Mississippi Development Authority
501 North West Street
Jackson, MS 39201

Request for Proposal to Provide

Investment Recruitment Services in Japan

RFP#: JAPAN03162016

Date: February 25, 2016

Mississippi Development Authority
501 North West Street
Jackson, MS 39201-1001

1. INVITATION:

Written proposals subject to the conditions therein stated and attached hereto, will be received at 501 N. West Street, Woolfolk Building, Suite 1500, Jackson, MS 39201 until Wednesday, March 16, 2016 at 2:00 P.M., CST for providing the services as described below for the Mississippi Development Authority (MDA).

2. DESCRIPTION:

The following is a general description of the services required. See attachment "B" for more detailed specifications and qualifications for the professional consultant services required. The MDA is seeking a professional services contractor to provide attraction of inbound investment on behalf of Mississippi firms and the MDA for the purpose of expanding foreign direct investment from Japan. Under MDA policy guidance, independent contractors currently operate foreign offices (either directly or by contract with consultants or representatives) in Germany/UK, South America, Europe, Japan and Chile. These offices provide an array of services related to expanding existing exports and/or the recruitment of inbound investment to Mississippi. Proposals are sought from qualified Proposers to provide investment recruitment services in Japan.

The major focus of the Japan services is promoting Mississippi as a site for foreign investment, offering in-country assistance to MDA staff and its economic development partners in Mississippi, and recruiting companies to directly invest in Mississippi. Special emphasis in recruitment identification and qualification of investment prospects, will be given to target sectors including automotive component assembly and supply, aerospace component assembly and supply, Japan small to medium-sized enterprises (first-time investors and suppliers of large investors), energy (Japanese firms seeking fuel sources, research and development, and production), and advanced manufacturing in general.

The MDA operates its international representative programs on the basis of very high quality services. International representatives are expected to take the necessary time and due diligence with each foreign investment prospect, offering the highest quality of service including fluent language and cultural immersion within the market.

3. EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS

MDA seeks to make award to the Offeror that demonstrates the most advantageous combination of capability, qualifications, experience, and price. The evaluation process and factors set forth herein as Attachment "A" reflect MDA's determination of the evaluation method, information, and criteria that will best assist MDA in making this selection. Generally, Step I is to determine the responsiveness of the proposal. Step II evaluation factors are scored numerically.

4. ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST SHALL BE IN WRITING.

5. OFFERORS MAY DESIGNATE THOSE PORTIONS OF THE PROPOSALS WHICH CONTAIN TRADE SECRETS OR OTHER PROPRIETARY DATA WHICH MAY REMAIN CONFIDENTIAL IN ACCORDANCE WITH SECTION 25-61-9 AND 79-23-1 OF THE MISSISSIPPI CODE.

Inquiries regarding this Request for Proposal may be mailed to:

Attn: Willie McAfee/ Mike McCollough
Mississippi Development Authority
P O Box 849
Jackson, MS 39205-0849
Or
501 N. West Street, Woolfolk Bldg., Suite 1500
Jackson, MS 39201
Or
Email: procurement@mississippi.org

Proposals and attachments must be submitted to:

Attn: Willie McAfee/Mike McCollough
Mississippi Development Authority
501 N. West Street, Woolfolk Bldg., Suite 1500
Jackson, MS 39201 USA

6. SPECIFICATIONS / SCOPE OF WORK

The specification/Scope of Work MDA is seeking is in Attachment "B".

7. TYPE OF CONTRACT:

The MDA is requesting proposals for a firm fixed price contract for services.

8. TERM AND EXTENSION OF CONTRACT:

The MDA anticipates awarding a contract for services in April/May 2016 with a July 01, 2016 start date, for a duration of (24) months extending to June 30, 2018. MDA shall have the option to renew the Contract two additional, 1-year terms. If the contract is renewed at the discretion of MDA, the MDA will give the Contractor 30 days' written notice prior to the contract ending date. The renewal would be under the same fixed unit prices, terms and conditions as the original Contract. However, compensation (cost) for the two-year term would be negotiated by both parties to the Contract taking into consideration the Japanese Yen and U.S. dollar exchange rate at the time of renewal.

9. REJECTION OF PROPOSALS:

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

A. The proposal contains unauthorized amendments to the requirements of the RFP;

B. The proposal is conditional;
C. The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
D. The proposal is not received by the deadline;
E. The proposal is not signed by an authorized representative of the party;
F. The proposal contains false or misleading statements or references.

10. ACCEPTANCE OF PROPOSALS:

MDA reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP, which does not affect the funding request, or give one party an advantage or benefit not enjoyed by other parties, or adversely impacts the interest of MDA. Waivers, when granted, shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements, if the party is awarded the contract.

11. DISPOSITION OF PROPOSALS:

All submitted proposals become the property of MDA.

12. COMPETITIVE NEGOTIATION:

The bidding method to be used is a competitive negotiation from which MDA is seeking the best combination of price, experience and quality of service. Discussions may be conducted with Proposers who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, MDA also reserves the right to accept any proposal as submitted to contract award, without substantive negotiation of offered terms, services or prices. Therefore, all parties are advised to propose their most favorable terms initially.

13. RFP DOES NOT CONSTITUTE ACCEPTANCE OF OFFER:

The release of the RFP does not constitute an acceptance of any offer, nor does such release in any way obligate MDA to award funds. MDA reserves the rights to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this RFP. The final decision to award funds to any party rests solely with MDA.

14. EXCEPTIONS AND DEVIATIONS:

Proposers taking exception to any part or section of the solicitation shall indicate such exceptions on the proposal and shall be fully described. Failure to indicate any exception will be interpreted as the Proposer's intent to comply fully with the requirements as written. Conditional or qualified Proposers, unless specifically allowed, shall be subject to rejection in whole or in part.

15. NONCONFORMING TERMS AND CONDITIONS:

A proposal, which includes terms and conditions not conforming to the terms and conditions in the RFP, is subject to rejection as non-responsive. MDA reserves the right to permit the Proposer to

withdraw nonconforming terms and conditions from its proposal prior to a determination by MDA of non-responsiveness based on the submission of nonconforming terms and conditions.

16. PROPOSAL ACCEPTANCE PERIOD:

The original and five (5) copies (6 copies total) of the proposal and all attachments shall be signed and submitted in a **sealed envelope or package** to Mississippi Development Authority, Attn: Willie McAfee/ Mike McCollough, 501 N. West Street, Woolfolk Building, Suite 1500, Jackson, MS 39201 no later than 2:00 P.M. Central Time on Wednesday, March 16, 2016. Timely submission of the proposal is the responsibility of the Proposer. Offers received after the specified time shall be rejected and returned to the Proposer unopened. **The envelope or package shall be marked "Japan Investment Recruitment Services RFP#JAPAN03162016" in the lower left hand corner**. Each page of the proposal and all attachments shall be identified with the name of the Proposer.

17. EXPENSES INCURRED IN PREPARING OFFERS:

MDA accepts no responsibility for any expense incurred by the Proposer in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the Proposer.

18. ADDITIONAL INFORMATION:

Questions concerning the RFP document must be submitted in writing to Mississippi Development Authority, Attn: Willie McAfee/ Mike McCollough, via email to procurement@mississippi.org. Questions will be received through Monday March 7, 2016, at 2:00 P.M. CST. Responses to all questions will be distributed in writing, as an amendment to the RFP, via email or fax to all known Proposers by Tuesday, March 8, 2016, at 2:00 P.M. CST. Proposers are cautioned that any statements made by the contact person that materially change any portion of the RFP shall not be relied upon unless subsequently ratified by a formal written amendment to this RFP.

19. ACKNOWLEDGMENT OF AMENDMENTS:

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 MDA by the time and at the place specified for receipt of proposals.

20. DEBARMENT:

By submitting a proposal, the Proposer 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 the U.S. Federal government and that it is not a person or entity which is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi or the Federal government.

21. RIGHT TO POST-AWARD DEBRIEFING:

A vendor, successful or unsuccessful, may request a post-award debriefing. See Attachment "C" for specific procedures to request a debriefing.

22. BID PROTEST PROCEDURES:

Bid protest procedures can be found in Attachment "D".

23. RELEASE OF BIDDING DOCUMENTS:

To improve the efficiency of the evaluation and award process, the MDA shall restrict the availability of proposals, scoring information, evaluation documents, emails or any other documentation related to the review and/or evaluation of proposals prior to contract award.

24. TERMS AND CONDITIONS:

By submitting a proposal in response to this RFP, the Proposer agrees to be bound by the Terms and Conditions contained in this RFP in Attachment "E".

25. THE FOLLOWING RESPONSE FORMAT SHALL BE USED FOR ALL SUBMITTED PROPOSALS:

A. Completed and signed *Request for Proposal Submission Form* (is included in this RFP).
B. Completed and signed acknowledgment for all addendums (if addendums were issued).
C. Proposal as required in Attachment "A" Step 1 and Step 2.
D. Acceptance of conditions: Indicate any exceptions to the General Terms and Conditions of the proposal document and any other requirements listed.
E. Additional data: Provide any additional information that will aid in evaluation of the response.
F. Cost data: Cost data submitted at this stage is not binding and is subject to negotiation if your proposal is chosen as a finalist. As stated in Attachment "A" Section B, price is scored, therefore, proposals must include a total budget for the twenty-four (24) month term. Proposals must also include 2 separate budgets using a July 1, 2016 – June 30, 2017 and a July1, 2017 – June 30, 2018 period.

Suggested Format:

Proposed Budget July 1, 2016 through June 30, 2017

Base Fee	
Travel Expenses	
Total Budget	

Proposed Budget July 1, 2017 through June 30, 2018

Base Fee	
Travel Expenses	
Total Budget	

Note: The two separate budgets added together should total the proposed twenty-four (24) month contract amount. International travel expenses will be reimbursed at actual cost, with prior approval from MDA. All other in county travel expenses are considered routine, will not require prior approval, and will be reimbursed at actual cost up to contract amount. All travel arrangements will be the responsibility of the successful Proposer and or their staff.

MISSISSIPPI DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSAL FOR

Investment Recruitment Services in Japan

SUBMISSION FORM

RFP # JAPAN02252016

Company _____

Address _____

Contact Person_____

Telephone Number_____

Email_____

NOTE: It is the Proposer's responsibility to provide adequate information in their proposal package to enable MDA to ensure the proposal meets the required criteria. Items listed in the package shall be in the same order as listed in the specifications. Failure to do so could result in the rejection of the proposal.

EMPLOYEES NOT TO BENEFIT

I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, no employee of MDA, or members of his/her family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this Contract.

CONFLICTS OF INTEREST

The Proposer [ ] is [ ] is not aware (***mark one box***) of any information bearing on the existence of any potential organizational conflict of interest.

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 (***circle the appropriate answer***) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Contract.

COLLUSION

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State of Mississippi and U.S. Federal laws and can result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of the proposal and certify that I am authorized to sign for my company.

Signature Date: _____

Name (Printed): _____

Title: _____

Signature: _____

Attachment A

EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS

- Step I is not scored and does not result in a ranking of Proposers. Rather, Step I is used to determine the responsiveness of the Proposer to the minimum information required for their proposal to continue on to Step II. Written proposals that include the minimum information required in this Solicitation will move on to Step II of the evaluation. Those written proposals that do not include the minimum information required in this Solicitation will be rejected immediately and will receive no further consideration. The minimum information required for Step I is set forth in Section A below.

- Step II is an evaluation of the Proposer's written proposal. Written proposals will be scored using the evaluation criteria set forth in Section B below.

- Each Offeror's Total Step II score will be ranked to determine the ranking of Offerors.

MDA reserves the right, but is not required, to conduct discussions with responsible Offerors whose proposals are determined to be reasonably susceptible to being selected for award. The discussion shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Revision of proposals may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. Based on total points received in Step II all Offerors who are determined to be reasonably susceptible to being selected for award may be contacted for a best and final offer. As discussions and/or requests for best and final offers are not required, Proposers must take care to ensure that their initial written submissions respond fully to the requirements of the solicitation, are competitively priced and provide all information Proposers want to submit for consideration.

Notwithstanding the determination of the Offerors and/or Awardee as set forth herein, MDA reserves the right prior to execution of any contract to require the Offeror and/or Awardee to provide any and all such information as the MDA deems necessary or proper to determine that the Offeror and/or Awardee is sufficiently responsible and has and can maintain all the necessary facilities, management capability, personnel, technical capability, financial resources, and integrity to ensure successful performance of any resulting contract. MDA may make such investigations deemed necessary and proper. MDA reserves the right to reject any offer if the evidence submitted by, or investigation of the Offeror and/or Awardee fails to satisfy MDA that the Offeror and/or Awardee is responsible and properly qualified to carry out the obligations of the contract.

A. Step I Minimum Information Required

Each Proposer shall include the following as part of its written proposal:

(1.) The name of the Offeror, the location of the Offeror's principal place of business and, if different, the place of performance of the proposed contract;
(2.) The age of the Offeror's business and average number of employees over the past 3 years;
(3.) The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
(4.) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within the past 3 years;
(5.) A plan giving as much details as is practical explaining how the services will be performed.

Any proposal that fails to include any of the above information will be rejected immediately and will receive no further consideration by MDA.

B. Step II – Evaluation of Written Proposals - Evaluation Factors and Their Relative Importance (Total of 100 points available)

MDA shall evaluate those written proposals determined in Step I to be eligible for consideration in Step II. Written proposals shall be reviewed and scored in accordance with the following criteria, the relative significance of which is stated, for how well the proposals demonstrate the following in Step II:

(1.) The overall quality of the proposed plan for performing the required services (Important 10 pts.).
(2.) Proposer's ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.). Proposer's proven ability to recruit should be clearly outlined in their proposal and should include at a minimum a sample of companies located, direct investments by companies, number of jobs and average salaries of the jobs created. (CRITICAL 30 pts.).
(3.) The degree of completeness of response to the specific requirements of the Solicitation (VERY IMPORTANT 15 pts.).
(4.) The personnel, equipment, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting (Critical 20 pts.).
(5.) Price. The proposal(s) received which has the lowest proposed price will receive the maximum points and the remaining Offertory will be given a pro rata score as their price compares to the lowest proposed price. (Critical 25 pts.).

C. Award Decision

The Offeror who receives the highest total score of all Offerors from Step II should be the Awardee based upon offering the most advantageous combination of capability, qualifications, experience, and price as evaluated in accordance with the terms of this solicitation.

D. Contract Negotiations

The MDA Procurement Officer will contact the Offeror determined to be the Awardee and attempt to negotiate an agreement that is acceptable to both parties.

Attachment B

SPECIFICATIONS, TERMS AND CONDITIONS FOR PROFESSIONAL CONSULTING SERVICES:

General Statement—

The MDA requests proposals for providing the following specific services.

A. Recruitment of foreign direct investment to Mississippi. Proposer should focus on Japan firms in the automotive, aerospace, energy and advanced manufacturing sectors and associated supply chains as primary targets for recruitment. This service will include (i) assisting the MDA in refining the market strategy in these sectors and identifying other sectors for additional consideration, (ii) developing knowledge of Mississippi's assets with respect to geography, workforce, incentives, etc., and (iii) developing a recruitment plan based on targeted sectors to include seminars, exhibitions, calling program, and other activities relative to recruitment and identification of prospective investors.

B. Proposer will act as primary point of contact for all matters related to activities regarding investment promotion efforts of the State of Mississippi in Japan. Proposer will provide ongoing, scheduled communications with the MDA management, assigned project managers, and Director of MDA Global Division via email and telephone/Skype.

C. Proposer will plan weekly, monthly, quarterly and annual activities to make the most effective use of the fixed annual budget. The selected contractor may request or be given extra funding for special activities and extraordinary promotional expenses as part of an annual plan. Such expenses, if approved in advance, will be fully reimbursed in a lump sum based on invoices received from third-party service providers and contractors at the conclusion of the special activity. These expenses shall not be considered part of the fixed annual budget, shall not include fees for services which would be part of the contractor's normal duties, and shall not be considered part of the core recruitment plan. Proposer will provide monthly, quarterly and end of contract reports to the MDA Global Division Director, which will summarize activities and expenses incurred, as well as performance measures and outcomes.

Proposer's Qualifications—

Prospective Proposers are required to possess these qualifications.

A. Must have a proven ability in promotion and representation of an American state or other public sector entity in the Japanese market. Provide examples of demonstrated success.

B. Experience in assisting U.S. federal, state or local government agencies or U.S. companies by conducting foreign direct investment attraction activities in Japan. Preference will be given to Proposers who have economic development credentials, have previous experience in U.S. state representation, or have special knowledge, experience or existing contracts in the Japanese market and/or in the targeted market sectors.

C. Knowledge and experience in conducting market research relevant to identifying and attracting foreign direct investment from companies in Japan.

D. Access or ownership of a current and well-organized database of contacts in the manufacturing sector in Japan.

E. Knowledge of key companies, trade associations, chambers of commerce, government agencies and other groups relevant to conducting business and identifying prospective investors in Japan.

F. Experience with U.S. and Japanese business practices and business culture. Proposer must be fully bilingual with the ability to read, write and compose business correspondence in English and Japanese.
G. Knowledge of and experience in site selection process, regulations, financial incentives and project management relative to foreign direct investment at the U.S. federal, state and local levels.
H. Knowledge of one or more of the targeted industry sectors as identified in this RFP.
I. Professional skills, experience, characteristics or approaches to inbound investment attraction (not described above) that make the Proposer exceptional and well-qualified.
J. The Proposer must have an office in Japan as a primary business location. The office(s) should be equipped with the necessary communications equipment (e.g. phone, fax) as well as copy machines, computers and other support equipment. The Proposer must have the ability to communicate via email and phone/Skype, and to send/receive attachments with large amounts of data.
K. Proposer's principal and key staff member(s) must either not need a U.S. non-immigrant visa to visit the U.S., or have the ability to obtain a U.S. non-immigrant visa for traveling to the U.S. at least once a year.
L. Proposer must have an established business in consulting, marketing sales or other areas that provide services to international companies.

Attachment C

Mississippi Development Authority
Procedures for filing a post-award vendor debriefing

1. A vendor, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission, to be received by MDA 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. If a vendor prefers to have legal representation present, the vendor must notify the MDA and identify its attorney. The MDA shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.
2. The debriefing should occur within five (5) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the MDA. The MDA Procurement Officer shall chair the meeting.
3. The debriefing shall include the following:
   a) The MDA's evaluation of significant weaknesses or deficiencies in the vendor's bid or proposal, if applicable;
   b) The overall evaluated cost or price, and technical ranking, if applicable, of the successful vendor(s) and the debriefed vendor;
   c) The overall ranking of all vendors, when any ranking was developed by the MDA during the selection process;
   d) A summary of the rationale for award; and,
   e) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.
4. Information MDA will not provide in a debriefing is:
   a) Point-by-point comparisons of the debriefed vendor's bid or proposal with those of other offering vendors;
   b) Trade secrets as identified by the offering vendor claiming the trade secrets;
   c) Privileged or confidential manufacturing processes and techniques as identified by the offering vendor claiming the privileged or confidential information;
   d) Commercial and financial information that is privileged or confidential, to include an offering vendor's cost, breakdowns, profit, indirect cost rates, and similar information as identified by the offering vendor claiming privileged or confidential information; and,
   e) The names of individuals providing reference information about any vendor's past performance.

Attachment D

Mississippi Development Authority
Policy and Procedures for Protest of RFP, IFB, RFQ or
Any other Competitive Procurement Process

(A) Right to Protest

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director of the agency. The protest shall be submitted in writing within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. If the tenth (10th) day falls on a weekend or State holiday the deadline shall be extended to the next business day.

(B) Authority to Resolve Protests

The Executive Director or a designee shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(C) Decision

The agency shall have ten (10) business days to conduct an investigation into the claims made by the aggrieved and shall issue a written response to the aggrieved. The agency, at its discretion, may solicit an outside entity to assist with or conduct the investigation if it is determined by the agency such action is necessary. In the event the agency solicits an outside entity to assist or conduct the investigation the agency shall have an additional five (5) business days to conduct the investigation.

(D) Notice of Decision

A copy of the decision under Section (C) of this policy shall be mailed or otherwise furnished to the protestant within the defined time period.

(E) Finality of Decision

A decision under Section (C) of this policy shall be final and conclusive.

(F) Stay of Procurements during Protests

The Executive Director or his designee shall have the right to suspend the process in the event of a timely protest under Section (A) of this document. Suspension of the process is at the discretion of the agency and will be considered upon receipt by the agency of a protest.

Filing of Protest

(A) When Filed

Protests shall be made in writing to the Executive Director, and shall be filed in duplicate within ten (10) calendar days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Executive Director. Protests filed after the ten (10) day period shall not be considered.

(B) Subject to Protest

A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived. Protests may be filed on the basis of the following:

1. Failure to follow established policies and/or procedures regarding procurement as outlined in (i) MDA policies or procedures, (ii) MDA rules for procurement, (iii) PSCRB Rules and Regulations, and/or (iv) competitive bid documents (i.e. RFP, IFB, RFQ, etc.) as applicable;
2. Errors in computing scores which contributed to the selection of an Offeror other than the lowest and best bidder; or
3. Documented conflict of interest on the part of an evaluator.

(C) Not Subject to Protest

Protests shall not be accepted by the agency where the subject of the protest is:

1. Evaluation Committee members (unless the protest is based on a documented conflict of interest);
2. The professional judgment of the Evaluation Committee including, but not limited to, the scoring by an evaluator;
3. Location of oral presentations (when required);
4. Time of oral presentations (when required);
5. Late submission of proposal;
6. Modification of any portion of the RFP when done in accordance with policy and process as outlined in (i) MDA policies or procedures, (ii) MDA rules for procurement, (iii) PSCRB Rules and Regulations, and/or (iv) competitive bid documents (i.e. RFP, IFB, RFQ, etc.) as applicable;
7. MDA's assessment of its own needs/requirements regarding the subject of the procurement.

(D) Form

Protest should be hand-delivered or mailed to the Executive Director's Office. The envelope should be labeled "Protest." The written protest shall include as a minimum the following:

1. The name and address of the protestor;
2. Appropriate identification of the procurement;
3. A statement of reasons for the protest; and,
4. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(E) Requested Information; Time for Filing

Any additional information requested by the agency from the protester shall be submitted within the time period established by the agency. Failure to comply expeditiously with a request for information by the agency may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.

(F) Making Information on Protests Available

The agency shall upon written request make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it

contains such information. The availability of such information to third parties shall be in compliance with Mississippi Public Records Act, Miss. Code Ann. 25-61-1, *et seq*.

Effect of Judicial or Administrative Proceedings

In the event an ongoing protest becomes the subject of a legal proceeding, the agency shall suspend its investigation pending the outcome of any proceeding. The Executive Director or his designee shall not act on the protest, but refer the protest to the agency's legal counsel.

Attachment E

GENERAL TERMS AND CONDITIONS:

1. Notices--All notices required or permitted to be given under this Contract 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 changes of address.

   For the Contractor: _____
   Name, Title, Contractor, and Address

   For the MDA: Becky Thompson, Global Division Director, Mississippi Development Authority, 501 N. West Street, 6th Floor, Jackson, MS 39201-1001.

2. Termination for Default Clause--If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the MDA will thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination. In that event, any furnished or unfurnished documents, data, studies, surveys, drawings, maps, models, photographs, reports, or other materials prepared by the Contractor under this Contract will, at the option of the MDA, become the MDA's property. The Contractor will be entitled to receive just and equitable compensation for any satisfactory work completed and delivered under the terms of this Contract.

   Notwithstanding the above paragraph, the Contractor will not be relieved of liability to the MDA for damages sustained by the MDA by virtue of any breach of this Contract by the Contractor, and the MDA may withhold any payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the MDA from the Contractor is determined.

3. Termination for Convenience Clause—

   1. *Termination.* The Procurement Officer of the MDA may, when the interests of the MDA so require, terminate this Contract in whole or in part, for the convenience of the MDA. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

   2. *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor

to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the MDA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so. The Contractor shall be entitled to compensation for services performed up to the date of termination, and authorized and accepted by the MDA.

4. Modification or Renegotiation--This Contract may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this Contract necessary.

5. Change in Scope of Work--The MDA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor, or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the MDA 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 MDA in writing of this belief. If the MDA 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 Scope of Services

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

7. Interest of the Contractor and the Contractor's Employees--The Contractor covenants that neither it nor its employees presently have any interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract, no person having such interest will be employed.

8. Confidential Information--"Confidential Information" shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the MDA and any other information

designated in writing as confidential by the MDA. Each party to this Contract agrees to protect all confidential information provided by one party to the other; to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its Subcontractor without the express written approval of the MDA shall result in the immediate termination of this Contract.

9. Officials Not to Benefit--No member of or delegate to the Congress of the United States of America, and no Resident Commission will be admitted to any share or part thereof or to any benefit to arise here from.

10. Ownership of Documents and Work Papers--The MDA 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 Contract, 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 MDA upon termination or completion of this Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDA and subject to any copyright protections.

11. Record Retention and Access to Records--Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the MDA or any duly authorized representatives, shall have unimpeded, prompt access to any of the 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. The Contractor shall retain all records related to this Contract for three (3) years after final payment is made under this Contract 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.

12. Personnel--The Contractor represents that it has, or will secure, at its own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of, or have any contractual relationship with the MDA. All of the services required hereunder will be performed by the Contractor under its supervision, and all personnel engaged in the work will be fully qualified and will be authorized or permitted under State and local law to perform such services.

13. Right to Inspect Facility--The MDA may at reasonable times, inspect the place of business of a Contractor or any Subcontractor, which is related to the performance of any contract awarded by the MDA.

14. Disputes--Any dispute concerning a question of fact under this Contract, which is not disposed of by agreement of the parties, shall be decided by the Executive Director of the MDA or his designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute breach under the terms of this Contract. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

15. Waiver--No delay or omission by either party to this Contract in exercising 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 Contract 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 Contract will void, waive, or change any other term or condition. No waiver by one party to this Contract of a default by the other party will imply, be construed as or require waiver of future or other defaults.

16. Severability--If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract 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 Contract as necessary to reflect the original intent of the parties, and to bring any invalid or unenforceable provisions in compliance with applicable law.

17. 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. The Contractor shall comply with applicable federal, State and local laws and regulations.

18. Compliance with Laws--The Contractor understands that the MDA 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, 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 this Contract 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 Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now exists and as may be amended or modified.

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

20. Procurement Regulations--The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 E.

Capitol Street, Suite 800, Jackson, Mississippi, for inspection or downloadable at www.mspb.ms.gov.

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

22. Indemnification--To the fullest extent allowed by law, the Contractor will indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi and the MDA from and against all claims, demands, liabilities, suits, actions damages, losses, and any costs related thereto, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees resulting from any negligent acts or misconduct of the Contractor, its agents, or employees.

23. Integrated Agreement/Merger--This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the MDA and the Contractor. The Contractor acknowledges that it has thoroughly read all Contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the MDA or the Contractor on the basis of draftsmanship or preparation hereof.

24. Oral Statements--No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. The MDA must make all modifications to the Contract in writing.

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

26. 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 MDA. Nothing contained herein shall be deemed or construed by the MDA, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the MDA and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDA or the Contractor hereunder, creates or

shall be deemed to create a relationship other than the independent relationship of the MDA and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDA; and MDA shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The MDA shall not withhold from the contract payments to the Contractor any federal or Mississippi unemployment taxes, federal or Mississippi income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MDA shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State of Mississippi for its employees.

27. Stop Work Order--

1. Order to Stop Work. The Procurement Officer of the Department, 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 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: (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 Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

3. Termination of Stopped Work. If a stop work order is not 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 by mutual consent of the parties.

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

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

30. E-payment / Pay mode - The MDA agrees to make payments in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Mississippi Code Annotated § 31-7-301 et seq., which generally provides for payment on undisputed amounts by the agency within forty-five (45) days of receipt of invoice. 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.

31. E-Verify - The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp 2008), 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. 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. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Contract 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 government entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

32. Transparency - This Contract, including any accompanying exhibits, attachments and appendices, is subject to the "Mississippi Public Records Act of 1983", codified as Section 25-61-1 *et seq.*, Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 31-7-13 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this Contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access. Prior to posting the contract to the website, any information identified by the 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.

33. Non-exclusivity – Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict the MDA from acquiring other services for projects specific in scope.