



SPECIAL MEETING MINUTES
Wednesday, December 11, 2019

- Location:** E.T. Woolfolk State Office Building
501 North West Street, Room 121W
Jackson, Mississippi
- Board Members Present:** Rita Wray, Chair
Jeffery Belk, Vice-Chair
Laura Jackson, Department of Finance and Administration
Norman McLeod
Billy Morehead
- Absent:** Leila Malatesta
- Staff:** Romaine Richards, Assistant Attorney General
Edward Wiggins, Special Assistant Attorney General
Aubrey Leigh Goodwin
Catoria Martin
Ross Campbell
Liz DeRouen
Alicia Coleman
- Guests:** Danny Lynch, Mississippi Department of Employment Security
John Garrett, Mississippi Department of Employment Security
Anna Clemmer, Mississippi Department of Employment
William Trey Jones, III, Brunini, Grantham, Grower & Hewes, PLLC
Carolyn Boteler, TempStaff, Inc.
Jamie Higdon, TempStaff, Inc.
Melinda Quave, TempStaff, Inc.
A. Seth Robbins, Watson Heidelberg, PLLC
Brenda Barron, Professional Staffing Group
Matthew Dry, PEER
Evelyn Johnson, Capitol Resources

I. Call to Order

The meeting was called to order by Chair Rita Wray.

II. Approval of per diem and expenses for the December 11, 2019 meeting and for any additional expenses incurred prior to the January 8, 2020 meeting

Action: A motion was made by Mr. Belk to approve per diem and expenses for the December 11, 2019 meeting and for any additional expenses incurred prior to the January 8, 2020 meeting. The motion was seconded by Mr. McLeod and unanimously approved by all members present.

III. Introduction of Guests

Ms. Wray requested each entity identify all persons present on their behalf and stated that Ms. Goodwin would keep time during their presentations.

IV. Presentation of Arguments

A. TempStaff, Inc. (Protestor)

- a. Mr. Jones presented arguments on behalf of the Protestor, TempStaff.**
- b. Ms. Boteler presented qualifications of TempStaff.**

B. Mississippi Department of Employment Security (MDES)

- a. Mr. Garrett presented arguments on behalf of the MDES.**

C. Professional Staffing Group (PSG)

- a. Mr. Robbins presented arguments for upholding the decision of MDES, on behalf of the winning bidder, PSG.**
- b. Ms. Barron presented qualifications of PSG.**

D. TempStaff, Inc. Rebuttal (*if reserved*)

- a. Mr. Jones presented the rebuttal for TempStaff.**
- b. Ms. Boteler presented more arguments for TempStaff.**

Action: A motion was made by Mr. Belk to close the meeting to consider going into executive session. The motion was seconded by Mr. McLeod and unanimously approved by all members present.

Ms. Wray announced the meeting would close and she excused the public from the room so that the Board could consider going into executive session. Only DFA staff and Board members remained in the room while Board members determined whether an executive session was appropriate.

Action: Mr. McLeod made a motion to go into executive session in accordance with Mississippi Code Section 25-41-7(4)(b) for the purpose of strategy sessions or

negotiations with respect to issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the PPRB. The motion was seconded by Mr. Morehead and unanimously approved by all members present.

Ms. Jackson announced to the public that the Board was entering Executive Session in accordance with Mississippi Code Section 25-41-7(4)(b) for the purpose of strategy sessions or negotiations with respect to issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the PPRB. Everyone other than the Board members and DFA staff were excused until the Board concluded its executive session.

V. Executive Session

*While the public was excused from the room, only discussion of the protest was had. The Board reviewed and discussed the following documents attached to these Minutes as **Attachment A**, as well as the arguments made by the parties.*

1. TempStaff Protest dated November 7, 2019
2. MDES Protest Decision dated November 13, 2019
3. TempStaff Appeal to PPRB dated November 20, 2019
4. MDES Response to Appeal dated December 4, 2019
5. Excerpts from MDES IFB No. 2019-02 issued September 27, 2019
6. Winning bid submitted by Professional Staffing Group dated October 27, 2019
7. Statute and regulation regarding IFB as "preferred method"; and
8. Professional Staffing Group Response to Protest dated December 9, 2019.

Motion: A motion was made by Mr. Belk to deny the protest and find 1) that the MDES properly exercised its discretion under the law and regulations regarding the form of the solicitation and 2) that the winning bidder met the minimum qualifications outlined in the Invitation for Bids. The motion was seconded by Mr. Morehead and unanimously approved by all members present. The Chair directed Board Counsel to prepare a written Order consistent with the findings of the Board.

Motion: A motion was made by Mr. Belk to exit the executive session and return to regular session. The motion to exit the session was seconded by Mr. Morehead and unanimously approved by all members present.

Ms. Wray invited the public back into an open meeting. She announced that in executive session the Board voted to deny the protest, having found that the minimum qualifications had been met and that MDES did follow the correct selection process.

A recess was taken before the presentation of Item VI.A.

VI. Other Business

Action: A motion was made by Mr. Belk to add consideration of the MDES award to Professional Staffing Group to the agenda. The motion was seconded by Mr. McLeod and unanimously approved by all members present.

A. DFA Office of Personal Service Contract Review (OPSCR)

1. Requesting Agency: Mississippi Department of Employment Security

Supplier: Professional Staffing Group, Inc.

Contract #: 8200048895

Term: 01/01/2020 – 12/31/2023

Total Value: \$10,000,000.00

New

\$10,000,000.00

Summary of Request: The term of the contract will be four years with one optional one-year renewal. The Contractor will provide temporary workers on an as-needed basis to all agency locations throughout the State. The Contractor will be paid a 20 percent markup on the hourly rate(s). The Contractor was selected through an IFB with twenty (20) respondents, of which three (3) were deemed non-responsive and rejected. One (1) post-award vendor debriefing was requested and held on November 4, 2019 with Staffers, Inc. The Agency requests an exception to PPRB OPSCR Rules and Regulations Section 3-202.12.4.1 for failure to obtain corrected documents from all vendors. As documents submitted contained minor informalities or mistakes in losing bids with little or no effect on price, quantity, quality, delivery, or contractual conditions, this exception does not affect competition, fairness or transparency. There were no minor informalities waived for Professional Staffing Group. The minor informalities included vendors who failed to adequately execute the certifications and assurances section of the bid form and one vendor who clarified their bid amount.

As one (1) protest was received by the Agency on November 7, 2019 from the incumbent contractor, TempStaff, Inc., the award of the contract was stayed pending resolution of the Protest Appeal. The Agency issued its Protest Decision in support of awarding the contract to Professional Staffing Group, Inc. on November 13, 2019. The protesting vendor filed an Appeal to the PPRB on November 20, 2019 protesting the agency's decision to uphold the award. A hearing on the Protest Appeal was held December 11, 2019, and the PPRB upheld the agency Protest Decision.

Several concerns remain regarding this procurement, OPSCR requested the agency respond to these questions during the meeting to complete their review.

1. How did you determine whether a vendor had "a track record of meeting performance expectations," without reviewing references?

Mr. Lynch responded that the solicitation did not require references be submitted or reviewed. The vendor did include in its bid information regarding experience with Butler Snow, Nissan and UMMC. The agency determined the information was sufficient to determine the vendor had a track record of meeting expectations of large organizations in comparable size to MDES.

2. Based on the requirements in Section 4.1.2 of the solicitation to be responsive, please provide an explanation of how you determined Professional Staffing Group was responsive without the information requested in number 7 of Attachment A.

Mr. Lynch responded that he subjectively inferred from the vendor's response that they had been serving the listed organizations for the last two years. Mr. Lynch subsequently added that during the follow-up transition meeting, the agency verified the vendor had three years of experience.

Ms. Wray requested that going forward the agency implement a formal process or form to ensure sufficient details are included in response to the solicitation to allow objective determinations regarding the vendor's ability to meet the solicitation requirements.

3. Do you have any documentation regarding the changeover in ownership from Jane Waugh to Brenda Barron or any other documents that show the company was recently bought and sold?

Mr. Lynch responded that he verified the vendor's license through the Secretary of State's Business Search system using the name, "PSG" and not "Professional Staffing Group", but did not obtain official documents regarding the transaction between Jane Waugh and Brenda Barron.

Staff Recommendation: Based on the additional information provided by the agency and the exception requested in this meeting, this request has been reviewed for compliance by OPSCR staff and upon granting of the requested exceptions, will comply with PPRB OPSCR Rules and Regulations and all legal requirements. OPSCR recommends granting exceptions and approval of the contract as requested contingent upon verification of ownership of Professional Staffing Group.

Projected Budget for Life of the Contract: \$12,500,000.00

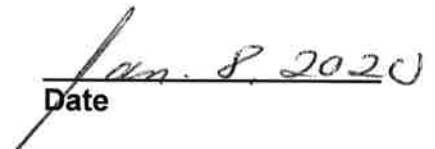
Action: A motion was made by Mr. Belk to approve the staff recommendation as presented. The motion was seconded by Mr. Morehead and unanimously approved by all members present.

VII. Adjournment

Action: A motion was made by Mr. Morehead to adjourn. The motion was seconded by Mr. Belk and unanimously approved by all members present.

The members approved these Minutes of the Public Procurement Review Board on the 8th of January, 2020.


Rita Wray, Chair


Date



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT
DEPARTMENT OF FINANCE AND ADMINISTRATION
LAURA D. JACKSON
EXECUTIVE DIRECTOR

NOTICE

A Special Meeting of the

PUBLIC PROCUREMENT REVIEW BOARD

will be held Wednesday, December 11, 2019
9:00 a.m. in the
1st Floor MDA Entrepreneur Center
Woolfolk State Office Building



SPECIAL MEETING AGENDA
Wednesday, December 11, 2019
9:00 a.m.

- I. **Call to Order**
- II. **Approval of per diem and expenses for the December 11, 2019 meeting and for any additional expenses incurred prior to the January 8, 2020 meeting**
- III. **Introduction of Guests**
- IV. **Presentation of Protest Arguments**
 - A. **TempStaff, Inc.**
 - B. **Mississippi Department of Employment Security**
 - C. **Professional Staffing Group**
 - D. **TempStaff, Inc. Rebuttal (if reserved)**
- V. **Executive Session**
- VI. **Other Business**
 - A. **DFA Office of Personal Service Contract Review (OPSCR)**
 - **Consideration of Contracts for Board Action**
 - 1. **Requesting Agency:** Mississippi Department of Employment Security
Supplier: Professional Staffing Group, Inc.
Contract #: 8200048895
Term: 01/01/2020 – 12/31/2023
Total Value: \$10,000,000.00 **New**
\$10,000,000.00
Summary of Request: The term of the contract will be four years with one optional one-year renewal. The Contractor will provide temporary workers on an as-needed basis to all agency locations throughout the State. The Contractor will be paid a 20 percent markup on the hourly rate(s). The Contractor was selected through an IFB with twenty (20) respondents, of which three (3) were deemed non-responsive and rejected. One (1) post-award vendor debriefing was requested and held on November 4, 2019 with Staffers, Inc. The Agency requests an exception to PPRB OPSCR Rules and Regulations Section 3-202.12.4.1 for failure to obtain

corrected documents from all vendors. As documents submitted contained minor informalities or mistakes in losing bids with little or no effect on price, quantity, quality, delivery, or contractual conditions, this exception does not affect competition, fairness or transparency.

As one (1) protest was received by the Agency on November 7, 2019 from the incumbent contractor, TempStaff, Inc., the award of the contract was stayed pending resolution of the Protest Appeal. The Agency issued its Protest Decision in support of awarding the contract to Professional Staffing Group, Inc. on November 13, 2019. The protesting vendor, filed an Appeal to the PPRB on November 20, 2019 protesting the agency's decision to uphold the award. A hearing on the Protest Appeal was held December 11, 2019, and the PPRB upheld the agency Protest Decision.

Several concerns remain regarding this procurement, OPSCR requested the agency respond to these questions to complete their review.

1. How did you determine whether a vendor had "a track record of meeting performance expectations," without reviewing references?
2. Based on the requirements in Section 4.1.2 of the solicitation to be responsive, please provide an explanation of how you determined Professional Staffing Group was responsive without the information requested in number 7 of Attachment A.
3. Do you have any documentation regarding the changeover in ownership from Jane Waugh to Brenda Barron or any other documents that show the company was recently bought and sold?

Staff Recommendation: Based on the information provided and the exception requested in this meeting, this request has been reviewed for compliance by OPSCR staff and upon granting of the requested exceptions, will comply with PPRB OPSCR Rules and Regulations and all legal requirements. OPSCR recommends granting exceptions and approval of the contract as requested.

Projected Budget for Life of the Contract: \$12,500,000.00

VII. Adjournment

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8. Professional Staffing Group Response to Protest – dated December 9, 2019



November 7, 2019

MDES Procurement Department
1235 Echelon Parkway
Jackson, MS 39213

RE: RFX No. 3160003190
Smart No. 1671-20-R-IFBD-0001

TempStaff would like to formally protest the awarding of MDES IFB 19-02 to Professional Staffing Group based on the facts provided below. It is our professional opinion that Professional Staffing Group, 22nd Century Technologies, Inc., and Staffers, Inc. do not meet the Minimum Qualifications to be Deemed Responsive (section 4.1.2), and therefore cannot adequately meet the service expectations of the Mississippi Department of Employment Security.

- **Licensed to conduct business in the State of Mississippi**

- 22nd Century Technologies (also known as 22nd Century Staffing) is headquartered in Virginia according to their website and do not have a physical presence in Mississippi. Based on a search of the MS Secretary of State website, 22nd Century Technologies utilizes Mississippi Registered Agent, LLC in Ridgeland, MS to satisfy the requirement to be licensed in Mississippi, which can be processed for just \$49.

- **Three or more years of experience delivering temporary services to large organizations**

Although billing amounts were requested as part of the IFB, average employee counts over a specified period of time are a better indication of services that have been provided. A review of each company's UI-2 Quarterly Contribution Report will provide a precise employee count to compare each vendor company's employee volume in Mississippi.

- TempStaff has extensive experience providing staffing services to large organizations throughout our 40-year history. Along with our proven track record with MDES, TempStaff has also provided large-volume staffing services to MS Division of Medicaid, Saks Incorporated, Milwaukee Tool, Lanter Delivery Systems, Wallenius Wilhelmsen Solutions, Scotts Miracle-Gro (closed), and Reckitt Benckiser (closed). Employee numbers for these clients range from 50 to over 200 at peak activity levels and often include an on-site TempStaff representative working with the client company.

In 2005, TempStaff partnered with MDES to provide statewide assistance with the National Emergency Grant, resulting in over \$52 million in billing for the entire length of the disaster period. This included recruiting, processing, supervising, and payroll of

several thousand Mississippians. In addition, TempStaff was able to immediately staff a call center with over 150 people at MDES. Since then, TempStaff has provided NEG assistance throughout the state for various natural disasters. No other staffing company in Mississippi has the resources to provide immediate results for emergency situations.

Our staff of over 25 professionals currently manage an active applicant database of over 1,200 Mississippians. With physical offices in Jackson, Canton and McComb, our team can easily service all areas of the state. TempStaff has processed over 26,250 checks/direct deposits this year and are on track to issue nearly 2,500 W-2s for 2019. 70% of our staff has been with us for at least 5 years and 40% have been employed by TempStaff for over 10 years.

- Professional Staffing Group currently has five people on staff according to their website. Of those, three have been with the company less than one year. They have a single location in Jackson, MS. Based on our market knowledge, they have one large account that currently employs less than 12 light industrial employees. Since their inception, they have specialized in clerical, legal, and professional fields with a focus on direct hire placements. Within the past few years, they have ventured into the light industrial arena that lends itself to larger accounts.
- Staffers has approximately 4 people on staff who specialize in administrative placements in the Hinds, Madison and Rankin County areas. Based on our market knowledge, they do not staff for any large accounts on a routine basis.

There are many challenges in today's business environment that require knowledge and expertise to maintain low overhead and avoid costly litigation. These include:

- **Adequate financial resources.** Does Professional Staffing Group and Staffers have the required financial resources available to add approximately 60 people to their payroll or significantly more for an emergency situation? TempStaff has a long standing relationship with a local financial institution that allows us the flexibility to easily accommodate the needs of our clients and add large clients to our growing list of customers. We are happy to provide more detailed information upon request.
- **Affordable Care Act.** Does Professional Staffing Group and Staffers currently offer an ACA compliant health care program to their temporary employees? The ACA employer mandate demands employers with 50 or more full-time employees and/or full-time equivalents to offer health insurance that meets multiple affordability and coverage requirements. TempStaff currently offers an ACA compliant plan to all employees, of which 22 employees assigned to MDES are currently enrolled.
- **Employee Benefits.** TempStaff offers 6 paid holidays to all temporary employees at no cost to the client company once the employee works 1,500 consecutive hours. This equated to \$21,282 in benefits in 2018 and an estimated \$18,300 in 2019 for employees assigned to MDES.
- **Adequate business insurance coverage.** Do all vendors have the necessary Worker's Compensation and Business Liability coverage to adequately protect the employee, MDES, and

themselves? TempStaff is part of an elite, staffing specific, self-insured Worker's Compensation Insurance Captive that provides a host of resources and coverages for our employees and clients. TempStaff has a dedicated Risk & Safety Manager that has managed several work related injuries that were incurred by employees assigned to MDES. Our current Certificate of Insurance detailing all insurance coverages is on file with MDES.

After nearly thirty years of partnership with the Mississippi Department of Employment Security and the staff across the state, TempStaff is fully ingrained in the culture and operations of MDES. The value of this knowledge is invaluable and cannot be easily quantified on paper.

We request a second review of the bid's submitted in response to IFB 19-02. With further due diligence and comparison of capabilities, we believe MDES will come to a factual conclusion that TempStaff meets the criteria as the lowest, responsive, and responsible bidder who is best equipped to serve the needs of MDES.

Thank you for your consideration.

Carolyn Boteler
President



Mississippi Department of Employment Security

Phil Bryant
Governor

Jacqueline A. Turner
Executive Director

November 13, 2019

Ms. Carolyn Boteler
Tempstaff, Inc.
962 North Street
Jackson, MS 39202

Re: Protest of Award MDES IFB 19-02

Dear Carolyn:

The Mississippi Department of Employment Security (MDES) presents the following response regarding Tempstaff's protest of award:

Requirement #1: Licensed to conduct business in the State of Mississippi

Narrative from Protesting Vendor: 22nd Century Technologies (also known as 22nd Staffing) is headquartered in Virginia according to their website and do (sic) not have a physical presence in Mississippi.

MDES Response: The bidder presented a valid license to conduct business in the State of Mississippi meeting the requirement of the bid. The bidder also has a physical location in the state of Mississippi.

Requirement #2: Three (3) or more years of experience delivering temporary services to large organization

Narrative from Protesting Vendor: Professional Staffing Group currently has five people on staff according to their website. Of those, three have been with the company less than one year. They have a single location in Jackson, MS. Based on our market knowledge, they have one large account that currently employs less than 12 light industrial employees. Since their inception, they have specialized in clerical, legal, and professional fields with a focus on direct hire placements. Within the past few years, they have ventured into the light industrial arena that lends itself to larger accounts.

Helping Mississippians Get Jobs

Henry J. Kirksey Building • 1235 Echelon Parkway • Jackson, Mississippi 39213
Post Office Box 1699 • Jackson, Mississippi 39215-1699 • (601) 321-6000

MDES is an Equal Employment Opportunity Employer

Staffers has approximately 4 people on staff who specialize in administrative placements in the Hinds, Madison and Rankin County areas. Based on our market knowledge, they do not staff for any large accounts on a routine basis.

MDES Response: MDES appreciates the insight provided by Tempstaff; however, merit cannot be granted based upon another vendor's market knowledge. Each of the aforementioned bidders supplied sufficient information meeting the bid requirements to adequately deliver temporary services to a large organization.

Protest Decision

MDES maintains the award was made in strict accordance with the bid requirements. Tempstaff's bid was deemed both responsible and responsive; however, it was not the lowest bid submitted in response to the solicitation thus placing it fourth (4th) among all responses.

22nd Century Staffing, Professional Staffing Group, and Staffers were all deemed to be both responsive and responsible meeting all aspects of the bid requirements.

This decision may be appealed to the Public Procurement Review Board within seven (7) calendar days.

Sincerely,



Danny Lynch
MDES Procurement

BRUNINI
ATTORNEYS AT LAW

William Trey Jones, III

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190 East Capitol Street
Jackson, Mississippi 39201
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Post Office Drawer 119
Jackson, Mississippi 39205
Facsimile: 601.960.6902

November 20, 2019

Ms. Catoria Parker Martin
Director, Office of Personal Services Contract Review
Mississippi Department of Finance & Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

via Hand Delivery

Ms. Rita Wray
Chair, Public Procurement Review Board
Mississippi Department of Finance & Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

via Hand Delivery

**RE: Mississippi Department of Employment Security's Invitation for Bids for
Temporary Staffing Services (IFB No. 2019-02)**

Dear Ms. Martin and Ms. Wray:

Our firm represents TempStaff, Inc. ("TempStaff"). Pursuant to Mississippi law and regulations, the Rules and Regulations of the Mississippi Public Procurement Review Board ("PPRB"), the Mississippi Department of Finance & Administration's ("DFA") procurement manual, and the terms of Invitation for Bid No. 2019-02 (the "IFB"), TempStaff hereby protests the Mississippi Department of Employment Security's ("MDES") award of the Temporary Staffing Services contract to Professional Staffing Group. The procurement process and the evaluation by MDES were seriously flawed. The temporary staffing services should have been procured through a request for proposals, as has been the practice of MDES and other State agencies contracting for such services, rather than through an invitation for bids. Because that process was not followed, MDES has awarded the contract to a company that is not qualified even under the terms of the IFB. TempStaff requests that the proposed award be overturned, that MDES conduct a new procurement process via a request for proposals, and that this matter be removed from the Board's agenda for its December meeting. Alternatively, TempStaff asks to be heard at that December meeting and asks that the Board reject the contract following the meeting. Finally, in the event the Board is not inclined to reject the contract now or at the conclusion of the meeting, TempStaff requests that the meeting be recessed and the matter tabled in order to permit TempStaff to obtain the bids of the other vendors and present this matter at a subsequent date.

I. Background

For nearly thirty years, TempStaff has provided temporary staffing services for MDES, including services for the MDES State Office Headquarters in Jackson, all WIN Job Centers statewide, and MDES's Jackson and Hattiesburg Call Centers. These services are intended to supplement MDES staff during times of increased workload. MDES utilizes individuals with

varying skills, responsibilities, length of work assignments, and rates of pay. The assignments primarily involve filing and general office duties, administrative assistant/secretarial duties, employment interviewers, computer operations, data entry, and basic accounting. Some positions require an associate degree or equivalent, and the Agency may require some positions to travel.

In 2014, MDES issued Request for Proposals No. 14-01 for Temporary Staffing Services. *See* Ex. 1, RFP 14-01. TempStaff was awarded that contract, which is currently set to end on January 1, 2020.

On September 27, 2019, MDES issued Invitation for Bid No. 2019-02 for Temporary Staffing Services. *See* Ex. 2, IFB 19-02. The IFB stated, in part: "Compensation for services will be in the form of a fixed price agreement based on a percentage mark-up over hourly rates established by MDES." *Id.* at §1.7 (emphasis in original). It further stated that "MDES will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the [PPRB], if necessary." *Id.*

The "Minimum Qualifications to be Deemed Responsive" were to:

- Be licensed to conduct business in the State of Mississippi;
- Have at least three (3) or more years of successful experience in providing temporary service employees;
- Have experience in delivering these services to a large organization similar in size to the MDES; and
- Have a track record of meeting performance expectations.

Ex. 2, IFB 19-02 at §4.1.2. Bidders were required to "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 MDES." *Id.* at §4.1.6.

Bid packages were required to contain: a Bid Cover Sheet (Attachment A to the IFB); a Bid Form (Attachment B to the IFB); and Certifications and Assurances (Attachment C to the IFB).¹ Ex. 2, IFB 19-02 at §4.1.5. Attachment A asked for basic information about each bidder, including information concerning how many years the company has been performing the temporary staffing services, how a company not physically located in the region would supply the services to agencies in the region, how many customers the company has provided the services to in the past two years (and related billing information), and the company's largest customer in the last two years. *Id.* at Attachment A. Attachment B, the bid form, included a spot for the bidder to fill in the percentage markup over the hourly rate as set by MDES. *Id.* at Attachment B. And Attachment C sought certifications and assurances regarding contingent fees, gratuities, and independent price determination. *Id.* at Attachment C.

The bid submission deadline was October 30, 2019, and the bids were opened at 1:00 p.m. Ex. 2, IFB 19-02 at 1. At 10:10 a.m. on October 31, 2019, one day after bids were submitted, MDES announced its intent to award the contract to Professional Staffing Group. *See*

¹ TempStaff submitted additional documents, such as its WBENC certification and key personnel resumes.

Ex. 3, Public Notice of Award at 1-2. The Award Letter included the following information regarding the top vendors' bid amount/percentage markup:

Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc.	22%

Under the terms of the IFB, any bidder aggrieved in connection with the solicitation or the outcome of the IFB was permitted to file a protest with MDES on or before November 7, 2019. Ex. 2, IFB 19-02 at §5.2. TempStaff submitted a timely protest, which is attached hereto and incorporated herein by reference. Ex. 4, 11/7/19 Protest Letter.

On November 13, 2019, MDES responded, stating that it "maintains the award was made in strict accordance with the bid requirements." Ex. 5, 11/13/19 MDES Response. The letter stated that MDES's decision may be appealed to the PPRB within seven calendar days, hence the timely filing of this protest. *Id.*

II. Arguments and Authorities

A. The PPRB and its Rules and Regulations

The PPRB approves personal and professional service contracts involving the expenditure of funds in excess of seventy-five thousand dollars (\$75,000.00) and provides assistance to agencies regarding such procurements. *See* PPRB Rule 2-103(b). The Office of Personal Services Contract Review ("OPSCR") provides all administrative support to the PPRB in relation to personal and professional services. The PPRB OPSCR Rules and Regulations set forth rules and regulations, along with other pertinent information, that agencies should follow in the procurement of personal and professional services. *See* Rule 1-101.01.

Rule 3-203.02.01 states that a request for proposals "should" be used if competitive sealed bidding (i.e. an invitation for bids) is not practicable and advantageous:

If competitive sealed bidding is not practicable, competitive sealed proposals or qualifications should be used. If competitive sealed bidding is practicable, it must then be determined whether competitive sealed bidding is advantageous. If competitive sealed bidding is determined not to be advantageous, competitive sealed proposals or qualifications should be used.

Rule 3-203.02.01 (emphasis added).

The terms "practicable" and "advantageous" are to be given ordinary dictionary meanings, with "practicable" denoting "what may be accomplished or put into practical application," and "advantageous" denoting "a judgmental assessment of what is in the state's best interest." Rule 3-201.05 (emphasis added).

Under Rule 3-201.05, the following factors shall be considered when determining advantageousness:

- 1) The need for flexibility;
- 2) The type of evaluations that will be needed after offers are received;
- 3) Whether the evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise;
- 4) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;
- 5) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and
- 6) Whether prior procurements indicate that a Request for Proposals may result in more beneficial contracts for the state.

Id. (emphasis added).

And the following factors shall be considered when determining practicability:

- 1) Whether the contract needs to be a contract other than a fixed-price type contract;
- 2) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- 3) Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- 4) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and
- 5) Whether the primary consideration in determining award may not be price.

Id. (emphasis added).

“Another consideration concerns the type of evaluations needed after offers are received.” Rule 3-203.03.1.1. “Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise” and “[w]here the types of services to be performed may require the use of comparative judgmental evaluations to evaluate them adequately[,]” use of competitive sealed proposals is an appropriate procurement method. *Id.*

As discussed in greater detail below, this procurement should have been done through the request for proposals process, not through an invitation for bids.

B. The temporary staffing services contract should have been procured through a request for proposals, not an invitation for bids.

1. MDES's 2014 contract procurement for the same services sought sealed competitive proposals.

As noted above, in 2014, MDES issued Request for Proposals No. 14-01 for Temporary Staffing Services. *See* Ex. 1, RFP 14-01. RFP 14-01 included some language that was used in IFB 19-02, but there are substantial substantive differences that demonstrate the inadequacy of the IFB process employed by MDES here. Though the IFB borrowed heavily from the RFP, it dropped the pages upon pages of requests by MDES for detailed information from the vendors and dropped the RFP's rating criteria that identified a vendor's capability and resources, experience and plan, and financial standing as being more important than the percentage markup.

In the 2014 procurement, MDES sought sealed proposals to establish a contract for the services at the Agency's facilities. Ex. 1, RFP 14-01 at §XII. The compensation for services was described the same way as it is in the new IFB, as were the requirements for qualified bidders. *Id.* at §XIX. However, the proposal and award rules and scoring and selection processes were extremely different. *Id.* at §§XX, XXI. For instance, under RFP 14-01 MDES reserved the right to request information relative to references and to make on-site visits to a proposer's place of business for examination of program capabilities (including inspection of facilities, review of the accounting system, and interviews with staff and trainees). *Id.* at §XX.H. Also, the technical proposal section of Attachment A required, in addition to the percentage mark-up:

- Detailed references and information from five of the vendor's largest Mississippi clients, stating, in part, "Client size will be a critical factor in determining if a company has the ability to perform in a situation similar to MDES," *id.* at 22;
- The vendor's plan to address the services required by MDES, including how it proposed to administer and manage MDES's placement, payroll, etc., how it proposed to manage high-volume timekeeping, how it proposed to administer performance reviews to track skill alignment and fulfillment of need by the Agency, how it proposed to transition from the current contract to the new contract, and how it proposed to meet the Agency's demands, *id.* at 23;
- Specific information regarding the vendor's experience, *id.*;
- Resumes for all key personnel, including names, educational background, years of experience, and employment history, particularly as it related to temporary staffing services, *id.* at 22-23; and
- A comparative audit, which would include data the previous two years, audits for the past two years if a comparative audit was not available, or end of year financial statements for the last two years if an audit had not occurred, *id.* at 23.

Id. at Attachment A.

Finally, the proposal rating criteria was set out as follows:

The award will be made to the best proposal. The criteria and the level of importance associated with each criterion are listed. The criteria for selecting the best proposal are the following:

1. Vendor's capability and resources available to support and provide the required service as exhibited by their references from other companies serviced within [the] past two (2) years and other documentation related to vendor's capabilities. **(Critical)**
2. Vendor's experience and plan to provide the required services as evidenced by completion of the technical proposal and submissions of resumes of the key personnel **(Very important)**
3. Vendor's financial standing as indicated by their most recent audits/financial statements and other financial documentation. **(Very important)**
4. Percentage markup over hourly rate as set by the Agency. **(Important)**

Ex. 1, RFP 14-01 at §XXI.C (bold in original; underlines added). The percentage markup was the least important criteria. *Id.* The proposals were to be evaluated and scored by a review board "according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in this RFP." *Id.* After several weeks of review of the proposals, MDES awarded the contract to TempStaff.

There can be no doubt that under Rule 3-201.05, this prior procurement indicates that a request for proposals would result in more a more beneficial/advantageous contract for the State.

2. The Mississippi Department of Revenue's 2019 procurement for temporary staffing services began as an invitation to bid, but was correctly changed to a request for sealed proposals.

Another clear example of why this procurement should have been done through a request for proposals instead of an invitation for bids is that just this year, the Mississippi Department of Revenue ("MDOR") procured the same services and determined it was more appropriate to use a request for proposals. On April 4, 2019, MDOR issued an invitation to bid for temporary staffing (IFB No. 3160002866). *See* Ex. 6, MDOR IFB. MDOR proposed to contract with a qualified agency to procure temporary staffing for its Clinton office and the Alcohol Beverage Control ("ABC") Distribution Center in Gluckstadt. *Id.* at §1.0. The IFB required information regarding each bidder's qualifications, references, business longevity, and insurance, as well as registration with the Mississippi Secretary of State. *Id.* at §§4.1-4.5 and Attachment D. The Bid Form included a line for percent mark-up. *Id.* at Amendment #1. Just like MDES's IFB here, this prior MDOR IFB stated that contracts and purchases would be made or entered into with the lowest, responsible and responsive bidder meeting specifications. *Id.* at §5.7. Factors to be considered in determining the lowest, responsible bidder included: price, conformity, responsibility of the bidder, the bidder's ability to deliver as per specifications, and reference responses, if any. *Id.*

On July 18, 2019, MDOR rightly changed course and issued a request for proposals for the services instead (RFP Number 3120001761). *See* Ex. 7, MDOR RFP. According to an email from MDOR's Chief of Procurement, "The DOR believes that the RFP process is more advantageous" *See* Ex. 8, MDOR Email (emphasis added).

The RFP stated, in part: "[MDOR] hereby solicits separate proposals using the competitive sealed proposal process. This process will allow us to assess prospective proposers on capability as well as price to establish a contract with a qualified agency to procure temporary clerical staffing for our Clinton location and a contract for temporary warehouse staffing at our [ABC] Distribution Center located in Gluckstadt." Ex. 7, MDOR RFP at §1.0 (emphasis added).

The proposal evaluation process was described as follows:

An evaluation committee will review and assess all responsive proposals submitted. ... The awards will be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth below. The factors and the level of importance associated with each factor are listed. The factor[s] for selecting the best proposal are the following:

- A. The overall quality of the proposed plan (the plan should reflect an understanding of the project and its objectives) and the ability to perform the services as reflected by the completion of the technical proposal and submission of resumes of the key personnel. Consideration will be given to the completeness of the responses to the specific requirements of the solicitation **(20 points, or 20%)**;
- B. The personnel, equipment, facilities and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting **(20 points, or 20%)**;
- C. A record of past performance of similar work as exhibited by references from other companies serviced within the past two (2) years and other documentation related to vendor's capabilities **(25 points, or 25%)**; and
- D. Price **(35 points, or 35%)**.

The score will be based on a 100-point scale, with each factor having the percentage of the total 100 points available as listed. The total score will be determined according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in this RFP. Prospective contractors must furnish, upon request of DOR, satisfactory evidence of their ability to provide services in accordance with the terms and conditions in Appendix A. ...

See Ex. 7, MDOR RFP at §7.10 (bold in original; underlines added). An evaluation committee was to review and score each responsive proposer using this criteria. *Id.* at §7.11.

3. MDES's IFB procurement process was inappropriate here given the nature of the contract.

The deficiencies in the IFB process at issue here are made clear by the information MDES did not seek, obtain, or review before awarding the contract. MDES did not require each vendor to provide a technical proposal or its plan to address the services required by MDES, including how it proposed to administer and manage MDES's placement, payroll, etc., how it proposed to manage high-volume timekeeping, how it proposed to administer performance reviews to track skill alignment and fulfillment of need by the Agency, or how it proposed to meet the Agency's demands. MDES did not require each vendor to provide detailed references and information regarding its largest clients. MDES did not require each vendor to provide specific information regarding its experience. MDES did not require each vendor to provide resumes for all key personnel, including names, educational background, years of experience, and employment history, particularly as it related to temporary staffing services. MDES did not require each vendor to provide detailed financial information. And even for the information MDES did request, MDES did not require any documentary support or proof. Given the fact that the contract was awarded one day after the bids were submitted, there are serious questions as to whether there was even time for the representations of the vendor's to be vetted. MDES's process here is contrary to what MDES has historically done and contrary to what MDOR is continuing to do for the same services.

Competitive sealed bidding was not practicable or advantageous here, and, therefore, competitive sealed proposals should have been used. *See* Rule 3-203.02.01. Rule 3-201.05 expressly states that one of the factors that "shall" be considered when determining advantageousness is "[w]hether prior procurements indicate that a Request for Proposals may result in more beneficial contracts for the state." As discussed above, that is the history here, with MDES and MDOR using the competitive sealed proposals process in procuring these exact services. The evaluation factors for the contract should involve the relative abilities of the offerors to perform, including degrees of technical or professional experience or expertise. Moreover, regarding practicability, state agencies procuring these services have determined that the award may need to be based upon a comparative evaluation of price factors as well as quality factors that include technical and performance capability and the content of technical proposals, and they have also determined that the primary consideration in determining the award may not be price. In fact, in MDES's previous RFP for these services, price was identified as the least important factor in the evaluation and scoring of proposals. Ex. 1, RFP 14-01 at §XXI.C

For all of these reasons, MDES's procurement process was inappropriate under the PPRB OPSCR Rules and Regulations, and the procurement should begin anew. The impending expiration of the existing contract and the timing of MDES's procurement efforts do not excuse a violation of the public procurement laws. The procurement process should be done in such a way that MDES selects the proposal that is the most advantageous to the State. For the exact same reasons that MDES used an RFP in 2014 and for the same reasons MDOR correctly found that RFPs are more advantageous for these types of contracts, it is clearly inappropriate here.

C. The companies with lower bids are not qualified.

Even if it is found that this procurement process could properly be done through an IFB, which it cannot, the contract should still be rejected because the requirements of the IFB were not met. There are serious questions concerning whether the vendors who finished ahead of TempStaff are actually qualified as required by the IFB. According to its website, Professional Staffing Group currently has five people on staff (<https://www.prostaffgroup.com/>). Of those, three have been with the company less than one year (<https://www.prostaffgroup.com/about-us/meet-our-team/>). They have a single location in Flowood, Mississippi. Based on information and belief, and without access to the bid documents, it is TempStaff's understanding that Professional Staffing Group has one large account that currently employs less than twelve light industrial employees. Per information obtained from LinkedIn, Staffers, Inc. has approximately four people on staff who specialize in administrative placements in Hinds, Madison and Rankin County. Based on information and belief, and without access to the bid documents, it is TempStaff's understanding that Staffers, Inc. does not staff for any large accounts on a routine basis. As to 22nd Century Technologies, Inc., the company is headquartered in Virginia, and its physical presence in Mississippi and its ability to perform the services is highly questionable. Its website does not identify any location in Mississippi (<https://www.tscti.com/>).

Because it has access to each party's bid submissions, the Board is currently in a better position than TempStaff to question and review this information. TempStaff requests that the Board review the bids, which TempStaff believes will demonstrate these companies are unqualified even under the highly relaxed criteria under the IFB. TempStaff reserves the right to supplement its protest should additional information become available.

The fact MDES has awarded this contract to a company that is not qualified demonstrates perfectly why this whole process is flawed and should have been done through an RFP.

III. Conclusion

In compliance with the terms of the IFB, this protest is submitted within seven calendar days after notice that MDES maintained its award to Professional Staffing Group. TempStaff's protest is based on Mississippi law and regulations, the PPRB's Rules and Regulations, the DFA's Contract Procurement Policy, the terms of the IFB, and the documents regarding previous RFPs for these services. MDES's procurement process for this contract, including its decision to change course and use an IFB instead of an RFP, its failure to seek or consider information vital to the successful performance of the services, and its conclusion that Professional Staffing Group, 22nd Century Technologies, Inc. and Staffers, Inc. are qualified, can only be characterized as arbitrary and capricious.

TempStaff respectfully asks that the proposed award of the contract be overturned, that MDES conduct a new procurement process using an RFP, and that this matter be removed from the agenda for the Board's December meeting. In the alternative, TempStaff requests that it be

heard at that December meeting and that the Board reject the contract following the meeting. If the Board is not inclined to reject the contract now or following the meeting, TempStaff asks that the matter be tabled to give TempStaff an opportunity to obtain the other vendors' bids and present this matter at a later date.

TempStaff has not had sufficient time to request all documents necessary for a full review of the proposed award. TempStaff reserves its legal right to amend this protest to timely add and include any and all issues as may be raised or made evident from the documents and materials to be provided to TempStaff relevant to the procurement process. TempStaff specifically reserves all protests as may be revealed by documents to be provided regarding any and all issues or grounds upon which a protest may be raised under law, regulation or practice.

Thank you again for your consideration of this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



William Trey Jones, III

WEJ:pa

Enclosures

cc: Jacqueline A. Turner, MDES Executive Director
Danny Lynch, MDES Procurement
Mississippi Department of Employment Security
Office of the Governor
1235 Echelon Parkway
P.O. Box 1699
Jackson, MS 39215-1699

Laura Jackson, DFA Executive Director
Mississippi Department of Finance and Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201



MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY
OFFICE OF THE GOVERNOR
MARK HENRY
EXECUTIVE DIRECTOR

REQUEST FOR PROPOSALS
No. 14-01
For the selection of a service provider for

Temporary Staffing Services

Proposals are due:

BY: 2:00 P.M., CDST
ON: OCTOBER 29, 2014
TO: Danny Lynch, Chief
Procurement
AT: Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, Mississippi 39213

Please address questions:

TO: Danny Lynch, Chief
Procurement
AT: Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, Mississippi 39213
EMAIL: bids@mdes.ms.gov

Equal Opportunity Employer/Program
Auxiliary aids and services available upon request
to individuals with disabilities: TDD/TTY 601-321-6056

1235 ECHELON PARKWAY • JACKSON, MISSISSIPPI 39213
TELEPHONE: (601) 321-6000 • 1.888.844.3577 • www.mdes.ms.gov

EXHIBIT
1

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REQUEST FOR PROPOSALS
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Attachment A – Proposal Package

Attachment B - General Contract Terms

Temporary Staffing Services Request for Proposals

XII. Services & Prices

The Mississippi Department of Employment Security (MDES, "Agency" or "State") located in Jackson, MS, is seeking sealed proposals to establish a contract for "Temporary Staffing Services" at the Agency's facilities.

The contract to be awarded will be a fixed price agreement and will require services to be performed by one selected contractor. The contractor will designate one person who will be responsible for all activities required to fulfill the specifications of said contract. This individual shall be vested with the authority to make decisions and commitments on behalf of the contractor during performance of the contract.

XIII. Statement of Work

MDES is requesting sealed proposals to establish a contract with a provider of temporary workers to supplement MDES staff during times of increased workloads. The Agency utilizes individuals with varying skills, responsibilities, length of work assignments and rates of pay. The assignments primarily involve filing and general office duties, administrative assistant/secretarial duties, employment interviewers, computer operations, data entry, basic accounting and some industrial. Some positions will require at least an associate degree or equivalent. Additionally, the Agency may require some positions to travel. It is anticipated that these will continue to be the primary categories required. However, duties may not necessarily be limited to the categories noted. It is further anticipated that the number of individuals needed at any given time could fluctuate. Certain positions will have access to confidential and private information and MDES will require the selected contractor to perform background checks on any individual placed in these positions.

XIV. Duration

The term of the Temporary Services Contract shall be from January 1, 2015, through December 31, 2018, with an option to renew for one (1) additional twelve (12) month period provided, however, that any contract extension shall be under the same prices, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the State and the Independent Contractor. The period of performance under the initial contract term and under any extension shall be conditioned upon the receipt of funds and satisfactory performance during prior years as determined by MDES.

XV. Relationship of Parties

It is expressly understood and agreed that MDES enters into a contract with a Temporary Staffing Service based on the purchase of professional services and not based on an employer-employee relationship. For all purposes under the Contract:

A. The Temporary Staffing Service represents that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under the Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of MDES.

B. Any person employed by the Temporary Staffing Service to perform the services hereunder shall be the employee of the Temporary Staffing Service, who shall have the sole right to hire and discharge its employee. MDES may, however, direct the Temporary Staffing Service to replace any of its employees under the Contract.

C. The Temporary Staffing Service shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation, and any other withholdings that may be required.

XVI. Contract Administration

The contract awarded subsequent to this solicitation shall be administered by MDES. The selected contractor will be reimbursed for allowable costs that have been identified and approved in a contract that the selected contractor and MDES have negotiated and executed. Contractors will be required to maintain documentation necessary to support each cost. All invoices submitted by the Contractor for payment of services performed pursuant to the contract shall be submitted as follows:

Chief Fiscal Officer
Mississippi Department of Employment Security
P.O. Box 1699
Jackson, MS 39215-1699

MDES agrees to pay Contractor 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 the State within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that MDES is exempt from the payment of taxes. All payments shall be in United States currency.

The State requires the Contractor to submit invoices electronically throughout the term of the agreement. Vendor invoices shall be submitted to the state agency using the processes and procedures identified by the State. Payments by state agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically by the State. These payments shall be deposited into the bank account of the Contractor's choice. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

Acceptance by Contractor of the payment from MDES shall operate as a release of all claims against the State by the Contractor.

XVII. Responsibilities and Duties

A CONTRACTOR DUTIES

The specific responsibilities of the prospective contractor will be as follows:

- (1) Provide qualified and competent staffing within twenty-four (24) hours of the Agency's order.
- (2) Provide qualified and competent replacement staffing within twenty-four (24) hours of an Agency order.
- (3) Verify employment records of all employees with results provided to the Agency on a per request basis.
- (4) Perform background checks when required for certain positions.
- (5) Administration of appropriate skills test with results provided to the Agency on a per request basis.
- (6) Maintain accurate quality control records including the disposition of all complaints and allow inspection of said records when requested by the Agency.
- (7) Allow movement of an individual from a contractual status to an Agency position after 480 hours of employment with the Temporary Services Provider with no fee to the Agency or individual.
- (8) Provide weekly itemized invoices.
- (9) Handle disciplinary matters promptly.
- (10) Allow employees to travel within the state of Mississippi on behalf of the agency when required.
- (11) If possible and eligible for hire, retain employees hired by previous contractor until work assignments are completed.

B MDES DUTIES

The specific responsibilities of MDES will be as follows:

- (1) Provide specific information about required education, skills and hourly rate of pay, if travel is required, and if a background check is to be performed.
- (2) Provide information on the projected length of the work assignment.
- (3) Provide daily supervision of Independent Contractor's employee.
- (4) Provide a copy of all policies and procedures by which the employee is to abide.
- (5) Provide timely payment for services in accordance with Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment by the Agency within forty-five (45) days of receipt of invoice.

XVIII. Compensation for Services

Compensation for services will be in the form of a fixed price agreement based on a percentage mark-up over hourly rates established by MDES. Services are to be provided on an as needed basis.

If any contract ensues from this RFP and subsequent procurement process, it is understood and agreed between the contracting parties that the Agency shall be bound only to the extent of the funds available or which may become available for the purpose of this solicitation.

XIX. Qualified Bidders

Proposing organizations must:

- Be licensed to do business in Mississippi
- Have three or more years of successful experience in providing temporary service employees
- Have experience in delivering these services to a large organization similar in size to the MDES
- Have a track record of meeting performance expectations

XX. Proposal and Award Rules

A. Proposal Format

All proposers must use the attached fill-in-the-blanks Proposal Package (*Attachment A*). Proposals should be (1) typed and non-reduced, (2) on only one side of each page, and (3) numbered in sequence.

Unless submitted via the Mississippi Accountability System for Government Information and Collaboration (MAGIC), the proposal submission must consist of one original and four copies. The original must be signed by a person authorized to sign for the proposer's organization. Omissions, inaccurate submissions, or out-of-order responses may cause Proposer's score to be reduced substantially, and may lead to proposal rejection.

B. Acceptance of Proposal Content

MDES reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is one that does not affect the cost stated in the proposal, give one party an advantage or benefit not enjoyed by all parties, or adversely impact the interest of MDES. Waivers, when granted, shall in no way modify the RFP requirements or excuse a party from full compliance with the RFP specifications and other contract requirements if the party is awarded the contract. The contents of the proposal of a successful proposer may become contractual obligations if a contract ensues. Failure of the successful Proposer to accept these obligations may result in cancellation of the award. Precedence of contractual documents will be Contract, RFP, and Proposal (as accepted).

C. Due Date

Proposals must be received by 2:00 p.m. CDST, Wednesday, October 29, 2014.

Proposals sent through the mail must be addressed to:

Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, Mississippi 39213

Attention: Procurement
(601)-321-6134

Deposit of a proposal into the mail or delivery to a different person or address does not constitute proposal submission unless the proposal is in fact received at the foregoing address by the time stated. Hand delivery of proposals is strongly encouraged. Receipts will be issued upon request. Proposals that are hand-delivered must be submitted to the above address by the foregoing date and time. Proposals will also be accepted through the MAGIC system.

D. Rejections of Proposals

MDES reserves the right to reject any and all proposals received as a result of this RFP, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interest of MDES. This RFP is issued for information or planning purposes only. MDES does not intend to award a contract solely on the basis of any response made to this request or otherwise pay for the information solicited or obtained.

E. Changes

All awards will be based upon fund availability. MDES reserves the right to terminate or modify any part of this procurement process at any time and for any reason; to award one contract or multiple contracts; to negotiate changes; to make no awards; and to issue new and/or revised policies and clarifications at any time. If it becomes necessary to revise any part of this RFP, addenda will be provided to all entities who received the original RFP.

F. Proposal Authorship and Ownership

Use of professional writers is discouraged since the quality of the proposal is one method for evaluating the skills of the staff and the ability of the organization to operate the proposed program. All proposal writers who do not work for the proposing organization on an ongoing basis must be identified and cannot be paid proposal writing fees from current or future MDES awards.

All proposals become MDES property. Proposals will be made available for inspection only after award of contract. For this reason, proprietary material should be

clearly labeled as such. The classification of an entire proposal as proprietary or trade secret is not acceptable and may result in rejection of the proposal. Request to review proprietary information will be handled in accordance with state law and applicable procedures. All disclosures of proposal information to interested parties will be made in compliance with MDES policies and procedures established in accordance with the Mississippi Public Records Act of 1983 defined in Section 26-61-1 et seq., of the Mississippi Code and exceptions found in Section 25-61-9 and 79-23-1.

G. Conflict of Interest

All proposals must be accompanied by a statement disclosing (1) any involvement, financial or otherwise, that an employee, officer, or agent of MDES may have in the proposing organization, and (2) any involvement, financial or otherwise, that any employee, officer of any other governmental agency may have in the proposing organization.

H. On-Site Reviews and References

MDES reserves the right to request information relative to references and to make on-site visits to Proposer's place of business for examination of program capabilities. This examination may include inspection of facilities, review of the accounting system, and interviews with staff and trainees. On-site visits may be used in funding decisions.

I. Equal Opportunity and Fair Treatment Assurance

Contracts, grants, loans, purchases, and all other financial transactions are administered by MDES equally to all without regard to race, color, creed, sex, religion, national origin, disability, or age. In addition, Proposer understands that MDES 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 Proposer agrees during the term of the agreement that Proposer will strictly adhere to this policy in its employment practices and provision of services. Proposer shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

J. Common Rule

In accordance with Section .36 (e); A.110.44 (b) of the Common Rule, MDES encourages, whenever possible, the utilization of small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms.

K. Fiscal Administration

Each service provider must establish and maintain accounting and reporting systems that meet MDES and Federal requirements.

L. Audit Bonding and Insurance

Each public or non-profit organization that expends a total of five hundred thousand dollars (\$500,000.00) or more in Federal funds from all funding sources must conduct a single audit in accordance with the requirements of OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations. Any audit shall comply with applicable Federal and MDES rules, regulations, policies and procedures.

Each private-for-profit organization that expends five hundred thousand dollars (\$500,000.00) or more in Workforce Investment Act (WIA) funding within its fiscal year must conduct an organization-wide financial and compliance audit performed on that fiscal year, in accordance with generally accepted government auditing standards (GAGAS), or a program-specific audit performed in accordance with generally accepted government auditing standards (GAGAS).

Organizations that are not currently funded by MDES must submit a copy of their most recent audit.

Prior to initial disbursement of funds, MDES shall receive a statement from the contractor's insurer certifying that it has appropriate and comprehensive insurance covering any incident arising from its operation. Such insurance shall at a minimum, include the following types of insurance and coverage limits:

1. Comprehensive General Liability - \$1 million each occurrence, with MDES added as an additional insured
2. Workers Compensation
3. Employee Dishonesty Bond Insurance with third party liability coverage and with limits of \$100,000.00

Proposer understands that should the minimum amounts listed above prove to be inadequate at any point during the contract period, proposer will be required to obtain adequate insurance.

M. Pricing

The charges in the proposal must not exceed those charged by Proposer to any other individual or organization for the same or similar services.

Proposer must guarantee that prices and/or cost data have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. This neither precludes nor impedes the formation of a consortium of companies and/or agencies.

The proposer further certifies that all costs and prices are good faith best estimates as of the time the proposal is submitted.

N. Response to Inquiries

Individuals may submit questions regarding this proposal via email to bids@mdes.ms.gov until 5:00 p.m. CDST, October 20, 2014. Responses to inquiries will be posted at <http://mdes.ms.gov/information-center/about-mdes/mdes-laws-regulations/rfp-bid-notice/> by 5:00 p.m. CDST, October 22, 2014. Questions submitted after this date and time will not be considered. Only questions and answers transmitted in this manner will be considered official and valid by MDES. No negotiations, decisions, or actions shall be initiated by any vendor as a result of any verbal discussion with any State or Agency employee or contractor.

XXI. PROPOSAL SCORING AND SELECTION

A. Responsive to the RFP

This is a pass/fail criterion applied to all proposals. If the proposal is incomplete, contains inaccurate information, or fails to contain the program design required by the RFP, it may be deemed unresponsive and may not be considered for funding.

B. Pre-Award Survey

This is a discretionary criterion that may be applied. It is based upon a site review to determine whether a new proposer's facilities, equipment, staffing levels, administrative systems, and staff qualifications are adequate.

C. Proposal Rating Criteria

The award will be made to the best proposal. The criteria and the level of importance associated with each criterion are listed. The criteria for selecting the best proposal are the following:

1. Vendor's capability and resources available to support and provide the required service as exhibited by their references from other companies serviced within past two (2) years and other documentation related to vendor's capabilities. **(Critical)**
2. Vendor's experience and plan to provide the required services as evidenced by completion of the technical proposal and submission of resumes of the key personnel. **(Very important)**
3. Vendors financial standing as indicated by their most recent audits/financial statements and other financial documentation. **(Very important)**
4. Percentage markup over hourly rate as set by the Agency. **(Important)**

The score will be determined according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in

this RFP. Prospective contractors must, upon request of MDES, furnish satisfactory evidence of their ability to provide services in accordance with the terms and conditions of these requirements. MDES may obtain information about the prospective contractor's ability to meet requirements through references not provided by the proposer, or any other means available. The MDES Executive Team reserves the right to make the final determination as to the prospective contractors' ability to meet requirements, including any information the Agency may have regarding services provided to MDES previously and the entity's responsiveness to issues and concerns.

D. Negotiation Rights

MDES reserves the right to negotiate with any or all proposers concerning modification to proposals. Discussions may be conducted with proposers who submit proposals determined to be reasonably susceptible of being selected for award, but proposals may be accepted without such discussions.

E. Approval Process

A review board will evaluate and score each responsive proposer using the scoring criteria. The name of each responsive proposer that is recommended for funding will be forwarded to the MDES Executive Director for final authorization. The Personal Services Contract Review Board (PSCRB) must also approve this procurement.

F. Contracts

Funding awards will not be final until the MDES and the proposer have negotiated and executed a written contractual agreement and this agreement is approved by the Personal Services Contract Review Board. If a contract is awarded, the selected proposer will be required to comply with general provisions that will be part of the contract. These general provisions are included as Attachment B to this RFP. Any resulting contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

G. Incurring Costs

MDES assumes no liability for costs incurred in responding to this RFP or for costs incurred in anticipation of a contract.

H. Protests

If Proposer wishes to protest MDES' selection or fund allocation decision, Proposer must submit a written protest to MDES within 15 calendar days after MDES' notification of a decision. The protest will be conducted in accordance with MDES' procurement policy.

I. Representation Regarding Contingent Fees

Proposer 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 Proposer's bid or proposal.

J. Representation Regarding Gratuities

Proposer represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

K. Acknowledgment of Amendments

MDES reserves the right to issue amendments to these guidelines and RFP. If it becomes necessary to amend said guidelines and RFP, MDES will provide copies of the amendments to all persons that requested a copy of the RFP. Amendments to the RFP will be posted on the MDES website (www.mdes.ms.gov). Proposers shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the submission of their proposal, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the Mississippi Department of Employment Security by the time and at the place specified for receipt of bids.

L. Certification of Independent Price Determination

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

M. Compliance with E-Verify

If applicable, Proposer 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.* (1972, as amended). 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 Proposer agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Proposer agrees to provide a copy of each such verification. Proposer 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 Proposer 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;

(b) the loss of any license, permit, certification or other document granted to Proposer 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, Proposer would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

N. Relationship of Parties

It is expressly understood and agreed that MDES enters into a contract with a proposer based on the purchase of a service and not based on an employer-employee relationship.

O. Applicable Laws

Proposer is responsible for complying with all applicable federal, state, and local laws and regulations.

P. Governing Law

This solicitation and any resulting contract shall be governed in all respects by 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 Jackson, Hinds County, Mississippi.

Q. Availability of Funds

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

R. Stop Work Order

It is understood that the following will apply to any contract resulting from this RFP:

(1) Order to Stop Work: The procurement officer, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either: (a) cancel the stop work order; or, (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

(2) Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and, (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) Termination of Stopped Work: If a stop work order is not canceled 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.

T. Transparency

Any contract resulting from this RFP, 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.*, (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance

and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

XXII. SCHEDULE OF ACTIVITIES AND SUBMISSION

RFP Issue Date		Oct. 8, 2014
Questions to MDES by	5 P.M. CDST	Oct. 20, 2014
MDES Written Responses	5 P.M. CDST	Oct. 22, 2014
Proposal Opened	2 P.M. CDST	Oct. 29, 2014
Award Notification		Pending PSCRB approval
Contract Effective Date		Jan. 1, 2015

Unless submitted via the MAGIC system, the proposal submission must consist of one original and four (4) copies. The original must be signed by a person authorized to sign for the proposer's organization and each partner agency/entity. **All proposals must be received by the MDES no later than 2:00 p.m. CDST, Oct. 29, 2014.**

It is suggested that if a proposal is mailed to MDES, it should be posted in certified mail with a return receipt guaranteed. MDES will not be responsible for mail delays or lost mail.

Proposals should be mailed to and labeled as follows:

Proposal for Temporary Staffing Services RFP 14-01
Mississippi Department of Employment Security
Chief, Procurement & Other Services
1235 Echelon Parkway
Jackson, Mississippi 39213
SEALED PROPOSAL – DO NOT OPEN

Or delivered and labeled as follows:

Proposal for Temporary Staffing Services RFP 14-01
Mississippi Department of Employment Security
Chief, Procurement & Other Services
1235 Echelon Parkway
Jackson, Mississippi 39213
SEALED PROPOSAL – DO NOT OPEN

Unless submitted via the MAGIC system, proposals shall be submitted in sealed envelopes or packages addressed to the Department specified above. One (1) original and four (4) copies shall be submitted.

1. Witten proposals shall be submitted in sealed envelopes or packages addressed to the Department specified above.
2. One (1) original and four (4) copies shall be submitted.
3. Receipt or acceptance of a proposal does not imply commitment or obligation on the part of the State of Mississippi to fund any proposal submitted.
4. Deposit of a proposal into the mail or delivery to a different person or address does not constitute proposal submission unless the proposal is in fact received at the foregoing address by the time stated. Hand delivery of proposals is strongly encouraged. Receipts will be issued upon request. Proposals that are hand-delivered must be submitted to the above address by the foregoing date and time.
5. The parties submitting proposals are responsible for ensuring that they are delivered by the required time and assume all risks of delivery. **Proposals and modifications or corrections thereof received after the closing time specified will not be considered.** Any proposal received subsequent to the specified date and time will be returned to the prospective contractor unopened. The proposal must be signed by a company official with authorization to bind the contractor to its provisions. If submitted via MAGIC, electronic signatures are acceptable.
6. Proposals submitted any electronic means will not be accepted, unless it is submitted via the MAGIC system. Proposals submitted in writing must have the appropriate certification signatures as indicated.
7. All proposal material shall become the property of MDES.
8. Proposals will not be opened publicly. Proposals will be made available for inspection only after award of contract.
9. The proposal shall be valid for at least 60 days subsequent to the proposal opening.
10. It shall be incumbent upon all Proposers to understand the provisions of the scope of services and to obtain clarification prior to the date set for the receipt of proposals. Proposers are responsible for following up to see that any correspondence or communications are properly received.

XXIII. LIST OF ATTACHMENTS AND FORMS

The following are included as attachments to this request:

Attachment A – Proposal Package

Attachment B – General Contract Terms

Attachment A

Proposal Package

Temporary Staffing Services

Be sure to answer each question as requested below. All responses must follow the instructions provided. This Requirement is a precondition to scoring and funding any proposal.

Mississippi Department of Employment Security

MDES CONTRACT FOR TEMPORARY SERVICES			
Name/Organization:	Federal Tax ID Number:		
Contact Person:	Phone Number:		
Physical Address:			
Mailing Address (If different):			
E-Mail Address:	Fax Number:		
Checklist: The following items comprise the Proposal: <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Vendor Statement of Compliance <input type="checkbox"/> Letter of Introduction <input type="checkbox"/> Executive Summary <input type="checkbox"/> Business & Directory Information <input type="checkbox"/> References <input type="checkbox"/> Technical Approach </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Technical Experience <input type="checkbox"/> Personnel <input type="checkbox"/> Financial Information <input type="checkbox"/> Insurance <input type="checkbox"/> Cost </td> </tr> </table>		<input type="checkbox"/> Vendor Statement of Compliance <input type="checkbox"/> Letter of Introduction <input type="checkbox"/> Executive Summary <input type="checkbox"/> Business & Directory Information <input type="checkbox"/> References <input type="checkbox"/> Technical Approach	<input type="checkbox"/> Technical Experience <input type="checkbox"/> Personnel <input type="checkbox"/> Financial Information <input type="checkbox"/> Insurance <input type="checkbox"/> Cost
<input type="checkbox"/> Vendor Statement of Compliance <input type="checkbox"/> Letter of Introduction <input type="checkbox"/> Executive Summary <input type="checkbox"/> Business & Directory Information <input type="checkbox"/> References <input type="checkbox"/> Technical Approach	<input type="checkbox"/> Technical Experience <input type="checkbox"/> Personnel <input type="checkbox"/> Financial Information <input type="checkbox"/> Insurance <input type="checkbox"/> Cost		
Percentage markup over the hourly rate as set by MDES _____ %			
I hereby declare that the information provided in this proposal is accurate, valid and a full disclosure of requested information. I am fully authorized to represent the organization listed above, to act on behalf of it, and to legally bind it in a matter related to this proposal.			
Name:	Title:		
Signature:			
Date:			
For MDES Use Only			
Date Received:	Time Received:		
Received By: (Print Name)	Signature:		

**Mississippi Department of Employment Security
PROPOSAL PACKAGE**

Temporary Staffing Services Statewide
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VENDOR STATEMENT OF COMPLIANCE

Prospective Contractor's Representation Regarding Contingent Fees

The prospective contractor represents as a part of such vendor's proposal that such vendor has / has not (Circle One) retained any person or agency on a percentage, commission, brokerage, or other contingent arrangement to secure this contract.

Debarment

The prospective contractor certifies as a part of such vendor's proposal that such vendor is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contract issued by any political subdivision or agency of the State.

By submission of this proposal, I have agreed to adhere to **all conditions and requirements**, as set forth in the Mississippi Department of Employment Security's Request for Proposal. I further understand that my failure to comply with all requirements and qualifications will result in disqualification of my proposal relative to this procurement action. I have submitted appropriate documentation and completed proposal form(s) as necessary to substantiate this evaluation. If inadequate, my proposal will not meet the proposal requirements and will be evaluated as "Not Meeting Specifications."

To concur, sign below:

OFFEROR: _____ Date: _____

TECHNICAL PROPOSAL: The following documents and responses will be included in the Technical Proposal and tabbed as such in the order given below.

1. LETTER OF INTRODUCTION: An individual authorized to legally bind the Vendor must submit and sign a Letter of Introduction. The person who signs the letter will be considered the contact person for all matters pertaining to the Offer unless the Vendor designates another person in writing. The letter must include the Vendor's mailing address, e-mail address, fax number, and telephone number. The letter should include a very brief overview of what your company has to offer and why you think your company should be selected as the Vendor to provide the services relative to this RFP.

2. EXECUTIVE SUMMARY: The Vendor must prepare an Executive Summary to include a more detailed overview of the services of its offering. This will include a general description about the company, including the nature of the business, years in operation, number of employees, types of services offered and any experience in similar situations. The Vendor should include statements that demonstrate the understandings of services required as noted in Section II of the RFP, Statement of Work, and Section VI, Responsibilities and duties.

3. BUSINESS AND DIRECTORY INFORMATION: Vendor must provide the following:

- (a) Name of Business (Official Name and D/B/A)
- (b) Business Headquarters (include Address, Telephone, and Facsimile)
- (c) If a Division or Subsidiary of another organization provide the name and address of the parent
- (d) Billing Address
- (e) Name of Chief Executive Officer
- (f) Customer Contact (include Name, Title, Address, Telephone, Toll-Free Number, Facsimile, and E-mail)
- (g) Company Web Site
- (h) Type of Organization (i.e., Sole Proprietor, Corporation, Partnership, etc. —should be the same as on the Taxpayer ID form below)
- (i) Length of Time in Business
- (j) Annual Sales (for the two most recently completed Fiscal Years)
- (k) Number of Full-Time Employees (average from the two most recent Fiscal Years)
- (l) Type of and description of business
- (m) State of incorporation, state of formation, or state of organization
- (n) Identify and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the Vendor's performance under the terms of this RFP
- (o) Identify the Vendor's accounting firm
- (p) Identify your State Vendor Number
- (q) Identify your MDES Employer Registration Number

(r) Identify your Dunn & Bradstreet Number

4. REFERENCES: Vendor must provide references from established firms or government agencies, other than the procuring agency, that can attest to your experience and ability to perform the contract subject of his RFP. The list should include five (5) of its largest Mississippi clients over the past two (2) years. Client size will be a critical factor in determining if a company has the ability to perform in a situation similar to MDES. Client size is a measure of revenues paid by the client to the Vendor during the two (2) year period. The "Annual Sales Amount" should be shown for EACH of the past two (2) years. The Agency will use these references to evaluate the quality of the Vendor's past experience and ability to perform. It may affect the proposer's score in this area if MDES is unable to reach ALL references. The list should include the information noted below.

- (1) Firm/Government Agency (Name): Contact Person Name:
Address:
Phone:
E-mail Address:
Types of Supplies/Services Provided and Dates Provided/Contracted:
Annual Sales Amount: Year 1 & Year 2

- (2) Firm/Government Agency (Name): Contact Person Name:
Address:
Phone:
E-mail Address:
Types of Supplies/Services Provided and Dates Provided/Contracted:
Annual Sales Amount: Year 1 & Year 2

- (3) Firm/Government Agency (Name): Contact Person Name:
Address:
Phone:
E-mail Address:
Types of Supplies/Services Provided and Dates Provided/Contracted:
Annual Sales Amount: Year 1 & Year 2

- (4) Firm/Government Agency (Name): Contact Person Name:
Address:
Phone:
E-mail Address:
Types of Supplies/Services Provided and Dates Provided/Contracted:
Annual Sales Amount: Year 1 & Year 2

- (5) Firm/Government Agency (Name): Contact Person Name:
Address:
Phone:
E-mail Address:
Types of Supplies/Services Provided and Dates Provided/Contracted:
Annual Sales Amount: Year 1 & Year 2

5. TECHNICAL APPROACH (PLAN TO ADDRESS THE SERVICES REQUIRED BY THE AGENCY). The Vendor must address the following issues.

- 5.1 How do you propose to administer and manage our contract including placement, payroll, etc.?
- 5.2 How do you propose to manage high-volume timekeeping?
- 5.3 How do you propose to administer performance reviews with temporary workers to track skill alignment and fulfillment of need by the Agency?
- 5.4 How do you propose to work with the Agency in ensuring ongoing performance reviews for the entire contract?
- 5.5 How do you propose to transition from the current contract that is in place to your contract? (Current vendor should address from the perspective of not having the current contract)
- 5.6 How do you propose to meet the Agency's demand? Do you believe you will be ready to handle volumes associated with the Agency with minimal transition time?

6. TECHNICAL EXPERIENCE: The Vendor must provide the following information regarding its experience:

- 6.1 Provide information regarding the Vendor's organization, staffing pattern, staff qualifications, and management support that will enhance the ability of the Vendor to provide services.
- 6.2 Number of years experience with providing types of services specified in Section II of the RFP, Statement of Work, and Section VI, Responsibilities and duties.
- 6.3 Include information supporting a history of the quality of the temporary employee services the Vendor has provided.
- 6.4 Describe initiatives/programs/benefits that will minimize turnover and absenteeism.
- 6.5 Provide information regarding testing and prescreening procedures for temporary service employees. Identify what testing and prescreening procedures are included in the cost proposal.

7. PERSONNEL: The Vendor must provide resumes for all key personnel, including the account manager, who will be involved in providing the services contemplated by this RFP.

Resumes must include the full name, education background, and years of experience and employment history particularly as it relates to the scope of services specified herein.

8. FINANCIAL CAPACITY INFORMATION: Vendor must submit either a comparative audit, which would include data from prior year and the year previous to that, audits for the past two (2) years if a comparative audit is not available, or end of year financial statements for the last two (2) years if an audit has not occurred. Vendor may also be required to provide additional financial information upon request.

9. INSURANCE: The Vendor must provide certificates from its insurer(s) certifying that it has appropriate and comprehensive insurance covering any incident arising from its operation. Please refer to Section L, Audit Bonding and Insurance for minimum requirements.

10. COST: The Agency will identify the hourly rate to be paid to each Temporary Worker for each particular job assignment. Please identify your **Percentage markup** over the hourly rate as set by the Agency- % (Also note on coversheet).

Attachment B
General Contract Terms

ATTACHMENT B

Required Clauses for Service Contracts in the State of Mississippi Resulting from this RFP

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

2. **Availability of Funds:** It is expressly understood and agreed that the obligation of the Agency 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 Agency, the Agency 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 Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. **Compliance with Laws:** The Contractor understands that MDES 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.

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

5. **E-Verification:** The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject Contractor 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;
- b. 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,
- c. both.

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

6. Insurance: The Contractor represents that it will maintain workers' compensation insurance as required by the State of Mississippi which shall inure to the benefit of all the Contractor's personnel provided hereunder; comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000 per occurrence; and employee dishonesty insurance or fidelity bond insurance with minimum limits of \$100,000 with third party liability coverage. All general liability, professional liability, employee dishonesty, and fidelity bond insurance will provide coverage to the *State of Mississippi* as an additional insured. The MDES 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.

7. Paymode: Payments by state agencies using Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State, may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

8. Procurement Regulations: This contract shall be governed by the applicable provisions of the *Personal Service Contract Review Board Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS, for inspection, or downloadable at <http://www.mspb.ms.gov>.

9. 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.

10. 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 6-204 (Gratuities) of the *Mississippi Personal Service Contract Rules and Regulations*.

11. Requirements contract: During the period of the contract, the contractor shall provide all the service described in the contract. The contractor understands and agrees that this is a requirements contract and that the [AGENCY NAME] shall have no obligation to the contractor

if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the MDES for the period of the contract. The amount is only an estimate and the contractor understands and agrees that the MDES is under no obligation to the contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The contractor further understands and agrees that the MDES may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

12. Stop Work Order:

a. *Order to Stop Work:* The Agency, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Agency shall either:

- i. cancel the stop work order; or,
- ii. terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract, if applicable.

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

- i. the stop work 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,
- ii. the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

c. *Termination of Stopped Work:* If a stop work order is not canceled 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.

13. Termination for Convenience:

a. *Termination:* The Agency may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency shall give written

notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

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

14. Termination for Default:

a. *Default:* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency 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 Agency, the Agency 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 Agency may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

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

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

d. *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 Agency within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract

requirements. Upon request of the Contractor, the Agency shall ascertain the facts and extent of such failure, and, if the Agency determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

e. Erroneous Termination for Default: If, after notice of termination of 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 State, be the same as if the notice of termination had been issued pursuant to such clause.

f. Additional Rights and Remedies: The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

15. **Transparency:** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," codified as § 25-61-1 et seq., Mississippi Code Annotated and exceptions found in § 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as § 31-7-13 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this contract is required to be posted to the Department of Finance and Administration's independent Agency contract website for public access. Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

16. **Indemnification:** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the Agency, its commissioners, board members, officers, employees, agents, 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, screening 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 Agency'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 Agency. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the Agency shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the Agency's concurrence, which the Agency shall not unreasonably withhold.

Required Federal Contract Clauses for Service Contracts Resulting from this RFP

As the contract will be funding will federal money, including some WIA money, the following federal contract clauses are required by OMB Circular A-102 and 29 CFR 97.36(i), MDES will include terms addressing the following, when applicable:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms;
2. Termination for cause and for convenience, including the manner in which termination will be effected and the basis of settlement;
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60);
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5);
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5.);
7. Requirements and regulations pertaining to financial and participant reporting;
8. Requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed due to the contract;
9. Requirements and regulations pertaining to copyrights and rights in data;
10. Access by the Department of Labor, MDES, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor;
11. Retention of all required records for three years after the MDES makes final payments and all litigation, audit and monitoring concerns are fully resolved;
12. Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15);
13. Mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL. 94-163, 89 Stat. 871);
14. Equal treatment of and religious liberty for organizations and individuals, regardless of religious affiliation or lack thereof, in accordance with Executive Order 13270, 20 CFR Parts 667 and 670, 29CFR Parts 2 and 37, published July 12, 2004;
15. The basis for payment, contract deliverables and performance expectations;
16. Compliance with 29 CFR 37.20, nondiscrimination and equal opportunity provisions contained in:
 - a. Section 188 of the Workforce Investment Act of 1998, which prohibits discrimination against individuals on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship/status as a lawfully admitted immigrant authorized to work in the United States or on the basis of participation in any WIA Title I-financially assisted program or activity;

- b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age;
 - e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs; and
 - f. 29 CFR Part 37 and all other regulations implementing the laws listed above.
17. Compliance with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result federally assisted programs;
 18. Compliance with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 19. Compliance with flood insurance purchase requirements in section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
 20. Compliance with environmental standards which may be prescribed pursuant to the following: (a) Institution of Environmental Quality Control Measures under the National Environmental Policy Act of 1969 (PL. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (PL 93-523), and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (PL 93-205);
 21. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system;
 22. Compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*);
 23. Compliance with Public Law 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
 24. Compliance with the Laboratory Animal Welfare Act of 1966 (PL 89-544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
 25. Compliance with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

26. **Compliance with the Resource Conservation and Recovery Act of 1976, as amended, which states that preference be given to recycled products in procurement activities by State and local governments receiving grants, loans, cooperative agreements, and other federal assistance when procuring goods made from recycled material when the amount of the procurement is equal to or more than \$10,000.**



Mississippi Department of Employment Security

**Phil Bryant
Governor**

Jacqueline A. Turner
Executive Director

Invitation for Bids (IFB)

No. 2019-02

RFx Number: 3160003190

Smart Number: 1671-20-R-IFBD-00001

Mississippi Department of Employment Security

Temporary Staffing Services

ISSUE DATE: September 27, 2019

**BID OPENING LOCATION: Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, MS 39213**

CONTACT: Danny Lynch
bids@mdes.ms.gov

BID SUBMISSION DEADLINE: October 30, 2019 9:00 AM CDT

Helping Mississippians Get Jobs

Henry J. Kirksey Building • 1235 Echelon Parkway • Jackson, Mississippi 39213
Post Office Box 1699 • Jackson, Mississippi 39215-1699 • (601) 321-6000

MDES is an Equal Employment Opportunity Employer

EXHIBIT

2

Scope of Services

The Mississippi Department of Employment Security ("MDES", "Agency" or "State") is requesting sealed bids to establish a contract with a provider for Temporary Staffing Services to supplement MDES staff during times of increased workloads. This contract will include providing temporary staffing services for the MDES State Office Headquarters located at 1235 Echelon Parkway, Jackson, MS, all WIN Job Centers located statewide, and the Jackson and Hattiesburg Call Centers. For a listing of all WIN Job Centers, please visit www.mdes.ms.gov.

The Agency utilizes individuals with varying skills, responsibilities, length of work assignments, and rates of pay. The assignments primarily involve filing and general office duties, administrative assistant/secretarial duties, employment interviewers, computer operations, data entry, basic accounting, and some industrial. Some positions will require at least an associate degree or equivalent. Additionally, the Agency may require some positions to travel. It is anticipated that these will continue to be the primary categories required. However, duties may not necessarily be limited to the categories noted. It is further anticipated that the number of individuals needed at any given time could fluctuate. Certain positions will have access to confidential and private information, and MDES will require the selected contractor to perform Tier 1 background checks on all individuals and Tier 2 background checks as requested by the agency.

It is expressly understood and agreed that MDES enters into a contract with a Temporary Staffing Service based on the purchase of professional services and not based on an employer-employee relationship. For all purposes under the Contract:

- A. The Temporary Staffing Service represents that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under the Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of MDES.
- B. Any person employed by the Temporary Staffing Service to perform the services hereunder shall be the employee of the Temporary Staffing Service, who shall have the sole right to hire and discharge its employee. MDES may, however, direct the Temporary Staffing Service to replace any of its employees under the Contract.
- C. The Temporary Staffing Service shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation, and any other withholdings that may be required.

Contractor Duties

The specific responsibilities of the prospective contractor will be as follows:

1. Provide qualified and competent staffing within twenty-four (24) hours of the Agency's order;
2. Provide qualified and competent replacement staffing within twenty-four (24) hours of an Agency order;
3. Verify employment records of all employees with results provided to the Agency on a per request basis;
4. Perform Tier 1 background checks on all positions and Tier 2 background checks as requested by MDES;
 - Tier 1 – non-sensitive positions are those which include mostly low risk, non-sensitive, and non-national security program responsibilities;
 - Tier 2 – public trust positions are those positions which require a high degree of integrity with public confidence in the individual position;
5. Administration of appropriate skills test with results provided to the Agency on a per request basis;
6. Maintain accurate quality control records including the disposition of all complaints and allow inspection of said records when requested by the Agency;
7. Provide itemized invoices at an interval (weekly, bi-weekly, etc.) chosen by the Agency;
8. Promptly handle disciplinary matters;
9. Allow employees to travel within the state of Mississippi on behalf of the agency when requested and/or required; and
10. If possible and eligible for hire, retain employees hired by previous contractor until work assignments are completed

MDES Duties

The specific responsibilities of MDES will be as follows:

1. Provide specific information about required education, skills and hourly rate of pay, if travel is required, and if a background check is to be performed;
2. Provide information on the projected length of the work assignment; and
3. Provide daily supervision of Temp Staffing Service employee.

Contract Duration

The term of the Temporary Services Contract shall be from January 1, 2020, through December 31, 2023, with an option to renew for one (1) additional twelve (12) month period provided, however, that any contract extension shall be under the same prices, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the State and the Contractor. The period of performance under the initial contract term and under any extension shall be conditioned upon the receipt of funds and satisfactory performance during prior years as determined by MDES.

Contract Administration

The contract awarded subsequent to this solicitation shall be administered by MDES. The selected contractor will be reimbursed for allowable costs that have been identified and approved in a contract that the selected contractor and MDES have negotiated and executed. Contractors will be required to maintain documentation necessary to support each cost. All invoices submitted by the Contractor for payment of services performed pursuant to the contract shall be submitted as follows:

ATTN: MDES ACCOUNTS PAYABLE
Mississippi Department of Employment Security
P.O. Box 1699
Jackson, MS 39215-1699

MDES agrees to pay Contractor 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 the State within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that MDES is exempt from the payment of taxes. All payments shall be in United States currency.

The State requires the Contractor to submit invoices electronically throughout the term of the agreement. Contractor invoices shall be submitted to the Agency/MDES using the processes and procedures identified by the State. Payments by state agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically by the State. These payments shall be deposited into the bank account of the Contractor's choice.

Acceptance by Contractor of the payment from MDES shall operate as a release of all claims against the State by the Contractor.

Bid Acceptance Period

The original and two (2) copies of the bid packets, three (3) copies total, shall be signed and submitted in a sealed envelope or package to MDES at 1235 Echelon Parkway Jackson, MS 39213 no later than the time and date specified for receipt of bids. Timely submission of the bid form is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened. The envelope or package shall be marked as indicated on Attachment A. Each page of the bid form and all attachments shall be identified with the name of the bidder. Failure to submit a bid on the bid form provided shall be considered just cause for rejection of the bid. Modifications or additions to any portion of the procurement document may be cause for rejection of the bid. MDES reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, MDES may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1 Timeline (All times CDT unless otherwise noted)

IFB Issue Date	
First Advertisement Date	September 27, 2019
Second Advertisement Date	October 4, 2019
Questions Submission Deadline	October 11, 2019 - 5:00 PM
Answers Posted	October 18, 2019 - 5:00 PM
Bid Submission Deadline	October 30, 2019 - 9:00 AM
Bid Opening	October 30, 2019 - 1:00 PM
Anticipated Notice of Intent to Award	October 31, 2019 - 5:00 PM
Debriefing Request Deadline	November 6, 2019 - 10:00 AM
Protest Deadline	November 7, 2019 - 5:00 PM CST

1.1.2 Late Submissions

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of bids. It must be determined by MDES that the late receipt was due solely to mishandling by MDES after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

1.2 Expenses Incurred in Preparing Bid

MDES accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

1.3 Bid Form

All pricing must be submitted on the bid form (**Attachment B**). Failure to complete and/or sign the bid form may result in the bidder being determined non-responsive.

1.3.1 Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

1.4 Registration with Mississippi Secretary of State

By submitting a bid, the bidder 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.

1.5 Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids 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 bids for contracts issued by any political subdivision or agency of the State of Mississippi.

1.6 Additional Information

Questions and requests for clarification must be submitted in writing to MDES Procurement at bids@mdes.ms.gov. Questions concerning the technical portions of the procurement document should be directed to MDES Procurement at bids@mdes.ms.gov. All questions must be submitted by 5:00 pm, October 11, 2019. Answers will be posted on or before 5:00 pm, October 18, 2019. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

1.7 Type of Contract

Compensation for services will be in the form of a fixed price agreement based on a percentage mark-up over hourly rates established by MDES. Services are to be provided on an as needed basis.

MDES will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the Public Procurement Review Board, if necessary. MDES reserves the right to reject any and/or all bids and waive minor informalities which do not affect quality, quantity, price or delivery.

1.8 Written Bids

All bids shall be in writing.

SECTION 2

2.1 Insurance

The successful contractor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$100,000.00. All workers' compensation, comprehensive general liability, professional liability, and fidelity bond insurance will provide coverage to MDES as an additional insured. The agency 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 contractor shall be prepared to provide evidence of required insurance upon request by MDES at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 3

3.1 Bid Evaluation

Bids will be evaluated based on the requirements set forth in IFB 2019-02, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

3.1.1 Responsive Bidder

Bidder must submit a bid which conforms in all material respects to this Invitation for Bids, IFB 2019-02, as determined by MDES.

4.1.2 Minimum Qualifications to be Deemed Responsive

- Be licensed to conduct business in the State of Mississippi;
- Have at least three (3) or more years of successful experience in providing temporary service employees;
- Have experience in delivering these services to a large organization similar in size to the MDES; and
- Have a track record of meeting performance expectations.

4.1.3 Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. MDES reserves the right to permit the bidder to withdraw non-conforming terms and conditions from its bid response prior to a determination by

MDES of non-responsiveness based on the submission of non-conforming terms and conditions.

4.1.4 Conditioning Bid Upon Other Awards

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.1.5 Bid Submission Format

The bid package must be sealed and must contain the following:

- Bid Cover Sheet (**Attachment A**);
- Bid Form (**Attachment B**); and
- Certifications and Assurances (**Attachment C**).

4.1.6 Responsible Bidder

Bidder 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 MDES

4.1.7 Minimum Qualifications to be Deemed Responsible

See Contractor Duties

4.2 Bid Opening

Bid opening will be open to the public; however, this will include opening, reading aloud, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made, either stated or implied at the bid opening.

4.3 Award

The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids by the date listed in Section 1.1.1

4.3.1 Notification

All participating contractors will be notified of the MDES' intent to award a contract. In addition, MDES will identify the selected contractor. Notice of award is also made available to the public.

4.3.2 Contract Management

If the Contractor fails to adhere to the Temporary Staffing services schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, MDES will inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a

pattern of non-performance as shown by repeated deficiencies, MDES may terminate the contract without further obligation to the Contractor.

SECTION 5

5.1 Post-Award Vendor Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Purchasing Director of MDES within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Purchasing Director of MDES in writing and identify its attorney by name, address, and telephone number. MDES will schedule and/or suspend and reschedule the meeting at a time when a Legal Representative of MDES can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the *Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations*.

5.2 Protest of Award

Any actual or prospective bidder or contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the agency. The protest shall be submitted on or before 5:00, CST November 7, 2019, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by MDES, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after the protest deadline will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/bidder shall include the required clauses found in **Attachment D** and those required by the *Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations* as updated.

5.4 *Optional Contract Terms and Conditions*

Any contract entered into between MDES and a contractor/bidder may have, at the discretion of MDES, the optional clauses found in Attachment E and those within the Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations as updated.

5.5 **Mississippi Contract/Procurement Opportunity Search Portal**

This Invitation for Bids, and the questions and answers concerning this Invitation for Bids, are posted on the Contract/Procurement Opportunity Search Portal.

5.6 **Attachments**

The attachments to this Invitation for Bids are made a part of this Invitation for Bids as if copied herein in words and figures.

ATTACHMENT A

Bid Cover Sheet

MDES is seeking to establish a contract for Temporary Staffing Services.

Bids are to be submitted as listed below, on or before October 30, 2019 at 9:00 AM CDT

PLEASE MARK YOUR ENVELOPE:

“MDES Temporary Staffing”
RFX No. 3160003190
Smart No. 1671-20-R-IFBD-00001
ATTENTION: MDES Procurement Department
1235 Echelon Parkway Jackson, MS 39213
SEALED BID – DO NOT OPEN

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip Code: _____

Company Representative: _____

Telephone: _____

Fax: _____

E-Mail: _____

FBI/FIN # (if company, corporation, or partnership):	
State Vendor Number	

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. _____

If your company is not physically located in the region, how will you supply Temporary Staffing Services to agencies in the region? _____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. _____

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids. _____

For how many customers has your company provided Temporary Staffing Services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. _____

What is the largest customer your company has provided Temporary Staffing Services for in the past two (2) years? Please include the annual amount of the billing. _____

Describe any specific services which your company offers along with any specialized experience, certification, and/or education of your current staff. _____

Printed Name _____

Signature/Date _____

ATTACHMENT B

Bid Form for Temporary Staffing Services

Company	Company Representative	Telephone

The pricing quoted must be inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any); and
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

Percentage markup over the hourly rate as set by MDES

_____ %

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Invitation for Bids, IFB 2019-02 and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, IFB 2019-02 and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids, IFB 2019-02, and the attachments herein;
4. That the company will perform, without delay, the services required at the price quoted in this **Attachment B**; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.

Printed Name: _____

Signature/Date: _____

ATTACHMENT C

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the bid to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by **circling** the applicable word or words in each paragraph below:

1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has/has not** retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid.

2. REPRESENTATION REGARDING GRATUITIES

The bidder or Contractor represents that it **has/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 Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

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

Name/Title: _____

Signature/Date: _____

Note: Please be sure to circle the applicable word or words provided above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as nonresponsive. Modifications or additions to any portion of this bid document may be cause for rejection of the bid.

ATTACHMENT D

Required Clauses for Service Contracts Resulting from this Invitation for Bids

1. Acknowledgement of Amendments. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, by letter, or by signing and returning Attachment G. The acknowledgement must be received by MDES by the time and at the place specified for receipt of bids.
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 Hinds County. Contractor shall comply with applicable federal, state, and local laws and regulations.
3. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency 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 Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
4. Compliance with Laws. Contractor understands that the Agency 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 Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
5. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*
6. E-Verification. If applicable, 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. Mississippi Code Annotated §§ 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. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. 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 Contractor to the following:

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

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

7. 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 Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
8. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 1301, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.
9. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid.
10. Representation Regarding Gratuities. 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's Office of Personal Service Contract Review's Rules and Regulations*.

11. Stop Work Order.

a. *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- i. cancel the stop work order; or,
- ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

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

- i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
- ii. Contractor asserts a claim for such an adjustment within 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.

c. *Termination of Stopped Work:* If a stop work order is not canceled 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.

12. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and

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

13. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify 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 Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth

above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
 - f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
14. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
15. 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.
16. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade

secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

ATTACHMENT E

Optional Clauses for Use in Service Contracts Resulting from this Invitation for Bids

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorney's Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
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. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be 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.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential

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

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency 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 Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.
7. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.
8. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:
 - (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
 - (2) has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
 - (3) has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - (5) has not, within a three-year period preceding this bid, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.
9. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or

completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:
 - (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
 - (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
 - (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - (4) is independently developed by the recipient without any reliance on confidential information;
 - (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
 - (6) is disclosed with the disclosing party's prior written consent
11. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.
12. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.
13. Failure to Enforce. Failure by the Agency 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 Agency to enforce any provision at any time in accordance with its terms.
14. Final Payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.
15. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God,

strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

16. HIPAA Compliance. Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
17. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.
18. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, 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 Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

19. Integrated Agreement/Merger. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor based on draftsmanship or preparation hereof.
(Contract Modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PPRB pursuant to Section 7-111 (Modifications) of the Mississippi Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations. Modifications shall not grant extra compensation, fee, or allowance to any Contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased.)
20. 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 revisions of any applicable laws or regulations make changes in this agreement necessary.
21. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
22. 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.
23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
24. 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 Agency and agreed to by Contractor.
25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's

internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.

26. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
27. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three-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-year period, whichever is later.
28. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.
29. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
30. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

31. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
32. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.
33. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.
34. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
35. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.
36. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for

compensation other than the total of the unit prices in the contract for the quantity actually used.

ATTACHMENT F

Bidder's Checklist

Attachment A Completed and Signed	<input type="checkbox"/>
Attachment B Completed and Signed	<input type="checkbox"/>
Attachment F Completed and Signed	<input type="checkbox"/>
<i>If necessary</i> , Attachment G completed and Signed	<input type="checkbox"/>

Printed Name: _____

Signature: _____

Date: _____

ATTACHMENT G

Acknowledgment of Amendments

(Only submit if an Amendment has been issued relative to this Invitation for Bids)

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

You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

Signature

Date



Mississippi Department of Employment Security

Phil Bryant
Governor

Jacqueline A. Turner
Executive Director

Public Notice of Award **October 31, 2019**

Temporary Staffing Services
MDES IFB 19-02
RFx 3160003190

On September 27, 2019, the Mississippi Department of Employment Security (MDES) issued Invitation for Bids (IFB) 19-02 for the procurement of Temporary Staffing Services. As a result of this solicitation, the following vendors submitted responses:

Vendor Name	Bid Amount - Percentage Markup
Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc	22%
LMATA Government Services, LLC	22.45%
Athena Consulting, LLC	22.50%
Spherion Staffing Services, LLC	23.38%
Intergrative Staffing Group, LLC	23.59%
Blue Arbor, Inc.	23.85%
New Wave People, Inc.	25%
Marathon Staffing Resources	25.75%
Industrial Staffing Services, Inc.	26%
Abacus Service Corporation	26%
Management Registry, Inc.	28%
NiteLines USA, Inc.	28%
Enterprise Solutions, Inc.	28%
Premier Staffing Source, Inc.	35%

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Post Office Box 1699 • Jackson, Mississippi 39215-1699 • (601) 321-6000

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The following vendors were determined to be non-responsive and/or non-responsible and have been notified separately of the reason(s):

Infojini, Inc.
INSI Cloud, Inc.
Manpower

The purpose of this procurement is to establish a contract with a provider for Temporary Staffing Services to supplement MDES staff during times of increased workloads. This contract will include providing temporary staffing services for the MDES State Office Headquarters located at 1235 Echelon Parkway, Jackson, MS, all WIN Job Centers located statewide, and the Jackson and Hattiesburg Call Centers.

The term of the Temporary Services Contract will be from January 1, 2020, through December 31, 2023, with an option to renew for one (1) additional twelve (12) month period. If granted, the contract extension shall be under the same prices, terms, and conditions as in the original contract. The anticipated budget for this contract is \$10,000,000.00.

Based on the evaluation of the submitted bids, MDES announces the intent to award a contract to the lowest, responsive, and responsible bidder whose bid meets the requirements set forth in MDES IFB 2019-02 pending approval by the Public Procurement Review Board:

Professional Staffing Group

MDES would like to express its appreciation to all participating vendors.

This contract will be on file and available for public inspection in the office of the Chief Procurement Officer at the Mississippi Department of Employment Security State Headquarters located at 1235 Echelon Parkway in Jackson, MS.



November 7, 2019

MDES Procurement Department
1235 Echelon Parkway
Jackson, MS 39213

RE: RFX No. 3160003190
Smart No. 1671-20-R-IFBD-0001

TempStaff would like to formally protest the awarding of MDES IFB 19-02 to Professional Staffing Group based on the facts provided below. It is our professional opinion that Professional Staffing Group, 22nd Century Technologies, Inc., and Staffers, Inc. do not meet the Minimum Qualifications to be Deemed Responsive (section 4.1.2), and therefore cannot adequately meet the service expectations of the Mississippi Department of Employment Security.

- **Licensed to conduct business in the State of Mississippi**

- 22nd Century Technologies (also known as 22nd Century Staffing) is headquartered in Virginia according to their website and do not have a physical presence in Mississippi. Based on a search of the MS Secretary of State website, 22nd Century Technologies utilizes Mississippi Registered Agent, LLC in Ridgeland, MS to satisfy the requirement to be licensed in Mississippi, which can be processed for just \$49.

- **Three or more years of experience delivering temporary services to large organizations**

Although billing amounts were requested as part of the IFB, average employee counts over a specified period of time are a better indication of services that have been provided. A review of each company's UI-2 Quarterly Contribution Report will provide a precise employee count to compare each vendor company's employee volume in Mississippi.

- TempStaff has extensive experience providing staffing services to large organizations throughout our 40-year history. Along with our proven track record with MDES, TempStaff has also provided large-volume staffing services to MS Division of Medicaid, Saks Incorporated, Milwaukee Tool, Lanter Delivery Systems, Wallenius Wilhelmsen Solutions, Scotts Miracle-Gro (closed), and Reckitt Benckiser (closed). Employee numbers for these clients range from 50 to over 200 at peak activity levels and often include an on-site TempStaff representative working with the client company.

In 2005, TempStaff partnered with MDES to provide statewide assistance with the National Emergency Grant, resulting in over \$52 million in billing for the entire length of the disaster period. This included recruiting, processing, supervising, and payroll of

several thousand Mississippians. In addition, TempStaff was able to immediately staff a call center with over 150 people at MDES. Since then, TempStaff has provided NEG assistance throughout the state for various natural disasters. No other staffing company in Mississippi has the resources to provide immediate results for emergency situations.

Our staff of over 25 professionals currently manage an active applicant database of over 1,200 Mississippians. With physical offices in Jackson, Canton and McComb, our team can easily service all areas of the state. TempStaff has processed over 26,250 checks/direct deposits this year and are on track to issue nearly 2,500 W-2s for 2019. 70% of our staff has been with us for at least 5 years and 40% have been employed by TempStaff for over 10 years.

- Professional Staffing Group currently has five people on staff according to their website. Of those, three have been with the company less than one year. They have a single location in Jackson, MS. Based on our market knowledge, they have one large account that currently employs less than 12 light industrial employees. Since their inception, they have specialized in clerical, legal, and professional fields with a focus on direct hire placements. Within the past few years, they have ventured into the light industrial arena that lends itself to larger accounts.
- Staffers has approximately 4 people on staff who specialize in administrative placements in the Hinds, Madison and Rankin County areas. Based on our market knowledge, they do not staff for any large accounts on a routine basis.

There are many challenges in today's business environment that require knowledge and expertise to maintain low overhead and avoid costly litigation. These include:

- **Adequate financial resources.** Does Professional Staffing Group and Staffers have the required financial resources available to add approximately 60 people to their payroll or significantly more for an emergency situation? TempStaff has a long standing relationship with a local financial institution that allows us the flexibility to easily accommodate the needs of our clients and add large clients to our growing list of customers. We are happy to provide more detailed information upon request.
- **Affordable Care Act.** Does Professional Staffing Group and Staffers currently offer an ACA compliant health care program to their temporary employees? The ACA employer mandate demands employers with 50 or more full-time employees and/or full-time equivalents to offer health insurance that meets multiple affordability and coverage requirements. TempStaff currently offers an ACA compliant plan to all employees, of which 22 employees assigned to MDES are currently enrolled.
- **Employee Benefits.** TempStaff offers 6 paid holidays to all temporary employees at no cost to the client company once the employee works 1,500 consecutive hours. This equated to \$21,282 in benefits in 2018 and an estimated \$18,300 in 2019 for employees assigned to MDES.
- **Adequate business insurance coverage.** Do all vendors have the necessary Worker's Compensation and Business Liability coverage to adequately protect the employee, MDES, and

themselves? TempStaff is part of an elite, staffing specific, self-insured Worker's Compensation Insurance Captive that provides a host of resources and coverages for our employees and clients. TempStaff has a dedicated Risk & Safety Manager that has managed several work related injuries that were incurred by employees assigned to MDES. Our current Certificate of Insurance detailing all insurance coverages is on file with MDES.

After nearly thirty years of partnership with the Mississippi Department of Employment Security and the staff across the state, TempStaff is fully ingrained in the culture and operations of MDES. The value of this knowledge is invaluable and cannot be easily quantified on paper.

We request a second review of the bid's submitted in response to IFB 19-02. With further due diligence and comparison of capabilities, we believe MDES will come to a factual conclusion that TempStaff meets the criteria as the lowest, responsive, and responsible bidder who is best equipped to serve the needs of MDES.

Thank you for your consideration.

Carolyn Boteler
President



Mississippi Department of Employment Security

Phil Bryant
Governor

Jacqueline A. Turner
Executive Director

November 13, 2019

Ms. Carolyn Boteler
Tempstaff, Inc.
962 North Street
Jackson, MS 39202

Re: Protest of Award MDES IFB 19-02

Dear Carolyn:

The Mississippi Department of Employment Security (MDES) presents the following response regarding Tempstaff's protest of award:

Requirement #1: Licensed to conduct business in the State of Mississippi

Narrative from Protesting Vendor: 22nd Century Technologies (also known as 22nd Staffing) is headquartered in Virginia according to their website and do (sic) not have a physical presence in Mississippi.

MDES Response: The bidder presented a valid license to conduct business in the State of Mississippi meeting the requirement of the bid. The bidder also has a physical location in the state of Mississippi.

Requirement #2: Three (3) or more years of experience delivering temporary services to large organization

Narrative from Protesting Vendor: Professional Staffing Group currently has five people on staff according to their website. Of those, three have been with the company less than one year. They have a single location in Jackson, MS. Based on our market knowledge, they have one large account that currently employs less than 12 light industrial employees. Since their inception, they have specialized in clerical, legal, and professional fields with a focus on direct hire placements. Within the past few years, they have ventured into the light industrial arena that lends itself to larger accounts.

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Staffers has approximately 4 people on staff who specialize in administrative placements in the Hinds, Madison and Rankin County areas. Based on our market knowledge, they do not staff for any large accounts on a routine basis.

MDES Response: MDES appreciates the insight provided by Tempstaff; however, merit cannot be granted based upon another vendor's market knowledge. Each of the aforementioned bidders supplied sufficient information meeting the bid requirements to adequately deliver temporary services to a large organization.

Protest Decision

MDES maintains the award was made in strict accordance with the bid requirements. Tempstaff's bid was deemed both responsible and responsive; however, it was not the lowest bid submitted in response to the solicitation thus placing it fourth (4th) among all responses.

22nd Century Staffing, Professional Staffing Group, and Staffers were all deemed to be both responsive and responsible meeting all aspects of the bid requirements.

This decision may be appealed to the Public Procurement Review Board within seven (7) calendar days.

Sincerely,



Danny Lynch
MDES Procurement



INVITATION FOR BID

IFB Number: 3160002866
To Provide: Temporary Staffing
Issue Date: 4/4/2019

Closing Location

Mississippi Department of Revenue
500 Clinton Center Drive
Clinton, MS 39056

BID Coordinator

Erica Greenwood, Contract Analyst, Sr.
Telephone: (601) 923-7860
Fax: (601) 923-7658
E-Mail: erica.greenwood@dor.ms.gov

Closing Date and Time:

Bids must be received by May 7, 2019, 12:00 p.m. (CST)

EXHIBIT
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MISSISSIPPI DEPARTMENT OF REVENUE INVITATION FOR BID TEMPORARY STAFFING

1.0 Purpose

The Department of Revenue (referred to as “DOR” or “Department”) propose to contract with a qualified agency to procure temporary staffing for our Clinton office and the Alcohol Beverage Control Distribution Center located in Gluckstadt, Mississippi. Over the past years we have contracted for 60 – 150 people with varying skills, responsibilities, lengths of work assignments and rates of pay. The work assignments have included, but are not limited to, general office, data entry, data control, mail clerk, batching, scanning and warehouse labor.

We are tasked with promptly and efficiently providing services to the taxpayers of this state. DOR is now soliciting bids from qualified temporary staffing agencies to fulfill our staffing needs. All bids submitted in response to this solicitation must conform to the requirements and specifications outlined within this document and any applicable amendments.

2.0 Procurement Time Line

It is our intent to follow the schedule below in the execution of this invitation for bid; however, DOR reserves the right to amend and/or change the below schedule of events, as it deems necessary.

A. Invitation for Bid Issue Date:	04/04/2019; 9:00 am CST
B. First Publication:	04/04/2019
C. Second Publication:	04/11/2019
D. Deadline for Submission of Questions:	04/18/2019; 5:00 pm CST
E. Bid Packet Submission Deadline:	05/07/2019; 12:00 pm CST
F. Bid Opening:	05/07/2019; 2:00 pm CST
G. Award Notification:	05/10/2019
H. Debriefing Request Date:	05/15/2019
I. Protest Deadline:	05/17/2019; 10:00 am CST

J. Projected Start Date:

08/01/2019

3.0 General Terms of Contract

The term of the contract shall be for one (1) year and will commence on July 1, 2019, and end on June 30, 2020. At the discretion of the Department of Revenue, the duration may be extended for a period of three (3) successive one-year periods under the same price, terms and conditions as the original contract upon written notice to the contractor at least ten (10) days prior to the anniversary date. The total number of renewals shall not exceed three (3).

4.0 Eligibility Requirements

4.1 Qualification of Bidders

The bidder may be required before the award of any contract to show to the complete satisfaction of the DOR that it has the necessary facilities, ability and financial resources to provide the service specified therein in a satisfactory manner. The bidder shall be required to give a history and references in order to satisfy the DOR in regard to the bidder's qualifications. The DOR may make reasonable investigations deemed necessary and proper to determine the ability of the bidder to perform the work, and the bidder shall furnish to the DOR all information for this purpose that may be requested. The DOR reserves the right to reject any bid if the evidence submitted by, or investigation of, the bidder fails to satisfy the DOR that the bidder properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the bidder's qualifications shall include (but are not limited to):

1. The ability, capacity, skill and financial resources to perform the work or provide the service required.
2. The ability of the bidder to perform the work or provide the service promptly or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
4. The quality of performance of previous contracts or services.

4.2 References

As part of its bid, each bidder may furnish a list of governmental entity client(s) for whom it has performed similar work within the last four (4) years. DOR will contact these clients

as references to evaluate the quality of the bidder's past work and management capabilities. Reference information may be provided as part of the bid package submitted for consideration.

References must report the vendor to be of good reputation in providing applicable services.

4.3 Business Longevity

Each bidder must have been in business a minimum of five (5) years prior to submission of its bid. Please indicate the length of time you have been in business providing professional services as specified in this IFB. Business longevity information must be provided as part of the bid package submitted for consideration.

4.4 Insurance

Prior to the start of the contract period the temporary staffing provider must provide the DOR Bid Coordinator certificates from its insurer(s) certifying they have appropriate and comprehensive insurance covering incident(s) and/or damages arising from the provider's provision of services arising from this contract. Additionally, DOR shall be named as an additional insured on such required coverage. Such insurance must include the following:

- A. No less than \$1,000,000.00 per occurrence Comprehensive General Liability. The DOR shall be named as an additional insured on the policy.
- B. The provider shall maintain in effect throughout the contract period workers' compensation insurance sufficient to meet or exceed the statutory minimum requirements of the State of Mississippi covering all persons performing work under this contract. The provider shall be prepared to provide evidence of required workers' compensation insurance upon request by DOR at any time during the contract period.

All required insurance will be endorsed to provide DOR with 30 days advance notice of cancellation or material change. Each provider must include an insurance certificate showing this coverage with its bid material or provide proof from its insurance provider that such coverage will be available if the provider is awarded the contract. The insurance company must be authorized to do business in Mississippi. The successful bidder must submit proof of insurance within fifteen (15) days after award of the executed contract.

4.5 Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business with the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by DOR that it has been awarded the contract.

4.6 Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids 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 bids for contracts issued by any political subdivision or agency of the State of Mississippi.

5.0 Procurement Methodology

5.1 Approach

It is understood that all bids are submitted on the basis of complying with the provisions, terms and specifications set out herein, provided that you can do so under the various government rulings and directives now in effect or which may be issued during the period of the contract. The Department reserves the right to waive minor technicalities on bid forms and specifications that can be waived or corrected without prejudice to other bidders when it is in the best interest of the Department of Revenue. The Department reserves the right to reject any and all bids, to waive any minor informality in the bids, and, unless otherwise specified by the bidders, to accept any items on the bid.

The bidder understands that the Department of Revenue is an equal opportunity employer and maintains a policy that prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration. The bidder will strictly adhere to this policy in its employment practices and provision of services.

5.2 Rules of Procurement

All formal bids shall be binding for a minimum of forty-five (45) days after opening. If a bid is withdrawn after opening, the vendor will be removed from the list of eligible bidders for a period of six (6) months.

5.3 Procedure for Answering Questions

- A. All questions concerning this Invitation for Bid or the bid process must be submitted by email to:

bidquestions@dor.ms.gov

- B. Questions and requests for clarification must be submitted via email during normal business hours by the deadline reflected in Section 2.0, Procurement Time Line.

- C. All questions and answers will be published on the Mississippi Department of Revenue website (www.dor.ms.gov) under the Procurement Tab in a manner that all bidders will be able to view by the date and time reflected in Section 2.0.
- D. The DOR will not be bound by any verbal or written information that is not contained within this IFB unless formally noticed and issued by the contact person.

5.4 Bid Amendment of Withdrawal

No bids shall be altered or amended after the specified time for opening bids. If a bid is withdrawn after opening, the bidder will be removed from the list of eligible bidders for a period of six (6) months. A bidder may withdraw a bid prior to the time set for the opening of bids by simply making a request in writing to the DOR; no explanation is required. No partial withdrawals of a bid are permitted after the time and date set for the bid opening; only complete withdrawals are permitted.

5.5 Amendments to the Invitation for Bid

The Administrative Services Division of the Department of Revenue will prepare a written response to all inquiries and post this information on the Department of Revenue website www.dor.ms.gov in a manner all bidders will be able to view. Respondents shall rely only on this bid and any communication from the Administrative Services Division of the Department of Revenue in submitting bids. The Department of Revenue's Purchasing Division shall not be bound by any oral communications; bidders who rely upon any oral communications regarding the Bid do so at their own risk.

Additionally, each bidder shall complete Form E, Acknowledgement of Amendments, and include this form as part of its bid packet.

5.6 Opening Procedures

Bid openings shall be conducted open to the public. However, they will serve only to open bids. No discussion will be entered into with any vendor/bidder as to the quality or provisions of the specifications, and no award will be made either stated or implied at the bid opening. Although all bidders are invited and encouraged to attend the bid-opening meeting, the bids will be considered to be in the evaluation process and will not be available for review by the bidders. Questions will **not** be answered as a result of telephone inquiries.

5.7 Bid Evaluation

Contracts and purchases will be made or entered into with the lowest, responsible and responsive bidder meeting specifications. Factors to be considered in determining the lowest, responsible bidder include:

- Price
- Conformity
- Responsibility of Bidder
- Bidder's ability to deliver as per specifications
- Reference response, if any

5.8 Award Notice

The award, if made, will be by the Department of Revenue within forty-five (45) days after the bid. After the Department of Revenue makes the award, official notification will be sent to all participating vendors. This information will be released in written form. Notice will be published on the Department of Revenue's website and the Mississippi Contract/Procurement Opportunity Search Portal website summarizing the award of the contract. The Department of Revenue will not respond to telephone calls requesting the information. Actions taken by a bidder before the receipt of the official notification will be at the bidder's own risk, and the Department of Revenue will not be responsible for such actions. All awards shall be subject to approval by Public Procurement Review Board (PPRB).

5.9 Right to Protest

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Bid Coordinator or the Commissioner of the Mississippi Department of Revenue. The protest shall be submitted in writing within seven (7) calendar days after notification is received. The written protest letter shall contain an explanation of the basis of the protest. A protest is considered submitted when received by the Bid Coordinator or Commissioner of the Mississippi Department of Revenue. To expedite handling the protest, the envelope should be labeled "Protest". Protest filed after normal business hours on the seventh day will not be considered.

5.10 Post Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Bid Coordinator of the MDOR within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Bid Coordinator of the MDOR in writing and identify its attorney by name, address and telephone number.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review's Rules and Regulations*.

5.11 Partial Bids Prohibited

Bids submitted must be all or none. Bids will not be accepted for any part of the total.

5.12 Exceptions and Deviations

Bidders taking exception to any part or section of the solicitation shall indicate such exceptions on the bid form and shall fully describe said exception. Failure to indicate any exception will be interpreted as the bidder's intent to comply fully with the requirements as written. Conditional or qualified bidders, unless specifically allowed, shall be subject to rejection in whole or in part.

5.13 Office Closure Statement

If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. **The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event.** Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.

6.0 Submission Procedures

6.1 Forms to be Utilized and Submitted

Bids must be submitted on the forms furnished by DOR, or they will not be considered. Letters will not be considered a part of your bid. Facsimile transmissions will not be accepted.

6.2 Procedures for Submitting Bid

- A. Each bid packet must be sealed in an envelope with the mailing label attached in the lower left hand corner of the envelope.

- B. Bids not properly marked in the lower left hand corner and opened by mail personnel prior to the bid opening will be rejected and returned to the bidder.
- C. The original bid packet shall be signed and submitted in a sealed envelope or package to 500 Clinton Center Dr. Clinton, MS 39056 no later than the time indicated in section 2.0 Procurement Time Line.
- D. Failure to submit a bid on the Bid Form provided will be considered cause for rejection of bid. You may attach other sheets if the space provided is inadequate.
- E. The Department of Revenue reserves the right to decide, on a case-by-case basis, whether to reject a bid with exceptions, modifications or additions outside the parameters set by this IFB, including specifications, as nonresponsive.
- F. Sealed bids should be mailed or hand delivered and labeled as follows:

Mississippi Department of Revenue
Attention: Bid Coordinator
Bid # **3160002866**
500 Clinton Center Dr.
Clinton MS 39056
SEALED BID – DO NOT OPEN

OR

Mississippi Department of Revenue
Attention: Bid Coordinator
Bid # **3160002866**
P O Box 22828
Jackson, MS 39225
SEALED BID – DO NOT OPEN

6.3 Submission Format

The bid package must be sealed and must contain the following:

- A. Bid Cover Sheet
- B. Certification to sign on behalf of the company
- C. Bid Form

D. References and Business Longevity Statement – each bidder may furnish a listing of governmental entity client(s) for whom it has performed similar work within the last four (4) years along with the contact person, address and phone number for each. These references must be familiar with the bidders' abilities in the areas involved in this IFB. The DOR will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. DOR will not seek to correct erroneous contact information or track down references. Bidders should verify before submitting their bid that contact information is current for each reference.

E. Acknowledgement of Amendments

F. Secretary of State Acknowledgement

6.4 Late Submission

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received, or it is received before award is made and was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids. It must be determined by the Department of Revenue that the late receipt was due solely to mishandling by the Department of Revenue after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

7.0 DOR Responsibilities

- Provide specific information about required education, skills and hourly rate of pay.
- Provide information on the projected length of the work assignment.
- Provide daily supervision of Temporary Staffing Provider's employee.

- Provide a copy of all policies and procedures by which the employee is to abide by.
- Provide timely payment for services rendered.

8.0 Temporary Staffing Provider Responsibilities

- Provide qualified and competent staffing within *two weeks* of the DOR's order.
- Provide qualified and competent replacement staffing within *two work days* of the DOR's request.
- Administer appropriate skills tests with results provided to the DOR.
- Perform a criminal investigation on every individual *before* placement with the DOR. Written confirmation/results of such check *shall* be provided to the DOR prior to staff placement.
- Perform a substance abuse test on every individual *before* placement with the DOR. No individual with a positive result *shall* be provided to DOR. Confirmation of negative results *shall* be provided to the DOR prior to staff placement.
- Perform employment reference checks to validate application information.
- Provide to the DOR a copy of the signed DOR policy statements on which the individual certifies he/she is in compliance with all tax, tag and title laws and understands the confidential nature of DOR information.
- Provide to the DOR a copy of the individual's application for employment.
- Maintain accurate quality control records including the disposition of all complaints and allow inspection of said record when requested by the DOR.
- Allow for movement of an individual from contractual status to a DOR position after 6 weeks of employment with Temporary Staffing Provider with no fee to the DOR.
- Handle disciplinary matters promptly.
- Provide itemized invoices weekly to the DOR.
- Allow for faxing or electronic submission of authorized time records from individuals and/or the individual's supervisor for payroll purposes.

- Provide direct deposit and/or mailing of checks directly to contractual staff.

9.0 Characteristics of Work

There are several essential functions where a temporary employee may be utilized. There are warehouse duties as well as clerical duties. Some of the clerical duties include, but are not limited to, reviewing information for correctness, answering the telephone, assisting an administrative superior or various clerical or administrative functions. Warehouse clerks handle stock in the warehouse. Responsibilities include receiving, storing, sorting, stocking and shipping various items. Additional duties involve unloading carriers, maintaining records, and labeling items for shipment and storage in accordance with established operating procedures.

10.0 Physical Requirements

Heavy Work: May frequently exert force equivalent to lifting up to 50 pounds and may occasionally exert force equivalent to lifting up to approximately 75 pounds.

Light Work: May frequently walk or stand and/or frequently exert force equivalent to lifting up to approximately 10 pounds.

Operate Equipment: A temporary employee must be willing to learn to operate a Stock Picker in a safe manner and be able to work above ground level.

Communication Skills: Ability to give and receive information through speaking and listening skills. Receives, attends to, interprets and responds to verbal messages and expresses information to individuals or groups effectively

Vision: Requires the ability to be able to read and the ability to perceive the nature of objects by the eye.

Motor Coordination: While performing the duties of the job, the temporary employee is regularly required to stand, use hands to fingers, handle or feel objects or tools, and reach with hands and arms. The temporary employee is frequently required to walk, stoop, kneel, crouch or bend and pick up product.

Work Ethic: Is productive, diligent, conscientious, timely and loyal. Conscientiously abides by the rules, regulations and procedures governing work.

Storage Maintenance: Handles stock in the warehouse. Receives, sorts and stores a variety of different items and equipment to place items in the proper location. Stock the pick locations with the proper product and select the correct product when filling customer's orders.

Integrity and Honesty: Demonstrates a sense of responsibility and commitment to the public trust through statements and actions.

Stress Tolerance: Deals calmly and effectively with high stress situations (for example, tight deadlines, hostile individuals, emergency situations, dangerous situations)

Personal Hygiene: Present themselves as well groomed and properly dressed to work.

Appendix A

Terms and Conditions

Acknowledgement of Amendments

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

Anti-Assignment/Subcontracting

The Contractor acknowledges that it was selected by the Department 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 Department, which the Department may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the Department of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Department 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 Department may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

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. Contractor shall comply with applicable federal, state, and local laws and regulations.

Approval

It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

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.

Availability of Funds

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

Certification of Independent Price Determination

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

Change in Scope of Work

The Department 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 Department 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 Department in writing of this belief. If the Department 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.

Compliance with Laws

Contractor understands that the Department of Revenue 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 Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. 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.

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 State. Each party to this agreement agrees to the following:

- (1) to protect all confidential information provided by one party to the other;
- (2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and
- (3) 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
- (4) to do so by using those methods and procedures normally used to protect the party’s own confidential information.

Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the Customer shall result in the immediate termination of this agreement.

Contractor Personnel

The Department 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 Department reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Department in a timely manner and at no additional cost to the Department. The day-to-day supervision and control of the Contractor’s employees or Subcontractors is the sole responsibility of the Contractor.

Debarment and Suspension

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

- (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- (2) has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under public transaction;
- (3) has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery,

- falsification or destruction of records, making false statements, or receiving stolen property;
- (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - (5) has not, within a three-year period preceding this bid, had one (1) or more public transactions (federal, state or local) terminated for cause or default.

Disclosure of Confidential Information

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

E- Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated Section § 37-7-301 *et seq.*

E-Verification

If applicable, 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. Mississippi Code Annotated. §§ 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. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. 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 Contractor to the following:

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

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

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

Failure to Enforce

Failure by the Department 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 Department to enforce any provision at any time in accordance with its terms.

Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Department immediately in writing of the cause of its inability to perform; how it affects its performance; and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Department determines it to be in its best interest to terminate the agreement.

Independent Contractor

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 Department. Nothing contained herein shall be deemed or construed by the Department, 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 Department and the Contractor. Neither the method of computation of fees nor other charges, nor any other provision contained herein, nor any act of the Department or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the Department 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 Department. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Department; and the Department shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Department 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 Department shall not provide to the Contractor any insurance

coverage or other benefits, including Workers' Compensation, normally provided by the Department for its employees.

Integrated Agreement/Merger

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

Ownership of Documents and Work Papers

The Department 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 Department 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. Contractor shall be entitled to use such work papers only after receiving written permission from the Department and subject to any copyright protections.

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 Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

Price Adjustment Clause

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

- a. by agreement on fixed price adjustment before the 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.

II. Submission of Cost of 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*.

Procurement Regulations

The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.

Prospective Contractor's Representation Regarding Contingent Fees

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

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 Department 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 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.

Recovery of Money

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

Representation Regarding Contingent Fees

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

Representation Regarding Gratuities

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

Severability

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

Stop Work Order

(1) Order to Stop Work: The procurement officer, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either:

(a) cancel the stop work order; or,

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

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

(a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,

(b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) Termination of Stopped Work: If a stop work order is not canceled 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.

Termination for Convenience Clause

I. Termination. The Department may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Department shall be given written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

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

Termination for Default Clause

I. 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 otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Department 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 Department, the Chairman of the Department 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 Department may procure similar supplies or services in a manner and upon terms deemed appropriate by the Department. 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.

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

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

II. Excuse of 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 Department within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, 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 Department shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Department under the clause entitled Termination for Convenience.

V. *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 Excuse for Nonperformance of 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 Department, be the same as if the notice of termination had been issued pursuant to such clause.

VI. *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.

Termination Upon Bankruptcy

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

Third Party Action Notification

Contractor shall give the Department prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

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 the examination, copying or reproduction.

Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.*, and Mississippi Code Annotated. § 79-23-1. In addition, this contract is subject to the 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>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Unsatisfactory Work

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the Department to create a condition that threatens the health, safety, or welfare, the Contractor shall, on being notified by the Department, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Department shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power of remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

Appendix B

MISSISSIPPI DEPARTMENT OF REVENUE (DOR)

Compliance With Tax, Tag and Title Laws Policy Statement Amended July 2010

PURPOSE

We want to be good citizens and comply with all federal and state laws, and it is absolutely essential that we keep the public's trust by obeying the same laws that we enforce against others. As a state agency tasked with the mission of collecting tax revenue for the State of Mississippi, any noted instances of noncompliance by DOR employees erodes public trust and confidence in the work that we do. The DOR could be found negligent in its duties to the public to continue the employment of a person who fails to comply with the laws that are administered by the DOR.

GENERAL

All employees are on notice that timely compliance with all tag, title and tax laws is expected by this agency, and that we will take disciplinary action against anyone who knowingly disobeys the laws the DOR administers.

RESPONSIBILITY

Furthermore, the failure to comply with all tag, title, and tax laws, both federal and state, will be considered a scheduled Group Three Offense for DOR employees. As such, the failure to comply with this policy may result in disciplinary action authorized by the State Personnel Board for the commission of a Group Three offense, which includes the risk of termination of employment.

Signature

Date

Printed Name

**Attachment A
Bid Cover Sheet**

The Department of Revenue is seeking to establish a contract to provide temporary staffing for our Clinton office and the Alcohol Beverage Control Distribution Center located in Gluckstadt, Mississippi.

Bids are to be submitted as listed below, on or before 12:00 p.m. CST on May 7, 2019.

PLEASE MARK YOUR ENVELOPE:

**Mississippi Department of Revenue
Attention: Bid Coordinator
BID #: 3160002866
500 Clinton Center Drive
Clinton, MS 39056
SEALED BID – DO NOT OPEN**

NAME OF COMPANY _____

QUOTED BY _____

SIGNATURE _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE _____

FAX NUMBER _____

EMAIL ADDRESS _____

***NAME AND PHONE NUMBER OF COMPANY REPRESENTATIVE TO BE
CONTACTED BY AGENCY SEEKING TO CONTRACT FOR SERVICES
PURSUANT TO THIS IFB***

Name: _____

Phone Number: _____

FEIN # (if company, corporation or partnership): _____

SS # (if individual): _____

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many qualified employees do you employ? _____

Attachment B Certification

By signing below, the company representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

1. That he/she has thoroughly read and understands the terms and conditions, instructions and specifications for the Invitation for Bids (**IFB # 3160002866**) and Attachments.
2. The company meets all requirements and acknowledges all certifications contained in the Invitation for Bids (**IFB # 3160002866**) and Attachments.
3. The company agrees to all provisions of the Invitation for Bids (**IFB # 3160002866**) and Attachments.
4. The company will perform the services required at the prices quoted on the bid form.
5. The company 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.

[Please execute and return with Bid Materials.]

Company: _____ Signature: _____

Date: _____ Title: _____

Printed Name: _____

Attachment C
Bid Form for Temporary Staffing

Bid Number: 3160002866

Gentlemen:

Pursuant to the advertisement for bids to be received, I/We _____

_____ located at _____

do submit our bid form for Bid # _____ . This bid is made without collusion on the part of any person, firm or corporation.

The pricing must include ALL associated costs with no additional or hidden fees.

Total Yearly Cost _____

Exceptions and/or Deviations? Yes ___ No ___

Please list and describe exceptions if applicable:

Company: _____

Signature: _____

Address: _____

Printed name: _____

Title: _____

Phone: _____

Date: _____

E-mail Address: _____

**Attachment D
References**

REFERENCE #1

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional): _____
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE #2

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional): _____
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE #3

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #4

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #5

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #6

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Attachment E
Acknowledgement of Amendments

Please sign and print at the appropriate statement.

I acknowledge receipt of all amendments associated with
BID # 3160002866.

They are as follows:

- 1.
- 2.

Printed Name

Company Name

Signature

There were no amendments associated with **BID # 3160002866.**

Printed Name

Company Name

Signature

Attachment F
Secretary of State Acknowledgement

_____, acknowledges that we
(Vendor Name)

_____ **are registered with the Secretary of State's Office**
(attach proof)

_____ **are not registered with the Secretary of State's Office**

We, _____
(Vendor Name)

_____ **will register before the start of the contract and provide**
proof

_____ **will not register**

Signature

Date

Printed Name

Amendment # 1

Temporary Staffing

Bid Number: 3160002866

Attachment C "Bid Form" has been amended to reflect a line for % Mark up instead of Total yearly cost.

Please note: Each bidder shall complete Form E, Acknowledgement of Amendments, and include as part of its bid packet.

Attachment C
Bid Form for Temporary Staffing

Bid Number: 3160002866

Gentlemen:

Pursuant to the advertisement for bids to be received, I/We _____

_____ located at _____

do submit our bid form for Bid # _____ . This bid is made without collusion
on the part of any person, firm or corporation.

% Mark Up _____

Exceptions and/or Deviations? Yes ___ No ___

Please list and describe exceptions if applicable:

Company: _____

Signature: _____

Address: _____

Printed name: _____

Title: _____

Phone: _____

Date: _____

E-mail Address: _____



Request for Proposal

RFP Number: 3120001761
To Provide: Temporary Staffing Services
Issue Date: 7/18/2019

Closing Location

Mississippi Department of Revenue
500 Clinton Center Drive
Clinton, MS 39056

PROPOSAL COORDINATOR

Erica Greenwood, Contract Analyst, Sr.
Telephone: (601) 923-7860
Fax: (601) 923-7658
E-Mail: erica.greenwood@dor.ms.gov

Closing Date and Time:

Proposals must be received by August 20, 2019, 12:00 p.m. (CST)

EXHIBIT
7

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RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP No. 3120001761.

- _____ 1) One clearly marked original response and 1 identical copy of the complete proposal
 - a) Label the front and spine of the three-ring loose-leaf binders with the Contractor name and RFP number.
 - b) DO NOT include the Contractor name on the pages of the proposal. Include the items listed below inside the binders.
 - c) DO NOT include a copy of the RFP in the binders.
 - d) DO NOT include your business name or any identifying information in your response to the Technical Approach (part of the Technical Proposal in **Attachment K**)
- _____ 2) Proposal Cover Sheet
- _____ 3) Certification to sign on behalf of the company
- _____ 4) Proposal Form # 1 – Clerical Staffing
- _____ 5) Proposal Form # 2 – Warehouse Staffing
- _____ 6) References
- _____ 7) Reference Score Sheet # 1
- _____ 8) Reference Score Sheet # 2
- _____ 9) Acknowledgement of Amendments
- _____ 10) Secretary of State Acknowledgement
- _____ 11) Conflict of Interest Disclosure Statement
- _____ 12) Technical Proposal
- _____ 13) Insurance Certificate or Letter

**MISSISSIPPI DEPARTMENT OF REVENUE
REQUEST FOR PROPOSAL
TEMPORARY STAFFING
Clerical Staff and Warehouse Staff**

1.0 Scope of Services

The Department of Revenue (referred to as “DOR” or “Department”) hereby solicits separate proposals using the competitive sealed proposal process. This process will allow us to assess prospective proposers on capability as well as price to establish a contract with a qualified agency to procure temporary clerical staffing for our Clinton location and a contract for temporary warehouse staffing at our Alcohol Beverage Control Distribution Center located in Gluckstadt, Mississippi. Over the past years, DOR has contracted for 60 – 150 people with varying skills, responsibilities, lengths of work assignments and rates of pay. The work assignments have included, but are not limited to, general office, data entry, data control, mail clerk, batching, and scanning and warehouse labor.

DOR is tasked with promptly and efficiently providing services to the taxpayers of this state. To attain this efficiency, the agency utilizes temporary staffing services to fulfill short term staffing needs to supplement full time personnel. Contracting services in this manner is more economical to the State. All proposals submitted in response to this solicitation must conform to the requirements and specifications outlined within this document and any applicable amendments.

The contracts awarded will be fixed price agreements and will require services to be performed by one contractor for each contract. Each contractor will designate one person who will be responsible for all activities required to fulfill the specifications of said contract. This individual shall be vested with the authority to make decisions and commitments on behalf of the contractor during performance of the contract.

2.0 Characteristics of Work

There are several essential functions where a temporary employee may be utilized. There are clerical duties as well as warehouse duties. Contractor will provide clerical staff for our Clinton office to perform clerical duties which include, but are not limited to, reviewing information for correctness, answering the telephone, assisting administrative superior or various clerical or administrative functions. Contractor will provide warehouse staff to the Alcohol Beverage Control Distribution Center located in Gluckstadt, Mississippi to perform warehouse duties, which include, but are not limited to, receiving, storing, sorting, stocking and shipping various items. Additional duties involve unloading carriers,

maintaining records, and labeling items for shipment and storage in accordance with established operating procedures.

3.0 General Terms of Contract

The term of the contracts shall be from December 1, 2019 through November 30, 2020. At the discretion of the Department of Revenue, the duration may be extended for a period of three (3) successive one-year periods under the same price, terms and conditions as in the original contract upon written notice to the contractor at least ten (10) days prior to the anniversary date. The total number of renewals shall not exceed three (3).

4.0 Relationship of Parties

It is expressly understood and agreed that DOR enters into a contract with a Temporary Staffing Service based on the purchase of professional services and not based on an employer-employee relationship. For all purposes under the Contract:

- A. The Temporary Staffing Service represents that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under the Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be employees of DOR.
- B. Any person employed by the Temporary Staffing Service to perform the services hereunder shall be the employee of the Temporary Staffing Service, who shall have the sole right to hire and discharge its employee. DOR may, however, direct the Temporary Staffing Service to replace any of its employees under the Contract.
- C. The Temporary Staffing Service shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of Federal Income Tax, State Income Tax, Social Security, Unemployment Compensation, and any other withholdings that may be required.

5.0 Procurement Time Line

It is our intent to follow the schedule below in the execution of this request for proposal; however, DOR reserves the right to amend and/or change the below schedule of events, as it deems necessary.

- A. Request for Proposal Issue Date: 07/18/2019; 9:00 am CST
- B. First Publication: 07/18/2019

C. Second Publication:	07/25/2019
D. Deadline for Submission of Questions:	08/01/2019; 5:00 pm CST
E. Last Day Answers Posted to Website:	08/08/2019; 5:00 pm CST
F. Proposal Packet Submission Deadline:	08/20/2019; 12:00 pm CST
G. Proposal Opening:	08/20/2019; 2:00 pm CST
H. Surrogate Bid Deadline:	08/29/2019; 12:00 pm CST
I. Award Notification:	08/30/2019
J. Debriefing Request Date:	09/05/2019
K. Protest Deadline:	09/06/2019; 12:00 pm CST
L. Submission to PPRB Deadline:	10/02/2019
M. PPRB Meeting Date:	11/06/2019
N. Projected Contract Date:	12/01/2019

6.0 Eligibility Requirements

6.1 Qualification of Proposer

The proposer may be required before the award of any contract to show to the complete satisfaction of DOR that it has the necessary facilities, ability and financial resources to provide the service specified therein in a satisfactory manner. The proposer shall be required to give a past history and references in order to satisfy DOR in regard to the proposer's qualifications. DOR may make reasonable investigations deemed necessary and proper to determine the ability of the proposer to perform the work, and the proposer shall furnish to DOR all information for this purpose that may be requested. DOR reserves the right to reject any proposal if the evidence submitted by, or investigation of, the proposer fails to satisfy DOR that the proposer properly qualified to carry out the obligations of the contract and to complete the work described therein. Qualifications will be based on the provisions of the following subsections under Eligibility Requirements 6.0.

6.2 References

As part of its proposal, each proposer must furnish contact information of at least four current references. The reference information should include the contact person, address

and phone number for each contract with their largest clients of similar size and scope of services, as specified in this RFP. "Largest client" is determined by the revenue paid by the client to the proposer over the past two year period. Failure to list a qualifying client may result in rejection of prospective proposer's proposal. DOR will contact these clients as references to evaluate the quality of the proposer's past work and management capabilities. Reference information must be provided as part of the packet submitted for consideration.

References must report the vendor to be of good reputation in providing applicable services. Although DOR requires the provision of a minimum of four (4) references, proposer may submit as many references as desired. References will be contacted in order listed until at minimum two references have been interviewed. Proposers are encouraged to submit additional references to ensure that at least two references are available for interview. It is the responsibility of the proposer to verify before submitting their proposal that contact information is correct and current for each reference. DOR will not seek to correct erroneous contact information or track down references.

DOR staff must be able to contact two (2) references for a proposal to be found responsive. In addition, the proposer must have a minimum score of six (6) on the Reference Score Sheet in **Attachment F and G** from reference interviews by DOR with two (2) references for a total minimum score of twelve (12).

6.3 Business Longevity

Each proposer must have been in business a minimum of five (5) years prior to submission of its proposal. Please indicate the length of time you have been in business providing professional services as specified in the Technical Proposal in **Attachment K**. Business longevity information must be provided as part of the proposal packet submitted for consideration.

6.4 Contractor Personnel Requirements

Each proposer must have personnel who are experienced and qualified to perform the duties as required by the DOR including, but limited to the following:

- A. Be able to read, write, understand and speak English.
- B. Have the following personality traits and abilities:
 1. tact in dealing with people
 2. ability to understand, explain, interpret and apply rules, regulations, directives and procedures,
 3. ability to accept and respond to instructions and directions.
- C. The proposer must not have any criminal history, including convictions for theft and alcohol related offenses, within the last seven (7) years. In addition, no personnel may have any active warrants out for his or her arrest at the time of hiring nor shall he or she be out on bond while facing criminal charges.

6.5 Insurance

Prior to the start of the contract period the temporary staffing provider must provide the DOR Proposal Coordinator certificates from its insurer(s) certifying they have appropriate and comprehensive insurance covering incident(s) and/or damages arising from the provider's provision of services arising from this contract. Additionally, DOR shall be named as an additional insured on such required coverage. Such insurance must include the following:

- A. No less than \$1,000,000.00 per occurrence Comprehensive General Liability. DOR shall be named as an additional insured on the policy.
- B. The provider shall maintain in effect throughout the contract period workers' compensation insurance sufficient to meet or exceed the statutory minimum requirements of the State of Mississippi covering all persons performing work under this contract. The provider shall be prepared to provide evidence of required workers' compensation insurance upon request by DOR at any time during the contract period.

Proposer understands should the minimum amounts listed above prove to be inadequate at any point during the contract period; proposer will be required to obtain adequate insurance.

All required insurance will be endorsed to provide DOR with 30 days advance notice of cancellation or material change. Each provider must include an insurance certificate showing this coverage with its proposal material or provide proof from its insurance provider that such coverage will be available if the provider is awarded the contract. The insurance company must be authorized to do business in Mississippi. The successful proposer must submit proof of insurance prior to the award of contract.

6.6 Registration with Mississippi Secretary of State

By submitting a proposal, the proposer certifies it is registered to do business with the State of Mississippi through Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by DOR that it has been awarded the contract. Please complete the Secretary of State Acknowledgement form included in **Attachment I**.

7.0 Procurement Methodology

7.1 Approach

It is understood that all proposals are submitted on the basis of complying with the provisions, terms and specifications set out herein, provided that you can do so under the various government rulings and directives now in effect or which may be issued during the period of the contract. DOR reserves the right to waive minor technicalities on

proposal forms and specifications that can be waived or corrected without prejudice to other proposers when it is in the best interest of DOR. DOR reserves the right to reject any and all proposals, to waive any minor informality in the proposals, and, unless otherwise specified by the proposers, to accept any items on the proposal.

The proposer understands that the Department of Revenue is an equal opportunity employer and maintains a policy that prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration. The proposer will strictly adhere to this policy in its employment practices and provision of services.

7.2 Proposer Rules of Procurement

All proposals shall be binding for a minimum of forty-five (45) days after opening.

7.3 Procedure for Answering Questions

- A. All questions concerning this Request for Proposal or the proposal process must be submitted by email to:

BidQuestions@dor.ms.gov

- B. Questions and requests for clarification must be submitted via email during normal business hours by the deadline reflected in Section 5.0, Procurement Time Line. Questions received after this time will not be considered.
- C. All questions and answers shall be treated as amendments to the RFP. See section 7.7 below. Therefore, all questions received by DOR in a timely manner will be answered and issued in the form of amendments to each vendor that received the RFP. Additionally, the questions and answers will be published on the DOR website (www.dor.ms.gov) in a manner that all proposers will be able to view by the date and time reflected in Section 5.0, Procurement Time Line.
- D. It shall be incumbent upon all Proposers to understand the provisions of the scope of services and to obtain clarification by the time reflected in Section 5.0, Procurement Time Line. Proposers are responsible for following up to see that any correspondence or communications are properly received.
- E. DOR will not be bound by any verbal or written information that is not contained within this RFP unless formally noticed and issued by:

Erica Greenwood, Contract Analyst, SR
Email: erica.greenwood@dor.ms.gov

7.4 Proposal Modification or Withdrawal

No proposals shall be modified after the specified time for the opening. If a proposal is withdrawn after opening, the proposer will be removed from the list of eligibles for a period of six (6) months. A proposer may withdraw a proposal prior to the time set for the opening by simply making a request in writing to DOR; no explanation is required. No partial withdrawals are permitted after the time and date set for the opening; only complete withdrawals are permitted. No late proposals, modifications or withdrawals will be considered unless receipt would have been timely but for the action or inaction of DOR personnel directly involved with the procurement activity.

7.5 Late Submission

No late proposals, modifications or withdrawals will be considered unless receipt would have been timely but for the action or inaction of MDOR personnel directly involved with the procurement activity. Late proposals or responses shall remain sealed and be maintained as part of the procurement file.

7.6 Negotiation Rights

Discussions may be conducted with proposers who submit proposals determined to be reasonably susceptible of being selected for award, but proposals may be accepted without such discussions.

7.7 Amendments to the RFP

Amendments to the RFP will be identified as such. Amendments will reference the portions of the RFP that it amends. Amendments will be sent to all prospective proposers that received an RFP. Each vendor shall acknowledge receipt of amendments by completing and signing the Acknowledgement of Amendments form included in **Attachment H** hereto. The Proposal Coordinator of DOR will post the Amendment by number on DOR website www.dor.ms.gov in a manner all proposers will be able to view. Respondents shall rely only on communication from the Proposal Coordinator of DOR in submitting proposals and obtaining amendments. The DOR's Purchasing Division shall not be bound by any oral communications; proposers who rely upon any oral communications regarding the proposal do so at their own risk.

Additionally, each proposer shall complete **Attachment H**, Acknowledgements of Amendments, and include as part of its proposal packet.

7.8 Opening Procedures

Proposals will not be opened publicly. Proposals will be made available for inspection only after award of contract.

7.9 Competitive Negotiation

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

7.10 Proposal Evaluation

An evaluation committee will review and assess all responsive proposals submitted. To be considered responsive to the RFP, each proposal must be complete, contain accurate information and contain the minimum expected components described in the RFP. If the proposal is incomplete, contains inaccurate information, or fails to contain the minimum expected components of the RFP, it may be deemed unresponsive and may not be considered for award.

The awards will be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth below. The factors and the level of importance associated with each factor are listed. The factor for selecting the best proposal are the following:

- A. The overall quality of the proposed plan (the plan should reflect an understanding of the project and its objectives) and the ability to perform the services as reflected by the completion of the technical proposal and submission of resumes of the key personnel. Consideration will be given to the completeness of the responses to the specific requirements of the solicitation **(20 points, or 20%)**;
- B. The personnel, equipment, facilities and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting **(20 points, or 20%)**;
- C. A record of past performance of similar work as exhibited by references from other companies serviced within the past two (2) years and other documentation related to vendor's capabilities **(25 points, or 25%)**; and
- D. Price **(35 points, or 35%)**.

The score will be based on a 100-point scale, with each factor having the percentage of the total 100 points available as listed. The total score will be determined according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in this RFP. Prospective contractors must furnish, upon

request of DOR, satisfactory evidence of their ability to provide services in accordance with the terms and conditions in **Appendix A**.

DOR may obtain information about the prospective contractor's ability to meet requirements through references not provided by the proposer, or any other means available. DOR Executive Staff reserves the right to make the final determination as to the prospective contractors' ability to meet requirements, including any information the agency may have regarding services provided to DOR previously and the proposer's responsiveness to issues and concerns.

7.11 Approval Process

An evaluation committee will review and score each responsive proposer using the scoring criteria. The name of each responsive proposer that is recommended for funding will be forwarded to the Commissioner of the Mississippi Department of Revenue or his designee for award subject to final approval by the Public Procurement Review Board (PPRB).

7.12 Award Notice

The awards, if made, will be by DOR's evaluation committee within forty-five (45) days after the proposal opening. After DOR makes the awards, official notification will be sent to all participating vendors along with an accompanying analysis describing why the contract was awarded to the particular vendor. Notice of award shall be made available to the public. DOR will not respond to telephone calls requesting the information. All awards shall be subject to **final** approval by the Public Procurement Review Board (PPRB).

7.13 Incurring Costs

Actions taken by or expenses incurred by the proposers in responding to this RFP, before the receipt of the official notification of award or in anticipation of a contract will be at the proposer's own risk, and DOR will not assume any liability for any such actions.

7.14 Right to Protest

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Commissioner of the Mississippi Department of Revenue. The protest shall be submitted in writing within seven (7) days after notification is received. The written protest letter shall contain an explanation of the basis of the protest. A protest is considered submitted when received by the Proposal Coordinator or Commissioner of the Mississippi Department of Revenue. To expedite the handling of the protest, the envelope should be labeled "Protest". Protest filed after normal business hours on the seventh day will not be considered.

7.15 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Proposal Coordinator of DOR within three (3) business days of notification of the contract awards. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Proposal Coordinator of the MDOR in writing and identify its attorney by name, address and telephone number.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review's Rules and Regulations*.

7.16 Proposal Ownership

All proposals become DOR property. Proposals will be made available for inspection only after award of contract. For this reason, proprietary material should be clearly labeled as such. The classification of an entire proposal as proprietary or trade secret is not acceptable and may result in rejection of the proposal. Request to review proprietary information will be handled in accordance with state law and applicable procedures. All disclosures of proposal information to interested parties will be made in compliance with DOR policies and procedures established in accordance with the Mississippi Public Records Act of 1983 defined in Section 26-61-1 et seq., of the Mississippi Code and exceptions found in Section 25-61-9 and 79-23-1.

7.17 Partial Proposals Prohibited

Proposals submitted must be all or none. Proposals will not be accepted for any part of the total.

7.18 Exceptions and Deviations

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

7.19 Compensation for Services

Compensation for services will be in the form of a fixed price agreement. Compensation will be based on a percentage mark-up beyond the hourly rates established by DOR for

the desired positions based on current labor market hourly wages for the positions. Services are to be provided on an as needed basis.

7.20 Conflict of Interest

All proposals must be accompanied by a statement disclosing (1) any involvement, financial or otherwise, that an employee, officer, or agent of DOR may have in the proposing organization, and (2) any involvement, financial or otherwise, that any employee, officer of any other governmental agency may have in the proposing organization. Disclosure statement form included in **Attachment J**.

7.21 Contract

Awards will not be final until DOR and the proposer have negotiated and executed a written contractual agreement and this agreement is approved by the Public Procurement Review Board. If a contract is awarded, the selected proposer will be required to comply with the terms and conditions, in **Appendix A**, that will be a part of the contract. The resulting contracts shall be governed by the applicable provisions of *Public Procurement Review Board Office of Personal Service Contract Review's Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://DFA.ms.gov>.

7.22 Office Closure Statement

If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of proposals at the advertised date and time, all proposals received shall be opened on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the proposal opening, as determined in accordance with this paragraph, shall not be advertised, and all proposers, upon submission of a proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Proposals shall be received by the agency until the new date and time of the proposal opening as set forth herein. **The agency shall not be held responsible for the receipt of any proposals for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event.** Each proposer shall be required to ensure the delivery and receipt of its proposal by the agency prior to the new date and time of the proposal opening.

8.0 Submission Procedures

8.1 Procedures for Submitting Proposal

- A. Proposals must be written and formatted based on the forms furnished by DOR, or they may not be considered. Letters will not be considered a part of your

proposal. Facsimile transmissions will not be accepted. Failure to submit a proposal in the manner specified will be considered cause for rejection of proposal.

- B. Proposals should be typed and single-sided; not handwritten. The proposal shall be signed by a company official with authorization to bind contractor to its provisions and submitted in a sealed envelope or package to 500 Clinton Center Dr. Clinton, MS 39056 no later than the time indicated in Section 5.0 Procurement Time Line.
- C. Unless submitted in the Mississippi Accountability System Government Information and Collaboration (MAGIC) system, a packet must be delivered by the time indicated for submission in Section 5.0 of the Procurement Time Line. It must be labeled as noted in (E.) below. Proposals not properly marked and opened by mail personnel prior to the opening will be rejected. If submitted in MAGIC documents must be signed and scanned in as an attachment.
- D. DOR reserves the right to decide, on a case-by-case basis, whether to reject with exceptions, modifications or additions outside the parameters set by this RFP, including specifications, as nonresponsive.
- E. Sealed proposals should be hand delivered (strongly encouraged) or mailed and labeled as follows:

Mississippi Department of Revenue
Attention: Proposal Coordinator
Proposal #3120001761
500 Clinton Center Dr
Clinton MS 39056
SEALED PROPOSAL – DO NOT OPEN

OR

Mississippi Department of Revenue
Attention: Proposal Coordinator
Proposal #3120001761
P O Box 22828
Jackson, MS 39225
SEALED PROPOSAL – DO NOT OPEN

- F. The parties submitting proposals are responsible for ensuring they are delivered by the required time assuming all risk of delivery. DOR will not be responsible for mail delays or lost mail. Delays due to system down time or weather will be reviewed on a case by case basis and the proposer should notify DOR Proposal Coordinator of such occurrences. Proposals and modifications or corrections thereof received after the closing time specified will not be considered. Any

proposals or responses received subsequent to the specified date and time shall remain sealed and be maintained as part of the procurement file.

8.2 Submission Format

The Proposal package must be sealed and must contain the following Attachments (located in Appendix D):

- A. Proposal Cover Sheet
- B. Certification to sign on behalf of the company
- C. Proposal Form # 1 – Clerical Staffing
- D. Proposal Form # 2 – Warehouse Staffing
- E. References
- F. Reference Score Sheet # 1
- G. Reference Score Sheet # 2
- H. Acknowledgement of Amendments
- I. Secretary of State Acknowledgement
- J. Conflict of Interest Disclosure Statement
- K. Technical Proposal

Notes on submission format: DOR asks that the vendor not include identifying information on the pages of their proposal unless that information is necessary in the response to the requirement (e.g the Letter of Introduction, Executive Summary, References, etc.) As an example, many proposals include the proposer's name as a footnote or header on each page, and that should be avoided in this proposal.

- L. Insurance Certificate or Letter

9.0 Responsibilities & Duties

9.1 DOR Responsibilities

1. DOR will provide specific information about required education, skills and hourly rate of pay.

2. DOR will provide information on the projected length of the work assignment.
3. DOR will provide daily supervision of Temporary Staffing Provider's employee.
4. DOR will provide a copy of all policies and procedures **Appendix B & C** by which the employee is to abide by.
5. DOR will provide timely payment for services rendered in accordance with E-Payments under terms and conditions in as stated herein.
6. DOR will provide information on the hours and location of the work assignment.

9.2 Temporary Service Provider Responsibilities

1. Fulfill all responsibilities as outlined in the Request for Proposal.
2. Provide qualified and competent staffing within **two weeks** of DOR's order.
3. Provide qualified and competent replacement staffing within **two work days** of DOR's request or sooner based on skill level. Further, Contractor shall provide same-day replacement for those staffing that are tasked primarily with manual labor so long as DOR makes a request for such replacement staffing prior to 12:00 p.m. If the request for such staffing is made by DOR after 12:00 p.m., Contractor will be required to have replacement staffing for the first shift the following day.
4. Administer appropriate skills tests with results provided to DOR.
5. Perform a criminal investigation on every individual *before* placement with DOR. Written confirmation/results of such check *shall* be provided to DOR prior to staff placement.
6. Perform a substance abuse test with no individual sent to DOR who had positive results. Confirmation of negative results *shall* be provided to DOR prior to staff placement.
7. Perform employment reference checks to validate application information.
8. Provide to DOR a copy of the signed DOR policy statements on which the individual certifies he/she is in compliance with all tax, tag and title laws in **Appendix B** and understands the confidential nature of DOR information in **Appendix C**.
9. Provide to DOR a copy of the individual's application for employment.

10. Maintain accurate quality control records including the disposition of all complaints and allow inspection of said records when requested by DOR.
11. Allow for movement of an individual from contractual status to a DOR position after 6 weeks of employment with Temporary Service Provider with no fee to DOR or the individual.
12. Handle disciplinary matters promptly.
13. Provide itemized invoices weekly to DOR.
14. Allow for faxing or electronic submission of authorized time records from individuals and/or the individual's supervisor for payroll purposes.
15. Provide direct deposit and/or mailing of checks directly to contractual staff.

10.0 Physical Requirements

Heavy Work: May frequently exert force equivalent to lifting up to 50 pounds and may occasionally exert force equivalent to lifting up to approximately 75 pounds.

Light Work: May frequently walk or stand and/or frequently exert force equivalent to lifting up to approximately 10 pounds.

Operate Equipment: A temporary employee must be willing to learn to operate a Stock Picker or a pallet jack in a safe manner and be able to work above ground level.

Communication Skills: Ability to give and receive information through speaking and listening skills. Receives, attends to, interprets and responds to verbal messages and expresses information to individuals or groups effectively

Vision: Requires the ability to be able to read and the ability to perceive the nature of objects by the eye.

Motor Coordination: While performing the duties of the job, the temporary employee is regularly required to stand, use hands to fingers, handle or feel objects or tools, and reach with hands and arms. The temporary employee is frequently required to walk, stoop, kneel, crouch or bend and pick up product.

Work Ethic: Is productive, diligent, conscientious, timely and loyal. Conscientiously abides by the rules, regulations and procedures governing work.

Storage Maintenance: Handles stock in the warehouse. Receives, sorts and stores a variety of different items and equipment to place items in the proper location.

Stock the pick locations with the proper product and select the correct product when filling customer's orders.

Integrity and Honesty: Demonstrates a sense of responsibility and commitment to the public trust through statements and actions.

Stress Tolerance: Deals calmly and effectively with high stress situations (for example, tight deadlines, hostile individuals, emergency situations, dangerous situations)

Personal Hygiene: Present themselves as well groomed and properly dressed to work.

Appendix A

Terms and Conditions

Anti-Assignment/Subcontracting

The Contractor acknowledges that it was selected by the Department 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 Department, which the Department may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the Department of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Department 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 Department may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

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. Contractor shall comply with applicable federal, state, and local laws and regulations.

Approval Clause

It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

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.

Availability of Funds

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

Certification of Independent Price Determination

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

Change in Scope of Work

The Department 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 Department 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 Department in writing of this belief. If the Department 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.

Compliance with Laws

Contractor understands that the Department of Revenue 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 Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of

services. 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.

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 State. Each party to this agreement agrees to the following:

- (1) to protect all confidential information provided by one party to the other;
- (2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and
- (3) 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
- (4) to do so by using those methods and procedures normally used to protect the party’s own confidential information.

Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the Customer shall result in the immediate termination of this agreement.

Contractor Personnel

The Department 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 Department reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Department in a timely manner and at no additional cost to the Department. The day-to-day supervision and control of the Contractor's employees or Subcontractors is the sole responsibility of the Contractor.

Debarment and Suspension

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

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

- performing a public (federal, state, or local) transaction or contract under public transaction;
- (3) has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - (5) has not, within a three-year period preceding this bid, had one (1) or more public transactions (federal, state or local) terminated for cause or default.

Disclosure of Confidential Information

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

E- Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated Section § 37-7-301 *et seq.*

E-Verification

If applicable, 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. Mississippi Code Annotated. §§ 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. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. 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 Contractor to the following:

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

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

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

Failure to Deliver

In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the DOR, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the DOR may have.

Failure to Enforce

Failure by the Department 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 Department to enforce any provision at any time in accordance with its terms.

Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Department immediately in writing of the cause of its inability to perform; how it affects its performance; and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Department determines it to be in its best interest to terminate the agreement.

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 Department. Nothing contained herein shall be deemed or construed by the Department, 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

Department and the Contractor. Neither the method of computation of fees nor other charges, nor any other provision contained herein, nor any act of the Department or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the Department 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 Department. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Department; and the Department shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Department 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 Department shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Department for its employees.

Integrated Agreement/Merger

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

Notices

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

For Contractor: name, title, Contractor, address

For the agency:

Mississippi Department of Revenue
Herb Frierson, Commissioner
P O Box 22828
Jackson MS 39225

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 DOR and agreed to by Contractor.

Ownership of Documents and Work Papers

The Department 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 Department 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. Contractor shall be entitled to use such work papers only after receiving written permission from the Department and subject to any copyright protections.

Paymode Clause

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

Price Adjustment Clause

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

- a. by agreement on fixed price adjustment before the 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.

II. Submission of Cost of 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*.

Procurement Regulations

The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.

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 Department 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 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.

Recovery of Money

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

Representation Regarding Contingent Fees

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

Representation Regarding Gratuities

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*.

Severability

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

Stop Work Order

(1) Order to Stop Work: The procurement officer, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered

by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

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

- (a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
- (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) Termination of Stopped Work: If a stop work order is not canceled 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.

Termination for Bankruptcy

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

Termination for Convenience Clause

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

2. Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the

Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Department may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default Clause

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 otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Department 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 Department, the Chairman of the Department 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 Department may procure similar supplies or services in a manner and upon terms deemed appropriate by the Department. 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 Department, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the Department has an interest.

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

4. *Excuse of 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 Department within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, 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 Department shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Department under the clause entitled Termination for Convenience.

5. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of 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 State, be the same as if the notice of termination had been issued pursuant to such clause.

6. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Third Party Action Notification

Contractor shall give the Department prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

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 the examination, copying or reproduction.

Transparency Clause

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.*, and Mississippi Code Annotated. § 79-23-1. In addition, this contract is subject to the 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>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Unsatisfactory Work

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the Department to create a condition that threatens the health, safety, or welfare, the Contractor shall, on being notified by the Department, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Department shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power of remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

Appendix B
MISSISSIPPI DEPARTMENT OF REVENUE
(DOR)

Compliance With Tax, Tag and Title Laws
Policy Statement
September 1, 1996
Amended July 2010

PURPOSE

We want to be good citizens and comply with all federal and state laws, and it is absolutely essential that we keep the public's trust by obeying the same laws that we enforce against others. As a state agency tasked with the mission of collecting tax revenue for the State of Mississippi, any noted instances of noncompliance by DOR employees erodes public trust and confidence in the work that we do. The DOR could be found negligent in its duties to the public to continue the employment of a person who fails to comply with the laws that are administered by the DOR.

GENERAL

All employees are on notice that timely compliance with all tag, title and tax laws is expected by this agency, and that we will take disciplinary action against anyone who knowingly disobeys the laws the DOR administers.

RESPONSIBILITY

Furthermore, the failure to comply with all tag, title, and tax laws, both federal and state, will be considered a scheduled Group Three Offense for DOR employees. As such, the failure to comply with this policy may result in disciplinary action authorized by the State Personnel Board for the commission of a Group Three offense, which includes the risk of termination of employment.

As an employee of _____
working on assignment for the MS Dept of Revenue, I
have read and agree to abide by the statement above.

Signature

Date

Printed Name

Appendix C

MISSISSIPPI DEPARTMENT OF REVENUE (DOR) Confidentiality of Information Amended July 2010

Purpose To define the confidentiality of all information within the Department of Revenue (DOR)

General All information within the DOR is to be held in the strictest confidence. No employee of the DOR is authorized to divulge any return information without the prior approval of the Commissioner or the director of a division, as applicable.

State law provides penalties for conviction of unauthorized disclosures of data from tax returns and related return information.

In addition to the other penalties, employees are also subject to dismissal from employment with the DOR for a breach of agency security or confidentiality.

Federal Tax Information (FTI) Since federal information is used by the DOR, you are advised that unauthorized disclosure of information may subject you to federal prosecution under the Internal Revenue Code. Federal law provides for both civil and criminal penalties for conviction of unauthorized disclosure of any federal tax return and return information data.

It shall be unlawful for any person willfully to disclose to any person any return or return information acquired by him or another person. Any violation of this shall be a felony punishable by a fine in any amount not exceeding \$5,000 or imprisonment of not more than 5 years, or both, together with the cost of prosecution.

It shall be unlawful for any person willfully to inspect any return information acquired by such person or another person. Any violation shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the cost of prosecution.

Definitions **Return-** The term "return" means any tax information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the federal or state statutes and any amendment or supplement thereof, including supporting schedules attachments or lists which are supplemental to, or part of the return filed.

Return Information- The term "return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the IRS or the DOR with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and any part of any written determination or any background file document relating to such written determination which is not open to the public inspection, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

As an employee of _____ working on assignment for the MS Dept of Revenue, I have read and agree to abide by the policies stated above.

Signature

Date

Printed Name

Appendix D

Proposal Package

Temporary Staffing

Be sure to answer and complete each question as requested. All responses must follow the instructions provided. This requirement is a precondition to scoring.

Attachment A

Proposal Cover Sheet

The Department of Revenue (referred to as "DOR" or "Department") hereby solicits separate proposals using the competitive sealed proposal process. This process will allow us to assess prospective proposers on capability as well as price to establish a contract with a qualified agency to procure temporary clerical staffing for our Clinton location and a contract for temporary warehouse staffing at our Alcohol Beverage Control Distribution Center located in Gluckstadt, Mississippi.

Proposals are to be submitted as listed below, on or before 12:00 p.m. CST on August 20, 2019.

PLEASE MARK YOUR ENVELOPE:

**Mississippi Department of Revenue
Attention: Proposal Coordinator
PROPOSAL #: 3120001761
500 Clinton Center Drive
Clinton, MS 39056
SEALED PROPOSAL – DO NOT OPEN**

NAME OF COMPANY _____

QUOTED BY _____

SIGNATURE _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE _____

FAX NUMBER _____

EMAIL ADDRESS _____

***NAME AND PHONE NUMBER OF COMPANY REPRESENTATIVE TO BE
CONTACTED BY AGENCY SEEKING TO CONTRACT FOR SERVICES
PURSUANT TO THIS IFB***

Name: _____

Phone Number: _____

FEIN # (if company, corporation or partnership): _____

SS # (if individual): _____

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many qualified employees do you employ? _____

Attachment B

Certification

By signing below, the company representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

1. That he/she has thoroughly read and understands the terms and conditions in Appendix A, instructions and specifications for the Request for Proposal and Attachments.
2. The company meets all requirements and acknowledges all certifications contained in the RFP and Attachments.
3. The company agrees to all provisions of the RFP and Attachments
4. The company will perform the services required at the prices quoted on the proposal form.
5. The company 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 proposal.

[Please execute and return with Proposal Materials.]

Company: _____ Signature _____

Date: _____ Title: _____

Printed Name: _____

Attachment C

**Proposal Form for Temporary Staffing
(Clerical Staffing)**

Proposal Number: 3120001761

Gentlemen:

Pursuant to the advertisement for proposal to be received, I/We _____
_____ located at _____

do submit our proposal. This proposal is made without collusion on the part of any person, firm or corporation.

% Mark Up _____

Exceptions and/or Deviations? Yes ___ No ___

.....
Company: _____

Signature: _____

Address: _____

Printed name: _____

Title: _____

Phone: _____

Date: _____

E-mail Address _____

Attachment D

**Proposal Form for Temporary Staffing
(Warehouse Staffing)**

Proposal Number: 3120001761

Gentlemen:

Pursuant to the advertisement for proposal to be received, I/We _____
_____ located at _____

do submit our proposal. This proposal is made without collusion on the part of any person, firm or corporation.

% Mark Up _____

Exceptions and/or Deviations? Yes ___ No ___

.....
Company: _____

Signature: _____

Address: _____

Printed name: _____

Title: _____

Phone: _____

Date: _____

E-mail Address _____

Attachment E

References

REFERENCE #1

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #2

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #3

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE #4

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Attachment F

Temporary Staffing

Procurement Reference Score Sheet # 1

TO BE COMPLETED BY AGENCY STAFF ONLY

Company Name: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Service From/To Dates: _____

Able to provide Temporary Staffing services (clerical or warehouse) when you called?	Yes	No
Satisfied with the Temporary Staffing services provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling Temporary Staffing services?	Yes	No
Was the Temporary Staffing services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Offeror must have a minimum of 6 "yes" answers on the questions above from two references (total of 12 "yes" answers) to be considered responsive and for its proposal to be considered.

Score: Pass/Fail

Do you have any business, professional or personal interest in the vendor's organization? If yes, please explain.	Yes	No
---	-----	----

A "yes" to the above question may result in an automatic disqualification of the provided reference; therefore, resulting in a score of zero as responses to previous questions become null and void.

Notes:

Called by: _____ **Signature** _____ **Title** _____ **Date**

Attachment G

Temporary Staffing

Procurement Reference Score Sheet # 2

TO BE COMPLETED BY AGENCY STAFF ONLY

Company Name: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Service From/To Dates: _____

Able to provide Temporary Staffing services (clerical or warehouse) when you called?	Yes	No
Satisfied with the Temporary Staffing services provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling Temporary Staffing services?	Yes	No
Was the Temporary Staffing services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Offeror must have a minimum of 6 "yes" answers on the questions above from two references (total of 12 "yes" answers) to be considered responsive and for its proposal to be considered.

Score: Pass/Fail

Do you have any business, professional or personal interest in the vendor's organization? If yes, please explain.	Yes	No
---	-----	----

A "yes" to the above question may result in an automatic disqualification of the provided reference; therefore, resulting in a score of zero as responses to previous questions become null and void.

Notes:

Called by: _____
Signature Title Date

Attachment H

Acknowledgement of Amendments

Please sign and print at the appropriate statement.

I acknowledge receipt of all amendments associated with **Proposal #** _____.

They are as follows:

1. _____

2. _____

Printed Name

Company Name

Signature

There were no amendments associated with **Proposal #** _____.

Printed Name

Company Name

Signature

Attachment I

Secretary of State Acknowledgement

_____, acknowledges that we
(Vendor Name)

_____ are registered with the Secretary of State's Office.
(Attach proof)

_____ are not registered with the Secretary of State's Office.

We, _____
(Vendor Name)

_____ will register before the start of the contract and provide proof.

_____ will not register.

Signature

Date

Printed Name

Attachment J

**Conflict of Interest
Disclosure Statement**

Conflict of Interest – Involvement, financial or otherwise, that an employee, officer, or agent of DOR may have in the proposing organization; and any involvement, financial or otherwise, that any employee, officer of any other governmental agency may have in the proposing organization.

_____, acknowledges that we
(Vendor Name)

_____ do not have a conflicting interest to report.

_____ do have a conflicting interest (please disclose below).

Describe the Nature of the Conflicting Interest:

Signature

Date

Printed Name

Attachment K

Technical Proposal: The following documents and responses will be included in the Technical Proposal and tabbed as such in the order given below.

- 1. Letter of Introduction:** An individual authorized to legally bind the Vendor must submit and sign a Letter of Introduction. The person who signs the letter will be considered the contact person for all matters pertaining to the Offer unless the Vendor designates another person in writing. The letter should include a very brief overview of what your company has to offer and why you think your company should be selected as the Vendor to provide the services relative to the RFP.

- 2. Executive Summary:** The Vendor must prepare an Executive Summary to include a more detailed overview of the services of its offering. This will include a general description about the company, including the nature of the business, years in operation, number of employees, types of services offered and any experience in similar situations. The Vendor should include statements that demonstrate the understandings of services required as noted in the Section 1.0 Scope of Services, Section 2.0 Characteristics of Work, Section 9.2 Temporary Service Provider Responsibilities and Section 10.0 Physical Requirements.

- 3. Business and Directory Information:** Vendor must provide the following:
 - (a) Name of Business (Official Name and D/B/A)
 - (b) Business Headquarters (include Address, Telephone, and Facsimile)
 - (c) If a Division or Subsidiary of another organization provide the name and address of the parent
 - (d) Billing address
 - (e) Name of Chief Executive Officer
 - (f) Customer Contact (include name, title, address, telephone, toll-free number, facsimile and e-mail)
 - (g) Company web site
 - (h) Type of Organization (i.e. Sole Proprietor, Corporation, Partnership, etc. – should be the same as on the Taxpayer ID Form)
 - (i) Length of time in business
 - (j) Annual Sales (for the two most recently completed Fiscal Years)
 - (k) Number of full-time employees (average from the two most recent Fiscal Years)
 - (l) Type of and description of business
 - (m) State of incorporation, state of formation or state of organization
 - (n) Identify and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the Vendor's performance under the terms of the RFP
 - (o) Identify the Vendor's accounting firm
 - (p) Identify your State vendor number
 - (q) Identify your Dunn & Bradstreet Number

4. Technical Approach (Plan to Address the Services Required by the Agency)

- a. How do you propose to administer and manage our contract including placement, payroll, etc.?
- b. How do you propose to manage high-volume timekeeping?
- c. How do you propose to administer performance reviews with temporary workers to track skill alignment and fulfillment of need by the Agency?
- d. How do you propose to work with the Agency in ensuring ongoing performance reviews for the entire contract?
- e. How do you propose to transition from the current contract that is in place to your contract? (Current vendor should address from the perspective of not having the current contract)
- f. How do you propose to meet the Agency's demand? Do you believe you will be ready to handle volumes associated with the Agency with minimal transition time?

5. Technical Experience: The Vendor must provide the following information regarding its experience:

- 5.1 Provide information regarding the Vendor's organization, staffing pattern, staffing qualifications and management support that will enhance the ability of the Vendor to provide services.
- 5.2 Number of years' experience with providing types of services specified in Section 1.0 Scope of Services, Section 2.0 Characteristics of Work, Section 9.2 Temporary Service Provider Responsibilities and Section 10.0 Physical Requirements.
- 5.3 Include information supporting a history of the quality of the temporary employee services the Vendor has provided.
- 5.4 Describe initiatives/programs/benefits that will minimize turnover and absenteeism.
- 5.5 Provide information regarding testing and prescreening procedures for temporary service employees. Identify what testing and prescreening procedures are included in the cost proposal.

6. Personnel: The Vendor must provide resumes for all key personnel, including the account manager, who will be involved in providing the services contemplated by this RFP. Resumes must include the full name, education background, and years of experience and employment history particularly as it relates to the scope of services specified herein.

7. Financial Capacity Information: Vendor must submit either a comparative audit, which would include data from prior year and the year previous to that, audits for the past two (2) years if a comparative is not available, or end of year financial statements for the last two (2) years if an audit has not occurred. Vendor may also be required to provide additional financial information upon request.

8. Insurance: The Vendor must provide certificates from its insurer(s) certifying that it has appropriate and comprehensive insurance covering any incident arising from its operation. Please refer to Section 6.5, Insurance for minimum requirements.

9. Cost: The Agency will identify the hourly rate to be paid to each Temporary Worker for each particular job assignment. Please identify your **Percentage markup** over the hourly rate as set by the Agency- _____% (Also note on Proposal Form in **Attachment C and D**).

Notes on submission format: DOR asks that the vendor not include identifying information on the pages of their proposal unless that information is necessary in the response to the requirement (e.g the Letter of Introduction, Executive Summary, References, etc.) As an example, many proposals include the proposer's name as a footnote or header on each page, and that should be avoided in this proposal.

Melinda Quave

From: Erica Greenwood <Erica.Greenwood@dor.ms.gov>
Sent: Thursday, July 25, 2019 10:31 AM
To: Melinda Quave
Subject: RE: Rfx 3120001761

Good morning Melinda,

The contract awarded to 22nd Century Technologies, Inc. was procured through an Invitation for bid. The DOR believes that the RFP process is more advantageous and seeks to determine whether there is a true cost benefit in splitting the two types of staffing from what has normally been a combined contract. Therefore, this will be determined at the conclusion of the proposal evaluation process.

Erica Greenwood

SR Contract Analyst
Administrative Services
Mississippi Department of Revenue
PO BOX 22828 - Jackson, MS 39225
Phone: 601-923-7860 - Fax: 601-923-7658
Email: erica.greenwood@dor.ms.gov



From: Melinda Quave <melinda@tempstaff.net>
Sent: Wednesday, July 24, 2019 3:48 PM
To: Erica Greenwood <Erica.Greenwood@dor.ms.gov>
Subject: RE: Rfx 3120001761

THIS EMAIL IS FROM AN EXTERNAL SENDER.

DO NOT click links, open attachments, or provide any information if the sender is unknown or the email is unexpected.

Will the new bid Rfx 3120001761 replace Rfx 3160002866 on December 1, 2019?

I just want to make sure I understand! Thanks you so much for clarifying for me ☺

From: Erica Greenwood [<mailto:Erica.Greenwood@dor.ms.gov>]
Sent: Wednesday, July 24, 2019 3:46 PM
To: Melinda Quave <melinda@tempstaff.net>
Subject: RE: Rfx 3120001761



Melinda,

My apologies for the typo. ☺

We welcome your proposal for RFX # 3120001761.

Erica Greenwood

Sr. Contract Analyst

Administrative Services

Mississippi Department of Revenue

PO BOX 22828 - Jackson, MS 39225

Phone: 601-923-7860 - Fax: 601-923-7658

Email: erica.greenwood@dor.ms.gov



-----Original Message-----

From: Melinda Quave <melinda@tempstaff.net>

Sent: Wednesday, July 24, 2019 3:42 PM

To: Erica Greenwood <Erica.Greenwood@dor.ms.gov>

Subject: FW: RFX 3120001761

THIS EMAIL IS FROM AN EXTERNAL SENDER.

DO NOT click links, open attachments, or provide any information if the sender is unknown or the email is unexpected.

Hi Erica,

I am sorry, maybe I misunderstood, I assumed that we were re-bidding on the bid referenced below: only in the new Bid 3120001761, which is attached, we are to provide 2 separate mark-ups for Clerical and Warehouse.

"However, we welcome your proposal for RFX # 3160002866." - this one was awarded in May to Century 22

Will the new bid RFX 3120001761 replace RFX 3160002866 on December 1, 2019?

Thank you,
Melinda

-----Original Message-----

From: Erica Greengreenwood [mailto:erica.greenwood@dor.ms.gov]
Sent: Thursday, July 18, 2019 9:00 AM
To: Melinda Quave <melinda@tempstaff.net>
Subject: RFX 3120001761

State of Mississippi Solicitation Opportunity
Agency: Department of Revenue

Bid Number:3120001761 (1181-20-R-RFPR-00001)

Bid Created: Jul11,2019

Submission Deadline: Aug20,2019 at 00:00:00 PM Bid Opening Date: Aug20,2019 at 02:00:00PM

For more information pertaining to this solicitation visit:
<https://portal.magic.ms.gov:443/irj/portal/>

Please do not respond to this message as this mailbox is not monitored and your response will be deleted.

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Mississippi Department of Employment Security

Phil Bryant
Governor

Jacqueline A. Turner
Executive Director

December 4, 2019

Ms. Catoria Parker Martin
Director, Office of Personal Services Contract Review
Mississippi Department of Finance & Administration
501 North West Street, Suite 1301, Woolfolk Building
Jackson, Mississippi 39201
Catoria.Martin@dfa.ms.gov

via Email

Ms. Rita Wray
Chair, Public Procurement Review Board
Mississippi Department of Finance & Administration
501 North West Street, Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

RE: Mississippi Department of Employment Security's Invitation for Bids for Temporary Staffing Services (IFB No. 2019-02)

Dear Ms. Martin and Ms. Wray,

On September 27, 2019, the Mississippi Department of Employment Security (hereinafter referred to as "MDES") issued an Invitation for Bids for Temporary Staffing Services (No. 2019-02). It advertised this IFB for a second time on October 4, 2019. The IFB was distributed to minority vendors found on the MDA list, as well as vendors listed on DFA's preferred vendor list. It was also sent through Magic to all vendors registered using the product category for temporary staffing. The Bid Submission Deadline was October 30, 2019, at 9:00 a.m. Out of twenty (20) respondents, three (3) were discarded. One vendor was late, one submitted two different prices, and one failed to include a percentage markup. (Please see Exhibit 1, MDES Bid Tabulation).

The bids were opened on October 30, 2019, at 1:00 p.m. Charlla Sistrunk, Arnitra Douglas, and Danny Lynch, Procurement Manager, represented the agency. Attendees included Melinda Quave from Tempstaff, Beth Henry and Kelly Sellers from Staffers, and Michael Frome from Spherion. Following the bid openings, each representative signed in, then bids were read aloud and recorded. Each of the responsive bids were reviewed as follows:

Helping Mississippians Get Jobs

Henry J. Kirksey Building • 1235 Echelon Parkway • Jackson, Mississippi 39213
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MDES is an Equal Employment Opportunity Employer

1. Licensed to conduct business in the state of Mississippi
2. 3+ years of experience
3. Experience with a large organization
4. Track record of meeting performance expectations

Upon evaluation, informalities were waived for 22nd Century Staffing and Staffers for failure to circle yes/no on Attachment C. Another informality was waived for Staffers due to failure to complete Attachment G acknowledging amendments. These informalities had no bearing on the outcome. Additionally, Staffers incorrectly stated their bid amount. We followed PPRB Rule 3-202.12.4.2 and allowed the correction to be made in writing. The responsible and responsive bids were arranged in order of the bid amount and the Notice of Award was issued. (Please see Exhibit 2, Public Notice of Award). The notice went to all vendors who submitted a bid, which included those in attendance at the bid opening.

On November 7, 2019, MDES received a protest letter from Tempstaff, Inc. MDES responded accordingly on November 13, 2019. On November 20, 2019, MDES received a hand-delivered copy of a protest made by Tempstaff, Inc. to the Mississippi Public Procurement Review Board. In its protest letter, Tempstaff claims that “[t]he procurement process and the evaluation by MDES were seriously flawed. The temporary staffing services should have been procured through a request for proposals...” (See Exhibit 3, Protest Letter, Page 1). It is the position of MDES that this procurement (IFB No. 2019-02) was conducted in strict compliance with all Rules and Regulations of the Mississippi Public Procurement Review Board, and as such, should be awarded to the winning bidder accordingly.

I. A state agency does, and should have, the discretion as to what method of procurement to utilize.

There are three main recognized methods of procurement in Mississippi: Competitive Sealed Bidding (Invitation for Bids, hereinafter “IFB”), a Request for Proposals (hereinafter “RFP”), and a Request for Qualifications. Out of these three methods, an IFB is the only one an Agency may use without prior approval from the Board. The Board clearly agrees with the practicality and advantages of using an IFB as opposed to other procurement methods, because it repeatedly describes IFBs as the preferred procurement method in the Public Procurement Review Board, Office of Personal Service Contract Review Rules and Regulations.

Rule 3-201.01 states not only that an IFB is the preferred method, but a requirement:

Competitive Sealed Bidding (Invitation for Bids) is the **preferred method of procurement**; however, if it is not practicable and advantageous, a Request for Proposals or Request for Qualifications **may** be used. **An agency may** petition for relief from the **requirement** that the agency use Competitive Sealed Bidding as the procurement method by submitting a Petition for Relief.

Rule 3-201.01 (emphasis added).

Rule 3-202.01 states that:

- (a) **Conditions for Use:** Competitive Sealed Bidding is the **preferred method** of procurement and contracts **shall be awarded** by competitive sealed bidding unless approval is given to utilize a different method.
- (b) **Invitation for Bids:** An invitation for Bids **shall be issued** and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

Rule 3-202.01 (emphasis added).

And lastly, Rule 7-102 states:

Competitive Sealed Bidding (Invitation for Bids) is the **preferred method** of procurement; however, if it is not practicable and advantageous, a Request for Proposals, Request for Qualifications, and any other alternative, generally acceptable procurement method previously approved by the PPRB **may** be used.

Rule 7-102 (emphasis added).

It is Tempstaff's position that the IFB procurement process was inappropriate given the nature of the contract. (See Ex. 3, Page 9). However, Tempstaff admitted that the assignments of its workers to MDES involved primarily filing and general office duties. (*Id.*, Page 2). While Tempstaff claims that MDES's previous use of an RFP to award the contract for temporary staffing services indicates that an RFP would result in a "more beneficial/advantageous contract for the State," we respectfully disagree. In fact, we believe that the utilization of an IFB is clearly practical and advantageous for the State, as we are obligated to get the lowest price for services while still maintaining the requisite qualifications.

Tempstaff argues that "[t]he impending expiration of the existing contract and the timing of MDES's procurement efforts do not excuse a violation of the public procurement laws." (*Id.*, Page 8). Absolutely no procurement laws have been violated. The applicable statute was amended in 2017, and made effective January 1, 2018, to make IFBs the preferred method in public procurement as a means of protecting the public from the misuse of public funds. The IFB process provides all qualified bidders with an unbiased opportunity to enter the bidding process, thereby encouraging competition in a manner conducive to sound fiscal practices. For example, when MDES issued a Request for Proposals for Temporary Staffing Service in 2014, we received only three (3) responses. With this Invitation for Bids, we received twenty (20) responses.

Tempstaff also points out in its protest that the Mississippi Department of Revenue began its procurement for temporary staffing services as an IFB but "correctly" changed to an RFP. (*Id.*, Page 6). With all due respect, it is merely the opinion of Tempstaff that an RFP should have been used in that case as well as the case at hand. It was MDOR's choice whether or not to change the procurement method, pending approval by the Board, just as it was MDES's choice to use an IFB. Allowing a vendor to dictate the procurement method to be used by a state agency would set a bad precedent and be a disservice to the citizens of Mississippi.

II. Qualifying experience is, and has always been, a fact question that is determined by the Agency.

In this case, MDES determined that it would be most advantageous for the State, as well as the best process for the public, to procure a qualified and economically beneficial vendor as our temporary staffing services provider through an IFB. We reviewed all correctly submitted bid packages. Each candidate deemed responsible, whose bid was also responsive, was then evaluated by price. Out of twenty (20) respondents, three (3) were discarded. One vendor was late, one submitted two different prices, and one failed to include a percentage markup. The seventeen (17) remaining bids were ranked by price. (See Ex. 2, Public Notice of Award). The winning bid belonged to Professional Staffing Group with a 20% markup. Tempstaff placed fourth with a 22% markup. (*Id.*) With the winning bidder, MDES acquired a qualified vendor that indisputably had the lowest price/percentage markup. While Tempstaff's bid was deemed responsive and Tempstaff itself found to be responsible, they simply did not have the lowest bid.

While we appreciate the services Tempstaff has provided to MDES over the years and hope that they will consider participating in future solicitations, that does not give them the right for an automatic contract renewal in perpetuity. Moreover, it does not give them the right to determine who is qualified to provide MDES with temporary staffing services. The basis for their argument that the companies with lower bids are not qualified comes from internet searches, including LinkedIn, a social networking site for business professionals – not reliable sources. Tempstaff then states that “[t]he fact MDES has awarded this contract to a company that is not qualified demonstrates perfectly why this whole process is flawed and should have been done through an RFP.” (See Ex. 3, Page 9). MDES respectfully disagrees, as again, this is merely Tempstaff's opinion, and they should not be allowed to dictate who is qualified based on what is most beneficial to them.

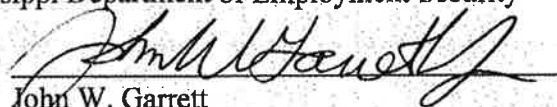
III. Conclusion

MDES acted in the best interest of the State when procuring a contract for temporary staffing services through an Invitation for Bids, which is the preferred procurement method under the Public Procurement Review Board, Office of Personal Service Contract Review Rules and Regulations. We ask that the Board affirm that the Agency has the right to use the IFB method for choosing a winning bidder. Moreover, as long as the winning bidder is deemed both responsible and responsive, the winning bid can be determined by choosing the vendor with the lowest price. MDES acquired a qualified vendor that indisputably had the lowest price. As such, we ask the Board to dismiss this protest and allow us to proceed with the contract award to Professional Staffing Group without delay, as any further postponement would have a detrimental effect on the services we provide to the citizens of Mississippi.

Sincerely,

Mississippi Department of Employment Security

By:


John W. Garrett
General Counsel

December 2, 2019

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JG:acc

Enclosures

cc: Laura Jackson, DFA Executive Director
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MDES Bid Tabulation

IFB: 2019-02

RFx: 3160003190

Smart Number: 1671-20-R-IFBD-00001

Description: Temporary Services

Bid Due Date: October 30, 2019 9:00 AM CDT

Bid Opening Date: October 30, 2019 1:00 PM CDT

Vendor Name	Bid Amount - Percentage Markup
Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc	22%
LMATA Government Services, LLC	22.45%
Athena Consulting, LLC	22.50%
Spherion Staffing Services, LLC	23.38%
Intergrative Staffing Group, LLC	23.59%
Blue Arbor, Inc.	23.85%
New Wave People, Inc.	25%
Marathon Staffing Resources	25.75%
Industrial Staffing Services, Inc.	26%
Abacus Service Corporation	26%
Management Registry, Inc.	28%
NiteLines USA, Inc.	28%
Enterprise Solutions, Inc.	28%
Premier Staffing Source, Inc.	35%



Mississippi Department of Employment Security

Phil Bryant
Governor

Jacqueline A. Turner
Executive Director

Public Notice of Award October 31, 2019

Temporary Staffing Services
MDES IFB 19-02
RFx 3160003190

On September 27, 2019, the Mississippi Department of Employment Security (MDES) issued Invitation for Bids (IFB) 19-02 for the procurement of Temporary Staffing Services. As a result of this solicitation, the following vendors submitted responses:

Vendor Name	Bid Amount - Percentage Markup
Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc	22%
LMATA Government Services, LLC	22.45%
Athena Consulting, LLC	22.50%
Spherion Staffing Services, LLC	23.38%
Intergrative Staffing Group, LLC	23.59%
Blue Arbor, Inc.	23.85%
New Wave People, Inc.	25%
Marathon Staffing Resources	25.75%
Industrial Staffing Services, Inc.	26%
Abacus Service Corporation	26%
Management Registry, Inc.	28%
NiteLines USA, Inc.	28%
Enterprise Solutions, Inc.	28%
Premier Staffing Source, Inc.	35%

The following vendors were determined to be non-responsive and/or non-responsible and have been notified separately of the reason(s):

Infojini, Inc.
INSI Cloud, Inc.
Manpower

The purpose of this procurement is to establish a contract with a provider for Temporary Staffing Services to supplement MDES staff during times of increased workloads. This contract will include providing temporary staffing services for the MDES State Office Headquarters located at 1235 Echelon Parkway, Jackson, MS, all WIN Job Centers located statewide, and the Jackson and Hattiesburg Call Centers.

The term of the Temporary Services Contract will be from January 1, 2020, through December 31, 2023, with an option to renew for one (1) additional twelve (12) month period. If granted, the contract extension shall be under the same prices, terms, and conditions as in the original contract. The anticipated budget for this contract is \$10,000,000.00.

Based on the evaluation of the submitted bids, MDES announces the intent to award a contract to the lowest, responsive, and responsible bidder whose bid meets the requirements set forth in MDES IFB 2019-02 pending approval by the Public Procurement Review Board:

Professional Staffing Group

MDES would like to express its appreciation to all participating vendors.

This contract will be on file and available for public inspection in the office of the Chief Procurement Officer at the Mississippi Department of Employment Security State Headquarters located at 1235 Echelon Parkway in Jackson, MS.

BRUNINI
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November 20, 2019

Ms. Catoria Parker Martin
Director, Office of Personal Services Contract Review
Mississippi Department of Finance & Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

via Hand Delivery

Ms. Rita Wray
Chair, Public Procurement Review Board
Mississippi Department of Finance & Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

via Hand Delivery

**RE: Mississippi Department of Employment Security's Invitation for Bids for
Temporary Staffing Services (IFB No. 2019-02)**

Dear Ms. Martin and Ms. Wray:

Our firm represents TempStaff, Inc. ("TempStaff"). Pursuant to Mississippi law and regulations, the Rules and Regulations of the Mississippi Public Procurement Review Board ("PPRB"), the Mississippi Department of Finance & Administration's ("DFA") procurement manual, and the terms of Invitation for Bid No. 2019-02 (the "IFB"), TempStaff hereby protests the Mississippi Department of Employment Security's ("MDES") award of the Temporary Staffing Services contract to Professional Staffing Group. The procurement process and the evaluation by MDES were seriously flawed. The temporary staffing services should have been procured through a request for proposals, as has been the practice of MDES and other State agencies contracting for such services, rather than through an invitation for bids. Because that process was not followed, MDES has awarded the contract to a company that is not qualified even under the terms of the IFB. TempStaff requests that the proposed award be overturned, that MDES conduct a new procurement process via a request for proposals, and that this matter be removed from the Board's agenda for its December meeting. Alternatively, TempStaff asks to be heard at that December meeting and asks that the Board reject the contract following the meeting. Finally, in the event the Board is not inclined to reject the contract now or at the conclusion of the meeting, TempStaff requests that the meeting be recessed and the matter tabled in order to permit TempStaff to obtain the bids of the other vendors and present this matter at a subsequent date.

I. Background

For nearly thirty years, TempStaff has provided temporary staffing services for MDES, including services for the MDES State Office Headquarters in Jackson, all WIN Job Centers statewide, and MDES's Jackson and Hattiesburg Call Centers. These services are intended to supplement MDES staff during times of increased workload. MDES utilizes individuals with

November 20, 2019

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varying skills, responsibilities, length of work assignments, and rates of pay. The assignments primarily involve filing and general office duties, administrative assistant/secretarial duties, employment interviewers, computer operations, data entry, and basic accounting. Some positions require an associate degree or equivalent, and the Agency may require some positions to travel.

In 2014, MDES issued Request for Proposals No. 14-01 for Temporary Staffing Services. *See* Ex. 1, RFP 14-01. TempStaff was awarded that contract, which is currently set to end on January 1, 2020.

On September 27, 2019, MDES issued Invitation for Bid No. 2019-02 for Temporary Staffing Services. *See* Ex. 2, IFB 19-02. The IFB stated, in part: "Compensation for services will be in the form of a fixed price agreement based on a percentage mark-up over hourly rates established by MDES." *Id.* at §1.7 (emphasis in original). It further stated that "MDES will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the [PPRB], if necessary." *Id.*

The "Minimum Qualifications to be Deemed Responsive" were to:

- Be licensed to conduct business in the State of Mississippi;
- Have at least three (3) or more years of successful experience in providing temporary service employees;
- Have experience in delivering these services to a large organization similar in size to the MDES; and
- Have a track record of meeting performance expectations.

Ex. 2, IFB 19-02 at §4.1.2. Bidders were required to "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 MDES." *Id.* at §4.1.6.

Bid packages were required to contain: a Bid Cover Sheet (Attachment A to the IFB); a Bid Form (Attachment B to the IFB); and Certifications and Assurances (Attachment C to the IFB).¹ Ex. 2, IFB 19-02 at §4.1.5. Attachment A asked for basic information about each bidder, including information concerning how many years the company has been performing the temporary staffing services, how a company not physically located in the region would supply the services to agencies in the region, how many customers the company has provided the services to in the past two years (and related billing information), and the company's largest customer in the last two years. *Id.* at Attachment A. Attachment B, the bid form, included a spot for the bidder to fill in the percentage markup over the hourly rate as set by MDES. *Id.* at Attachment B. And Attachment C sought certifications and assurances regarding contingent fees, gratuities, and independent price determination. *Id.* at Attachment C.

The bid submission deadline was October 30, 2019, and the bids were opened at 1:00 p.m. Ex. 2, IFB 19-02 at 1. At 10:10 a.m. on October 31, 2019, one day after bids were submitted, MDES announced its intent to award the contract to Professional Staffing Group. *See*

¹ TempStaff submitted additional documents, such as its WBENC certification and key personnel resumes.

Ex. 3, Public Notice of Award at 1-2. The Award Letter included the following information regarding the top vendors' bid amount/percentage markup:

Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc.	22%

Under the terms of the IFB, any bidder aggrieved in connection with the solicitation or the outcome of the IFB was permitted to file a protest with MDES on or before November 7, 2019. Ex. 2, IFB 19-02 at §5.2. TempStaff submitted a timely protest, which is attached hereto and incorporated herein by reference. Ex. 4, 11/7/19 Protest Letter.

On November 13, 2019, MDES responded, stating that it "maintains the award was made in strict accordance with the bid requirements." Ex. 5, 11/13/19 MDES Response. The letter stated that MDES's decision may be appealed to the PPRB within seven calendar days, hence the timely filing of this protest. *Id.*

II. Arguments and Authorities

A. The PPRB and its Rules and Regulations

The PPRB approves personal and professional service contracts involving the expenditure of funds in excess of seventy-five thousand dollars (\$75,000.00) and provides assistance to agencies regarding such procurements. *See* PPRB Rule 2-103(b). The Office of Personal Services Contract Review ("OPSCR") provides all administrative support to the PPRB in relation to personal and professional services. The PPRB OPSCR Rules and Regulations set forth rules and regulations, along with other pertinent information, that agencies should follow in the procurement of personal and professional services. *See* Rule 1-101.01.

Rule 3-203.02.01 states that a request for proposals "should" be used if competitive sealed bidding (i.e. an invitation for bids) is not practicable and advantageous:

If competitive sealed bidding is not practicable, competitive sealed proposals or qualifications should be used. If competitive sealed bidding is practicable, it must then be determined whether competitive sealed bidding is advantageous. If competitive sealed bidding is determined not to be advantageous, competitive sealed proposals or qualifications should be used.

Rule 3-203.02.01 (emphasis added).

The terms "practicable" and "advantageous" are to be given ordinary dictionary meanings, with "practicable" denoting "what may be accomplished or put into practical application," and "advantageous" denoting "a judgmental assessment of what is in the state's best interest." Rule 3-201.05 (emphasis added).

Under Rule 3-201.05, the following factors shall be considered when determining advantageousness:

- 1) The need for flexibility;
- 2) The type of evaluations that will be needed after offers are received;
- 3) Whether the evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise;
- 4) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;
- 5) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and
- 6) Whether prior procurements indicate that a Request for Proposals may result in more beneficial contracts for the state.

Id. (emphasis added).

And the following factors shall be considered when determining practicability:

- 1) Whether the contract needs to be a contract other than a fixed-price type contract;
- 2) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- 3) Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- 4) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and
- 5) Whether the primary consideration in determining award may not be price.

Id. (emphasis added).

"Another consideration concerns the type of evaluations needed after offers are received." Rule 3-203.03.1.1. "Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise" and "[w]here the types of services to be performed may require the use of comparative judgmental evaluations to evaluate them adequately[,]" use of competitive sealed proposals is an appropriate procurement method. *Id.*

As discussed in greater detail below, this procurement should have been done through the request for proposals process, not through an invitation for bids.

B. The temporary staffing services contract should have been procured through a request for proposals, not an invitation for bids.

1. MDES's 2014 contract procurement for the same services sought sealed competitive proposals.

As noted above, in 2014, MDES issued Request for Proposals No. 14-01 for Temporary Staffing Services. *See* Ex. 1, RFP 14-01. RFP 14-01 included some language that was used in IFB 19-02, but there are substantial substantive differences that demonstrate the inadequacy of the IFB process employed by MDES here. Though the IFB borrowed heavily from the RFP, it dropped the pages upon pages of requests by MDES for detailed information from the vendors and dropped the RFP's rating criteria that identified a vendor's capability and resources, experience and plan, and financial standing as being more important than the percentage markup.

In the 2014 procurement, MDES sought sealed proposals to establish a contract for the services at the Agency's facilities. Ex. 1, RFP 14-01 at §XII. The compensation for services was described the same way as it is in the new IFB, as were the requirements for qualified bidders. *Id.* at §XIX. However, the proposal and award rules and scoring and selection processes were extremely different. *Id.* at §§XX, XXI. For instance, under RFP 14-01 MDES reserved the right to request information relative to references and to make on-site visits to a proposer's place of business for examination of program capabilities (including inspection of facilities, review of the accounting system, and interviews with staff and trainees). *Id.* at §XX.H. Also, the technical proposal section of Attachment A required, in addition to the percentage mark-up:

- Detailed references and information from five of the vendor's largest Mississippi clients, stating, in part, "Client size will be a critical factor in determining if a company has the ability to perform in a situation similar to MDES," *id.* at 22;
- The vendor's plan to address the services required by MDES, including how it proposed to administer and manage MDES's placement, payroll, etc., how it proposed to manage high-volume timekeeping, how it proposed to administer performance reviews to track skill alignment and fulfillment of need by the Agency, how it proposed to transition from the current contract to the new contract, and how it proposed to meet the Agency's demands, *id.* at 23;
- Specific information regarding the vendor's experience, *id.*;
- Resumes for all key personnel, including names, educational background, years of experience, and employment history, particularly as it related to temporary staffing services, *id.* at 22-23; and
- A comparative audit, which would include data the previous two years, audits for the past two years if a comparative audit was not available, or end of year financial statements for the last two years if an audit had not occurred, *id.* at 23.

Id. at Attachment A.

Finally, the proposal rating criteria was set out as follows:

The award will be made to the best proposal. The criteria and the level of importance associated with each criterion are listed. The criteria for selecting the best proposal are the following:

1. Vendor's capability and resources available to support and provide the required service as exhibited by their references from other companies serviced within [the] past two (2) years and other documentation related to vendor's capabilities. **(Critical)**
2. Vendor's experience and plan to provide the required services as evidenced by completion of the technical proposal and submissions of resumes of the key personnel **(Very important)**
3. Vendor's financial standing as indicated by their most recent audits/financial statements and other financial documentation. **(Very important)**
4. Percentage markup over hourly rate as set by the Agency. **(Important)**

Ex. 1, RFP 14-01 at §XXI.C (bold in original; underlines added). The percentage markup was the least important criteria. *Id.* The proposals were to be evaluated and scored by a review board "according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in this RFP." *Id.* After several weeks of review of the proposals, MDES awarded the contract to TempStaff.

There can be no doubt that under Rule 3-201.05, this prior procurement indicates that a request for proposals would result in more a more beneficial/advantageous contract for the State.

2. The Mississippi Department of Revenue's 2019 procurement for temporary staffing services began as an invitation to bid, but was correctly changed to a request for sealed proposals.

Another clear example of why this procurement should have been done through a request for proposals instead of an invitation for bids is that just this year, the Mississippi Department of Revenue ("MDOR") procured the same services and determined it was more appropriate to use a request for proposals. On April 4, 2019, MDOR issued an invitation to bid for temporary staffing (IFB No. 3160002866). *See* Ex. 6, MDOR IFB. MDOR proposed to contract with a qualified agency to procure temporary staffing for its Clinton office and the Alcohol Beverage Control ("ABC") Distribution Center in Gluckstadt. *Id.* at §1.0. The IFB required information regarding each bidder's qualifications, references, business longevity, and insurance, as well as registration with the Mississippi Secretary of State. *Id.* at §§4.1-4.5 and Attachment D. The Bid Form included a line for percent mark-up. *Id.* at Amendment #1. Just like MDES's IFB here, this prior MDOR IFB stated that contracts and purchases would be made or entered into with the lowest, responsible and responsive bidder meeting specifications. *Id.* at §5.7. Factors to be considered in determining the lowest, responsible bidder included: price, conformity, responsibility of the bidder, the bidder's ability to deliver as per specifications, and reference responses, if any. *Id.*

On July 18, 2019, MDOR rightly changed course and issued a request for proposals for the services instead (RFP Number 3120001761). See Ex. 7, MDOR RFP. According to an email from MDOR's Chief of Procurement, "The DOR believes that the RFP process is more advantageous" See Ex. 8, MDOR Email (emphasis added).

The RFP stated, in part: "[MDOR] hereby solicits separate proposals using the competitive scaled proposal process. This process will allow us to assess prospective proposers on capability as well as price to establish a contract with a qualified agency to procure temporary clerical staffing for our Clinton location and a contract for temporary warehouse staffing at our [ABC] Distribution Center located in Gluckstadt." Ex. 7, MDOR RFP at §1.0 (emphasis added).

The proposal evaluation process was described as follows:

An evaluation committee will review and assess all responsive proposals submitted. ... The awards will be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth below. The factors and the level of importance associated with each factor are listed. The factor[s] for selecting the best proposal are the following:

- A. The overall quality of the proposed plan (the plan should reflect an understanding of the project and its objectives) and the ability to perform the services as reflected by the completion of the technical proposal and submission of resumes of the key personnel. Consideration will be given to the completeness of the responses to the specific requirements of the solicitation **(20 points, or 20%)**;
- B. The personnel, equipment, facilities and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting **(20 points, or 20%)**;
- C. A record of past performance of similar work as exhibited by references from other companies serviced within the past two (2) years and other documentation related to vendor's capabilities **(25 points, or 25%)**; and
- D. Price **(35 points, or 35%)**.

The score will be based on a 100-point scale, with each factor having the percentage of the total 100 points available as listed. The total score will be determined according to the degree of compliance made in the proposal in meeting each component of the responsibilities and requirements in this RFP. Prospective contractors must furnish, upon request of DOR, satisfactory evidence of their ability to provide services in accordance with the terms and conditions in Appendix A. ...

See Ex. 7, MDOR RFP at §7.10 (bold in original; underlines added). An evaluation committee was to review and score each responsive proposer using this criteria. *Id.* at §7.11.

3. MDES's IFB procurement process was inappropriate here given the nature of the contract.

The deficiencies in the IFB process at issue here are made clear by the information MDES did not seek, obtain, or review before awarding the contract. MDES did not require each vendor to provide a technical proposal or its plan to address the services required by MDES, including how it proposed to administer and manage MDES's placement, payroll, etc., how it proposed to manage high-volume timekeeping, how it proposed to administer performance reviews to track skill alignment and fulfillment of need by the Agency, or how it proposed to meet the Agency's demands. MDES did not require each vendor to provide detailed references and information regarding its largest clients. MDES did not require each vendor to provide specific information regarding its experience. MDES did not require each vendor to provide resumes for all key personnel, including names, educational background, years of experience, and employment history, particularly as it related to temporary staffing services. MDES did not require each vendor to provide detailed financial information. And even for the information MDES did request, MDES did not require any documentary support or proof. Given the fact that the contract was awarded one day after the bids were submitted, there are serious questions as to whether there was even time for the representations of the vendor's to be vetted. MDES's process here is contrary to what MDES has historically done and contrary to what MDOR is continuing to do for the same services.

Competitive sealed bidding was not practicable or advantageous here, and, therefore, competitive sealed proposals should have been used. *See* Rule 3-203.02.01. Rule 3-201.05 expressly states that one of the factors that "shall" be considered when determining advantageousness is "[w]hether prior procurements indicate that a Request for Proposals may result in more beneficial contracts for the state." As discussed above, that is the history here, with MDES and MDOR using the competitive sealed proposals process in procuring these exact services. The evaluation factors for the contract should involve the relative abilities of the offerors to perform, including degrees of technical or professional experience or expertise. Moreover, regarding practicability, state agencies procuring these services have determined that the award may need to be based upon a comparative evaluation of price factors as well as quality factors that include technical and performance capability and the content of technical proposals, and they have also determined that the primary consideration in determining the award may not be price. In fact, in MDES's previous RFP for these services, price was identified as the least important factor in the evaluation and scoring of proposals. Ex. 1, RFP 14-01 at §XXI.C

For all of these reasons, MDES's procurement process was inappropriate under the PPRB OPSCR Rules and Regulations, and the procurement should begin anew. The impending expiration of the existing contract and the timing of MDES's procurement efforts do not excuse a violation of the public procurement laws. The procurement process should be done in such a way that MDES selects the proposal that is the most advantageous to the State. For the exact same reasons that MDES used an RFP in 2014 and for the same reasons MDOR correctly found that RFPs are more advantageous for these types of contracts, it is clearly inappropriate here.

C. The companies with lower bids are not qualified.

Even if it is found that this procurement process could properly be done through an IFB, which it cannot, the contract should still be rejected because the requirements of the IFB were not met. There are serious questions concerning whether the vendors who finished ahead of TempStaff are actually qualified as required by the IFB. According to its website, Professional Staffing Group currently has five people on staff (<https://www.prostaffgroup.com/>). Of those, three have been with the company less than one year (<https://www.prostaffgroup.com/about-us/meet-our-team/>). They have a single location in Flowood, Mississippi. Based on information and belief, and without access to the bid documents, it is TempStaff's understanding that Professional Staffing Group has one large account that currently employs less than twelve light industrial employees. Per information obtained from LinkedIn, Staffers, Inc. has approximately four people on staff who specialize in administrative placements in Hinds, Madison and Rankin County. Based on information and belief, and without access to the bid documents, it is TempStaff's understanding that Staffers, Inc. does not staff for any large accounts on a routine basis. As to 22nd Century Technologies, Inc., the company is headquartered in Virginia, and its physical presence in Mississippi and its ability to perform the services is highly questionable. Its website does not identify any location in Mississippi (<https://www.tscti.com/>).

Because it has access to each party's bid submissions, the Board is currently in a better position than TempStaff to question and review this information. TempStaff requests that the Board review the bids, which TempStaff believes will demonstrate these companies are unqualified even under the highly relaxed criteria under the IFB. TempStaff reserves the right to supplement its protest should additional information become available.

The fact MDES has awarded this contract to a company that is not qualified demonstrates perfectly why this whole process is flawed and should have been done through an RFP.

III. Conclusion

In compliance with the terms of the IFB, this protest is submitted within seven calendar days after notice that MDES maintained its award to Professional Staffing Group. TempStaff's protest is based on Mississippi law and regulations, the PPRB's Rules and Regulations, the DFA's Contract Procurement Policy, the terms of the IFB, and the documents regarding previous RFPs for these services. MDES's procurement process for this contract, including its decision to change course and use an IFB instead of an RFP, its failure to seek or consider information vital to the successful performance of the services, and its conclusion that Professional Staffing Group, 22nd Century Technologies, Inc. and Staffers, Inc. are qualified, can only be characterized as arbitrary and capricious.

TempStaff respectfully asks that the proposed award of the contract be overturned, that MDES conduct a new procurement process using an RFP, and that this matter be removed from the agenda for the Board's December meeting. In the alternative, TempStaff requests that it be

November 20, 2019
Page 10

heard at that December meeting and that the Board reject the contract following the meeting. If the Board is not inclined to reject the contract now or following the meeting, TempStaff asks that the matter be tabled to give TempStaff an opportunity to obtain the other vendors' bids and present this matter at a later date.

TempStaff has not had sufficient time to request all documents necessary for a full review of the proposed award. TempStaff reserves its legal right to amend this protest to timely add and include any and all issues as may be raised or made evident from the documents and materials to be provided to TempStaff relevant to the procurement process. TempStaff specifically reserves all protests as may be revealed by documents to be provided regarding any and all issues or grounds upon which a protest may be raised under law, regulation or practice.

Thank you again for your consideration of this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



William Trey Jones, III

WEJ:pa
Enclosures

cc: Jacqueline A. Turner, MDES Executive Director
Danny Lynch, MDES Procurement
Mississippi Department of Employment Security
Office of the Governor
1235 Echelon Parkway
P.O. Box 1699
Jackson, MS 39215-1699

Laura Jackson, DFA Executive Director
Mississippi Department of Finance and Administration
501 North West Street Suite 1301, Woolfolk Building
Jackson, Mississippi 39201

1.8 Written Bids

All bids shall be in writing.

SECTION 2

2.1 Insurance

The successful contractor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$100,000.00. All workers' compensation, comprehensive general liability, professional liability, and fidelity bond insurance will provide coverage to MDES as an additional insured. The agency 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 contractor shall be prepared to provide evidence of required insurance upon request by MDES at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 3

3.1 Bid Evaluation

Bids will be evaluated based on the requirements set forth in IFB 2019-02, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

3.1.1 Responsive Bidder

Bidder must submit a bid which conforms in all material respects to this Invitation for Bids, IFB 2019-02, as determined by MDES.

4.1.2 Minimum Qualifications to be Deemed Responsive

- Be licensed to conduct business in the State of Mississippi;
- Have at least three (3) or more years of successful experience in providing temporary service employees;
- Have experience in delivering these services to a large organization similar in size to the MDES; and
- Have a track record of meeting performance expectations.

4.1.3 Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. MDES reserves the right to permit the bidder to withdraw non-conforming terms and conditions from its bid response prior to a determination by

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. _____

If your company is not physically located in the region, how will you supply Temporary Staffing Services to agencies in the region? _____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. _____

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids. _____

For how many customers has your company provided Temporary Staffing Services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. _____

What is the largest customer your company has provided Temporary Staffing Services for in the past two (2) years? Please include the annual amount of the billing. _____

Describe any specific services which your company offers along with any specialized experience, certification, and/or education of your current staff. _____

Printed Name _____

Signature/Date _____

ATTACHMENT A

Bid Cover Sheet

MDES is seeking to establish a contract for Temporary Staffing Services.

Bids are to be submitted as listed below, on or before October 30, 2019 at 9:00 AM CDT

PLEASE MARK YOUR ENVELOPE:

“MDES Temporary Staffing”
RFx No. 3160003190
Smart No. 1671-20-R-IFBD-00001
ATTENTION: MDES Procurement Department
1235 Echelon Parkway Jackson, MS 39213
SEALED BID – DO NOT OPEN

Name of Company: Professional Staffing Group

Quoted By: Brenda Barron

Signature: _____

Address: 2475 Lakeland Drive, Suite C

City/State/Zip Code: Flowood MS 39232

Company Representative: Brenda Barron Managing Partner

Telephone: 601-981-1658

Fax: 601-510-9196

E-Mail: brenda@prostaffgroup.com

FEI/FIN # (if company, corporation, or partnership):	84-1977541
State Vendor Number	207062301

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? 1986

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? 33 years

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. 2475 Lakeland Drive, Suite C
Flowood, MS 39232

If your company is not physically located in the region, how will you supply Temporary Staffing Services to agencies in the region? We are in Mississippi and have been since the company started over 30 years ago.

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. No. The current owner purchased the company from the prior owner after working for the prior owner. This just took place in 2019.

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids. State of MS Business License

For how many customers has your company provided Temporary Staffing Services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. Our company averages over 100 clients per year. Many of our clients have been allowing us to provide them with contract associates for more than 20 years. With size ranging from one hundred dollars to one million dollars. We work with multiple state and federal organizations, as well as major legal practices, and distribution facilities in the state. We have clients spread all across the state of Mississippi including Oxford, Hattiesburg and the MS Gulf Coast.

SEE ATTACHED EXCEL SPREADSHEET FOR CLIENT LIST AND REVENUE NUMBERS

What is the largest customer your company has provided Temporary Staffing Services for in the past two (2) years? Please include the annual amount of the billing. Butler Snow Law Firm, Nissan Trading Company are our two largest clients. SEE ATTACHED EXCEL SPREADSHEET FOR CLIENT LIST AND REVENUE NUMBERS

Describe any specific services which your company offers along with any specialized experience, certification, and/or education of your current staff. _____

The owner of Professional Staffing Group has worked in the staffing industry for twenty years starting her career in Jackson MS. Brenda Barron career in staffing has taken her all across the United States where most recently she was VP of Recruiting and Compliance for a multi billion

dollar organization. Brenda's primary responsibility was to assure we provided the clients with the staff needed to meet the day to day production requirements of their various organizations.

Printed Name Brenda Barron

Signature/Date 10/27/2019



**PROFESSIONAL STAFFING GROUP
2475 LAKELAND DRIVE, Suite C
FLOWOOD, MS 39232**

Company Name	Revenue
Nissan Trading Corporation Americas	1,097,438.88
Butler Snow LLP	805,342.53
University Medical Center	347,226.20
Leidos - Missions Support Services	347,124.96
Mississippi Baptist Health Systems, Inc.	344,888.79
Mississippi Filing Systems / Vital Records Control of Mississippi	303,688.44
Stratosphere Quality	232,399.27
Packaging Corporation of America	227,087.01
Jackson Housing Authority	168,158.32
Daniel Coker Horton & Bell, P.A.	82,845.32
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC	75,686.26
Women's Health Associates, PLLC	71,015.80
Delta Gastroenterology PC	70,294.04
Wise Carter Child and Caraway, P.A.	69,070.89
Davis Aviation	67,756.52
Ovation Women's Wellness	63,154.62
Medical Practice Solutions	62,546.97
Southern Poverty Law Center	53,519.91
Jones Walker	51,888.19
Richland Primary Care Center	51,347.55
Modine Manufacturing Co.	45,000.00
Lockheed Martin IS&GS - Civil	44,399.35
Republic Finance - Pearl	44,295.64
Mississippi State Medical Association	43,494.51
AAA of Mississippi/Auto Club South	41,403.08
Agent Consulting	41,384.56
Priester Law Firm	40,220.84
Woodward Hines Education Foundation	39,175.38
SAC Wireless, LLC	39,010.78
Bradley Arant Boult and Cummings, LLP	36,828.86
Renaissance Community Loan Fund	36,000.00
Bomgar	30,661.45
Diabetes & Endocrine Institute	29,674.27
Balch and Bingham, LLP	29,312.89
Forman Watkins & Krutz LLP	28,800.00
Brunini Grantham Grower & Hewes, PLLC	28,260.00
Hometown Medical	27,842.76
John R McNeal Attorney at Law	26,542.38
Methodist Children's Home	26,480.61
MSI Inventory Service Corporation	26,157.23

**PROFESSIONAL STAFFING GROUP
2475 LAKELAND DRIVE, Suite C
FLOWOOD, MS 39232**

Financial Concepts	26,000.00
Dickerson Petroleum, Transportation and Services	25,400.00
Armstrong & Associates	23,873.28
Harrell & Rester, Attorneys at Law	22,723.57
Sotolongo Clinic, Inc.	22,381.40
Mississippi Children's Home Services, Inc. DBA "Canopy Children's Solutions"	22,114.68
American Tire Distributors	21,920.85
RPT Distributing	21,308.44
National Tile Contractor Association	21,077.55
McAngus GoudeLock & Courie LLC	21,000.00
McElroy Metal	20,376.20
LBA Hospitality	20,172.00
Jackson Municipal Airport Authority	20,126.19
Mississippi Physician Health Program	19,800.00
Mitchell Day Health Law Firm PLLC	19,778.35
Hancock Law Firm	19,133.05
Horne LLP	18,308.76
Glover Russell, PA	18,192.00
Phelps Dunbar LLP	17,154.30
Emerald Transformer	16,560.00
Wells Marble Attorneys at Law	15,202.25
Mid South Rehab Services	14,920.84
Glynn Griffing & Associates	14,400.00
Jackson State University	13,883.70
First Commercial Bank	13,440.00
Elior NA	13,016.59
Milner & Nixon, PLLC	12,616.62
National Tax Center	12,161.20
Attorney at Law Ben Wise	11,943.54
Reserve National Insurance Company	11,535.04
Goldring/Woldenberg Institute of Southern Jewish Life	11,400.00
Southeast Urogyn	11,225.29
Young Williams, PC	10,800.00
Taylor Wellons Politz & Duhe APLC	10,484.00
Young Wells PA	10,285.90
McKay Lawler Franklin & Foreman, PLLC	10,228.75
Advantage Closing and Escrow	10,000.00
Midtown Partners/ Little Samaritan Montessori Center	10,000.00
Jackson Pain Center PA	9,840.83
Carroll Warren & Parker, PLLC	9,720.00
Barefield Workplace Solutions	9,325.45

**PROFESSIONAL STAFFING GROUP
2475 LAKELAND DRIVE, Suite C
FLOWOOD, MS 39232**

Integrated Strategies Cleaning, LLC	8,698.18
Thrash Commercial Contractors	8,519.21
Contractors Millwork	7,941.84
Law Office of Felecia Perkins, P.A.	7,907.14
Great Scott Clothing for Men	7,500.00
Simpson Law Firm	5,976.95
Lakeland Premier Women's Clinic	5,524.69
Pendleton Security	5,441.36
ZYAA INC	5,160.00
Copeland Cook Taylor & Bush, PA	4,950.00
Republic Finance - Byram	4,884.81
Richard Wilbourn & Associates, PLLC	4,580.62
Ron and Ann Inc.	4,555.32
mindCARES	4,189.94
Vigilant Health	3,615.30
Law Office of James McGee, Jr. PLLC	3,578.78
Newk's Franchise Company, LLC	3,431.55
Integrative Health Associates	3,225.49
American Packaging	2,867.40
Tenax Aerospace	2,279.78
Harbor House	2,232.00
Shoemaker Homes	1,699.10
Morris and McDaniel, Inc.	1,449.14
Hazzard Law, LLC	1,436.21
A'marie's Bath Flower Shop / A'marie's Bath Happies LLC	1,342.60
Mike Farrell, PLLC	1,197.24
Cinch	1,086.18
Stimley Brown & Assoc	804.16
Wilkins Patterson, Attorneys at Law	717.30
Hagwood and Tipton	491.04
Antique Shops of Jackson	466.43
Shell Buford, PLLC	429.35
Catholic Charities	414.38
Randall, Segrest, Weeks, Reeves & Sones, PLLC	159.76
Total	6,090,008.00

ATTACHMENT B

Bid Form for Temporary Staffing Services

Company	Company Representative	Telephone
Professional Staffing Group	Brenda Barron	601-421-9367 Cell

The pricing quoted must be inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any); and
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

Percentage markup over the hourly rate as set by MDES

20 %

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Invitation for Bids, IFB 2019-02 and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, IFB 2019-02 and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids, IFB 2019-02, and the attachments herein;
4. That the company will perform, without delay, the services required at the price quoted in this **Attachment B**; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.

Printed Name: Brenda Barron

Signature/Date: 10/27/2019

Brenda Barron

ATTACHMENT C

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the bid to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by **circling** the applicable word or words in each paragraph below:

1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has** has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid.

2. REPRESENTATION REGARDING GRATUITIES

The bidder or Contractor represents that it **has** 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 Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation have **have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

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

Name/Title: Brenda Barron Managing Partner

Signature/Date: 10/27/2019 

Note: Please be sure to circle the applicable word or words provided above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as nonresponsive. Modifications or additions to any portion of this bid document may be cause for rejection of the bid.

ATTACHMENT G


Acknowledgment of Amendments

(Only submit if an Amendment has been issued relative to this Invitation for Bids)

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

You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

Amendment # 1


Signature


10/27/2019
Date

ATTACHMENT F

Bidder's Checklist

Attachment A Completed and Signed	<input checked="" type="checkbox"/>
Attachment B Completed and Signed	<input checked="" type="checkbox"/>
Attachment F Completed and Signed	<input checked="" type="checkbox"/>
<i>If necessary</i> , Attachment G completed and Signed	<input checked="" type="checkbox"/>

Printed Name: Brenda Barron

Signature: 

Date: 10/27/2019



PROFSTA-01

SMOORE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/6/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hub International Gulf South 300 Concourse Boulevard, Suite 300 Ridgeland, MS 39157	CONTACT NAME: PHONE (A/C, No, Ext): (601) 607-5500	FAX (A/C, No): (601) 707-2070
	E-MAIL ADDRESS:	
INSURED Professional Staffing Group, LLC, Progroup, Inc 2475 Lakeland Drive, Suite C Flowood, MS 39232	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Federal Insurance Company	NAIC # 20281
	INSURER B: AmFed National Insurance Agency	NAIC # 11208
	INSURER C:	
	INSURER D:	
	INSURER E:	

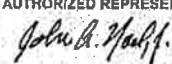
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		35859831EUC	4/5/2019	4/5/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 COMM E O \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X		1973547095	4/5/2019	4/5/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below.	Y/N	N/A	WC2190021276	3/15/2019	3/15/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Commercial Property			35859831EUC	4/5/2019	4/5/2020	EDP Equipment
A	Employee Dishonesty			8225-2568	4/5/2019	4/5/2020	Limit 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 MDES is named as Additional Insured with respects to the Commercial General Liability coverage and Waiver of Subrogation in favor of Workers Compensation.

CERTIFICATE HOLDER **CANCELLATION**

MDES 1235 Echelon Blvd Jackson, MS 39213	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

West's Annotated Mississippi Code
Title 31. Public Business, Bonds and Obligations
Chapter 7. Public Purchases
Best Practices for Soliciting Requests for Proposals or Requests for Qualifications

Miss. Code Ann. § 31-7-403

§ 31-7-403. Conditions for use

Currentness

(1) Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, a request for proposals or request for qualifications may be used. The terms “practicable” and “advantageous” are to be given ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application. “Advantageous” denotes a judgmental assessment of what is in the state's best interest.

(2) The following factors shall be considered when determining advantageousness:

(a) The need for flexibility;

(b) The type of evaluations that will be needed after offers are received;

(c) Whether the evaluation factors involve the relative abilities of offerers to perform, including degrees of technical or professional experience or expertise;

(d) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;

(e) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and

(f) Whether prior procurements indicate that a request for proposals may result in more beneficial contracts for the state.

(3) The following factors shall be considered when determining practicability:

(a) Whether the contract needs to be a contract other than a fixed-price type contract;

(b) Whether oral or written discussions may need to be conducted with offerers concerning technical and price aspects of their proposals;

(c) Whether offerers may need to be afforded the opportunity to revise their proposals, including price;

(d) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and

(e) Whether the primary consideration in determining award may not be price.

(4) On or before January 1 of each year, and every time a chief procurement officer is hired, each state agency shall provide to the state purchasing agent the name of the state agency's chief procurement officer and information identifying the state agency's central purchasing office, if applicable. If the chief procurement officer of an agency or his or her designee determines, in writing, that the use of competitive sealed bidding is either not practicable or not advantageous to the state, he or she shall submit a detailed explanation of the reasons for that determination to the Public Procurement Review Board. If the Public Procurement Review Board determines that competitive sealed bidding is either not practicable or not advantageous to the state, then a contract may be entered into for the procurement of commodities, supplies, equipment, construction, technology, personal and professional services, state agency purchased employee benefits or state agency supplemental insurance and cafeteria plans, by a request for proposals or request for qualifications. However, these procurements contracted for through a request for proposals or request for qualifications may not be combined or included in a contract with other procurements that are required to be procured through competitive sealed bidding so as to avoid the statutory obligation for procurement through competitive sealed bidding. The board may modify or revoke its determination at any time, and the determination should be reviewed for current applicability from time to time.

In addition to determining whether a request for proposals or request for qualifications would be practicable and advantageous to the state, when making the decision to use a request for proposals or request for qualifications, the chief procurement officer shall consider the following factors:

(a) Whether quality, availability or capability is overriding in relation to price in procurements for research and development, technical supplies or services;

(b) Whether the initial installation needs to be evaluated together with later maintenance and service capabilities and what priority should be given to these requirements in the best interests of the state; and

(c) Whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals but evaluation and discussion of them before making the award.

Credits

Added by Laws 2017, Ch. 400 (H.B. 1109), § 2, eff. Jan. 1, 2018.

Miss. Code Ann. § 31-7-403, MS ST § 31-7-403

The Statutes and Constitution are current through the 2019 Regular Session.

3-103.03 Change of Name

When a contractor requests to change the name in which it holds a contract with the State, the agency shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect the change. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are changed. This change must be approved by the PPRB.

3-103.04 Staff Authority

PPRB may delegate its authority to approve contracts to OPSCR staff.

3-201 METHOD OF SOURCE SELECTION

Unless otherwise authorized by law, all Mississippi contracts for personal and professional services shall be procured using one of the following competitive procurement methods:

Competitive Sealed Bidding (Section 3-202), Requests for Applications (Section 3-101.04.1), or after prior approval from PPRB, Competitive Sealed Proposals or Qualifications (Section 3-203) or an alternative, generally accepted procurement method approved by the PPRB.

Competitive bidding includes Invitations for Bids. In order to procure through an alternative, generally accepted procurement method, the agency must bring a request before the Board for approval using the procedure in Section 3-201.02, Procedure for Petition for Relief from Competitive Bidding. If otherwise authorized by law, the agency may use other competitive methods of procurement without approval from the Public Procurement Review Board.

3-201.01 Petition for Relief from Competitive Bidding

Competitive Sealed Bidding (Invitation for Bids) is the preferred method of procurement; however, if it is not practicable and advantageous, a Request for Proposals or Request for Qualifications may be used.

An agency may petition for relief from the requirement that the agency use Competitive Sealed Bidding as the procurement method by submitting a Petition for Relief. The Chief Procurement Officer of an agency or his or her designee shall determine, in writing, that the use of Competitive Sealed Bidding is either not practicable or not advantageous to the state, he or she shall submit a detailed explanation of the reasons for that determination to the Public Procurement Review Board. If the PPRB determines that Competitive Sealed Bidding is either not practicable or not advantageous to the state, then a contract may be entered into for the procurement of personal and professional services, state agency purchased employee benefits or state agency supplemental insurance and cafeteria plans by a Request for Proposals or Request for Qualifications.



WatsonHeidelberg PLLC
ATTORNEYS AND COUNSELORS AT LAW

J. Kevin Watson
C. Maison Heidelberg
Elizabeth M. Boone *
W. Robert Jones, III
A. Seth Robbins
Chadwick Mitchell Welch**
Tresa Patterson
Michael S. McKay

* Admitted in TN
** Admitted in VA, D.C.

December 9, 2019

Via Electronic Mail Only To: AubreyLeigh.Goodwin@dfa.ms.gov
Ms. Aubrey Leigh Goodwin
Deputy Executive Director
Mississippi Department of Finance and Administration
501 North West Street, Suite 1301A
Jackson, MS 39201

Re: Mississippi Department of Employment Security’s Invitation for Bids for Temporary Staffing Services (IFB No. 2019-02) and Approval Thereof by the Public Procurement Review Board

Dear Ms. Goodwin:

This firm represents PSG Holdings, LLC, d/b/a Professional Staffing Group (“PSG”).

The Mississippi Department of Employment Security (“MDES”) announced its intent to award a contract for temporary staffing services to PSG, as the “lowest, responsive, and responsible bidder meeting the requirements set forth in MDES IFB Number 2019-02 (the “Subject IFB”), pursuant to that certain Public Notice of Award dated October 31, 2019 attached hereto as Exhibit “A” and incorporated herein by reference (the “Notice of Award to PSG”).

The Notice of Award to PSG ranked the top five bidders as follows:

Vendor Name	Bid Amount - Percentage Markup
Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc	22%
LMATA Government Services, LLC	22.45%

MDES operated the Subject IFB and issued the Notice of Award to PSG in accordance with the applicable rules, regulations, and law. Consequently, the Public Procurement Review Board (“PPRB”) should promptly approve MDES’ Notice of Award to PSG.

Unfortunately, TempStaff, Inc., (“Protestor”) a competitor of PSG that simply failed to submit the lowest, responsive, and responsible bid has chosen to protest the Notice of Award to PSG and the Subject IFB. For the reasons set forth herein and/or such other reasons that the PPRB may find appropriate, the

PPRB should reject and dismiss this protest. Notably, Protestor's own response to the Subject IFB, was not even close to PSG's "lowest, responsive, and responsible" bid that was selected by MDES, as PSG's winning bid plus two other responses were ranked better than Protestor's fourth-ranked bid. Ultimately, PSG submitted the lowest qualified bid in response to the Subject IFB and Protestor's allegations that the Subject IFB was conducted illegally or improperly should be disregarded by the PPRB.

I. PSG's Qualifications.

As provided in PSG's response to the Subject IFB, PSG clearly meets the requirements of the Subject IFB and MDES properly issued the Notice of Award to PSG. PSG has the financial resources to meet the needs of MDES, provides ACA compliant benefits to its employees, and maintains insurance coverage (including workers' compensation and liability) as required by the Subject IFB. PSG is a Mississippi limited liability company and is licensed to conduct business in Mississippi. Specifically, as required by section 3.1.2 of the Subject IFB, the PSG team has significantly more than three (3) years' experience in delivery temporary staffing services to large organizations similar in size to MDES and has a track record of meeting performance expectations.

PSG provides staffing services to a broad range of clients and fields in Mississippi, including an auto manufacturer and a large international law firm based in the Jackson area. Brenda Barron, the owner and managing partner of PSG, and her PSG staff have a combined thirty-two plus years of experience in the staffing industry and are seasoned professionals in addressing a wide variety of staffing needs for the most demanding industries and placements. For example, in a prior role, Brenda worked in conjunction with the U. S. Department of Homeland Security to obtain work visas for approximately 600 employees for a seasonal role with a client location in North Mississippi and previously managed a recruiting team that averaged approximately 20,000 new hires annually. Additionally, in her prior experience, Brenda and her team serviced clients in 15 states and were responsible for compliance oversight (e.g. background checks, FCRA, drug-testing, E-Verify) and for all candidate sourcing, interviewing and on-boarding.

As evidenced by the Notice of Award to PSG, MDES found PSG's response to the Subject IFB to meet all the requirements of MDES and further determined that PSG submitted the lowest, responsive, and responsible bid. The PPRB should consequently approve the Notice of Award to PSG and disregard Protestor's conjecture regarding PSG's qualifications.

II. The Subject IFB Process Complied with Law and Proved Advantageous to MDES.

MDES' use of competitive bidding or an Invitation for Bid ("IFB") for the Subject IFB, in lieu of a request for proposals ("RFP"), fully complied with all applicable rules, law, and was advantageous for MDES and Mississippi taxpayers. Protestor mischaracterizes an RFP issued by MDES in 2014 and an RFP issued by Mississippi Division of Revenue ("DOR") to support its protest of the Notice of Award to PSG. Protestor simply fails to account for recent reforms to the procurement process by the Mississippi Legislature and DOR's cancellation of its RFP.

A. Legislative Directive Indicates the IFB to be Preferred and Required Process for Procurement.

Pursuant to House Bill 1109 as passed by the Mississippi Legislature in 2017 that became effective January 1, 2018, the Legislature broadly reformed the Mississippi's public procurement process. H.B. 1109 (2017). As part of this reform, the Legislature clearly established that competitive bidding which includes an invitation for bids ("IFB") is the preferred and required method of procurement. *Id.*, PPRB Rule 3-101.01(g) ("competitive bidding includes invitations for bid"). This policy directive is present in PPRB Rule 7-102, which reads in pertinent part as follows:

Competitive Sealed Bidding (Invitation for Bids) is the preferred method of procurement; however, if it is not practicable and advantageous, a Request for Proposals, Request for Qualifications, and any other alternative, generally accepted procurement method previously approved by the PPRB may be used. PPRB Rule 7-102, emphasis added, PPRB Rule 3-201.01, and PPRB Rule 3-202.01.

In fact, procurement by means other than an IFB requires an agency seek pre-approval from the PPRB, unless otherwise specifically provided by law. PPRB Rule 3-201. Protestor omits this stated policy preference and requirement to use an IFB in asserting that, since DOR previously issued an RFP for staffing services in 2014, an RFP is the only proper means to procure temporary staffing services in 2019. Yet, even without the clear policy preference stated in PPRB Rule 7-102 and HB 1109, MDES' prior use of an RFP to procure staffing services almost 6 years ago should have no bearing on MDES' use of the Subject IFB to procure staffing services today. MDES conducted the 2014 RFP in a different era and the Legislature has clearly established that competitive bidding (i.e. an IFB) is preferred. Notably, MDES only received three (3) responses to the 2014 RFP but received twenty (20) responses to the Subject IFB. MDES submittal to PPRB, 12/4/2019, p. 4. As such, assuming *arguendo* that the rules did not provide such a preference for competitive bidding, the IFB was clearly practicable and advantageous as MDES utilized it for the Subject IFB with great success. There is nothing special about requested services that makes competitive bidding impracticable or not advantageous. The Subject IFB complied with the legislative policy directive and the PPRB rules and should consequently be upheld by the PPRB.

B. Protestor's Misguided Reliance on Division of Revenue RFP For Temporary Staffing Services.

Protestor argues that DOR "rightly changed course" and issued RFP No. 3120001761 (the "DOR RFP"), in lieu of DOR IFB No. 31600028666 (the "DOR IFB") for staffing services because the RFP was a more advantageous method. Protestor submittal to PPRB, 11/20/2019, p. 7. However, the DOR RFP was ultimately rejected and DOR procured the staffing services based on the DOR IFB, according to the DOR Notice of Rejection attached hereto as Exhibit "B". According to correspondence from a representative of DOR, which is attached hereto at Exhibit "C", the DOR RFP was issued simply to determine if there is any advantage in splitting certain aspects of the requested services (clerical and warehouse). Even if DOR utilized the DOR RFP in lieu of the DOR IFB, different agencies have different needs and another agency's use of an RFP is not dispositive as to the appropriate procurement process for MDES. Yet, by Protestor's own logic, the Subject IFB was the correct process for procuring temporary staffing services since DOR cancelled the DOR RFP and awarded a contract for staffing services based on the DOR IFB.

III. Conclusion.

In carrying out its duties, the PPRB must "promote the following underlying purposes and policies", among others:

- "to provide for increased public confidence in the procedures followed in the public procurement...";
- "to ensure the fair and equitable treatment of all persons who deal with the procurement system...";
- "to provide increased economy in the State of Mississippi procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the State"; and;
- "to foster effective broad-based competition with the free enterprise system..."

PPRB Rule 1-101.02.01.

The Legislature has clearly established that competitive bidding is preferred for public procurement in the State of Mississippi. HB 1109, *See* PPRB Rule 7-102, PPRB Rule 3-201.01, and Rule 3-202.01. MDES used the Subject IFB to solicit competitive bids for temporary staffing services and PSG properly submitted the lowest, responsive, and responsible bid. Consequently, MDES properly issued the Notice of Award to PSG and the PPRB should approve such Notice of Award to PSG.

In order for the PPRB not to approve MDES' Notice of Award to PSG or to otherwise accept the arguments of the Protestor, the PPRB would have to ignore the facts and law applicable to this matter along with the clear legislative preference for competitive bidding. Such a result would certainly not increase confidence in public procurement, ensure fairness in procurement, maximize the value of MDES' procurement dollars, or foster competition.

For the reasons set forth herein or such other reasons as may be appropriate, the PPRB should reject and dismiss the protest of the Subject IFB and approve MDES' issuance of the Notice of Award to PSG.

Respectfully submitted,

WATSON HEIDELBERG PLLC

A handwritten signature in cursive script that reads "A. Seth Robbins".

A. Seth Robbins

Enclosures

Cc: via email only to brenda@prostaffgroup.com



Mississippi Department of Employment Security

**Phil Bryant
Governor**

Jacqueline A. Turner
Executive Director

**Public Notice of Award
October 31, 2019**

Temporary Staffing Services
MDES IFB 19-02
RFx 3160003190

On September 27, 2019, the Mississippi Department of Employment Security (MDES) issued Invitation for Bids (IFB) 19-02 for the procurement of Temporary Staffing Services. As a result of this solicitation, the following vendors submitted responses:

Vendor Name	Bid Amount - Percentage Markup
Professional Staffing Group	20%
22nd Century Technologies, Inc.	20.50%
Staffers, Inc.	21.50%
Tempstaff, Inc	22%
LMATA Government Services, LLC	22.45%
Athena Consulting, LLC	22.50%
Spherion Staffing Services, LLC	23.38%
Intergrative Staffing Group, LLC	23.59%
Blue Arbor, Inc.	23.85%
New Wave People, Inc.	25%
Marathon Staffing Resources	25.75%
Industrial Staffing Services, Inc.	26%
Abacus Service Corporation	26%
Management Registry, Inc.	28%
NiteLines USA, Inc.	28%
Enterprise Solutions, Inc.	28%
Premier Staffing Source, Inc.	35%

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MDES is an Equal Employment Opportunity Employer

The following vendors were determined to be non-responsive and/or non-responsible and have been notified separately of the reason(s):

Infojini, Inc.
INSI Cloud, Inc.
Manpower

The purpose of this procurement is to establish a contract with a provider for Temporary Staffing Services to supplement MDES staff during times of increased workloads. This contract will include providing temporary staffing services for the MDES State Office Headquarters located at 1235 Echelon Parkway, Jackson, MS, all WIN Job Centers located statewide, and the Jackson and Hattiesburg Call Centers.

The term of the Temporary Services Contract will be from January 1, 2020, through December 31, 2023, with an option to renew for one (1) additional twelve (12) month period. If granted, the contract extension shall be under the same prices, terms, and conditions as in the original contract. The anticipated budget for this contract is \$10,000,000.00.

Based on the evaluation of the submitted bids, MDES announces the intent to award a contract to the lowest, responsive, and responsible bidder whose bid meets the requirements set forth in MDES IFB 2019-02 pending approval by the Public Procurement Review Board:

Professional Staffing Group

MDES would like to express its appreciation to all participating vendors.

This contract will be on file and available for public inspection in the office of the Chief Procurement Officer at the Mississippi Department of Employment Security State Headquarters located at 1235 Echelon Parkway in Jackson, MS.

Exhibit "B"

Notice of Rejection

8/29/2019

Procurement Type and Number	RFP No. 3120001761
Procurement Title	Temporary Staffing Services
Opening Date and Time	August 20, 2019 at 12:00 p.m.

Dear Vendors,

Thank you for the recent response to the solicitation referenced above. Regrettably, your response has been rejected. The reason for the rejection is as follows:

- The solicitation has been cancelled and all responses have been rejected. The solicitation will not be reissued. The Department of Revenue has determined that it's not in the best interest of the Agency to move forward with the Request for Proposal.

The rejected response will be retained in the procurement file.

If you have any questions, please contact Erica Greenwood, Contract Analyst, Sr. at Erica.Greenwood@dor.ms.gov or (601) 923-7860.

We appreciate your interest in doing business with the State of Mississippi.

Sincerely,

Justin Stephens, Deputy Office Director
Mississippi Department of Revenue
500 Clinton Center Drive
Clinton, MS 39056
Phone: 601-923-7656
Email: Justin.Stephens@dor.ms.gov

Seth Robbins

Subject: FW: Notice of Intent to Award - 22nd Century Technologies, Inc.

Exhibit "C"

From: Erica Greenwood <Erica.Greenwood@dor.ms.gov>

Date: December 3, 2019 at 8:14:52 AM CST

To: Brenda Barron <brenda@prostaffgroup.com>

Subject: RE: Notice of Intent to Award - 22nd Century Technologies, Inc.

DOR issued an RFP to see if there was a cost benefit in splitting the two contracts (Clerical and Warehouse). A Notice of Rejection was issued on 8-29-2019 for RFP # 3120001761 advising that the solicitation was cancelled and that it would not be reissued.

22nd Century maintained the initial contract that was awarded.

Erica Greenwood

Sr. Contract Analyst

Administrative Services

Mississippi Department of Revenue

PO BOX 22828 - Jackson, MS 39225

Phone: 601-923-7860 - Fax: 601-923-7658

Email: erica.greenwood@dor.ms.gov



From: Brenda Barron <brenda@prostaffgroup.com>

Sent: Tuesday, December 3, 2019 6:49 AM

To: Erica Greenwood <Erica.Greenwood@dor.ms.gov>

Subject: RE: Notice of Intent to Award - 22nd Century Technologies, Inc.

THIS EMAIL IS FROM AN EXTERNAL SENDER.

DO NOT click links, open attachments, or provide any information if the sender is unknown or the email is unexpected.

Erica,

I am of the understanding that the IFB was changed to an RFP (3120001761) in July of 2019, can you verify if this is in fact true. If so, was 22nd Century Technologies still awarded the contract?

Thank you for your prompt response.

Brenda

Brenda Barron, CSP

Managing Partner-Owner

p: 601.981.1658 ext. 15

c: 601.421.9367

f: 601.510.9196

myra@prostaffgroup.com

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