



STATE OF MISSISSIPPI

PROPOSAL FORMAT AND GUIDELINES

CLASS 999 EMERGENCY COMMODITIES, EQUIPMENT AND SUPPLIES

**DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF PURCHASING AND TRAVEL
701 WOOLFOLK BUILDING, SUITE A
501 NORTH WEST STREET
JACKSON, MISSISSIPPI 39201**

STATE OF MISSISSIPPI

Effective
Date: 07/01/06

PROPOSAL FORMAT AND GUIDELINES

Revised
Date: 07/22/13

FOR EMERGENCY COMMODITIES, EQUIPMENT AND SERVICES

1.0 Introduction

This document constitutes a Request for Qualifications (RFQ) for the potential procurement and/or rental of products and/or services typically required in an emergency situation, as set forth herein.

The purpose of this RFQ is to create the mechanism necessary for the State of Mississippi Department of Finance and Administration (DFA), the Mississippi Emergency Management Agency (MEMA), other state agencies and institutions and governing authorities (cities, counties, K-12, Junior Colleges, etc.) to select and enter into a contract or contracts with providers for the purpose of the acquisition or rental of various products, equipment and services for government use during a declared Emergency situation.

The DFA will create a list of all potential providers which properly respond to this RFQ and have been determined to meet the minimum qualifications set forth herein. As the need arises to procure or rent products, equipment or services during an emergency declaration, the requesting government entity will conduct a selection process, as set forth in Section 2.0 C, to choose a specific provider to provide the product, equipment or services.

The chosen provider, if providing commodities or equipment via purchase, will be required to accept a purchase order or Procurement Card purchase with no additional requirements (credit check, etc). Upon issuance of the purchase order or Procurement Card purchase, the provider will be authorized to ship the specified products as set forth in the order.

The chosen provider, if providing rental or services will be required to enter into a contract which is in substantial compliance with the appropriate sample contract attached as Appendix B (Services) or Appendix C (Rental). Upon signature of all parties to the contract, the provider will be authorized to begin work and will be compensated as set forth in the contractual agreement.

It is the desire of the DFA and MEMA that the establishment of this list of qualified providers will allow for prompt, economical and efficient acquisition of required resources during times of emergency. Whenever practicable it will be our goal to obtain the best value when taking into consideration such issues as cost, availability, service level, location, urgency, etc. It should be understood that in emergency situations the government may purchase from any source, which may include providers that are not listed on the qualified providers list and have not responded to this request. The DFA intends to solicit qualifications on an annual basis until such time as it determines this process is no longer needed.

2.0 Selection Procedure

- A. Of the proposals/qualifications received, an evaluation will be conducted to determine that the minimum qualifications, as set forth in Section 5.2, have been met.
- B. All proposals/qualifications that meet the minimum requirements will be placed on the Qualified Providers of Emergency Commodities, Equipment and Services List. If needed, the process will be repeated annually.
- C. Upon the declaration of an emergency and as needs are identified and defined, the buying entity will review the qualifications, products and services of those on the Qualified Providers of Emergency Commodities, Equipment and Services List to determine which provider(s) are considered the best qualified for the specific requirement. The buying entity will then attempt to obtain at least two quotes or proposals and will purchase or enter into contract with, the provider that is able to offer the greatest value to the buying entity taking into consideration such issues as cost, availability, service level, location, urgency, etc
- D. If needed the buying entity will contact the most qualified provider(s) and will discuss the details of the specific project.

Vendors interested in being included on the Qualified Providers of Emergency Commodities, Equipment and Services List should submit a proposal which shall include the following:

I. Request Form

A signed request form (see attached) from an authorized representative of the company indicating the firm's interest in being included on the Qualified Providers of Emergency Commodities, Equipment and Services List. This form should include company name, location address, mailing address, telephone number, fax number, email address, website address, (if applicable) and name of authorized representative submitting proposal. By signing this form, the vendor is certifying that neither the vendor nor any potential subcontractors are debarred or suspended from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi

The attached Check List Form must also be included when submitting the proposal request. Any requested information not submitted may cause proposal request to be denied.

II. Duties of the contractor.

1. Provide and keep up dated a list of individuals and applicable contact information (office phone, cell phone, email address) that can be contacted anytime (24/7) on issues related to the contract.
2. Provide a list of the products and services that are or may be available in an emergency situation. Specifically the DFA and MEMA are interested in establishing a list of providers for the following products and services. Additional products or services may be included but providers are urged to keep this limited as timely decision making is severely hampered by excessive lists. It is better to have a list of 50 items that are probable needs in an emergency situation than a catalog of 3000 items. The buyers will tend to by-pass the lengthy catalogs so they can find what they need quickly.

- a. 250 man base camp (provide details of what products/services are included)
 - b. 500 man base camp (provide details of what products/services are included)
 - c. Generators for purchase (provide details of sizes, etc)
 - d. Generators for rental (provide details of sizes, etc)
 - e. Fork lifts for purchase (provide details of sizes, etc)
 - f. Fork lifts for rental (provide details of sizes, etc)
 - g. Ice
 - h. Water
 - i. Meals ready to eat
 - j. Portable Toilets with service
 - k. Portable Showers
 - l. Portable Laundry facilities
 - m. Tarps
 - n. Personal safety equipment and apparel
 - o. Body bags
 - p. Trucks, refrigeration, rental
3. If applicable, be able and willing to enter into a service or agreement as set forth in Appendix B and C

III. Transportation Terms

It is desired that transportation terms shall be F.O.B. Destination, freight prepaid by the vendor.

IV. Payment Terms

List applicable payment terms. State law stipulates that payments are to be made with 45 days after acceptance of the product and receipt of a correct invoice. Any payments made after 45 days are subject to interest in the amount of 1 ½ % per month. We will consider any payment terms that are advantageous to the state but can not accept any terms more stringent than stipulated in state law.

V. Distribution

Define how distribution will be made. If using authorized distributors or distribution points, a list shall be provided. This list of all authorized distributors must include their phone numbers, addresses and email addresses. It is the vendor's responsibility to keep this list updated during the contract period.

Minority Vendor Status - Manufacturers should indicate if they or any of the distributors they list are considered Minority Vendors. Minority vendor means a business concern that (1) is at least 51% minority-owned by one or more individuals, or minority business enterprises that are both socially and economically disadvantaged, and (2) have its management and daily business controlled by one or more such individuals as ascribed under the Minority Business Enterprise Act 57-69 and the Small Business Act 15 USCS, Section 637(a). **MINORITY** as used in this provision means a person who is a citizen or lawful permanent resident of the United States and who is: Black Americans - racial groups of Africa; Hispanic Americans - of Mexican, Puerto Rican, Cuban, Central/South America, Spanish or Portuguese culture or origin; Native Americans - origin in any of the original peoples of North America; Asian Pacific Americans origins of the Far East, Southeast Asia, the Indian subcontinent; Women.

Manufacturers should put a "MV" beside their name and/or any of the authorized distributors listed who qualifies under this section. The Office of Purchasing and Travel will include this information in the documents distributed to the agencies and governing authorities.

VI. Purchase Summary

A purchase summary is requested at the end of the emergency situation. This purchase summary should indicate each state agency or other governmental entity to which sales have been made, the location of each, and the total dollar sales generated to date. Where authorized distributors of the contractor have been utilized, this purchase information should be presented as it pertains to each authorized distributor.

VII. Proposal Deadline

The Office of Purchasing and Travel desires to maintain a Qualified Providers List of Emergency Commodities, Equipment and Services. You may send your proposal any time during the year.

VIII. Cooperative Purchasing Agreements

In addition to other methods of entering into nonexclusive, negotiated contracts, the Office of Purchasing and Travel may elect to approve for use by state agencies and governing authorities, multi-state, cooperative and group purchasing agreements established by other governmental agencies.

There are many contracts, which have been developed by other state and local governments, which may be advantageous to state agencies and governing authorities. This would include but not be limited to contracts established by the Western States Contract Alliance (WSCA), the National Association of State Procurement Officials (NASPO), U.S. Communities, and Educational and Institutional Cooperative (E&I). The Office of Purchasing and Travel may enter into an agreement that would allow state agencies and governing authorities to purchase from these agreements. Such action shall only be taken if; OPT determines that the products and prices available under the agreement would be advantageous to the state agencies and governing authorities.

Contractors holding contracts of this type are encouraged to submit a copy of the contract and other pertinent information detailing what process the state will need to follow to take advantage of the established cooperative contract.

IX. Payments

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.

X. E-Verify Compliance

Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1 et seq of the Mississippi Code Annotated (Supp 2008, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system

replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the State, and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) 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, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller 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/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

Requests to be included on the list should be submitted to:

Lance Fulcher, Director
Office of Purchasing, Travel and Fleet Management
701 Woolfolk Building, Suite A
501 North West Street
Jackson, MS 39201

Request to be included on the Qualified Providers of Emergency Commodities, Equipment and Services List

Company name: _____

Location Address: _____

Mailing Address: _____

City/State: _____

Telephone number: _____

Fax number: _____

Email address: _____

Website address,
(if applicable): _____

Name of authorized
representative submitting proposal. _____

Attach a list of representative(s) to contact during emergency situations, include e-mail address and phone numbers for 24/7 contact capability.

General Description of commodities, equipment and/or services being proposed:

By signing this form, the vendor is requesting to be placed on the Qualified Providers of Emergency Commodities, Equipment and Services List and certifying that the vendor is in agreement with the terms and conditions set forth herein.

By signing this form the vendor is certifying that neither the vendor nor any potential subcontractors are debarred or suspended from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

Signature of Authorized Representative

Date

Appendix B - Sample Contract for Services

Personal Services Agreement
Between the
(NAME OF BUYING ENTITY)
And the
(NAME OF CONTRACTOR)

Section 1

This Personal Service Contract is made by and between the (NAME OF BUYING ENTITY) whose address is (BUYING ENTITY ADDRESS), and the (NAME OF CONTRACTOR) (the "Contractor"), whose address is (ADDRESS OF CONTRACTOR), on the _____ day of _____, 2006, under the following terms and conditions:

Section 2

Scope of Services:

Section 3

Term:

Contract Start Date:

Contract End Date:

Section 4

Consideration:

Section 5.0

STANDARD TERMS AND CONDITIONS

5.1 Access to Records

The Contractor agrees that the (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) 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 of Mississippi. The Contractor shall comply with applicable

federal, state, and local laws and regulations.

5.3 Assignment

Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the (NAME OF BUYING ENTITY). Any attempted assignment or subcontract without said consent shall be void and of no effect. However, if approved by the (NAME OF BUYING ENTITY) in writing, the Contractor may assign or subcontract for those services described herein provided that any subcontracts include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Contractor and the (NAME OF BUYING ENTITY) and to ensure that the (NAME OF BUYING ENTITY) is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a contract in those matters described in the contract between the (NAME OF BUYING ENTITY) and the Contractor.

The Contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

The Contractor shall agree and understand that utilization of a subcontractor to provide any of the equipment or services in the contract shall in no way relieve the Contractor of the responsibility for providing the equipment or services as described and set forth herein.

All subcontracts must be in writing. All subcontractors shall comply with the applicable provisions of federal and State laws, regulations and policies. All subcontractors shall comply with the provisions of the contract and shall include at least the following:

A description of services to be provided or other activities performed. This description shall be in such form as to permit the state agency to ascertain definitively which contractual obligations have been subcontracted.

Provisions for release to the Contractor any information necessary for the Contractor to perform any of its obligations under the contract including, but not limited to, compliance with all reporting requirements.

Provision(s) that the facilities and records of the subcontractor shall be open to inspection by the Contractor and appropriate state and federal agencies and the records, or copies thereof, shall be provided to the Contractor, upon request, for transfer to subsequent subcontractors for review by the state agency.

Provision(s) that the subcontractor shall maintain records and provide access to same in accordance with Section 5.1 of this RFP.

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 (NAME OF BUYING ENTITY) to proceed under this agreement is conditioned upon the specific 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 anytime, 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 program under which funds were provided or if funds are not otherwise available to the state, the state shall have the right upon ten (10) working days written notice to the Contractor, to terminate or modify this agreement without damage, penalty, cost or expenses to the state of any kind whatsoever. The effective date of termination or modification shall be as specified in the notice of termination or modification.

5.6 Change in Scope of Work

The (NAME OF BUYING ENTITY) may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. The Contractor may make no claims 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 (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) in writing of this belief. If the (NAME OF BUYING ENTITY) believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

5.7 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 (NAME OF BUYING ENTITY). 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 (NAME OF BUYING ENTITY) 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 State law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by the Mississippi Code of 1972, Annotated, §25-61-1, et.seq, regarding Public Access to Public Records.

Offeror and the (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) or the Offeror from any non-party, or (f) is disclosed with the Disclosing Party's prior written consent.

5.8 Copyrights

Contractor (i) agrees that the (NAME OF BUYING ENTITY) 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, and (ii) 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, 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.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of the Contractor's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in the Contractor's opinion be likely to become, the subject of any infringement claim or suit, the Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.

It is understood that the (NAME OF BUYING ENTITY) shall have unlimited, royalty free license

to use, reproduce, translate, or publish the instruments, software, and methodologies provided, developed and produced by the Contractor under this Agreement.

5.9 Compliance With Laws

The Contractor understands that the (NAME OF BUYING ENTITY) is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of 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. The Contractor ensures that any person assigned to perform services hereunder meets the employment eligibility requirements of the immigration and naturalization laws including, but not limited to, the Immigration Reform and Control Act of 1986.

5.10 Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the (NAME OF BUYING ENTITY), its 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 attorneys' 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 (NAME OF BUYING ENTITY)'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 (NAME OF BUYING ENTITY); the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the (NAME OF BUYING ENTITY) shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the (NAME OF BUYING ENTITY)'s concurrence, which the (NAME OF BUYING ENTITY) shall not unreasonably withhold. In the event the Contractor fails to comply with the dictates of this section, the (NAME OF BUYING ENTITY) shall have the right to seek any legal remedy that may be available.

5.11 Independent Contractor Status

The Contractor acknowledges that, if awarded a contract, they shall, at all times, be regarded as an independent Contractor and shall at no time act as an agent for the (NAME OF BUYING ENTITY). Nothing contained herein shall be deemed or construed by the (NAME OF BUYING ENTITY), 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 (NAME OF BUYING ENTITY) and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the (NAME OF BUYING ENTITY) or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY). Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the (NAME OF BUYING ENTITY); and the (NAME OF BUYING ENTITY) shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the (NAME OF BUYING ENTITY) for its employees.

5.12 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 (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY).

5.13 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.

5.14 Ownership of Documents and Work Papers

The (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) and subject to any copyright protections.

5.15 Patents and Royalties

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. The Contractor covenants to save, defend, keep and hold harmless, and indemnify the (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY).

5.16 Price Adjustment

Submission of Cost or Pricing Data. The Contractor shall provide data supporting any requested adjustment subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi Personal Service Contract Procurement Regulations.

5.17 Procurement Regulations

The contract shall be governed by the applicable provisions of the Mississippi Personal Services Contract Review Board Regulations which can be found at <http://www.spb.state.ms.us/SPB%20Documents/CRB/CRB%20pubs.html>

5.18 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 proposal.

5.19 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 Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

5.20 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.

5.21 Right to Inspect Facility

The (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY).

5.22 Stop Work Order

Order to stop work. The (NAME OF BUYING ENTITY), 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 (NAME OF BUYING ENTITY) shall either:

Cancel the stop work order; or

Terminate the work covered by such order as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

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:

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

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 (NAME OF BUYING ENTITY) 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.

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.

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.

5.23 Termination for Default

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 (NAME OF BUYING ENTITY) may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the (NAME OF BUYING ENTITY), the (NAME OF BUYING ENTITY) 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 (NAME OF BUYING ENTITY) may procure similar supplies or services in a manner and upon terms deemed appropriate by the (NAME OF BUYING ENTITY). 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.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the (NAME OF BUYING ENTITY), the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the (NAME OF BUYING ENTITY) has an interest.

Compensation. Payment for completed services delivered and accepted by the (NAME OF BUYING ENTITY) shall be made according to the terms set forth in the agreement. The (NAME OF BUYING ENTITY) may withhold from amounts due the Contractor such sums as the (NAME OF BUYING ENTITY) deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the (NAME OF BUYING ENTITY) for the excess costs incurred in procuring similar goods and services.

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.

5.24 Termination for Convenience

Termination. The (NAME OF BUYING ENTITY) may, when the interests of the (NAME OF BUYING ENTITY) so require, terminate this contract in whole or in part, for the convenience of the (NAME OF BUYING ENTITY). The (NAME OF BUYING ENTITY) shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

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 (NAME OF BUYING ENTITY) may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the (NAME OF BUYING ENTITY). The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

5.25 Insurance

The Contractor acknowledges that they shall maintain workers' compensation insurance, which shall inure to the benefit of the Contractor's personnel, and automobile liability insurance as prescribed by law. The Contractor also acknowledges that \$1,000,000 general liability and employee fidelity bond insurance must be maintained. The State shall require a certificate of conformity as a requirement to awarding a contract.

Appendix C - Sample Contract for Rental

RENTAL AGREEMENT FOR USE BY MISSISSIPPI DEPARTMENTS AND VENDORS

(applicable to equipment rental transactions. Clauses may be added or deleted depending upon the type of equipment being rented)

The Agreement is entered into by and between _____ (hereinafter referred to as "Customer"), and _____ (hereinafter referred to as "Vendor"). This Agreement becomes effective upon signature by Customer and Vendor, and shall take precedence over all agreements and understandings between the parties. Vendor, by its acceptance hereof, agrees to rent to Customer, and Customer, by its acceptance hereof, agrees to rent from Vendor, the equipment, including applicable software and services to render it continually operational, listed in Exhibit A, which is attached hereto and incorporated herein.

1. CUSTOMER ACCOUNT ESTABLISHMENT

- A. A separate Vendor Customer Number will be required for each specific customer/installation location.
- B. The Customer is identified as the entity on the first line of the "bill-to" address. All invoices and notices of changes will be sent to the "bill-to" address.
- C. "Ship-to" and/or "Installed-at" address is the location to which the initial shipment of equipment/supplies will be made and the address to which service representatives will respond. Subsequent shipments of supplies for installed equipment will also be delivered to the "installed-at" address unless otherwise requested.
- D. Unless creditworthiness for this Customer Number has been previously established by Vendors, Vendor's Credit Department may conduct a credit investigation for this Order. Notwithstanding delivery of equipment, Vendor may revoke this Order by written notice to the Customer if credit approval is denied within thirty (30) days after the date this Rental Agreement is accepted for Vendor by an authorized representative.

2. EQUIPMENT SELECTION, PRICES, AND AGREEMENT: The Customer has selected and Vendor agrees to provide the equipment, including applicable software and services to render it continually operational, identified on Exhibit A attached to this Rental Agreement. The specific prices, inclusive of applicable transportation charges, are as set forth on the attached Exhibit A. The parties understand and agree that the Customer is exempt from the payment of taxes.

3. SHIPPING AND TRANSPORTATION: Vendor agrees to pay all non-priority, ground shipping, transportation, rigging and drayage charges for the equipment from the equipment's place of manufacture to the installation address of the equipment as specified under this Agreement. If any form of express shipping method is requested, it will be paid for by Customer.
4. RISK OF LOSS OR DAMAGE TO EQUIPMENT: While in transit, Vendor shall assume and bear the entire risk of loss and damage to the equipment from any cause whatsoever. If, during the period the equipment is in Customer's possession, due to gross negligence of the customer, the equipment is lost or damaged, then, the customer shall bear the cost of replacing or repairing said equipment.
5. DELIVERY, INSTALLATION, ACCEPTANCE, AND RELOCATION:
 - A. DELIVERY: Vendor shall deliver the equipment to the location specified by Customer and pursuant to the delivery schedule agreed upon by the parties. If, through no fault of the Customer, Vendor is unable to deliver the equipment or software, the prices, terms and conditions will remain unchanged until delivery is made by Vendor. If, however, Vendor does not deliver the equipment or software within ten (10) working days of the delivery due date, Customer shall have the right to terminate the order without penalty, cost or expense to Customer of any kind whatsoever.
 - B. INSTALLATION SITE: At the time of delivery and during the period Vendor is responsible for maintenance of the equipment, the equipment installation site must conform to Vendor's published space, electrical and environmental requirements; and the Customer agrees to provide, at no charge, reasonable access to the equipment and to a telephone for local or toll free calls.
 - C. INSTALLATION DATE: The installation date of the equipment shall be that date as is agreed upon by the parties, if Vendor is responsible for installing the equipment.
 - D. ACCEPTANCE: Unless otherwise agreed to by the parties, Vendor agrees that Customer shall have ten (10) working days from date of delivery and installation, to inspect, evaluate and test the equipment to confirm that it is in good working order.
 - E. RELOCATION: Customer may transfer equipment to a new location by notifying Vendor in writing of the transfer at least thirty (30) calendar days before the move is made. If Vendor is responsible for maintenance of the equipment, this notice will enable Vendor to provide technical assistance in the relocation efforts, if needed, as well as to update Vendor's records as to machine location. There will be no cessation of rental charges during the period of any such transfer. The Vendor's cost of moving and reinstalling equipment from one location to another is not included in this Agreement, and Customer agrees to pay Vendor, after receipt of invoice of Vendor's charges with respect to such moving of equipment, which will be billed to Customer in accordance with Vendor's standard practice then in effect for commercial users of similar equipment or software.

6. RENTAL TERM: The rental term for each item of equipment shall be that as stated in the attached Exhibit A. If the customer desires to continue renting the equipment at the expiration of the original rental agreement, the customer must enter into a new rental agreement which shall be separate from this agreement. There will be no automatic renewals allowed. There shall be no option to purchase.
7. OWNERSHIP: Unless the Customer has obtained title to the equipment, title to the equipment shall be and remain vested at all times in Vendor or its assignee and nothing in this Agreement shall give or convey to Customer any right, title or interest therein, unless purchased by Customer. Nameplates, stencils or other indicia of Vendor's ownership affixed or to be affixed to the equipment shall not be removed or obliterated by Customer.
8. PAYMENTS:
 - A. INVOICING AND PAYMENTS: The charges for the equipment, software or services covered by this Rental Agreement are specified in the attached Exhibit A. Charges for any partial month for any item of equipment shall be prorated based on a thirty (30) day month. Vendor shall submit an invoice with the appropriate documentation to Customer. Customer agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Sections 31-7-301, et. seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment by Customer within forty-five (45) days of the date the invoice is received and the goods are inspected and accepted.
 - B. METER READINGS (IF APPLICABLE): If applicable, the Customer shall provide accurate and timely meter readings at the end of each applicable billing period on the forms or other alternative means specified by Vendor. Vendor shall have the right, upon reasonable prior notice to Customer, and during Customer's regular business hours, to inspect the equipment and to monitor the meter readings. If Customer meter readings are not received in the time to be agreed upon by the parties, the meter readings may be obtained electronically or by other means or may be estimated by Vendor subject to reconciliation when the correct meter reading is received by Vendor.
 - C. COPY CREDITS (IF APPLICABLE): If applicable, if a copier is being rented, the Customer will receive one (1) copy credit for each copy presented to Vendor which, in the Customer's opinion, is unusable and also for each copy which was produced during servicing of the equipment. Copy credits will be issued only if Vendor is responsible for providing equipment services or maintenance services (except time and materials maintenance). Copy credits will be reflected on the invoice as a reduction in the total copy volume, except for run length plans which will be credited at a specific copy credit rate as shown on the applicable price list.
9. USE OF EQUIPMENT: Customer shall operate the equipment according to the manufacturer's specifications and documented instructions. Customer agrees not to employ or use additional attachments, features or devices on the equipment or make changes or alterations to the equipment covered hereby without the prior written consent

of Vendor in each case, which consent shall not be unreasonably withheld.

10. MAINTENANCE SERVICES, EXCLUSIONS, AND REMEDIES:

- A. SERVICES: If Vendor is responsible for providing equipment services, maintenance services (except for time and materials), or warranty services: (1) Vendor shall install and maintain the equipment and make all necessary adjustments and repairs to keep the equipment in good working order. (2) Parts required for repair may be used or reprocessed in accordance with Vendor's specifications and replaced parts are the property of Vendor, unless otherwise specifically provided on the price lists. (3) Services will be provided during Customer's usual business hours. (4) If applicable, Customer will permit Vendor to install, at no cost to Customer, all retrofits designated by Vendor as mandatory or which are designed to insure accuracy of meters.
- B. EXCLUSIONS: The following is not within the scope of services: (1) Provision and installation of optional retrofits. (2) Services connected with equipment relocation. (3) Installation/removal of accessories, attachments or other devices. (4) Exterior painting or refinishing of equipment. (5) Maintenance, installation or removal of equipment or devices not provided by Vendor. (6) Performance of normal operator functions as described in applicable Vendor operator manuals. (7) Performance of services necessitated by accident; power failure; unauthorized alteration of equipment or software; tampering; service by someone other than Vendor; causes other than ordinary use; interconnection of equipment by electrical, or electronic or mechanical means with noncompatible equipment, or failure to use operating system software. If Vendor provides, at the request of the Customer, any of the services noted above, the Customer may be billed by Vendor at a rate not to exceed the Master State Prices Agreement between the Vendor and the State of Mississippi, or in the absence of such agreement at the then current time and materials rates.
- C. REMEDIES: If during the period in which Vendor is providing maintenance services, Vendor is unable to maintain the equipment in good working order, Vendor will, at no additional charge, provide either an identical replacement or another product that provides equal or greater capabilities.

11. HOLD HARMLESS: Vendor agrees that it will, and hereby does, indemnify, defend and hold harmless Customer from and against any and all claims, damages, losses, costs and expenses of every kind and nature, including court costs and attorney fees and claims for damages resulting from or arising out of any infringement claim or claim of bodily injury, death or damage to real or tangible personal property caused by Vendor and/or its partners, principals, agents, employees or subcontractors in the performance of this Agreement. Customer will promptly notify Vendor in writing of any claim to be indemnified hereunder, of which Customer has knowledge, and Vendor in turn will promptly notify Customer of any such claim. Vendor shall, at its sole expense, control the defense of such suit to the extent allowed by Mississippi law. The parties agree to cooperate with one another in the defense of any such matter.

12. ALTERATIONS, ATTACHMENTS, AND SUPPLES:

- A. If Customer makes an alteration, attaches a device or utilizes a supply item that increases the cost of services, Vendor will either propose an additional service charge or request that the equipment be returned to its standard configuration or that use of the supply item be discontinued. If, within five (5) days of such proposal or request, Customer does not remedy the problem or agree in writing to do so within a reasonable amount of time, Vendor shall have the right to terminate this Agreement as provided herein. If Vendor believes that an alteration, attachment or supply item affects the safety of Vendor personnel or equipment users, Vendor shall notify Customer of the problem and may withhold maintenance until the problem is remedied.
- B. Unless Customer has obtained title to the equipment free and clear of any Vendor security interest, Customer may not remove any ownership identification tags on the equipment or allow the equipment to become fixtures to real property.

13. ASSIGNMENT:

- A. BY CUSTOMER: Without the prior consent of Vendor, which consent shall not be unreasonably withheld, Customer shall not (1) assign, transfer or pledge all or any part of this Agreement or software licensed by Vendor, or (2) resell, lease, lend or permit a lien or encumbrance of any kind against the equipment unless Customer has obtained title to the equipment free and clear of any Vendor security interest.
- B. BY VENDOR: Vendor shall not assign its rights or delegate its duties hereunder without the prior written consent of Customer, which consent shall not be unreasonably withheld.

14. GOVERNING LAW: This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Vendor expressly agrees that under no circumstances shall Customer be obligated to pay an attorneys fee or the cost of legal action to Vendor. Notwithstanding any other provisions of this Agreement between the parties, all activities and performances of the parties with respect to the equipment, software or services herein shall be subject to all applicable laws, regulations, policies and procedures of the United States of America, or any agency thereof, the State of Mississippi or any agency thereof, or any local governments or political subdivisions that may affect the performance of services hereunder.

15. NOTICE: Any notice required or permitted to be given under this Agreement shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their usual business address. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other of any change of address.

16. WAIVER: Failure of either party hereto to insist upon strict compliance with any of the

terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement.

17. CAPTIONS: The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Agreement.
18. SEVERABILITY: If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
19. THIRD PARTY ACTION NOTIFICATION Vendor shall give Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Vendor by any entity that may result in litigation related in any way to this Agreement.
20. AUTHORITY TO CONTRACT: Vendor warrants that it is a validly organized business with valid authority to enter into this Agreement. 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 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.
21. RECORD RETENTION AND ACCESS TO RECORDS: Vendor shall maintain and make available to Customer, any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Agreement. These records shall be maintained for at least three (3) years; however, if any litigation or other legal action, by or on behalf of the State has begun that is not completed at the end of the three (3) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.
22. EXTRAORDINARY CIRCUMSTANCES: If either party is rendered unable, wholly or in part, by reason of strikes, accidents, acts of God, weather conditions or any other acts beyond its control and without its fault or negligence to comply with any obligations or performance required under this Agreement, then such party shall have the option to suspend its obligations or performance hereunder until the extraordinary performance circumstances are resolved. If the extraordinary performance circumstances are not resolved within a reasonable period of time, however, the non-defaulting party shall have the option, upon prior written notice, of terminating the Agreement.
23. TERMINATION: This Agreement may be terminated as follows: (a) Customer and vendor mutually agree to the termination, or (b) If either party fails to comply with the terms and conditions of this Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the other party, then the non-defaulting party

has the right to terminate this Agreement. The non-defaulting party may also pursue any remedy available to it in law or in equity. Upon termination, all obligations of Customer to make payments required hereunder shall cease.

24. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the fulfillment of the conditions of this agreement by Customer is conditioned upon the receipt of governmental funding. If the funds anticipated for the fulfillment of this Agreement are, at any time, not forthcoming or insufficient, Customer shall have the right to terminate this Agreement, without damage, penalty, cost or expense to Customer of any kind whatsoever.
25. 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 and/or state revision of any applicable laws or regulations make changes in this Agreement necessary.
26. WARRANTIES: Vendor warrants that the equipment, when operated according to the manufacturer's specifications and documented instructions, shall perform the functions indicated by the specifications and documented literature. Vendor may be held liable for any damages caused by failure of the equipment to function according to specifications and documented literature published by the manufacturer of the equipment. The State may be held liable for any damages caused by failure to operate the equipment according to the specifications and documented instructions.
28. ENTIRE AGREEMENT: This agreement constitutes the entire agreement of the parties with respect to the equipment, software or services described herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto. No terms, conditions, understandings, usages of the trade, course of dealings or agreements, not specifically set out in this Agreement or incorporated herein, shall be effective or relevant to modify, vary, explain or supplement this Agreement.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

Witness my signature this the _____ day of _____, 20____.

Vendor: _____

By: _____
Authorized Signature

Printed Name: _____

Title: _____

WITNESS:

Witness my signature this the _____ day of _____, 20__.

State of Mississippi: _____

By: _____
Authorized Signature

Printed Name: _____

Title: _____

WITNESS:

EXHIBIT "A"
RENTAL AGREEMENT
FOR USE BY
MISSISSIPPI DEPARTMENTS AND VENDORS
(Applicable to Equipment Rental Transactions)

The following, when signed by the Customer and the Vendor shall be considered to be a part of the rental agreement between the parties.

Vendor Company Name:

Customer Agency Name: _____

Bill to Address: _____

Ship to Address: _____

Description of Equipment, Software, or Services

Price

Delivery Schedule and Installation Date: _____

Rental Term: Number of Months _____ Start Date _____ End Date _____

Modifications:

Vendor Signature

Customer Signature