MISSISSIPPI DEPARTMENT OF INSURANCE

REQUEST FOR QUALIFICATION
For
Professional Actuarial Services
For Rate Review Services under
The Patient Protection and Affordable Care Act
Bid No. 3120000691

PROPOSALS MUST BE RECEIVED BY
4:00 P.M. CST ON TUESDAY, APRIL 19, 2016

THIS REQUEST FOR QUALIFICATION SHOULD BE CAREFULLY REVIEWED.
FAILURE OF A PROPOSAL TO CONFORM TO THIS
REQUEST MAY CAUSE REJECTION OF THE PROPOSAL

Part 1. Solicitation; Description of Services; Qualifications.

1.1 Solicitations of Proposals. The Mississippi Insurance Department (MID), a department of the state government of Mississippi, solicits proposals from qualified Respondents to enter into a contract with MID to furnish the Services described in this Request for Qualification (RFQ) during the period beginning on July 1, 2016, and ending on June 30, 2017. If selected, the Respondent shall execute a contract with MID in the form of Exhibit "A". The final contract will include a maximum dollar amount determined by the MID to be the maximum amount that can be invoiced to MID. Contracts may be awarded to multiple qualified Respondents as a result of this RFQ.

It is understood that federal grant funds will be used under this contract and the grant funds will only be used to enhance Mississippi's existing rate review efforts and will not substitute the existing funding for such efforts.

1.2. Description of Services. The following Services shall be provided under a contract awarded as a result of this RFQ on an as-requested or as-needed basis:

1.2.1. The Contractor will provide enhancement activities for Mississippi's current rate review capacity for oversight of major medical health insurance insurers rating practices of major medical health insurance product filings filed in accordance with the Patient Protection and Affordable Care Act (PPACA).

1.2.2. On behalf of and as directed by the MID, the contractor will provide actuarial services with respect to major medical health insurance rate filings made by Life, Accident and Health Insurance companies as defined in Miss. Code Ann. § 83-19-1.

1.2.3. Review major medical health insurance rate filings according to provisions set forth in PPACA, any applicable State laws and any subsequent State or Federal regulations.

1.2.4. Work with the MID on major medical health insurance filing reviews and coordinate on any necessary correspondence/communications with filing insurers on all actuarial matters to ensure product filings are reviewed efficiently and within a time frame that will allow the MID to meet the statutory obligations to respond to the filer.

1.2.5. When reviewing product filings, complete all necessary correspondence and applicable actuarial checklists. Follow up on responses to actuarial objections and include documentation of telephone and e-mail communication within filings.

1.2.6. Work with MID, as necessary, to resolve actuarial questions and issues with major medical health insurance filings and provide written actual observations and recommendations to MID for each reviewed major medical health insurance rate filing.

1.2.7. Respond to product filing inquiries and questions, especially actuarial in nature, as directed, from MID staff, insurance companies, consumers, and all other interested parties.

1.2.8. Discuss major medical health insurance rate issues and advise the MID on other items of an actuarial nature.

1.3. Qualifications. Only experienced actuarial firms will be considered for a contract award. Persons or firms that are unable to demonstrate the described qualifications should not submit a response to this RFQ. The Respondent must have the following qualifications:

1.3.1. A minimum of one accredited actuary (ASA, FSA, or MAAA) on staff with ten (10) or more years of life, accident and health insurance and annuity contract ratemaking experience.

1.3.2. A minimum of one accredited actuary on staff with experience with financial examination and reserving of major medical health insurance filings by insurance companies.

1.3.3. Demonstrated knowledge and experience with development and/or review of major medical health insurance policy form filings within the context of PPACA, and a solid

working knowledge of rate and form filing review for major medical health insurance product lines for individual and group.

1.3.4. Demonstrated knowledge and familiarity with Microsoft Outlook, Word, Excel, and the System for Electronic Rate and Form Filing (SERFF). Experience in utilizing ACL and TeamMate® Software and the ability to prepare and maintain work papers utilizing TeamMate®.

1.3.5. Demonstrated experience in providing documentation of procedures that complies with NAIC ratemaking and financial analysis accreditation standards.

1.3.6. Demonstrated experience in providing expert witness testimony in administrative or court hearings.

1.3.7. Demonstrated knowledge, through experience, of PPACA, pertinent Federal rules and regulations, Mississippi insurance markets, Mississippi insurance laws, and Mississippi insurance regulations.

1.3.8. Demonstrated communication skills and ability to work with both industry and regulatory personnel to achieve appropriate and adequate insurance industry regulation in Mississippi.

1.3.9. Demonstrated ability to work effectively and independently in a fast-paced work environment, including the ability to successfully handle review of multiple submissions within stated deadlines.

1.3.10. The contractor's employees providing services required by this contract shall have the qualifications, experience, training, and certifications commensurate with the particular services being performed.

1.4. Interchangeable Designations. The terms "Respondent" and "Contractor" are referenced throughout this RFQ. Generally, references to the "Respondent" are used in conjunction with the proposing organization and procurement process leading up to the final RFQ selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Respondent. Additionally, the terms "State of Mississippi," "State" or "MID" may be used interchangeably throughout this RFQ to denote the political entity issuing the RFQ and requesting responses from Respondents throughout these specifications.

Part 2. Proposal of Respondent.

2.1. Responsiveness. The proposal must be responsive to all requirements set forth in this RFQ and prepared in the form described in Part 4. A proposal determined by MID to be non-responsive shall be rejected and shall not be considered for a contract award.

2.2. Unacceptable Terms or Conditions. A proposal containing terms, conditions or qualifications deemed unacceptable to the MID may be rejected as non-responsive. Without limiting the generality of the preceding sentence, pricing in accordance with the following Section 2.3.6. shall be firm pricing for the duration of the awarded contract, and subcontracting or assignment of the contract or of performance of specific aspects of the Services is not permitted.

2.3. Required Content. To be responsive, a proposal must include, but is not limited to inclusion of, the following information:

a. The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed Contract;

b. The age of the respondent's business and average number of employees over a previous period of time, as specified in the RFQ, except when respondent is a contract worker as defined in accordance with § 3-101.04, *Personal Services Contract Review Board Rules and Regulations*;

c. The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services; and,

d. A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFQ.

2.3.1. Identification. The proposal must contain: the Respondent's correct name, mailing address, physical address if different from the mailing address, telephone numbers(s), facsimile number(s), electronic mail address(es), Federal Employer Identification Number if Respondent is a business entity, or Social Security Number if Respondent is an individual or sole proprietorship.

2.3.2. Contact Persons. The proposal shall contain the names, titles, telephone and facsimile numbers, and electronic mail address(es) of not less than two (2) individuals designated as the Respondent's contract persons for purposes of the proposal. Each designated individual must be authorized to respond to questions from the MID.

2.3.3. Authority to Transact Business. If the Respondent is a non-Mississippi business entity, the proposal shall affirmatively state that the Respondent has qualified or registered, as appropriate, through the Mississippi Secretary of State to transact business in Mississippi as of the proposed date.

2.3.4. Agreement to Contract. The proposal shall include an unconditional agreement to enter into a fixed-price contract with MID in the form of Exhibit "A", within the time specified in the notice of award if Respondent is notified of a contract award.

2.3.5. Qualifications. The proposal must specifically detail the names, qualifications, education, training, experience and certifications of any employee who will or may provide services under any contract resulting from this RFQ. Respondent must warrant that each employee, including replacement employees, if any, possess or will possess as of the time of performance under the contract the qualifications, education, training, experience and certifications necessary to perform the services under the contract.

2.3.6. Personnel Rates. The MID has set a maximum hourly rate of $225.00 an hour for the work performed by an accredited actuary under this contract. If work under this contract will be performed by persons other than an accredited actuary, then the proposal must include a completed pricing form which specifies the hourly rates of Respondent's personnel and identifies the individuals who will be performing services under a contract awarded as a result of this RFQ. If the work under this contract will be done solely by an accredited actuary, then the proposal should include a statement to this fact. Prices subject to change will not be considered. All personnel identified must be employees of Respondent or independently contract with the Respondent to act under the direct supervision and responsibility of the contract firm. Personnel rate pricing must exclude "travel time".

2.3.7. Expenses. If awarded a contract, the Respondent shall bear all costs and expenses for performance, except expenses incurred for authorized travel shall be reimbursed. The MID shall reimburse a contractor only for travel expenses if approved in writing by the MID in advance. The proposal shall specify whether Respondent shall be paid for expenses incurred for authorized travel on an actual cost basis or a per diem basis. Actual cost basis cannot include multipliers, carrying or processing charges, or other amounts in excess of actual costs. To the extent Respondent proposes to charge on a per diem basis in lieu of reimbursement for actual costs, the expense methodology must conform to the per diem rates for intrastate and interstate travel as established by the Office of Purchasing, Travel and Fleet Management, Mississippi Department of Finance & Administration. Per diem reimbursements may not include "travel time".

2.3.8. References. The proposal must provide a list of all states, agencies or other entities, including insurance companies, for which Respondent has provided services similar to those requested in this RFQ within the three (3) years preceding the proposal date. The proposal must include names, telephone and facsimile numbers, and electronic mail address(es) of contact persons at each named entity.

2.3.9. Cancellations. The proposal must provide a list of all contracts that Respondent executed or accepted for actuarial services within the two (2) years preceding the proposal date and that were canceled or terminated by any state agency or other entity prior to completion. If applicable, the proposal must include a detailed explanation for each such cancellation or termination and the final resolution of the matter. The proposal must include the names, telephone and facsimile numbers, and electronic mail address of each such agency's or entity's contact individual with knowledge of the cancellation and the reasons for the cancellation.

2.3.10. Administrative Action; Litigation. The proposal must specify whether during the two (2) years preceding the proposal date, the Respondent, including any parent or subsidiary business entity and/or office location, has been involved in any administrative proceeding or litigation with any federal, state, or governmental entity. If applicable, the proposal must set forth the style and case number of the proceeding, the jurisdiction in which the proceeding is or was pending, a description of the issues and a description of the resolution or current status if still pending as of the proposal date.

2.3.11. Conflicts or Potential Conflicts of Interest. The proposal must identify any conflicts or potential conflicts of interest of Respondent or Respondent's employees who will or may provide services under any contract resulting from this RFQ. The proposal must acknowledge the Respondent possesses the necessary independence in the provision of Services under the contract notwithstanding any disclosed existing or potential conflicts of interest.

2.3.12. Warranties. The proposal shall include the following:

2.3.12.01. Respondent warrants that neither Respondent nor any person or entity that will participate financially in the contract has received compensation from MID for participation in preparation of the RFQ and any resulting contract.

2.3.12.02. Respondent warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this RFQ and any resulting contract.

2.3.12.03. Respondent warrants that it is not currently delinquent in the payment of any taxes owed the State of Mississippi.

2.3.12.04. Respondent warrants that neither Respondent nor anyone acting for Respondent has directly or indirectly communicated Respondent's proposal or contents thereof to any competitor or any other person engaged in the type of business described in this RFQ, has colluded or conspired with any other respondent in devising proposals in response to this RFQ, or has otherwise violated the antitrust laws of Mississippi or the Federal antitrust laws in connection with Respondent's proposal.

2.3.13. Other information. The proposal may contain such information not specifically required by this RFQ as the Respondent may elect to submit for the MID's consideration.

Part 3. Required Contractual Provisions. Any Respondent must be agreeable to the contractual provisions listed below in order to be awarded the contract under this RFQ.

3.1. Implied Warranties. Any provisions disclaiming implied warranties shall be null and void. See Miss. Code Ann. §§ 11-7-18 and 75-2-719(4). The Contractor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.

3.2. Limitation of Liability. Nothing in this RFQ shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance or duties by Contractor.

3.3. Interest Payments. All requirements that the State pay interest are deleted.

3. 4. Applicable Law. Any contract negotiated under this RFQ will be governed by and construed according to the laws of the State of Mississippi, excluding its conflicts of law provisions. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. The Contractor shall comply with applicable federal, state and local laws and regulations.

3.5. Availability of Funds. It is understood that federal grant funds will be used under this contract and the grant funds will only be used to enhance Mississippi's existing rate review efforts and will not substitute the existing funding for such efforts. It is expressly understood and agreed that the obligation of the Department to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of 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 Department, the Department shall have, notwithstanding the termination provisions of Sections 3.15, 3.16. and 3.17, the right upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Department of any kind whatsoever. In that event, The Contractor shall be entitled to receive just and equitable compensation for any satisfactory, authorized work completed as of the termination date. The effective date of termination shall be as specified in the notice of termination.

3.6. Sovereign Immunity. The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into a contract under this RFQ with the Contractor, Contractor agents, subcontractors, or assignees.

3.7. 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 MID agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Miss. Code Annotated § 31-7-301, *et. seq.*, which generally provides for payment of undisputed amounts by the agency within forty five (45) days of receipt of the invoice. Pursuant to Miss. Code Annotated § 31-7-305, no late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered.

3.8. Attorney's Fees. The MID shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Contractor.

3.9. Transparency. Any contract entered into pursuant to this RFQ, including any accompanying exhibits, attachments, and appendices, shall be subject to the "Mississippi Public Records Act of 1983", Miss. Code Annotated § 25-61-1 *et seq.*, and exceptions found in Miss. Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Miss. Code Annotated § 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, this 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 . Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information, including confidential Respondent information, or any other information which is required to be confidential by state or federal law or is outside the applicable freedom of information statutes will be redacted.

3.10. Paymode. Payments by state agencies using the Statewide Automated Accounting System (SAAS) 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.

3.11. Compliance with Laws. The Contractor understands that Mississippi 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.

3.12. E-Verification. If awarded a contract, the Contractor will be required to represent and warrant that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Mississippi Code Annotated §§ 71-11-1 *et seq.* and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of these warranties, may subject Contractor to the following:

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

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

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

3.13. Stop Work Order.

3.13.1. Order to Stop Work: The MID 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 RFQ. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the MID shall either:

a. Cancel the stop work order; or,

b. Terminate the work covered by such order as provided in the Termination for Convenience Clause of this RFQ.

3.13.2. 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 may be made in the delivery schedule or Contractor price, or both, and the contract may 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 Agency 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.

3.13.3. Termination of Stop 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.

3.14. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this RFQ and any resulting contract which contains 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.

3.15. Termination for Convenience.

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

3.15.2. 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 also shall 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 Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor still must complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

3.16. Termination for Default.

3.16.1. 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 in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify 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 Agency Head of designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head of designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

3.16.2. Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the MID, the Contractor shall take timely, reasonable, and necessary action

to protect and preserve property in the possession of Contractor in which the State has an interest.

3.16.3. Compensation. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

3.16.4. Excuse for Nonperformance or Delayed Performance. 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 work hereunder which endangers such performance) if the Contractor has notified the Agency Head or designee within fifteen (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, 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 Agency Head or designee shall ascertain the facts and extent of such failure, and , if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, 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 State under the clause entitled "Termination for Convenience".

3.16.5. Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of paragraph 3.16.4. of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Department, be the same as if the notice of termination has been issued pursuant to such clause.

3.16.6. 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.

3.17. Termination upon Bankruptcy. This contract may be terminated in whole or in part by the MID upon written notice to the Contractor, if the 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, the 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.

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

3.19. Representation Regarding Gratuities. The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition again gratuities set forth in § 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations.*

3.20. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection or downloadable at http://www.mspb.ms.gov .

3.21. Acknowledgement of Amendments. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and the date in the space provided for this purpose on the bid form, or by letter. The acknowledgement must be received by the MID at the time and at the place specified for receipt of bids.

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

Part 4. Proposal Submission Requirements.

4.1. Submission Requirements. The objective of the Proposal Submission Requirements section is to provide Respondents with the information required to submit a response to this RFQ. A

Respondent who has responded to previous RFQs issued by MID should not assume that the requirements are the same, as changes may have been made.

4.1.1. Failure to follow any instruction within this RFQ may, at the State's sole discretion, result in the disqualification of the Respondent's proposal.

4.1.2. The State has no obligation to locate or acknowledge any information in the Respondent's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.

4.1.3. The Respondent's proposal must be received as directed in Section 4.2. below by the date and time specified. MID is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.

4.1.4. Proposals or alterations by fax will not be accepted.

4.1.5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Respondent's original submission must be clearly identified as the original.

4.1.6. MID reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.

4.1.7. MID reserves the right to waive any defect or irregularity in any proposal procedure.

4.1.8. The Respondent may intersperse their response following each RFQ specification but must not otherwise alter any of the original text of this RFQ. If the MID determines that the Respondent has altered any language in the original RFQ, the MID may, in its sole discretion, disqualify the Respondent from further consideration. The RFQ issued by MID is the official version and will supersede any conflicting RFQ language submitted by the Respondent.

4.2. Submission Standards. The Respondent must conform to the following standards in the preparation of the Respondent's proposal:

4.2.1. The Respondent is required to submit one clearly marked original response and four (4) identical copies of the complete proposal, including all sections and exhibits, in three-ring binders. Also submit one electronic copy of the complete proposal including all sections in

Microsoft Word format with Exhibits in Microsoft Word or portable document format (PDF) to the following address RFQSubmittals@mid.ms.gov . The electronic copy will be considered the official response in evaluating responses for scoring, protest resolution and public posting. The response must include the bid number on the first page of the proposal.

4.2.2. To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information from this RFQ cover page must be clearly typed and affixed to the package in a clearly visible location.

4.2.3. Number each page of the proposal.

4.2.4. Respond to the sections and exhibits in the same order as this RFQ.

4.2.5. Label and tab the responses to each section and exhibit, using the corresponding headings from the RFQ.

4.2.6. If the Respondent does not agree with any item in any section, then the Respondent must list the item on the Proposal Exception Summary Form.

4.2.7. MID reserves the right to request additional information or clarification of a Respondent's proposal. The Respondent's cooperation during the evaluation process in providing MID staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Respondent's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Respondent's proposal.

4.3. Submittal letter. The first page of the proposal must be a submittal letter signed by the Respondent, if an individual, or by an authorized representative of a Respondent business entity, which includes the following:

> The representations and information in this proposal are true and correct as of the date of the proposal. The submitting person or entity represents that it is ready and able to execute a contract if a contract is awarded based on this proposal. This proposal shall remain firm and be valid through the date of the contract resulting from this RFQ if awarded. The submitting person or entity understands that MID's contract form is not negotiable and will not be revised unless MID determines, in its sole discretion, that a revision would be in the best interests of MID and the State of Mississippi.
>
> The undersigned represents that the only person or persons, entities, or parties, interested in the proposal as principals are named in this proposal. This proposal is made without

collusion with any other person, persons, company or parties submitting a proposal. This proposal is in all respects fair and made in good faith without collusion or fraud. If the submitting party is a business entity, the undersigned has full authority to bind the entity in a contract with MID.

The submitting person or entity acknowledges that a material false statement in or omission from this proposal and all material submitted with this proposal may cause rejection of the proposal or the withholding of a contract, or may constitute a breach of an awarded contract.

4.4. Communications with MID. From the issue date of this RFQ until a Respondent is selected and the selection is announced, responding Respondents or their representatives may not communicate, either orally or in writing regarding this RFQ with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Respondent, all questions regarding this RFQ must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Respondent questions provided in this RFQ. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFQ, and they will be posted to the MID web site. Respondents failing to comply with this requirement will be subject to disqualification. Questions should be submitted to: RFQQuestions.aca@mid.ms.gov .

4.5. Alterations or withdrawals. A proposal cannot be altered or amended after it has been delivered to MID. A proposal may be withdrawn before the deadline specified in Section 4.6., but may not be withdrawn after the deadline.

4.6. Anticipated timetable. MID currently anticipates that the selection of a qualified firm and execution of the contract will proceed according to the following approximate timetable. MID reserves the right, in its sole discretion, to revise all deadlines related to this RFQ and to post notice of these revisions on the MID website: www.mid.gov/rfq .

Issuance of Request for Proposals	April 1, 2016
Deadline for Written Questions	April 11, 2016
Answers to Written Questions Posted on MID Website	April 15, 2016
Deadline for Proposal Responses	April 19, 2016
Opening of Bids	April 20, 2016
Announcement of Award	May 3, 2016

4.7. Scoring Methodology. An Evaluation Team composed of MID representatives will review and evaluate all proposals. All information provided by the Respondents, as well as any other information available to evaluation team, will be used to evaluate the proposals.

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

Part 5. Respondent Information. The objective of the Respondent Information section of this RFQ is to provide Respondents with information required to respond to the RFQ successfully.

5.1. Interchangeable Designations. The terms "Respondent" and "Contractor" are referenced throughout this RFQ. Generally, references to the "Respondent" are used in conjunction with the proposing organization and procurement process leading up to the final RFQ selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Respondent. Additionally, the terms "State of Mississippi," "State" or "MID" may be used interchangeably throughout this RFQ to denote the political entity issuing the RFQ and requesting responses from Respondents throughout these specifications.

5.2. Respondent's Responsibility to Examine RFQ. Respondents must examine all documents, forms, specifications, standard provisions, and instructions.

5.3. Proposal as Property of State. All written proposal material becomes the property of the State of Mississippi.

5.4. Written Amendment to RFQ

5.4.1. Any interpretation of an MID RFQ will be made by written amendment only. The MID will not be responsible for any other explanation of this RFQ. A copy of any amendment will be posted on the MID website, together with the associated RFQ specification. Respondents are required to check the MID website periodically for RFQ amendments before the proposal opening date at: www.mid.ms.gov/rfq .

5.4.2. Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFQ.

5.5. Oral Communications Not Binding. Only transactions which are in writing from MID may be considered official. No negotiations, decisions, or actions shall be executed by any Respondent as a result of any discussions with any State employee.

5.6. Respondent's Responsibility for Delivery. Respondents must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFQ. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Respondent, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

5.7. Evaluation Criteria. The State's intent in issuing this RFQ is to award a contract to the best responsive Respondent who meets the specifications considering qualifications and other factors. The Respondent's past performance, cooperation, and ability to provide service are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in Technical Specifications.

5.8. Multiple Awards. MID reserves the right to make multiple awards.

5.9. Right to Award in Whole or Part. MID reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

5.10. Right to Use Proposals in Future Projects. MID reserves the right to evaluate the awarded proposal from this RFQ, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Respondent is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Respondent's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Respondent. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Respondent, market, and technical environments since the initial award.

5.11. Price Changes during Award or Renewal Period. A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

5.12. Right to Request Information. The MID reserves the right to request information relative to a Respondent's references and financial status, and to visit a Respondent's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Respondents document their financial ability to provide the products and services proposed up to the total dollar amount of the Respondent's cost proposal. The State reserves the right to request information about the Respondent from any previous customer of the Respondent even if that customer is not included in the Respondent's list of references.

5.13. Respondent Personnel. For RFQs including professional services specifications, the Respondent will be required to provide in the Respondent's proposal the information requested in Section 2.3.2. of this RFQ.

5.14. Restriction on Advertising. The Respondent must receive written approval from MID before advertising or referencing the award of the contract or the services being provided. The Respondent must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

5.15. Valid Contract Required to Begin Work. The successful Respondent should not commence any billable work until a valid contract has been executed. Any work done by the successful Respondent prior to the execution of the contract is done at the Respondent's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

5.16. Termination for Convenience.

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

5.16.2. 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 also shall 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 Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor still must complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

5.17. Termination for Default.

5.17.1. 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 in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify 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 Agency Head of designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head of designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

5.17.2. Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the MID, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

5.17.3. Compensation. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

5.17.4. Excuse for Nonperformance or Delayed Performance. 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 the Contractor has notified the Agency Head or designee within fifteen (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. Upon request of the Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, 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 State under the clause entitled "Termination for Convenience".

5.18. Termination upon Bankruptcy. This contract may be terminated in whole or in part by the MID upon written notice to the Contractor, if the 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, the 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.

Part 6. Scoring and Award.

6.1. Evaluation

6.1.1. Team. An Evaluation Team composed of MID representatives, will review and evaluate all proposals. All information provided by the Respondents, as well as any other information available to evaluation team, will be used to evaluate the proposals.

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

6.1.3. Process. The Evaluation Team will evaluate the proposals in the following two-step process:

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

1. Proposal submission deadline met.
2. Minimum Respondent requirements met.
3. Required format followed.

4. Original proposal, requested number of copies of proposal, and electronic copy properly submitted.

5. Signed Statutory Requirement disclosure statement.

6. Signed Statement of Compliance with a high degree of acceptance of proposed contract terms.

7. Signed Acknowledgement of RFQ Amendments (if amendments have been posted).

8. Narrative questionnaire answered.

9. Duration of proposal requirement met.

10. Required proposal attachments provided.

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

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

1. *Experience and Qualifications – 60 points.* The committee will look at the Respondent's specialized expertise, capabilities, experience and technical competence of the specific individuals who are anticipated to perform the services described in this RFQ; whether the Respondent has adequate resources to perform the services described in this RFQ; the past performance of similar services described in this RFQ; references provided that support Respondent's ability to provide the services described in this RFQ; any demonstrated ability and history in handling special projects similar to the services described in this RFQ; and the Respondent's quality, reliability and ability to provide the quality services detailed in this RFQ.

2. *Knowledge of Mississippi Insurance Market – 20 points.* The committee will look at the Respondent's knowledge and understanding of specific characteristics of PPACA, Federal regulations, the Mississippi insurance market as exhibited in prior work performed for the MID. An applicant with no MID prior experience but with significant experience with Mississippi insurers and with other state insurance regulators will receive credit in this category.

3. *Cost – 10 points.* A Respondent that agrees to the total proposed costs, including, but not limited to, the hourly rate for actuarial services offered under this RFQ will receive credit in this category.

4. *Demonstrated knowledge of SERFF and TeamMate® software– 5 points.* Respondent must include references from projects where the referenced programs were used.

5. *Clarity of Response – 5 points.* Clarity and content of Respondent's proposal, including their understanding of the nature of the solicitation, their work plan, and their communication skills.

6.2. Award. Once the committee makes its recommendation, the selected Respondent or Respondents will be notified by MID. Subsequent to approval by the MID to enter into contract negotiations with the selected Respondent or Respondents, all proposing Respondents will be notified of the contract award. Each Respondent whose proposal is deemed acceptable by MID shall be notified and shall execute and return a final contract within the time period specified in the notice. The contract, when fully executed, shall be the entire agreement between the MID and the contract Respondent(s).

6.3. Rejection of proposals. The MID may reject all proposals and not award a contract based on this RFQ if, in the MID's judgment, a contract award will not serve the best interests of MID and the State of Mississippi. MID may issue another RFQ for the services as described in this RFQ or similar services at any time.

6.4. Proposal preparation costs. The MID shall not pay or reimburse Respondent for the cost or expense of preparing and submitting a proposal.

EXHIBIT "A"

CONTRACT FOR ACTUARIAL SERVICES

[CONTRACTOR]
AND
THE MISSISSIPPI INSURANCE DEPARTMENT

THIS CONTRACT, by and between the Mississippi Insurance Department, hereinafter referred to as "Department" and _____, hereinafter referred to as "Contractor".

WITNESSETH: In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

A. **Services:** The Contractor agrees to perform the following services:

1. On behalf of and as directed by the MID, provide actuarial services with respect to major medical health insurance companies as defined in Miss. Code Ann. § 83-19-1.

2. The Contractor will provide enhancement activities for Mississippi's current rate review capacity for oversight of major medical health insurance insurers' rating practices of major medical health insurance product filings filed in accordance with the Patient Protection and Affordable Care Act (PPACA).

3. Review major medical health insurance rate filings according to provisions set forth in PPACA, any applicable State laws and any subsequent State or Federal regulations.

4. Work with the MID on major medical health insurance filing reviews and coordinate on any necessary correspondence/communications with filing insurers on all actuarial matters to ensure product filings are reviewed efficiently and within a time frame that will allow the MID to meet the statutory obligations to respond to the filer.

5. When reviewing product filings, complete all necessary correspondence and applicable actuarial checklists. Follow up on responses to actuarial objections and include documentation of telephone and e-mail communication within filings.

6. Work with MID, as necessary, to resolve actuarial questions and issues with major medical health insurance filings and provide written actual observations

and recommendations to MID for each reviewed major medical health insurance rate filing.

7. Respond to product filing inquiries and questions, especially actuarial in nature, as directed, from MID staff, insurance companies, consumers, and all other interested parties.

8. Provide written actuarial observations and recommendations to the Department for each reviewed filing.

9. Discuss reviewed items and advise the Department on other items of an actuarial nature.

10. Discuss major medical health insurance rate issues and advise the MID on other items of an actuarial nature.

B. **Rate of Compensation:** The Department agrees to compensate the Contractor as follows:

Contractor will bill the Department for the work performed by the Contractor at the fixed rate not to exceed two hundred twenty-five dollars ($225.00) an hour, and all expenses for approved travel, all of which shall not exceed $_____ during the contract term. Contractor will submit all invoices to the Department on a monthly basis in a manner sufficient to identify the program reviewed that is acceptable by the Department and the Department will pay the same. Contractor shall submit invoices for the work performed to: Mississippi Insurance Department, Attn: Bob Williams, P.O. Box 79, Jackson, MS 39205.

C. **Contract Term :** The parties further agree that the term of this contract shall begin on July 1, 2016 and shall continue in force until June 30, 2017.

D. **Availability of Funds.** It is understood that federal grant funds will be used under this contract and the grant funds will only be used to enhance Mississippi's existing rate review efforts and will not substitute the existing funding for such efforts. It is expressly understood and agreed that the obligation of the Department to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of 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 Department, the Department shall have, notwithstanding the termination provisions of Paragraphs V, W, and X, the right upon ten (10) working days' written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Department of any kind whatsoever. In that event, the Contractor shall be entitled to receive just and equitable compensation for any

satisfactory, authorized work completed as of the termination date. The effective date of termination shall be as specified in the notice of termination.

E. **Amendments:** This contract may be modified only by written amendment executed by all parties hereto.

F. **Transparency:** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983", codified as § 25-61-1 *et seq.*, Mississippi Code Annotated and exceptions found in § 79-23-1 of the Mississippi Code Annotated. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as § 27-104-151 *et seq.* of the Mississippi Code Annotated. Unless exempted from disclosure due to a court-issued protective order, this 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. Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required to be confidential by state or federal law or is outside the applicable freedom of information statutes will be redacted.

G. **Paymode:** Payments by state agencies using the Statewide Automated Accounting System (SAAS) 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. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

H. **Applicable Law:** This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions. Any litigation with respect thereto shall be brought in the courts of Jackson, Hinds County, Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.

I. **Compliance With Laws:** The Contractor understands that Mississippi 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.

J. **E-Verification:** Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§ 71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired

employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. Any breach of these warranties may subject Contractor to the following:

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

2. The loss of any license, permit, certification or other document granted to 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 termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State of Mississippi.

K. **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 MID agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-3-5.

L. **Stop Work Order**.

1. **Order to Stop Work:** The MID 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 RFQ. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the MID 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 Stop Work 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 may be made in the delivery schedule or Contractor price, or both, and the contract may 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 Agency 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 Stop Work Order:** 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.

M. **Confidentiality**. Notwithstanding any provision to the contrary contained herein, it is recognized that MID is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq*. If a public records request is made for any information provided to MID pursuant to the agreement and designated by the Contract in writing as trade secrets or other proprietary confidential information MID shall follow the provisions of the Miss. Code Ann. 25-61-9 and 79-23-1 before disclosing such information. The MID shall not be liable to the Contractor for disclosures of information required by court order or required by law.

N. **Procurement Regulations**. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations,* a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at http://www.mspb.ms.gov .

O. **Trade Secrets, Commercial and Financial Information**. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the 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.

P. **Indemnification**. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, 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 Contractor 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 suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all 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 unreasonable withhold.

Q. **No Limitation of Liability**. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance or duties by Contractor.

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

S. **Records Retention and Access to Records**. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representative shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (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.

T. **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 Contractor's bid or proposal.

U. **Representation Regarding Gratuities.** The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in § 6-2-4 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations.*

V. **Termination for Convenience.**

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

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 also shall 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 Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor still must complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

W. **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 in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify 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 Agency Head of designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head of designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the MID, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

3. **Compensation.** Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

4. **Excuse for Nonperformance or Delayed Performance**. 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 the Contractor has notified the Agency Head or designee within fifteen (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. Upon request of the Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, 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 State under the clause entitled "Termination for Convenience".

5. **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 Subparagraph 4 (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

6. **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.

X. **Termination upon Bankruptcy.** This contract may be terminated in whole or in part by the MID upon written notice to the Contractor, if the 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, the 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.

Y. **Approval**. It is understood that this contract requires approval by the Personal Services Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

IN WITNESS WHEREOF, the parties have by their duly authorized representative set forth their signatures.

CONTRACTOR

By: _____ DATE _____
CONTRACTOR

MISSISSIPPI INSURANCE DEPARTMENT

By:_____ DATE _____
MIKE CHANEY
COMMISSIONER OF INSURANCE