](http://www.mspb.ms.gov).
16. **Representation Regarding Contingent Fees:** The Contractor represents that it has not retained a person to solicit or secure a DFA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.

17. **Representation Regarding Gratuities:** The Bidder, Offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
18. **Termination for Convenience:**
- (1) Termination. The DFA may, when the interests of the DFA so require, terminate this contract in whole or in part, for the convenience of the DFA. The DFA shall give written notification of the termination to the Contractor specifying the part of the contract terminated and when the termination becomes effective.
  - (2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The DFA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the DFA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
19. **Termination for Default:**
- (1) *Default.* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified within this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the DFA may notify the Contractor in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the DFA, the DFA may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the DFA may procure similar supplies or services in a manner and upon terms deemed appropriate by the DFA. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
  - (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the DFA, the Contractor shall take timely,

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

- (3) *Compensation.* Payment for completed services delivered and accepted by the DFA shall be at the contract price. The DFA may withhold from amounts due the Contractor such sums as the DFA deems to be necessary to protect the DFA against loss because of outstanding liens or claims of former lien holders and to reimburse the DFA for the excess costs incurred in procuring similar goods and services.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of Subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the DFA within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the DFA shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the DFA under the clause entitled ( in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- (5) *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the DFA, be the same as if the notice of termination had been issued pursuant to such clause.

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

20. **Stop Work Order:**

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

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

21. **Price Adjustment:**

- (1) *Price Adjustment Methods.* Any adjustment in contract price pursuant to a clause in this contract, shall be made in one or more of the following ways:
- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
  - (b) by unit prices specified in the contract;
  - (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
  - (d) by the price escalation clause.
- (2) *Submission of Cost or Pricing Data.* The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

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

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

24. **Indemnification:** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or

failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

25. **Third-Party Action Notification:** The Contractor shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this Agreement.
26. **Notices:** All notices required or permitted to be given under this Agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

Name  
Title  
Address  
City, State, & Zip Code

For the DFA:

Laura D. Jackson  
Executive Director  
Post Office Box 267  
Jackson, Mississippi 39205-0267

27. **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.
28. **Priority:** The contract consists of this Agreement, the request for proposal [number] (hereinafter "RFP" and attached as Schedule [ ]), and the response proposal by [Contractor] dated [date] (hereinafter "Proposal" and attached as Schedule [ ]). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this Agreement and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this Agreement or attached Schedules [ ] or [ ] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
29. **Change in Scope of Work:** The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such

changes or adjustments have been made by written amendment to the contract signed by the DFA and the Contractor.

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

30. **Contractor Personnel:** The DFA shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Contractor. If the DFA reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the DFA in a timely manner and at no additional cost to the DFA. The day-to-day supervision and control of the Contractor's employees and Subcontractors is the sole responsibility of the Contractor.
31. **Recovery of Money:** Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the DFA, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the amount of any loss or damage suffered by the DFA on account of the acts or omissions of the Contractor.
32. **Failure to Enforce:** Failure by the DFA at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.
33. **Trade Secrets, Commercial and Financial Information:** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
34. **Termination Upon Bankruptcy:** This contract may be terminated in whole or in part by the DFA upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under

this contract, but in no case shall said compensation exceed the total contract price.

Witness our signatures, on the date first written.

*(Insert Contractor)*

Department of Finance and Administration

By: _____	By: _____
Name	Laura D. Jackson
Title	Executive Director