REQUEST FOR QUALIFICATIONS

RFX # 3140002275

Professional Consulting Services for Oversight and Compliance for COVID-19 Relief Funds

Issue Date: April 28, 2020

CONTACT:
Aubrey Leigh Goodwin, Deputy Executive Director
Mississippi Department of Finance and Administration
501 North West Street, Suite 1301A
Jackson, Mississippi 39201
AubreyLeigh.Goodwin@dfa.ms.gov

DUE DATE AND TIME:
Proposals must be received at the address above by May 4, 2020 at 12:00 p.m. CST
BACKGROUND

The President of the United States declared a nationwide state of emergency due to the coronavirus COVID-19 pandemic on March 13, 2020. And on March 14, 2020, pursuant to the Constitution of the State of Mississippi and Miss. Code Ann. § 33-15-11(b)(17) the Governor issued a Proclamation declaring a State of Emergency in the State of Mississippi as a result of the outbreak of COVID-19. On March 27, 2020, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, 116th Congress) which provides significant relief funding to deal with the emergency, including $1,250,000,000 CARES Act Coronavirus Relief Fund that provides relief to the State of Mississippi. The Governor has accepted these federal funds. The CARES Act Coronavirus Relief Fund may only be used to cover costs incurred by the State that (i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of the enactment of the CARES Act; and (iii) were incurred during the period beginning on March 1, 2020, and ending on December 30, 2020. The State may receive other additional federal assistance as well (such relief funding is hereinafter collectively referred to as “Relief Funds”). Pursuant the Governor’s authority granted under the Constitution of the State of Mississippi, the emergency powers and emergency management powers granted to the Governor under the Mississippi Emergency Management Act, Section 33-15-1 et seq. of the Mississippi Code, and other controlling law, the Office of the Governor, on behalf of the State of Mississippi (hereinafter “the State”), seeks Statements of Qualifications (hereinafter “SOQs”) from professionals familiar with federal grant oversight, compliance and reporting. It is anticipated that professional accounting and advisory firms or law firms, or some partnership of the two, will respond to this Request for Qualifications (hereinafter “RFQ”). The State has no preference as to the contracting entity, provided the respondent meets all requirements of this RFQ. Responding entities are collectively referred to in this RFQ as “consulting firms” or “firms”.

SECTION 1

1. Qualifications and Proposal Acceptance Period
The SOQ shall be signed and submitted in a sealed envelope(s) or package(s) as described in this Request for Qualifications (hereinafter “the RFQ”) no later than the time and date specified for receipt on the title page of this RFQ. Timely submission is the responsibility of the respondent. SOQs received after the specified time shall be rejected and returned to the respondent unopened. The envelope(s) or package(s) shall be marked with the name of the respondent, and the services to be provided (as listed on the title page of this RFQ). Each page of the SOQ and all attachments shall be identified with the name of the respondent. The State reserves the right to decide, on a case-by-case basis, whether to reject an SOQ
with modifications or additions as nonresponsive. As a precondition to SOQ acceptance, the State may request the respondent to withdraw or modify those portions of the SOQ deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service. The State is under no obligation to enter into a contract or otherwise engage any consulting firm as a result of this RFQ process and may cancel this RFQ process when it is determined to be in the best interest of the State.

1.1. **Timeline***

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>April 28, 2020</td>
<td>RFQ posted to the Mississippi Procurement Portal</td>
</tr>
<tr>
<td>April 30, 2020</td>
<td>Deadline for questions related to RFQ** (2:00 PM CST)</td>
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<tr>
<td>May 1, 2020</td>
<td>Deadline for responses to all questions related to RFQ to be posted to the Mississippi Procurement Portal (2:00 PM CST)</td>
</tr>
<tr>
<td>May 4, 2020</td>
<td>Closing date for RFQ. All SOQ responses due (12:00 PM CST)</td>
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<tr>
<td>May 4 - 5, 2020</td>
<td>SOQ responses evaluated and clarifications sought (if necessary)</td>
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<tr>
<td>May 5, 2020</td>
<td>Evaluation Committee makes recommendation to Office of Governor for selection of firm</td>
</tr>
<tr>
<td>May 6, 2020</td>
<td>Notification of award</td>
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(*) – Dates are estimated and are subject to change.  
(**) – Questions may only be received in writing, directed to the contact identified on the cover page of this RFQ

1.2. **Late Submissions**

An SOQ received at the place designated in the RFQ for receipt of SOQs after the exact time specified for receipt will not be considered.

2. **Expenses Incurred in Preparing Statement of Qualifications**

The State accepts no responsibility for any expense incurred by the respondent(s) in the preparation and presentation of an SOQ. Such expenses shall be borne exclusively by the respondent(s).
3. **Registration with Mississippi Secretary of State**
   By submitting an SOQ, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

4. **Debarment**
   By submitting an SOQ, the respondent certifies that it is not currently debarred from submitting SOQs for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government, and that it is not an agent of a person or entity that is currently debarred from submitting SOQs for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government.

5. **Additional Information**
   Questions about this RFQ must be submitted in writing and directed to the contact first identified on the cover page of this RFQ. Respondents are cautioned that any statements made by the contact person that cause a material change to any portion of the RFQ shall not be relied upon unless subsequently ratified by a formal written amendment. All questions and answers shall be published to respondents by the deadline first mentioned herein on the Mississippi Procurement Portal.

6. **Release of Information**
   The State will not release information submitted in response to this RFQ during the evaluation process or prior to an engagement award. After all respondents have been notified of the engagement award, respondents’ SOQs will be available for public review, subject to the limitations of the Mississippi Public Records Act of 1983, as amended.

7. **Non-Discrimination**
   There shall be no discrimination as to race, sex, color, creed, national origin or disability in the operations proposed to be conducted under any engagement arising out of the responses to this RFQ.

8. **Supplementation**
   Each respondent must supplement its response to this RFQ within three (3) days of any material change to the information contained in its response.

9. **Terms and Conditions of Contract**
   The terms and conditions of any contract resulting from a response to this RFQ will contain, by reference, the terms of this RFQ and the respondent’s response thereto. Because time is of the essence, respondents agree, by submitting an SOQ, to execute the State’s standard terms and conditions as found in the attached Exhibit A, without substantive negotiation.
SECTION 2

1. **Compensation for Services**
Respondents are requested to identify all fees and expenses applicable to the provision of the services. It is anticipated that these services will be a qualified expense of the federal funds.

2. **Scope of Services**
The respondent selected by the State will be required to provide professional services necessary for the State and its agencies impacted by the Relief Funds to comply with all requirements of the Relief Funds; including, but not limited to:

   a) Identification of authorized uses of the Relief Funds
   b) Establish and/or verify eligibility under the Relief Funds
   c) Establish procedures for verification of eligibility for award and expenditure of Relief Funds
   d) Design/establish application procedures
   e) Establish call center, web based portal or other processes to accept applications for award of Relief Funds and receive and respond to inquiries regarding status of applications
   f) Confirmation of verification of eligibility and final disbursement of Relief Funds or other award of proceeds
   g) Coordinate with federal and state agencies, including the U.S. Department of the Treasury, the US Attorney’s office, the US Department of Justice, the Mississippi Emergency Management Agency, the Mississippi Attorney General’s office, and the Office of State Auditor
   h) Provide for fraud, waste, and abuse identification, reporting and remediation
   i) Provide assistance and representation to any federal or state audit of Relief Funds
   j) Provide for consolidated financial reporting
   k) Establish appeal procedure regarding any disputes regarding amounts awarded and a process for evaluation for final determination
   l) Provide periodic status reports including reporting on financial performance and projection modeling—How are we doing? How have we done? How much more remains to be done?
m) Process for review and any subsequent reporting required by the Relief Funds

3. Period of Performance
The contract will be a term of one (1) year; however, prior to the expiration of the term, the contract may be extended for an additional period of time as agreed between the parties to continue any services made necessary by the Relief Funds. Any firm selected pursuant to this RFQ shall serve at the pleasure of the Office of the Governor, and the professional services of any firm selected may be terminated, at the sole discretion of the Office of the Governor, upon delivery of written notice of such termination to the selected firm. The State is under no obligation to enter into a contract for these services as a result of the issuance of this RFQ and this RFQ may be canceled at any time, if it is determined to be in the best interest of the State.

SECTION 3

1. Insurance
The successful firm must carry professional errors and omissions insurance adequate to guarantee the services contemplated in this RFQ. The State reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The successful firm shall be prepared to provide evidence of required insurance upon request by the State at any point during the engagement period and should consult with legal counsel regarding its obligations.

SECTION 4

1. Minimum Qualifications
To be eligible to respond to this RFQ, a certification by the respondent is required to each of the following requirements:

   a. A current business operation in the State;

   b. At least five (5) years of documented experience advising government clients on compliance with federal grants; including, but not limited to: identification of authorized uses of such funds and any subsequent reporting requirements;

   c. Must have no conflict of interest in representing the State; and

   d. Must carry a level of insurance, including deductible, to cover errors and omissions, improper judgment, or negligence appropriate for the magnitude of the engagement.
2. **Responsive & Responsible Respondent**  
Respondent must submit an SOQ which conforms in all material respects to this RFQ, as determined by the State, and the respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by the State.

3. **Nonconforming Terms and Conditions**  
An SOQ that includes terms and conditions that do not conform to the terms and conditions in the RFQ is subject to rejection as nonresponsive. The State reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its SOQ response prior to a determination by the State of nonresponsiveness based on the submission of nonconforming terms and conditions.

4. **Evaluation Procedure**  
The State has designated an Evaluation Committee which will evaluate all SOQs that are received on or before the stated due date and time. Those responses that satisfy the Minimum Qualifications will be further evaluated and assigned a score in accordance with the Evaluation Criteria for this RFQ.

During the evaluation process, the Evaluation Committee may request written clarifications where necessary to ascertain the intent or meaning of any portion of the SOQ.

5. **Evaluation Criteria**

The Evaluation Committee will use the following criteria to evaluate all acceptable proposals and to develop recommendations to be presented to the State:

- Demonstration of minimum experience and the professional and technical competence of the firm with respect to the type of services required by governmental entities for compliance with federal grants, including, but not limited to: project management experience; experience, knowledge of, and compliance with state and federal ethics rules; experience with identification and reporting of waste, fraud and abuse; and experience with the oversight of disbursement and tracking of federal funds by state or federal agencies. **40 Points**

- The capacity and capability of the firm to provide the services requested on an expedited basis, specifically a staffing plan and identification of any sub-consultants necessary to perform the services and the professional qualifications of both staff and sub-consultants. **30 Points**

- Price. Because no bid form is provided, respondents will propose a fee structure based on a percentage of Relief Funds disbursed. Additionally, respondents must identify any fees and anticipated expenses applicable to the provision of the services, if not included in the percentage. The Evaluation Committee will evaluate the relevant costs in the manner determined to most fairly compare costs proposed. **15 points**
Mississippi business operation, i.e., the extent and duration of the firm’s presence in the State, as well as proximity to the Jackson, Mississippi, Metro Area to facilitate provision of the services requested. Firm need not be domiciled in Mississippi, nor have its primary operations in the State; however, an established presence and the ability to respond in person quickly will be considered. **10 Points**

- Conformance with RFQ instructions regarding format of SOQ. **5 Points**

**Total 100 Points**

### 7. Procedures for Delivery of Qualifications

The respondent shall submit four (4) copies of its SOQ in an envelope(s) or package(s) marked “Statement of Qualifications Package.” The envelope or package shall also be clearly labeled with the name of the respondent, the services to be provided, the RFX No. 3140002275, and directed at the attention of the named contact person.

The SOQs are due by the time and date listed on the title page of this RFQ. Any responses received after the due time and date set for receipt will be considered late and shall not be considered for award.

Qualifications shall be mailed or hand delivered to:

**Aubrey Leigh Goodwin, Deputy Executive Director**  
**Mississippi Department of Finance and Administration**  
**501 N. West Street, Suite 1301A**  
**Jackson, Mississippi 39201**

The parties submitting qualifications are responsible for ensuring that the sealed qualifications are delivered by the required time and to the required location. The submitting parties assume all risks of delivery. No facsimile or e-mailed responses will be accepted.

### 8. Format of SOQ

As previously stated, four (4) copies of the respondent’s SOQ shall be submitted in an envelope or package marked “Statement of Qualifications Package”. **Because time is of the essence, Respondents SOQ’s are limited to a total length of twenty (20) pages.**

The State requests that each page of the printed response that the respondent considers confidential be conspicuously marked in the upper right hand corner of each page with the word “CONFIDENTIAL.” Confidential information may be identified by alternate font color and/or type on copies of the SOQ. Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being released subject to a public records request pursuant to the Public Records Act of 1983, Mississippi Code Annotated §25-61-1 et seq. and §79-23-1.
The first page of the SOQ should be a title page which is clearly marked with the name of the respondent, the services to be provided (as stated on the Title Page of this RFQ), the RFQ number and the due date of the response. **Thereafter, the SOQ must include the following information and should be labeled and tabbed as follows:**

**TAB 1 – Signed Confirmations**

a. Certification that the respondent meets each of the minimum qualifications identified in Section 4 that are required to respond to this RFQ.

**TAB 2 – Firm’s 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 engagement.

b. The age of the respondent’s business, the average number of employees over the previous four (4) years, as well as the average number of employees in Mississippi over the previous four (4) years, and the current number of employees providing services in the area of expertise requested in this RFQ.

c. The name, telephone number and email address of the person(s) responsible for the response to this RFQ who may be contacted in the event of questions or notifications.

d. The name of the professional(s) and key personnel who will be primarily responsible for any engagement resulting from this RFQ. Please provide the qualifications, including the state(s) licensed to practice in where applicable, certifications, education, skills, and experience of the professional(s) who will be primarily responsible for providing the required services.

**TAB 3 – Experience information as requested in Section 4**

a. Demonstration of minimum experience and technical competence of the firm with respect to the type of consulting services required by governmental entities for compliance with federal grants including, but not limited to: project management experience; experience, knowledge of, and compliance with state and federal ethics rules; experience with identification and reporting of waste, fraud and abuse; and experience with the oversight of disbursement and tracking of federal funds by state or federal agencies. For any such experience, state the source and amount of funds and the length of the engagement.

b. The resources, capacity and capability of the firm to provide the services requested on an expedited basis, specifically a staffing plan and identification of any sub-consultants necessary to perform the services, and the professional qualifications of both staff and sub-consultants.

c. Demonstration of quality control policies and procedures of the firm
d. Mississippi business operation, i.e., the extent and duration of the consulting firm’s presence in the State, as well as proximity to the Jackson, Mississippi, Metro Area to facilitate provision of the services requested. Firm need not be domiciled in Mississippi, nor have its primary operations in the State; however, an established presence and the ability to respond in person quickly will be considered.

**TAB 4 – Insurance**

a. The type of insurance the firm carries, the name of the carrier, and the limits of coverage.

b. A list of all legal actions or claims made against your firm, within the past five (5) years, and the disposition of same.

**TAB 5 – Price**

a. Detailed fee structure based on a percentage of Relief Funds disbursed. Additionally, respondents must identify any fees and anticipated expenses applicable to the provision of the services, if not included in the percentage.

**TAB 6 – Conflicts of Interest**

a. Information on relationships and/or activities that might present a conflict of interest for the firm’s provisions of professional services to the State.

**SECTION 5**

1. **Award**

The Evaluation Committee will recommend engagement be awarded by written notice in accordance with the schedule in Section 1, to the highest ranked respondent whose SOQ meets the requirements and criteria set forth in this RFQ. The award shall be contingent upon the approval of the Office of the Governor and an executed contract.

2. **Notification**

All participating respondents will be notified of the State’s intent to award the engagement to the selected firm.
This Personal Service Contract (“Contract”) is made by and between the Office of Governor Tate Reeves, (the “OFFICE OF THE GOVERNOR”) whose address is 550 High Street, 19th Floor, Sillers Building, Jackson, Mississippi 39201 and __________, (the “CONTRACTOR”) who address is ________ on the ___ day of ______, 2020, under the following terms and conditions:

1. **Scope of Services:**

2. **Contract Term:**

3. **Consideration:**

4. **E-Payment:** The CONTRACTOR agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The OFFICE OF THE GOVERNOR 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 the invoice. Miss. Code Ann. § 31-7-301, et seq., as amended.

5. **Paymode:** Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of 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. The CONTRACTOR understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

6. **Availability of Funds:** It is expressly understood and agreed that the obligation of the OFFICE OF THE GOVERNOR to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the OFFICE OF THE GOVERNOR, the OFFICE OF THE GOVERNOR shall have the right upon ten (10) working days written notice to the CONTRACTOR, to terminate this Agreement without damage, penalty, cost or expenses to the OFFICE OF THE GOVERNOR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
7. **Record Retention and Access to Records:** Provided the CONTRACTOR is given reasonable advance written notice and such inspection is made during normal business hours of the CONTRACTOR, the OFFICE OF THE GOVERNOR or any duly authorized representatives shall have unimpeded, prompt access to any of the CONTRACTOR's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the CONTRACTOR for a period of 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.

8. **Representation Regarding Contingent Fees:** The CONTRACTOR represents that it has not retained a person to solicit or secure an OFFICE OF THE GOVERNOR contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the CONTRACTOR's bid, proposal or qualifications.

9. **Representation Regarding Gratuities:** The Bidder, Offeror, or 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 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

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

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

12. **Compliance with Laws:** The CONTRACTOR understands that the OFFICE OF THE GOVERNOR 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.

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

14. **E-Verification:** If applicable, the CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. § 71-11-1, et seq. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The CONTRACTOR agrees to maintain records of such compliance. Upon request of the State and approval of the Social Security Administration or Department of Homeland Security when required, the CONTRACTOR agrees to provide a copy of each such verification. The 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 this Agreement may subject the
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 the CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or both.

(3) In the event of such cancellation/termination, the CONTRACTOR would also be liable for any additional costs incurred by the State due to the Contract cancellation or loss of license or permit to do business in the State.

15. **Independent Contractor Status:** The CONTRACTOR shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, 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 State and the CONTRACTOR. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the CONTRACTOR hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and the CONTRACTOR. The CONTRACTOR’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. No act performed or representation made, whether oral or written, by the CONTRACTOR with respect to third parties shall be binding on the OFFICE OF THE GOVERNOR. Neither the CONTRACTOR nor its employees shall, under any circumstances, be considered servants, agents, or employees of the OFFICE OF THE GOVERNOR and the OFFICE OF THE GOVERNOR shall be at no time legally responsible for any negligence or other wrongdoing by the CONTRACTOR, its servants, agents, or employees. The OFFICE OF THE GOVERNOR 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 OFFICE OF THE GOVERNOR shall not provide to the CONTRACTOR any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

16. **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 the State revisions of any applicable laws or regulations make changes in this Agreement necessary.
17. **Termination for Convenience:**

(1) **Termination.** The OFFICE OF THE GOVERNOR may, when the interests of the OFFICE OF THE GOVERNOR so require, terminate this Contract in whole or in part, for the convenience of the OFFICE OF THE GOVERNOR. The OFFICE OF THE GOVERNOR shall give written notification of the termination to the CONTRACTOR specifying the part of the Contract terminated and when the termination becomes effective.

(2) **CONTRACTOR’s Obligations.** The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The OFFICE OF THE GOVERNOR may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the OFFICE OF THE GOVERNOR. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

18. **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 OFFICE OF THE GOVERNOR may notify the CONTRACTOR in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the OFFICE OF THE GOVERNOR, the OFFICE OF THE GOVERNOR may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the OFFICE OF THE GOVERNOR may procure similar supplies or services in a manner and upon terms deemed appropriate by the OFFICE OF THE GOVERNOR. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) **CONTRACTOR’s Duties.** Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the OFFICE OF THE GOVERNOR has an interest.
(3) **Compensation.** Payment for completed services delivered and accepted by the OFFICE OF THE GOVERNOR shall be at the contract price. The OFFICE OF THE GOVERNOR may withhold from amounts due the CONTRACTOR such sums as the OFFICE OF THE GOVERNOR deems to be necessary to protect the OFFICE OF THE GOVERNOR against loss because of outstanding liens or claims of former lien holders and to reimburse the OFFICE OF THE GOVERNOR for the excess costs incurred in procuring similar goods and services.

(4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if the CONTRACTOR has notified the OFFICE OF THE GOVERNOR 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 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 OFFICE OF THE GOVERNOR shall ascertain the facts and extent of such failure, and, if OFFICE OF THE GOVERNOR 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 OFFICE OF THE GOVERNOR under the clause entitled (in fixed-price contracts, “Termination for Convenience,” in cost-reimbursement contracts, “Termination”). (As used in this Paragraph of this clause, the term “subcontractor” means subcontractor at any tier).

(5) **Erroneous Termination for Default.** If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the OFFICE OF THE GOVERNOR, 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.

19. **Price Adjustment:**

   (1) **Price Adjustment Methods.** Any adjustment in contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways:

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

   (2) **Submission of Cost or Pricing Data.** The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

20. **Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the OFFICE OF THE GOVERNOR and agreed to by the CONTRACTOR.

21. **Ownership of Documents and Work Papers:** The OFFICE OF THE GOVERNOR 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 OFFICE OF THE GOVERNOR upon termination or completion of the Agreement. The foregoing notwithstanding, the CONTRACTOR shall be entitled to retain a set of such work papers for its files. The CONTRACTOR shall be entitled to use such work papers only after receiving written permission from the OFFICE OF THE GOVERNOR and subject to any copyright protections.

22. **Indemnification:** To the fullest extent allowed by law, the CONTRACTOR shall indemnify, defend, save and hold harmless, protect, and exonerate the OFFICE OF THE GOVERNOR, its Commissioners, Board Members, officers, employees,
agents, and representatives, and the State of Mississippi from and against all
claims, demands, liabilities, suits, actions, damages, losses, and costs of every
kind and nature whatsoever, including, without limitation, court costs,
investigative fees and expenses, and 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 State'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 State. The 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. The CONTRACTOR shall not settle any claim, suit,
etc., without the State's concurrence, which the State shall not unreasonably
withhold.

23. **Third-Party Action Notification:** The CONTRACTOR shall give the OFFICE
OF THE GOVERNOR prompt notice in writing of any action or suit filed, and
prompt notice of any claim made against the CONTRACTOR by any entity that
may result in litigation related in any way to this Agreement.

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

25. **Change in Scope of Work:** The OFFICE OF THE GOVERNOR may order
changes in the work consisting of additions, deletions, or other revisions within
the general scope of the Contract. No claims may be made by the
CONTRACTOR that the scope of the project or of the CONTRACTOR’s services
has been changed, requiring changes to the amount of compensation to the
CONTRACTOR or other adjustments to the Contract, unless such changes or
adjustments have been made by written amendment to the Contract signed by
the OFFICE OF THE GOVERNOR 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 OFFICE OF THE GOVERNOR in writing of this belief. If the OFFICE OF THE GOVERNOR believes that the particular work is within the scope of the Contract as written, the CONTRACTOR will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

26. **Stop Work Order:**

1. **Order to stop work.** The Chief Procurement Officer, 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 ninety (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 Chief Procurement Officer shall either:

   a. cancel the stop work order; or,

   b. terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.

2. **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or the CONTRACTOR price, or both, and the Contract shall be modified in writing accordingly, if:

   a. the stop work order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Contract; and,

   b. the CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
(3) **Termination of Stopped Work.** If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

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

27. **Contractor Personnel:** The OFFICE OF THE GOVERNOR shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the CONTRACTOR. If the OFFICE OF THE GOVERNOR reasonably rejects staff or subcontractors, the CONTRACTOR must provide replacement staff or subcontractors satisfactory to the OFFICE OF THE GOVERNOR in a timely manner and at no additional cost to the OFFICE OF THE GOVERNOR. The day-to-day supervision and control of the CONTRACTOR’s employees and subcontractors is the sole responsibility of the CONTRACTOR.

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

29. **Failure to Enforce:** Failure by the OFFICE OF THE GOVERNOR at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the OFFICE OF THE GOVERNOR to enforce any provision at any time in accordance with its terms.

30. **Trade Secrets, Commercial and Financial Information:** It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
31. **Termination Upon Bankruptcy:** This Contract may be terminated in whole or in part by the OFFICE OF THE GOVERNOR 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 the 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.

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

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

The following person *(name and title)* has been empowered to act as the duly authorized representative for this contract:

**For the CONTRACTOR:**

**For the OFFICE OF THE GOVERNOR:**

Witness our signatures, on the date first written.

**CONTRACTOR**

By: ____________________________
Name
Title

**Office of the Governor**

By: ____________________________
Name
Title