

Request for Proposals

**Financial Advisor
For Master Lease Purchase Programs**

For

(1) K-12 School Districts & Community and Junior College Districts

(2) State Agencies

RFP #3120000726

**State of Mississippi
Department of Finance and Administration (DFA)
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501 North West Street
Jackson, Mississippi 39201**

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Due Date:

**Sealed Proposals
2:00 PM Central Standard Time, Thursday, July 7, 2016**

**RFP for Financial Advisor for Master Lease Purchase Programs
for K-12 School Districts and Community and Junior College Districts
and State Agencies
RFP #3120000726**

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1.0 Introduction

This Request for Proposals (RFP) is being issued by the Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (DFA or State) for the procurement of a Financial Advisor (FA) for the Master Lease Purchase Program(s) for K-12 School Districts and Community and Junior College Districts and State Agencies as set forth herein. In accordance with Section 31-7-10 of the Mississippi Code, the purpose of this Request for Proposals is to establish a contract for an FA who will develop procedures and documents which will be used to obtain financing for various items of equipment required by the Districts and State Agencies of the State of Mississippi, and will provide administrative support and all FA functions related to these programs.

The DFA seeks submittals of Proposals from qualified Financial Advisors in order to accomplish the goals listed below:

1.1 General Instructions

Proposals shall be submitted as set forth in Section 4.1.

1.2 Project Description

It is the intent of the State, with the assistance of the awarded FA, to develop a process by which the FA will, as needed, consolidate the equipment lease/purchase requirements of one or more Districts and State Agencies into an issue for funding purposes. The FA will then solicit bids or otherwise obtain rates for financing, using the documents and process recommended by the FA. Following receipt of bids or otherwise obtaining rates, the FA, using criteria recommended by the FA, will determine the best bidder and/or the acceptability of the rates obtained. The FA will then prepare award documents and obtain financing using the recommended documents. The FA will be expected to develop the entire process from needs assessment to final lease payment with all applicable documentation. The FA will also be expected to provide the State with checklists of occurrences which the State should consider throughout the process.

1.3 Definitions

District – The term “District” denotes any of the various K-12 School Districts and Community and Junior College Districts which may acquire equipment under this program.

State Agencies – The Term “State Agencies” means any state board, commission, committee, council, university, department or unit thereof created

by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute (except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority) which may acquire equipment under this program.

Bond Advisory Division – The term “Bond Advisory Division” means the DFA Office of Bond Advisory.

DFA, Office of Purchasing and Travel, or Office – These terms may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Offerors.

Contractor – The term “Contractor” denotes the role assumed, post-award, by the winning Offeror.

Offeror – The term “Offeror” is used in conjunction with the proposing organization during the procurement process leading up to the final selection and award.

State – The term “State” denotes the State of Mississippi.

Program(s) – The term “Programs” is used to denote the contract that will be awarded as a result of this RFP to manage two separate Programs; (1) K-12 School Districts and Community and Junior College Districts, and (2) State Agencies.

2.0 Scope of Work

The awarded Contractor (FA) shall provide all Financial Advisor functions required for the development of procedures and documents which will be used to obtain competitive bids for tax-exempt financing of various items of equipment by the Districts or State Agencies of the State of Mississippi. In addition, the FA will provide all functions required to administer the Master Lease Purchase Programs. A summary of the programs for the past five (5) years is attached as Appendix D.

2.1 Duties of the Contractor

- A. Basic Program. The Contractor will be expected to make recommendations with regard to and assist the DFA in structuring a Competitive Bid Process, whether public or private placement, for obtaining tax-exempt funding for the DFA’s Master Lease Purchase Program, including the preparation of basic financing documents, offering documents, and supporting documentation, in a manner which will result

in financing offerings and procedures which are acceptable to financial markets and institutions. The implementation of the Programs must not have a negative impact upon any other aspect of the State's financing opportunities. All documents shall be developed in such a manner that the DFA will be able to use the generic documents, with applicable adjustments, for multiple future bid solicitations.

- B. Process. The Contractor will be expected to develop and administer the entire process from needs recognition to final payment with all applicable documentation. The Contractor will also be expected to provide the DFA with checklists of occurrences which the DFA should consider throughout the process. It is understood that the process described herein is representative of a process of funding which utilizes Certificates of Participation. Offerors may submit Proposal for other forms of financing and/or COP financing procedures in which some or all of the following requirements may not be applicable. Offerors are expected to fully describe in their Proposals, which, if any, of the following procedures will not be complied with, and what procedures will be substituted to achieve the apparent intent of the requirement. It should be clear from these requirements that the DFA does not intend to perform many functions in-house but rather that the Contractor will be expected to perform a vast majority of the required activities.
- C. The awarded Contractor will develop a process by which the Contractor, on an as needed basis, will consolidate the equipment lease-purchase requirements of one or more Districts and the equipment lease purchase requirements of one or more State Agencies. This shall include, but not be limited to, developing program descriptions for use by the Districts and State Agencies, a description of information needed prior to receiving funds, and a generic calendar of events for use by the Districts and State Agencies in understanding the Programs. All documents developed by the Contractor related to the entire Master Lease Purchase Programs shall be provided in a Word format, and transmitted electronically, to enable the Office to use the documents on all future issues of this and future Programs.
- D. The Contractor will manage and coordinate the pre financing process with the participating Districts and State Agencies.
- E. The Contractor will develop an educational plan that will ensure that potential participants (Districts, State Agencies, vendors, etc.) will have a sound working knowledge of the program, its structure, and applicable accounting and purchasing procedures. It should be noted that this often requires multiple one-on-one meetings and phone conversations with various individuals throughout the Districts and State Agencies. This educational plan should include, but is not limited to:

- i. Assisting and educating the Districts and State Agencies in order that the Districts and State Agencies gain an understanding of the Programs' procurement and acquisition process.
 - ii. Having staff available for statewide travel to meet with Districts and State Agencies and to make presentations to department personnel, as well as attend statewide conferences of purchasing officials.
- F. The Contractor will consolidate the information received from the Districts and State Agencies. The Contractor will analyze the character of collateral, useful life of equipment, timing of equipment delivery, cost elements of equipment, and will review vendor contracts and timing of vendor payments.
- G. If the acquisition involves software, the Contractor will examine the software license to determine, among other things, if a perpetual license is created so that a security interest in the software can be obtained.
- H. Upon District and State Agency requests, the Contractor will create preliminary amortization schedules, usually necessary for budgetary purposes. This schedule is often used by the Districts and State Agencies to determine the economic feasibility of acquiring the equipment through financing.
- I. The Contractor will create a spreadsheet with breakdowns by District and State Agency of equipment description, equipment cost, anticipated delivery, and acceptance dates.
- J. The Contractor will contact the Department of Finance and Administration, Office of Purchasing and Travel and Bond Advisory Division, with results of District and State Agency communications and make recommendations as to the timing of the next issue or, if necessary, obtain interim financing for specific pieces of equipment. If interim financing is requested and approved by the Office, the Contractor will obtain an interim rate and prepare and distribute interim financing documentation.
- K. After the Department of Finance and Administration, Office of Purchasing and Travel and the Public Procurement Review Board approve the list of equipment as indicated on the spreadsheet, the Contractor will gather information as to the essential governmental use of the equipment, as well as the District's and State Agency's justification for the acquisition. This involves communication with each District and State Agency, as well as gathering information directly from potential vendors or from potential vendor brochures and pamphlets (NOTE: any acquisitions proposed in

the Program must follow all applicable procurement rules and regulations, including competitive solicitations where applicable, once the acquisition schedule is approved by the Public Procurement Review Board). Additionally, if the District or State Agency is establishing a Program that is designed to evolve over a period of time and will require equipment acquisitions in stages, the Contractor will acquire a full understanding of the Program from its inception to full implementation to assist the District and State Agency in accurately assessing its equipment purchases. After the information has been received, the Contractor will draft a description of each item of equipment being acquired to be included in offering materials and will provide a copy of the list to each District and State Agency to allow a review of the accuracy of the description prior to inclusion in the offering materials.

- L. If equipment involves telecommunications or computer equipment, the Contractor will obtain necessary approval from the Mississippi Department of Information Technology Services in addition to the Office of Purchasing and Travel.
- M. The Contractor will prepare initial sizing of the Program to determine time of financing.
- N. The Contractor will determine market conditions by analyzing interest rates and reviewing comparable sales analyses and other market activity to optimize pricing, check forward municipal calendar, and contact the Mississippi Department of Finance and Administration, Bond Advisory Division and Office of Purchasing and Travel, before making a recommendation as to timing of the deal.
- O. The Contractor will analyze the structure of the financing from the perspective of state law and federal tax and securities laws and determine potential financing participants.
- P. The Contractor will prepare basic financing documents, closing certificates, suggested opinions to be rendered at closing, offering materials, and documents required to assign title to certain equipment to the Department of Information Technology Services, if applicable.
- Q. The Contractor will distribute financing documents to all applicable parties.
- R. If applicable, the Contractor will develop a rating strategy and presentation, prepare rating application, and submit to the rating agency after approval from the Department of Finance and Administration. The Contractor will also be responsible for obtaining a rating release from the rating agency, and, if applicable, credit enhancement for the Program.

- S. The Contractor will solicit program fees and make award recommendation for Trustee, Trustee's attorney, and rating agency.
- T. The Contractor will revise documents pursuant to communications with parties to the transaction and distribute second drafts, if necessary, to all parties.
- U. The Contractor will arrange for a bid process in order to obtain a guaranteed investment contract, if applicable. The Contractor may not submit a bid on its behalf.
- V. If financing through a public competitive bid process, the Contractor will prepare and arrange for publication notices of sale in the appropriate publications. The Contractor will register the sale through SureBid or a similar service for the purpose of receipt of bids deposits through SureBid. The Contractor will coordinate with Bidcomp/PARITY to arrange for receipt of on-line bids. The Contractor either will attend the bid opening or will coordinate with the DFA by conference call and will analyze the bids and make a recommendation as to the low bidder.
- W. The Contractor will prepare the Preliminary Offering Circular and the Final Offering Circular. The Contractor will arrange for electronic distribution of the Preliminary Offering Circular through the services of I-deal or a similar service. The Contractor will prepare and will arrange for the printing and distribution of the Final Offering Circular to the winning underwriter. The Contractor will prepare the Certificates of Participation, proof of accuracy and forward to the Trustee for authentication and delivery to The Depository Trust Company (DTC).
- X. The Contractor will prepare amortization schedules by District and State Agency and, if requested, by group or piece of equipment and will communicate with each District and State Agency to verify final equipment amounts and lease terms and anticipated delivery schedules.
- Y. The Contractor will finalize financing and closing documents, attach amortization schedules, prepare multiple execution copies, coordinate receipt of executed opinions, and hold in escrow pending closing.
- Z. If an investment contract is obtained, the Contractor will coordinate receipt of accountant's verification report and opinion verifying cash flows under the lease, together with interest earnings derived from the investment contract, will be adequate to pay debt service on the Financing Agreement.

- AA. The Contractor will coordinate with the Department of Finance and Administration, Office of Purchasing and Travel and the Bond Advisory Division to arrange pre-closing meetings with each District and State Agency, if necessary, travel to and attend pre-closing, obtain signatures of authorized representatives of each District and State Agency, as well as any other necessary signatures.
- BB. The Contractor will prepare and file applications for the receipt of CUSIP numbers in the event of a competitive sale and will file for eligibility under the DTC, coordinate closing with the Trustee, including preparation of the closing statement detailing flow of funds from investors to Trustee, and from Trustee to trust accounts.
- CC. The Contractor will provide investment instructions for escrowed funds in the Acquisition Account pursuant to the Trust Indenture.
- DD. The Contractor will confirm wiring instructions and confirm receipt of funds.
- EE. The Contractor will provide Trustee with executed counterparts of financing documents, opinions, certificates as to tax and no-arbitrage, and IRS Form 8038-G.
- FF. The Contractor will confirm with DTC that the documents have been received.
- GG. The Contractor will confirm settlement and closing with Trustee.
- HH. The Contractor will prepare and file UCC-1 Financing Statements and UCC-3 statements, if any, for each District and State Agency with the Secretary of State of the State of Mississippi. The Contractor will prepare and timely file Form 8038-G with the Internal Revenue Service on behalf of DFA.
- II. The Contractor will prepare and distribute closing transcripts.
- JJ. The Contractor will prepare and distribute to the State a post-sale analysis detailing the results and market conditions for each competitive sale.
- KK. The Contractor will coordinate equipment acquisitions between Program participants and vendors.
- LL. As Disbursement Requests are received, the Contractor will review the applicable purchase orders, invoices, and vendor contracts for consistency and recalculate for pricing accuracy.

- MM. The Contractor will match each Disbursement Request to the original spreadsheet to ensure that the equipment was contemplated for acquisition under the Program and review requested substitutions.
- NN. The Contractor will maintain balances for each piece of equipment and for each District and State Agency in conjunction with the Trustee.
- OO. The Contractor will transmit Disbursement Requests with proper attachments (e.g., purchase orders, invoices, and declaration of intent to reimburse) to Trustee for vendor payment.
- PP. The Contractor will prepare customized semi-annual invoices in summary and by District and State Agency and by equipment within a District and State Agency, if requested. Contractor will distribute invoices to the individual District and State Agency and the Department of Finance and Administration, Director, Office of Budget and Accounting 30 days prior to payment date.
- QQ. The Contractor will coordinate with Trustee on lease payment discrepancies and late payments.
- RR. The Contractor, on behalf of the Trustee, will request copies of insurance policies or evidence of self-insurance on each District and State Agency and will request updated information on an annual basis.
- SS. The Contractor will assist the State in obtaining annual rebate and arbitrage calculations in compliance with federal tax law. The annual calculations will be provided at the State's expense.
- TT. The Contractor periodically will contact each District and State Agency with respect to draw-downs in the respective Acquisition Accounts. Based on the District's and State Agency's responses, the Contractor will direct the Trustee to reinvest the acquisition funds in qualified investments, in accordance with the provision of the Trust Indenture.
- UU. The Contractor will perform semi-annual calculations to determine interest earnings in the Acquisition Account by District and State Agency and by equipment within a District and State Agency. After all rebate calculations have been performed, the Contractor will determine the amount of interest earnings available for each District and State Agency, and will notify DFA of this amount. The contractor will arrange for the disbursements of such interest earnings at the discretion of DFA.
- VV. Semi-annually, the Contractor will report the status of the Acquisition Accounts by District and State Agency for all outstanding leases to the

Department of Finance and Administration, Office of Purchasing and Travel and Bond Advisory Division.

- WW. If prepayment options are exercised, the Contractor will coordinate with the District and State Agency and Trustee in calculating pay-off amounts and timing.
- XX. Documents. The Contractor will assure that the process and documents comply with Rule 15(c) 2-12, as amended.
- YY. Laws. The Contractor will assure that all documents and procedures will comply with all federal and state laws and regulations governing the Master Lease Purchase Programs and will advise the State of any responsibilities concerning such laws which are or may be responsibilities of the State.
- ZZ. Legal Matters and Tax Exemption. The Contractor will prepare sample legal opinions which will support the documents and the process and indicate that the State's execution and delivery of any such documents will be subject to review and approval of the State's counsel. The State will be responsible for the cost of review by its counsel of all documentation related to the Agreement and any resulting funding. The Attorney General of the State will deliver an opinion that the Agreement and the supporting documentation constitute legal, valid, and binding obligations of the State, enforceable against the State and in accordance with their respective terms. Likewise, the Contractor shall at its expense, provide a tax counsel opinion to the State on the legality of documents, tax exempt status and conformity with Internal Revenue Code Regulations, which tax counsel opinion shall indicate that the State is qualified as a political subdivision under Section 103 of the Internal Revenue Code of 1986 and that the interest portion of any payments will constitute interest not to be included in gross income for purposes of federal and state income taxation. The State and the Contractor will covenant to comply with all rules, regulations, or procedures required in order to establish or preserve the tax-exempt nature of any resulting certificates. Any resulting financing will not be a general obligation of the State.
- AAA. Acquisition Fund. The documents and process shall insure that any interest earned on funds residing in the Acquisition Account shall accrue to the District and State Agency which has borrowed the funds and may be used to purchase additional equipment and/or to reduce the principal amount due, as directed by DFA.
- BBB. Non-appropriation. The documents and process shall insure that continuation of the lease purchase of any item of equipment is contingent

upon the annual appropriation of adequate funds to the using District and State Agency.

CCC. Miscellaneous. The Contractor will coordinate with DFA to maintain and update, as needed, the State's website for the Master Lease Programs.

DDD. The Contractor will assist the Office in the development of a solicitation for Bond Counsel.

EEE. The Contractor will assist the Office in the development of a solicitation for Trustee.

2.2 Duties of the Mississippi Department of Finance and Administration

The specific responsibilities of DFA are as stated below:

- A. Receive Proposals.
- B. If needed, conduct interviews with the Offeror(s) deemed to have submitted the best Proposal.
- C. Negotiate an acceptable contract with the Offeror determined to have submitted the best Proposal. If unable to negotiate an acceptable contract, discontinue negotiations and attempt to negotiate an acceptable contract with the Offeror determined to have submitted the second best Proposal.
- D. Notify Districts or State Agencies of the Contractor's contact information.
- E. Review and approve or disapprove proposed equipment acquisition schedules and subsequent series documents.
- F. Other management and administrative tasks as required.

2.3 Selection Procedure

- A. Award. The State shall award a single contract for the administration of the two programs for all listed functions.
- B. Criteria. The award will be made to the best Proposal. Factors to be considered in determining the Proposals include:
 - i. Conformity with Specifications
 - ii. Description and applicability of the Programs
 - iii. References
 - iv. Financial Statement
 - v. Programs Expertise
 - vi. Interest Rate Program

- vii. Program Cost
- viii. Program Limitations
- ix. Educational Programs

C. Procedure. The procedure used to evaluate the Proposals shall be as follows:

Step 1. The DFA will review the material contained in the Proposals Information Package to assure compliance with the minimum specifications. Proposals which do not comply with the minimum specifications will be immediately rejected and will receive no further consideration.

Step 2. Proposals which satisfactorily complete Step 1 of the evaluation process will be reviewed and will be assigned points in each of the following areas; the points shown are the maximum available:

Description and applicability of Program	20 points
Educational program	10 points
Program Limitations	5 points
References	15 points
Financial Statement	5 points
Program Expertise	15 points
Interest Rate Program	<u>5 points</u>
 Total Available for Technical Evaluation	 75 Points

The State reserves the right to conduct interviews with one or more of those responding to this RFP so that the evaluation team can assure an accurate evaluation and scoring of the Proposals.

Step 3. After each Proposal has been evaluated and assigned a Technical Evaluation score, the State will open the Proposals Cost Form Package and assign pricing scores. The Offeror proposing the lowest cost to the State will receive 100% of the 25 points available for cost. All other Offerers will receive points in relation to the price differential between their Proposals and the lowest cost Proposals. An example follows:

- A. The lowest cost Proposal is \$25 per \$1000 issued; the Proposal receives 100% of the available points, or 25 points.
- B. The next lowest cost Proposal is \$28.50 per \$1000 issued; the Proposal receives 87.7% (25/28.5) of the available points or 21.93 points.
- C. The next lowest cost Proposal is \$28.75 per \$1000 issued; the Proposal receives 86.9% (25/28.75) of the available points or 21.73 points.

Step 4. The State will then add the score for cost to the scores previously arrived at, in the technical evaluation, to obtain a total score for each Proposal.

- Step 5. The State will contact the Offeror achieving the highest score and will attempt to negotiate an agreement which is acceptable to both parties. The negotiation will be for clarification and minor alterations to forms and documents and will not include any changes to the cost.

3.0 Qualifications

Offerors must furnish satisfactory evidence of their ability to perform in accordance with the terms and conditions of these specifications. The DFA reserves the right to make the final determination as to the Offeror's ability. The DFA reserves the right to reject any and all Proposals, to request and evaluate "best and final offers" from some or all of the respondents, to negotiate with the best proposed Offeror to address issues other than those described in the Proposals, but within the scope, to award a contract to other than the low Offeror, or not to make any award if it is determined to be in the best interest of the DFA.

3.1 Required Information

The information set forth in Section 4.1 and 4.2 must be provided:

4.0 Format and Procedures for Delivery of Proposals

4.1 Technical Proposals Format

Seven copies of the Technical Proposals shall be submitted in an envelope or container marked "Technical Proposals Information Package". The Technical Proposals must include the following information and each section shall be identified (A, B, C, etc.) in response to the items listed below:

- A. A completed and signed Proposals Transmittal Form (Appendix A) and a Transmittal letter which must identify the Offeror's key contact individual and the telephone number where that person can be reached. The transmittal must affirmatively state an Offeror's commitment to the terms and conditions specified throughout this RFP.
- B. A complete description of the Programs, which must describe the events which will take place as well as the documents that will be used. This should include a description of the educational and training programs that will be used.
- C. Description of information needed from a District and/or a State Agency to prepare the documentation required to acquire funding.
- D. Copies of representative documents which have been used or could be used by other entities to establish similar programs and to obtain funding (to include, if applicable, a Master Lease Purchase Agreement, Arbitrage

and Tax Certificate, Closing Certificate, District and State Agency Sub-lease Agreement, offering materials, legal opinion, etc).

- E. Financial Statement of Offeror dated within one (1) year of Proposals Due Date.
- F. Name, background, years of experience and qualifications of personnel to be involved with the State of Mississippi Master Lease Purchase Programs for K-12 School Districts and Community and Junior College Districts and State Agencies.
- G. Offerors must provide references from at least three (3) customers to whom the Offeror has provided functions similar to the scope described in this RFP. A description of the functions provided as well as the name, address, and phone number of a representative of the firm or entity must be included. Documentation concerning recent issues is also required. The documentation shall include a description of the equipment purchased as well as the amount financed, the date financed, and the interest rate obtained. The representative must have adequate knowledge of the documentation provided to be able to discuss with the State.
- H. Offerors must submit a list of master equipment leases undertaken during the past three (3) years, grouping those from \$1 to \$5 million and from over \$5 million to \$10 million. Information must include lessee name, equipment amount, method by which the lease was financed and an indication whether the lease was rated or insured.
- I. Offerors must submit a detailed explanation of any legal, financial or other concerns which would pertain to the following situations: (a) lease purchase of an airplane, (b) funds remaining in an acquisition account for three years, (c) pay off prior to the final scheduled payment date, and (d) change orders which require additional funding for previously funded projects. This should include any additional forms, records, or approvals which must be considered for items (a) – (d). It is the intent of this requirement to ascertain the Offerors' general knowledge of issues which have or may develop under the Programs.
- J. Offerors must submit a suggested check list containing occurrences the State should consider concerning market conditions and the timing of financial transactions.
- K. Offerors must submit a list of all Program limitations to include, but not be limited to, types of equipment and/or software which will not be covered by the agreement, minimum dollar amounts per transaction, and requirements for cross-collateralization of equipment within a District and State Agency and between Districts and State Agencies.
- L. Offerors must submit a calendar of events from Contract Award to first financing. This calendar should include estimated dates and events which must take place prior to the initial financing.

- M. Offerors must submit a complete description of the method or methods that will be used to obtain funding. This description shall explain how interest rates will be determined (sealed bid, negotiation, etc.) and shall fully describe how the State will be able to assure that the interest rates are competitive in the market and represent a good rate for the Districts and State Agencies. If multiple methods are proposed, the Offeror shall describe the circumstances which would require the use of the various methods.

4.2 Cost Proposal Format

Seven (7) copies of the Cost Proposals shall be submitted in an envelope or container marked "Cost Proposals Information Package". The Cost Proposals must include the following information. The Offeror will provide all functions listed herein on a cost per \$1000 issued basis and shall show this cost on the Proposals Cost Form (Appendix B). The cost will be included in the funds borrowed and will be amortized proportionally across the participating Districts and State Agencies. It is anticipated that the only costs not included in this "Cost per \$1000 issued" will be Bond Counsel fees and Trustee Bank fees. The State anticipates, with the assistance of the Contractor, soliciting Proposals for these costs. These costs will also be included in the funds borrowed and will be amortized proportionally across the participating Districts and State Agencies. Offerors should clearly identify if there are any other costs that will be incurred by the State.

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

DFA reserves the right to reject all Proposals.

4.3 Procedures for Delivery of Proposals

Seven (7) copies of the Technical Proposals shall be submitted in an envelope or container marked "Technical Proposal Information Package" (see 4.1). Seven (7) copies of the Cost Proposal shall be submitted in an envelope or container marked "Cost Proposal Information Package" (see 4.2). These fourteen (14) envelopes or containers must be submitted in sealed packages that are clearly identified as Proposal for Financial Accounting Advisor for Master Lease Purchase Programs for K-12 School Districts and Community and Junior College Districts and State Agencies RFP #3120000726, and must be received by 2:00 p.m. Central Standard Time, on Thursday, July 7, 2016.

Offeror must use the designated forms or formats, as instructed. **Failure to respond in substantial compliance with the format and context prescribed by the DFA shall result in disqualification of the Proposals.** DFA reserves

the right to reject all Proposals.

Proposals must be mailed or hand delivered to:

Ross Campbell, Director, Marketing and Audit
Office of Purchasing, Travel and Fleet Management
Proposal for Financial Accounting Advisor for Master Lease Purchase Program
for K-12 School Districts and Community and Junior College Districts
and Program for State Agencies
RFP #3120000726
Mississippi Department of Finance and Administration
501 North West Street, Suite 701A
Jackson, Mississippi 39201

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

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

4.4 Acceptance of Proposals

The DFA reserves the right, in its sole discretion, to waive minor informalities in Proposals. A minor informality is a variation in the Proposals that does not affect the cost of the Proposals or give one Offeror an advantage or benefit not enjoyed by other Offerors or that adversely impact the interests of the State. Waivers, when granted, shall in no way modify the RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded a contract.

4.5 Rejection of Proposals

Proposals may be rejected, in whole or in part, when it is determined to be in the best interest of the State, as determined by the Office of Purchasing, Travel and Fleet Management. Reasons for rejecting Proposals include, but are not limited to:

- A. The Proposals contain unauthorized amendments to the requirements of the RFP;
- B. The Proposals are conditional;

- C. The Proposals are incomplete or contain irregularities that make the Proposals indefinite or ambiguous;
- D. An authorized representative of the party does not sign the Proposals;
- E. The Proposals contain false or misleading statements or references;
- F. The Offeror is determined to be non-responsible as specified in the Mississippi Procurement Manual;
- G. The Proposals ultimately fail to meet the announced requirements of the DFA in some material aspect;
- H. The Proposals price is clearly unreasonable;
- I. The Proposals are not responsive, i.e., does not conform in all material respects to the RFP;
- J. The supply or service item offered in the Proposals is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFP;
- K. The Offeror does not comply with the Procedures for Delivery of Proposals as set forth in 4.3 above; or
- L. The Offeror currently owes the State money.

4.6 Conditions of Solicitation

- A. All submitted Proposals become the property of the DFA and will not be returned to the Offeror.
- B. The release of this RFP does not constitute an acceptance of any offer, nor does such release in any way obligate the DFA to execute a contract with any other party. The DFA reserves the rights to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with the DFA.
- C. The Offeror shall assure compliance with the following conditions of solicitation:
 - a. Any Proposals submitted in response to the RFP shall be in writing; and

- b. The DFA will not be liable for any costs incurred by any party which are associated with the Proposals process, including, but not limited to, preparation of proposals, required on-site interviews, if necessary, and negotiations of a contract.
- D. The award of a contract for any Proposals is contingent upon the following:
 - a. Favorable evaluation of the Proposals;
 - b. Favorable on-site interviews and presentations with the potential winning Offeror(s);
 - c. Favorable evaluation of “best and final offers” should the DFA request the submission of a “best and final offer” from the potential leading Offerors. The DFA reserves the right to request a “best and final offer”, however, the DFA is under no obligation to request or evaluate “best and final offers” and Offerors are encouraged to present their best offering in their initial response to this RFP; and
 - d. Approval of the Proposals by the DFA and successful negotiation of a contract.
- E. The DFA reserves the right to accept any Proposals as submitted for contract award without substantive negotiation of offered terms, requirements, or prices.
- F. All parties are advised to propose their most favorable terms initially. The DFA reserves the right to conduct discussions with Offerors who substantively meet the qualifications for the purpose of clarification to ensure full understanding of and responsiveness to the requirements and the budget summary submitted. However, as stated above, Proposals may be accepted without any such discussions or clarifications.
- G. Contracted parties will be required to assume full responsibility for all specified Financial Accounting Advisors and may subcontract only as specified in the RFP.
- H. **Offerors shall designate those portions of the Proposals that contain trade secrets or other proprietary data that they wish to remain confidential in accordance with §25-61-9 and §79-23-1 of the Mississippi Code of 1972, Annotated. Unless so designated, all information shall become public information upon contract award. Offerors should refer to Section 5.8 of this RFP. Any information considered to contain trade secrets or other proprietary data shall be on colored paper that is easily identifiable.**

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

5.0 Standard Terms and Conditions for Contract

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

5.1 Access to Records

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

5.2 Applicable Law

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.

5.3 Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without prior written consent of the DFA, which the DFA 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 State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

5.4 Authority to Contract

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

5.5 Availability of Funds

It is expressly understood and agreed that the obligation of the DFA to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the Programs 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.

5.6 Certification of Independent Price Determination

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

5.7 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 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 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.

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

Contractor or its subcontractor without the express written approval of DFA shall result in the immediate termination of this agreement.

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by Mississippi Code Annotated §§25-61-1, et seq.

Offeror and the DFA shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“the Disclosing Party”) which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on Confidential Information; (e) is or later becomes part of the public domain or may be lawfully obtained by the DFA or the Offeror from any non-party, or (f) is disclosed with the Disclosing Party’s prior written consent.

5.9 Copyrights

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

5.10 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.

5.11 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.

5.12 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:

- i. 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;

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

5.13 Indemnification

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

5.14 Independent Contractor Status

Contractor shall, at all times, be regarded as and shall be legally considered an independent Contractor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by the DFA, 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 DFA and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the DFA or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the DFA 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 DFA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the DFA, and the DFA shall be at no time 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 the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the DFA shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the DFA for its employees.

5.15 Legal and Technical Support

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

5.16 Modification or Renegotiation

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

5.17 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 each engagement under the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the DFA and subject to any copyright protections.

5.18 Patents and Royalties

The Contractor covenants to save, defend, keep and hold harmless, and indemnify the DFA and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties,

and cost - including court costs and attorney's fees, charges, liability, and exposure, however caused - for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the DFA. If the Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work.

5.19 Price Adjustment

A. Price Adjustment Methods. Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

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

B. Submission of Cost or Pricing Data. 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.

5.20 Procurement Regulations

The contract shall be governed by the applicable provisions of the State of Mississippi's Procurement Manual.

5.21 Prospective Contractor's Representation Regarding Contingent Fees

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

5.22 Representation Regarding Contingent Fees

The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission,

percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or Proposals.

5.23 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*.

5.24 Acknowledgement of Amendments

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the DFA by the time and at the place specified for receipt of bids or proposals.

5.25 Right to Audit

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

5.26 Right to Inspect Facility

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

5.27 Stop Work Order

A. *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:

- 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 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:
- i. The stop work results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. 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.
- C. *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.
- D. *Adjustments of Price.* Any adjustment in administrative fee calculations made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

5.28 Termination for Default

- A. *Default.* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the DFA may notify the Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the 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 a failure to properly perform. In the event of termination in whole or in part, the DFA may procure similar supplies or requirements 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.

- B. *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.
- C. *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 State 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.
- D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the 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 to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the 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, 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.

- E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the DFA, be the same as if the notice of termination had been issued pursuant to such clause.
- F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

5.29 Termination for Convenience

- A. *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 notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- B. *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The 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.

5.30 Termination upon Bankruptcy

This contract may be terminated in whole or in part by DFA upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

5.31 Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

5.32 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.

5.33 Insurance

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

5.34 Debarment

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

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

obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

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

5.35 Paymode

Payments by state agencies using the Statewide Automated Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to electronically submit invoices and supporting documentation at any time during the term of this agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

5.36 Notices

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

For the Contractor: name, title, contractor, address

For the DFA: Ross Campbell, Director, Marketing and Audit
Office of Purchasing, Travel and Fleet Management
Mississippi Department of Finance & Administration
701A Woolfolk Building
501 North West Street
Jackson, Mississippi 39201

6.0 Timeframe for Performance of Service

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

Appendix A - Proposals Transmittal Form

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

IMPORTANT

Include all items set forth in Section 4.1

Contingency:

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

Authority to Bind Offeror:

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

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

Authorized Signature _____ Date _____

Proposals Due: **July 7, 2016**, no later than **2:00 PM** Central Standard Time

US MAIL OR HAND DELIVERED

Ross Campbell, Director, Marketing and Audit
Office of Purchasing, Travel and Fleet Management
Proposal for Financial Accounting Advisor for Master Lease Purchase Programs for K-12 School Districts and Community and Junior College Districts and State Agencies
RFP #3120000726
Department of Finance and Administration
701A Woolfolk State Office Building
501 North West Street
Jackson, Mississippi 39201

Appendix B – Proposals Cost Form

Proposers are asked to indicate the cost per \$1000 issued. As per the specifications, all costs not otherwise indicated should be included in the cost per \$1000 issued and will be included in the proceeds and will be amortized to the participating Districts and State Agencies on their amortization schedule and annual invoice.

Description

- (1) Financial Accounting Advisor for K-12 School Districts and Community and Junior College Districts and
- (2) State Agencies

Cost per \$1000 issued \$ _____

Please indicate below or on an attached page, any costs which the DFA or the Districts and State Agencies will incur which are not included in the cost per \$1000 issued. Please include a complete description of the cost and the estimated cost. Any such costs shall also be included in the proceeds and be amortized to the participating Districts and State Agencies on their amortization schedule and annual invoice.

Appendix C - Sample Contract

FINANCIAL ADVISOR CONTRACT
Between the
Mississippi Department of Finance and Administration
Office of Purchasing, Travel and Fleet Management (DFA)
And the
(NAME OF CONTRACTOR)

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

1. **Scope of Services**
2. **Contract Term**
3. **Consideration**
4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the Statewide Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The State, may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds** It is expressly understood and agreed that the obligation of the DFA to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DFA, the DFA shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
7. **Record Retention and Access to Records** Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the Contractor agrees that the DFA or any of its duly authorized representatives shall have unimpeded, prompt access

to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

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

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

10. **Compliance with Laws** The Contractor understands that the DFA is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

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

12. **E-Verification** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (1972, as amended), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is

operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following:

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

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

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

13. **Independent Contractor Status** The Contractor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by DFA, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between DFA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DFA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. DFA shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, DFA shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by DFA for its employees.

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

15. **Procurement Regulations** The contract shall be governed by the applicable provisions of the *Mississippi Procurement Manual* available at <http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html>

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 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; or
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

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

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

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

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

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

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

For the Contractor:

For the DFA:

Name

Ross Campbell, Director, Marketing and Audit

Title

DFA Office of Purchasing, Travel and Fleet Management

Address

701-A Woolfolk State Office Building, 501 N West St

City, State, & Zip Code

Jackson, Mississippi 39201

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

28. **Change in Scope of Work** The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the DFA and the Contractor.

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

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

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

31. **Failure to Enforce** Failure by the DFA at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.

32. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

33. **Termination Upon Bankruptcy** This contract may be terminated in whole or in part by DFA upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

WITNESS our signatures, on the date first written.

(NAME OF CONTRACTOR)

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

Date: _____

Mississippi Department of Finance and Administration

By: _____
Kevin J. Upchurch, Executive Director

Date: _____

Appendix D – Summary of Previous Purchases

Series 2011A (State Agencies) Dated Date: November 4, 2011
Certificates of Participation: \$5,290,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 10/2016
Type of Sale: Publicly offered, negotiated, underwritten by Morgan Keegan
True Interest Cost: 2.054066% (All-in-TIC 2.611082%)

Agency	Equipment	Amount	Total for Agency
<i>Board of Animal Health</i>	Trucks	<u>\$106,069.06</u>	\$106,069.06
<i>Department of Education</i>	Computers and technology	<u>\$465,354.90</u>	\$465,354.90
<i>Department of Transportation</i>	Heavy road equipment	<u>\$2,007,000.00</u>	\$2,007,000.00
<i>Ellisville State School</i>	Phone system Kronos time and attendance system	\$300,000.00 <u>\$519,848.00</u>	\$819,848.00
<i>Boswell Regional Center</i>	Kronos time and attendance system	<u>\$190,756.00</u>	\$190,756.00
<i>Hudspeth Regional Center</i>	Kronos time and attendance system	<u>\$332,967.00</u>	\$332,967.00
<i>Mississippi Adolescent Center</i>	Kronos time and attendance system	<u>\$51,604.00</u>	\$51,604.00
<i>North Mississippi Regional Center</i>	Kronos time and attendance system	<u>\$328,336.00</u>	\$328,336.00
<i>North Mississippi State Hospital</i>	Kronos time and attendance system	<u>\$63,594.00</u>	\$63,594.00
<i>South Mississippi Regional Center</i>	Kronos time and attendance system	<u>\$239,521.00</u>	\$239,521.00
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2011A			<u>\$4,605,049.96</u>

Series 2012A (State Agencies) **Dated Date:** June 8, 2012
Certificates of Participation: \$4,975,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 4/2017
Type of Sale: Publicly offered, competitively bid, underwritten by Hutchinson, Shockey, Erley & Co.
True Interest Cost: 1.637348% (All-in-TIC 2.184799%)

Agency	Equipment	Amount	Total for Agency
Department of Corrections	Vehicles	\$860,554.00	
	Fire truck	298,393.00	
	Boiler Unit	224,742.00	
	Commercial laundry dryers	<u>53,232.65</u>	\$1,436,921.65
Information Technology Services	Mainframe server	\$773,503.00	
	Cisco Nexus 7000 and switches	327,426.00	
	Switches	<u>430,717.00</u>	\$1,531,646.00
Department of Transportation	Heavy road equipment	<u>\$870,000.00</u>	\$870,000.00
East Mississippi State Hospital	Computer hardware	\$305,000.00	
	Computer software	82,000.00	
	Air conditioning units	135,000.00	
	Elevator components	<u>63,000.00</u>	\$585,000.00
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2012A			<u>\$4,423,567.65</u>

Series 2013A (State Agencies) **Dated Date:** October 10, 2013
Certificates of Participation: \$26,555,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 4/2023
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James
True Interest Cost: 2.263608% (All-in-TIC 2.545144%)

Agency	Equipment	Amount	Total for Agency
Refinancing:			
<i>Series 2005 Equipment</i>	Energy management project		\$ 2,631,905.64
Refinancing:			
<i>Series 2008 Equipment</i>	Security enhancements and Energy management project		\$ 6,979,440.42
Series 2013 Equipment:			
Department of Transportation	Heavy road equipment	<u>\$2,536,810.00</u>	\$2,536,810.00
Department of Corrections	Vehicles, security equipment and farming equipment	<u>\$2,100,000.00</u>	\$2,100,000.00
Department of Mental Health	Electronic health records system	<u>\$5,298,240.00</u>	\$5,298,240.00
East Mississippi State Hospital	Vans	\$180,000.00	
	Minivan	<u>20,000.00</u>	\$ 200,000.00
Department of Agriculture and Commerce	Vehicles	\$1,235,273.00	
	IT equipment	375,000.00	
	Weights and measures	<u>\$589,727.00</u>	\$ 2,200,000.00
Department of Revenue	Hi-speed production scanner	\$300,000.00	
	Mail extraction/scanning equipment	175,000.00	
	Vehicles	250,000.00	
	Computers	<u>550,000.00</u>	\$ 1,275,000.00
Mississippi University for Women	Technology hardware	\$651,000.00	
	Gold carts	<u>74,000.00</u>	\$ 725,000.00
TOTAL NEW EQUIPMENT COSTS FINANCED FOR SERIES 2013A		<u>\$14,335,050.00</u>	
TOTAL REFINANCING PLUS 2013A EQUIPMENT			<u>\$23,946,396.06</u>

Series 2014A (State Agencies) **Dated Date:** December 23, 2014
Certificates of Participation: \$5,770,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 10/2017
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James
True Interest Cost: 2.412285% (All-in-TIC 2.949204%)

Agency	Equipment	Amount	Total for Agency
Information Technology Services	Power monitoring system	\$651,670.54	
	Switchboard	206,690.00	
	Power Infrastructure	<u>1,518,000.00</u>	\$2,376,360.54
Department of Revenue	Mail extracting/scanning equipment	\$ 90,000.00	
	Law enforcement vehicles	216,000.00	
	Racking and stock pickers	134,000.00	
	Computers/servers/printers	860,000.00	
	Battery charging system/batteries	<u>254,000.00</u>	\$1,500,000.00
North Mississippi Regional Center	Telephone system	\$126,657.00	
	Computers and related technology	<u>111,360.00</u>	\$238,017.00
Jackson State University	Motor coaches	\$1,094,000.00	
	Wheelchair lift	<u>33,000.00</u>	\$1,127,000.00
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2014A			<u>\$5,241,377.54</u>

Series 2015A (State Agencies) **Dated Date:** July 30, 2015
Certificates of Participation: \$4,095,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 4/2023
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James
True Interest Cost: 2.353950% (All-in-TIC 3.041747%)

Agency	Equipment	Amount	Total for Agency
<i>Board of Animal Health</i>	Pickup trucks	<u>\$135,000.00</u>	\$ 135,000.00
<i>Ellisville State School</i>	Sewage treatment equipment (tank)	<u>\$850,000.00</u>	\$ 850,000.00
<i>Copiah-Lincoln Community College</i>	Servers/switches/SAN	<u>\$425,000.00</u>	\$425,000.00
<i>Clarksdale Municipal School District</i>	School buses	<u>\$425,000.00</u>	\$425,000.00
<i>Greene County School District</i>	School buses	\$810,000.00	
	Computers/networking	100,000.00	
	Floor buffers and auto scrubbers	45,000.00	
	Vehicles	<u>45,000.00</u>	\$1,000,000.00
<i>Long Beach School District</i>	Computers/technology, Security cameras, band instruments	<u>\$822,729.00</u>	<u>\$822,729.00</u>
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2015A			<u>\$3,657,729.00</u>

Series 2011A (School Districts) **Dated Date:** August 16, 2011
Certificates of Participation: \$2,630,000
Reserve Fund: 10%
Rating: S&P "AA-" (uninsured)
Final Maturity: 4/2016
Type of Sale: Publicly offered, negotiated, underwritten by Morgan Keegan
True Interest Cost: 2.113059% (All-in-TIC 3.044173%)

Agency	Equipment	Amount	Total for Agency
<i>Okolona Municipal Separate School District</i>	School buses	<u>\$117,354.42</u>	\$117,354.42
<i>Pontotoc County School District</i>	School buses	<u>\$449,658.90</u>	\$449,658.90
<i>Rankin County School District</i>	Technology equipment	\$1,000,000.00	
	Driver's ed vehicles	<u>175,000.00</u>	\$1,175,000.00
<i>Copiah-Lincoln Community College District</i>	Desktop computers	\$350,000.00	
	Table PCs	43,200.00	
	Core switch and closet switch replacements	<u>152,000.00</u>	<u>\$545,200.00</u>
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2009A			<u>\$2,287,213.32</u>

Series 2012A (School Districts) **Dated Date:** December 20, 2012
Certificates of Participation: \$1,005,000
Reserve Fund: 10%
Rating: Unrated/Uninsured
Final Maturity: 10/2018
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James/Morgan Keegan
True Interest Cost: 1.771908% (All-in-TIC 2.849508%)

Agency	Equipment	Amount	Total for Agency
<i>Claiborne County School District</i>	School buses	<u>\$450,000.00</u>	\$450,000.00
<i>Coahoma County School District</i>	Cafeteria equipment	<u>\$139,000.00</u>	\$139,000.00
<i>North Panola School District</i>	School buses	<u>\$276,951.51</u>	\$276,951.51
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2012A			<u>\$865,951.51</u>

Series 2013A (School Districts) **Dated Date:** September 19, 2013
Certificates of Participation: \$4,730,000
Reserve Fund: 10%
Rating: Unrated/Uninsured
Final Maturity: 10/2023
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James
True Interest Cost: 3.201566% (All-in-TIC 3.588062%)

Agency	Equipment	Amount	Total for Agency
Jackson Public School District	School buses, vehicles	\$3,010,291.11	
	Food service equipment	<u>989,500.00</u>	\$3,999,791.11
Leland School District	Color Digital copier	\$15,857.00	
	School bus	<u>83,500.00</u>	<u>\$99,357.00</u>
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2013A			<u>\$4,099,148.11</u>

Series 2014A (School Districts) **Dated Date:** October 14, 2014
Certificates of Participation: \$1,255,000
Reserve Fund: 10%
Rating: Unrated/Uninsured
Final Maturity: 10/2021
Type of Sale: Publicly offered, negotiated, underwritten by Raymond James
True Interest Cost: 2.105410% (All-in-TIC 2.938448%)

<u>Agency</u>	<u>Equipment</u>	<u>Amount</u>	<u>Total for Agency</u>
<i>Cleveland School District</i>	Classroom furnishings	\$222,491.00	
	HVAC unit	75,000.00	
	Cafeteria serving line	40,000.00	
	Buses; vehicles	<u>426,804.00</u>	\$764,295.00
<i>North Panola School District</i>	School buses	<u>\$311,192.00</u>	<u>\$311,192.00</u>
TOTAL EQUIPMENT COSTS FINANCED FOR SERIES 2014A			<u>\$1,075,487.00</u>