

**RFP No:** **4029**4029

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **October 31, 2017October 31, 2017 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for local governmental entities in Mississippilocal governmental entities in Mississippi43766.

Reverse Auction and Electronic Bidding Services**Reverse Auction and Electronic Bidding Services**

OPTIONAL PRE-PROPOSAL WEB VENDOR CONFERENCE: Friday, September 29, 2017

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS.

**The Vendor must submit proposals and direct inquiries to:**

Lynn Ainsworth

ISS Division Director

Information Technology Services

3771 Eastwood Drive

Jackson, MS 39211

(601) 432-81508150

lynn.ainsworthlynn.ainsworth@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO

RFP NO. 4029

due October 31, 2017 @ 3:00 p.m.,

ATTENTION: Lynn Ainsworth

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Craig P. Orgeron, Ph.D.**

**Executive Director, ITS**

**ITS** **RFP Response Checklist**

RFP Response Checklist: These items should be included in your response to RFP No. 4029.

|  |  |
| --- | --- |
| \_\_\_\_\_ | 1. One clearly marked original response and five (5) identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
 |
| \_\_\_\_\_ | 1. *Submission Cover Sheet*, signed and dated. (Section I)
 |
| \_\_\_\_\_ | 1. *Proposal Bond,* if applicable (Section I)
 |
| \_\_\_\_\_ | 1. *Proposal Exception Summary*, if applicable (Section V)
 |
| \_\_\_\_\_ | 1. Vendor response to *RFP Questionnaire* (Section VI)
 |
| \_\_\_\_\_ | 1. Point-by-point response to *Technical Specifications* (Section VII)
 |
| \_\_\_\_\_ | 1. Vendor response to *Cost Information Submission* (Section VIII)
 |
| \_\_\_\_\_ | 1. *References* (Section IX)
 |

Table of Contents

[SECTION I 4](#_Toc490226394)

[SUBMISSION COVER SHEET & CONFIGURATION SUMMARY 4](#_Toc490226395)

[PROPOSAL BONDS 5](#_Toc490226396)

[SECTION II 6](#_Toc490226397)

[PROPOSAL SUBMISSION REQUIREMENTS 6](#_Toc490226398)

[SECTION III 9](#_Toc490226399)

[VENDOR INFORMATION 9](#_Toc490226400)

[SECTION IV 13](#_Toc490226401)

[LEGAL AND CONTRACTUAL INFORMATION 13](#_Toc490226402)

[SECTION V 23](#_Toc490226403)

[PROPOSAL EXCEPTIONS 23](#_Toc490226404)

[PROPOSAL EXCEPTION SUMMARY FORM 25](#_Toc490226405)

[SECTION VI 26](#_Toc490226406)

[RFP QUESTIONNAIRE 26](#_Toc490226407)

[SECTION VII 30](#_Toc490226408)

[TECHNICAL SPECIFICATIONS 30](#_Toc490226409)

[SECTION VIII 41](#_Toc490226410)

[COST INFORMATION SUBMISSION 41](#_Toc490226411)

[SECTION IX 42](#_Toc490226412)

[REFERENCES 42](#_Toc490226413)

[REFERENCE FORM 44](#_Toc490226414)

[SUBCONTRACTOR REFERENCE FORM 45](#_Toc490226415)

[EXHIBIT A 46](#_Toc490226416)

[STANDARD CONTRACT 46](#_Toc490226417)

# SECTION I

## SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (**ITS**), should contact for questions and/or clarifications.

|  |  |  |  |
| --- | --- | --- | --- |
| Name |  | Phone # |  |
| Address |  | Fax # |  |
|  |  | E-mail |  |

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Original signature** of Officer in Bind of Company/Date

|  |  |
| --- | --- |
| Name (typed or printed) |  |
| Title |  |
| Company name |  |
| Physical address |  |
|  |  |
| State of Incorporation |  |

CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

## PROPOSAL BONDS

A Proposal Bond is not required for this procurement.

# SECTION II

## PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State’s sole discretion, result in the disqualification of the Vendor’s proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor’s proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor’s proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor’s original submission must be clearly identified as the original. The Vendor’s original proposal must include the Proposal Bond (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor’s proposal:
	1. The Vendor is required to submit one clearly marked original response and five (5)five (5) identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.
	2. To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
	3. Number each page of the proposal.
	4. Respond to the sections and exhibits in the same order as this RFP.
	5. Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
	6. If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
	7. Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with “NOT APPLICABLE.”
	8. Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
	9. When an outline point/attachment is a statement provided for the Vendor’s information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
	10. Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
	11. The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor’s cost proposal may be grounds for rejection of the Vendor’s proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
11. **ITS** reserves the right to request additional information or clarification of a Vendor’s proposal. The Vendor’s cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor’s overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State’s discretion, result in the disqualification of the Vendor’s proposal.
12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
	1. A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
	2. Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
	3. Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
	4. The Vendor must follow procedures outlined herein for submitting updates and clarifications.
	5. The Vendor must submit a statement outlining the circumstances for the clarification.
	6. The Vendor must submit one clearly marked original and five (5) copies of the clarification.
	7. The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State’s contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

* 1. The State’s contact person for the selection process is: Lynn Ainsworth, ISS Division Director, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8150, lynn.ainsworth@its.ms.gov.
	2. Vendor may consult with State representatives as designated by the State’s contact person identified in 14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

# SECTION III

## VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

1. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

1. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

1. **Written Amendment to RFP**

Any interpretation of an **ITS** RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the **ITS** website, together with the associated RFP specification. Vendors are required to check the **ITS** website periodically for RFP amendments before the proposal opening date at:

<http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx>

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the **ITS** website, you may contact the **ITS** resource listed on the cover page of this RFP and request a copy.

1. **Oral Communications Not Binding**

Only transactions which are in writing from **ITS** may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

1. **Vendor’s Responsibility for Delivery**

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

1. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendors who meet specifications, considering price and other factors. The Vendor’s past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

1. **Multiple Awards**

**ITS** reserves the right to make multiple awards, and anticipates doing so with this RFP.

1. **Right to Award in Whole or Part**

**ITS** reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

1. **Right to Use Proposals in Future Projects**

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

The State also reserves the right for governmental entities outside of Mississippi to use the award from this RFP (i.e., piggyback language), in a similar manner as outlined in the paragraph above.

1. **Price Changes During Award or Renewal Period**

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

1. **Right to Request Information**

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

1. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor’s proposal:

* 1. A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
	2. That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
	3. That the individual is proficient in spoken and written English;
	4. That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all United States Citizenship and Immigration Services (USCIS) regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
	5. That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.
1. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State’s business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor’s software; and/or providing web-hosting, hardware, networking or other processing services on the State’s behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State’s ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

1. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

1. **Restriction on Advertising**

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

1. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

1. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

1. **Valid Contract Required to Begin Work**

The successful Vendors should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendors prior to the execution of the contract is done at the Vendors’ sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

# SECTION IV

## LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

1. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

1. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

* 1. The Proposal Exception Summary Form as accepted by **ITS**;
	2. Contracts which have been signed by the Vendor and **ITS**;
	3. **ITS’** Request for Proposal, including all addenda;
	4. Official written correspondence from **ITS** to the Vendor;
	5. Official written correspondence from the Vendor to **ITS** when clarifying the Vendor’s proposal; and
	6. The Vendor’s proposal response to the **ITS** RFP.
1. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendors.

1. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

1. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the Mississippi Department of Finance and Administration (DFA) and local governmental entities in Mississippi. ITS, DFA, and those entities are sometimes collectively referred to within this RFP as "State."

1. **Mandatory Legal Provisions**
	1. The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
	2. Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
	3. The Vendor shall have no limitation on liability for claims related to the following items:
		1. Infringement issues;
		2. Bodily injury;
		3. Death;
		4. Physical damage to tangible personal and/or real property; and/or
		5. The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor’s employees or subcontractors.
	4. All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
	5. Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
	6. Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
	7. The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendors, Vendor agents, subcontractors, or assignees.
	8. The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor’s products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
	9. The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.
2. **Approved Contract**
	1. Award of Contract - A contract is considered to be awarded to a proposer once the proposer’s offering has been approved as lowest and best proposal through:
		1. Written notification made to proposers on **ITS** letterhead, or
		2. Notification posted to the **ITS** website for the project, or
		3. CP-1 authorization executed for the project, or
		4. The **ITS** Board’s approval of same during an open session of the Board.
	2. **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
	3. A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.
3. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

1. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

1. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring local governmental entity and are contingent upon receipt by an awarded Vendor of a purchase order from the acquiring entity.

1. **CP-1 Requirement**

This requirement does not apply to awards made from this RFP.

1. **Requirement for Electronic Payment and Invoicing**
	1. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.
2. **Time For Negotiations**
	1. All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS,** unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.
	2. Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor’s proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.
3. **Prime Contractor**

The selected Vendors will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

1. **Sole Point of Contact**

**ITS** will consider the selected Vendors to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

* 1. The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor’s commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
	2. Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
	3. Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party’s name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor’s proposal and subsequently accepted by the State.

1. **ITS** **Approval** **of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

1. **Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor’s proposal.

1. **Negotiations with Subcontractor**

In order to protect the State’s interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

1. **References to Vendor to Include Subcontractor**

All references in the RFP to “Vendor” shall be construed to encompass both the Vendor and its subcontractors.

1. **Outstanding Vendor Obligations**
	1. Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
	2. Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
	3. The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
2. **Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

1. **Delivery Intervals**

The Vendor’s proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

1. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

1. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

1. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

1. **Americans** **with Disabilities Act Compliance for Web Development and Portal** **Related** **Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

1. **Ownership of Developed Software**
	1. When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
	2. The State may be willing to grant the Vendor a nonexclusive license to use the State’s software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.
2. **Ownership of Custom Tailored Software**

In installations where the Vendor’s intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

1. **Terms of** **Software** **License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor’s proposal.

1. **The** **State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

1. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi’s Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Vendors wanting to view the Enterprise Security Policy should notify the contact listed on the cover page of this RFP.

1. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

1. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated.All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=155> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor’s proposal or portion thereof. **ITS** will not,however, give such notice with respect to summary information prepared in connection with the State’s review or evaluation of a Vendor’s proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory “Officer in Bind of Company” provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the “Officer in Bind of Company” should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

1. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

1. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

1. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal.

1. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

1. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=173> or from **ITS** upon request.

1. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of theenvelope must be marked “Protest” and must specify RFP Number 4029.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the amount of $250,000.00**$250,000.00**. The bond shall be accompanied by a dulyauthenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor’s expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS’** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

1. **Mississippi Employment Protection Act**

Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), 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. Vendor will agree to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

# SECTION V

## PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with ”shall” or “must,” as long as the following are true:
	1. The specification is not a matter of State law;
	2. The proposal still meets the intent of the RFP;
	3. A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
	4. The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the Proposal *Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
	1. The Vendor will withdraw the exception and meet the specification in the manner prescribed;
	2. **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
	3. **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
	4. None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

## PROPOSAL EXCEPTION SUMMARY FORM

**List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.**

|  |  |  |  |
| --- | --- | --- | --- |
| **ITS** RFP Reference | Vendor Proposal Reference | Brief Explanation of Exception | **ITS** Acceptance (sign here only if accepted) |
| (Reference specific outline point to which exception is taken) | (Page, section, items in Vendor’s proposal where exception is explained) | (Short description of exception being made) |  |
| 1. |  |  |  |
| 2. |  |  |  |
| 3. |  |  |  |
| 4. |  |  |  |
| 5. |  |  |  |
| 6. |  |  |  |
| 7. |  |  |  |

# SECTION VI

## RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Mississippi’s Accountability System for Government Information and Collaboration (MAGIC) Information for State of Mississippi Vendor File**
	1. **MAGIC Vendor Code**: Any Vendor who has not previously done business with the State and has not been assigned a MAGIC Vendor code should visit the following link to register:

<https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100>

Vendors who have previously done business with the State may obtain their MAGIC Vendor code and all Vendors may access additional Vendor information at the link below.

<http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/>

 All Vendors must furnish **ITS** with their MAGIC Vendor code.

MAGIC Vendor Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendors will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at:

<http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf>

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at minority@mississippi.org.

If Vendor is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Vendor must include a copy of their Minority Vendor Self-Certification Form with their RFP response.

1. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

1. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

* 1. Does there exist any possible conflict of interest in the sale of items to any institution within **ITS** jurisdiction or to any governing authority? (A yes or no answer is required.)
	2. If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.
1. **Pending Legal Actions**
	1. Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor’s proposal? (A yes or no answer is required.)
	2. Are there any criminal or civil proceedings (federal or state) pending against the Vendor or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)
	3. If your answer to either of the above is “yes”, provide a copy of same and state with specificity the current status of the proceedings.
	4. The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Vendor’s proposal.
2. **Non-Disclosure of Social Security Numbers**

Does the Vendor acknowledge that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual’s Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual’s Social Security Number? This acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

1. **Order and Remit Address**

The Vendor must specify both an order address and a remit address:

Order Address:

Remit Address (if different):

1. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

1. **Web Amendments**

 As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

 <http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx>

 **ITS** may post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

 Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

 Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

1. **Certification of Liability Insurance**

Vendor must provide a copy of their Certificate of Liability Insurance with their RFP response.

1. **E-Verify Registration Documentation**

Vendor must ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008). Vendor must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 41 for additional information.

# SECTION VII

## TECHNICAL SPECIFICATIONS

1. **How to Respond to this Section**
	1. Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
	2. The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
	3. “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
	4. “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
	5. If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” See Section V, for additional instructions regarding Vendor exceptions.
	6. Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
	7. In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.
2. **Mandatory Provisions for this RFP**
	1. Certain items in this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification.
	2. Mandatory requirements are those requirements labeled as “**MANDATORY**.”
3. **General Overview and Background**
	1. Legislative Intent
		1. House Bill 1106 from the 2017 Regular Session of the Mississippi Legislature revised Mississippi Code Section 31-7-13(c)(v) and requires local governmental entities to provide a “secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically.” The only exceptions to this requirement are for local governmental entities who are currently without available high-speed internet access and counties having a population of less than twenty thousand and municipalities having a population of less than ten thousand.
		2. House Bill 1109 from the 2017 Regular Session of the Mississippi Legislature revises Mississippi Code Section 31-7-13(c)(i)(2) and requires local governmental entities to utilize reverse auctions as the primary method of receiving bids. Local governmental entities may petition the Mississippi Public Procurement Review Board (PPRB) for relief from utilizing a reverse auction on a particular procurement; however, they must seek approval of the resulting contract following the procurement by the alternative method.
		3. The requirements for both the receipt of electronic bids and the use of reverse auctions are effective January 1, 2018 and are applicable to procurements governed by Mississippi Code Section 31-7-13.
		4. Mississippi law prohibits the use of reverse auctions for design and construction of public facilities, including buildings, roads, and bridges.
		5. “Local Governmental Entities” as used herein means governing authorities as defined by Mississippi Code Section 31-7-1(b).
	2. This RFP Number 4029 is for reverse auction and electronic bidding services.
		1. **MANDATORY**: If awarded for reverse auction services, Awarded Vendors must offer reverse auction services for procurements valued at $50,000.01 and above.
		2. **MANDATORY**: If awarded for electronic bidding services, Awarded Vendors must offer electronic bidding services for procurements valued at $50,000.01 and above.
4. **Procurement Project Schedule**

| **Task** | **Date** |
| --- | --- |
| First Advertisement Date for RFP | 09/19/2017 |
| Second Advertisement Date for RFP | 09/26/2017 |
| Deadline to Register for Vendor Web Conference | 4:00 p.m. Central Time on 09/28/2017 |
| Optional Pre-Proposal Vendor Web Conference  | 10:00 a.m. Central Time on 09/29/2017 |
| Deadline for Vendor’s Written Questions | 3:00 p.m. Central Time on 10/03/2017 |
| Questions Answered and Posted to ITS Web Site | 10/12/2017 |
| Open Proposals | 10/31/2017 |
| Begin Evaluation of Proposals | 11/01/2017 |
| Begin Contract Negotiations | 11/15/2017 |
| Publish Instructions for Use Memo | 12/15/2017 |
| Services Available for Use | 01/01/2018 |

* 1. Vendors may request additional information or clarifications to this RFP using the following procedure:
		1. Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
		2. Vendor must deliver a written document to Lynn Ainsworth at **ITS** by Tuesday, October 3, 2017, at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS**. It is solely the responsibility of the Vendor that the clarification document reaches **ITS** on time. Vendors may contact Lynn Ainsworth to verify the receipt of their document. Documents received after the deadline will be rejected.
	2. Vendors may participate in an Optional Pre-Proposal Vendor Web Conference on Friday, September 29, 2017, at 10:00 a.m. For conference access, contact Lynn Ainsworth no later than 4:00 p.m. on Thursday, September 28, 2017.
	3. All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on Thursday, October 12, 2017.
1. **Statements of Understanding**
	1. The State anticipates awarding this RFP to multiple Vendors.
		1. The State reserves the right to award in part (i.e., award to specific Vendor(s) for reverse auction services, electronic bidding services, or both.
	2. The State reserves the right, in its sole discretion, to eliminate Vendors whose cost proposals are not competitive.
	3. The State anticipates an initial term of the award and resulting contracts to be for two (2) years, with three (3) optional, one-year renewal periods.
		1. Awarded Vendors must all agree to the same terms and conditions; therefore, Exceptions to the Standard Contract will be considered but are discouraged.
		2. Local governmental entities using this award must not be required to sign any other contract documents by the awarded Vendors.
		3. The State reserves the right for local governmental entities to require awarded Vendors to sign addendums to the Standard Contract, when additional terms and conditions are required by federal partners or for other funding agents.
	4. The use of the award from this RFP Number 4029 is optional for local governmental entities in Mississippi.
		1. Local governmental entities using this award will not be required to exclusively select a single awarded Vendor (i.e., may use any or all awarded Vendors for any period of time).
		2. Local governmental entities using this award will not be required to select an awarded Vendor for any minimum period of time (i.e., may use any or all awarded Vendors for any period of time).
	5. State agencies can NOT use this award. State agencies must use the State’s Enterprise Resource Planning System, MAGIC, administered through the Mississippi Department of Finance and Administration.
	6. The services provided through this award are limited to the provision of electronic bidding and/or reverse auction services.
		1. Awarded Vendors can NOT offer services for roles or work traditionally performed by public servants through this award, including but not limited to solicitation preparation, requirements/specifications development, specifications research/development, prequalification of bidding vendors/suppliers, and follow-on services (i.e., services performed after the reverse auction or electronic bid is awarded).
	7. The State anticipates publishing Instructions for Use Memorandum to all local governmental entities contemplating use of the award from this RFP.
		1. Responding Vendors must provide a 2-page How-To-Get-Started Guide with their proposal that may be published with the Memorandum.
	8. The State reserves the right to terminate the Master Software as a Service Agreement for any awarded Vendor not adhering to the terms and conditions of the contract and this RFP.
	9. Awarded vendors must report all reverse auction and electronic bidding services delivered to local governmental entities through this award. Regardless of activity (or lack thereof), awarded vendors must submit a report to DFA and ITS by the 15th of the month following the 6-month reporting period. The report for activity from July 1st through December 31st is due by January 15th, and the report for activity from January 1st through June 30th is due by July 15th. The detail of the report should follow the detail submitted in response to Section VIII. Cost Proposal, such that each reverse auction or electronic bid conducted is reported by specific local governmental entity.
	10. The State is seeking compensation information as Vendors would traditionally propose such in the course of business (See Item 7.4 and Section VIII of this RFP). The State understands, from informational meetings with Vendors prior to writing this RFP, that costs are traditionally borne by the bidding vendors/suppliers and not the procuring entities. Responding Vendors are advised that the State is aware of at least one Mississippi Attorney General’s Opinion (MS AG Op., Mosely (January 24, 2014)) indicating bidding vendors/suppliers may not be required to pay a fee to participate in the public bidding process, and therefore questions remain about the legality of proceeding with such a model. In the event the Attorney General opines that such an agreement is not lawful, the State reserves the right to negotiate maximum fees to be paid by the local governmental entity(s) using the award.
2. **Experience Requirements**
	1. **MANDATORY** – The responding Vendor must have been in business for at least three (3) years.
	2. Responding Vendors must list the number of public/government customers since inception or the past ten (10) years, whichever is shorter.
		1. Responding Vendors must provide a list of the customers included in the number provided in response to 6.2 above.
	3. Responding Vendors must list the number of reverse auctions performed since inception or the past ten (10) years, whichever is shorter, by size/value.
		1. Responding Vendors must include the number of auctions cancelled or having to be re-solicited, along with the reason why, for the number provided in response to 6.3 above.
	4. Responding Vendors must list the number of electronic bids performed since inception or the past ten (10) years, whichever is shorter, by size/value.
		1. Responding Vendors must include the number of bids cancelled or having to be re-solicited, along with the reason why, for the number provided in response to 6.4 above.
	5. Responding Vendors must list the number of employees by role, along with a role description for each role listed.
		1. Responding Vendors must identify employees by name and role that would be available to work with Mississippi local governmental entities using the award from this RFP.
3. **Business Model Requirements**
	1. Responding Vendors must describe how a Mississippi local governmental entity using the award from this RFP would request services.
		1. Responding Vendors must provide a sample of any form that must be completed by a Mississippi local governmental entity using the award from this RFP.
		2. Alternatively, responding Vendors may list the data elements/fields that must be provided online by a Mississippi local governmental entity using the award from this RFP. This list must include any and all ‘click-through’ acknowledgements.
		3. Responding Vendors must agree that neither forms or online order processes to use the services can include contractual terms and conditions.
		4. Responding Vendors must agree that each local governmental entity using their services must have a separate account.
			1. Responding Vendors must describe any limitation to the number of users a local governmental entity may have for access to the solution/service.
	2. Responding Vendors must describe how bidding vendors/suppliers register or are otherwise made aware of upcoming reverse auctions and electronic bids.
		1. Responding Vendors must describe the process used to onboard incumbent vendors for a local governmental entity using the reverse auction and/or electronic bidding service.
	3. Responding Vendors must provide a list of factors to be considered by local governmental entities when determining whether a procurement is a candidate for reverse auction.
	4. Responding Vendors must describe in detail their costs, including a description of their compensation model, who pays, and when payment is made. The description in response to this requirement should match the numbers and details provided in response to Section VIII of this RFP.
		1. Responding Vendors must provide examples to further explain how their compensation model works.
	5. Responding Vendors must describe any branding features that are available for local governmental entities to use so that bidding vendors/suppliers recognize the reverse auction or electronic bid as being for that particular entity (e.g., logo for a specific city.)
4. **Technical Requirements - General**
	1. The services provided through this award are limited to the provision of electronic bidding and reverse auction services, without the requirement to license, install, and/or maintain application software (i.e., cloud-based or otherwise internet accessible software being provided by the awarded Vendors as a service to the users, both local governmental entities and bidding vendors/suppliers.)
	2. Responding Vendors must describe how their reverse auction and/or electronic bidding service works, including a technical description of the proposed solution/software.
		1. Responding Vendors may provide a link, URL, and/or log-in information for Evaluation Team members to view the software/service.
		2. Responding Vendors must describe in an all-encompassing list any constraints in the use of the proposed solution, including, but not limited to, any limitation in the number of line items allowed for a reverse auction and electronic bid.
		3. Responding Vendors must explain recommended lapse times required for each activity or step in the process from entry of reverse auction and electronic bid information to award of procurement. Vendors are encouraged to include workflow(s) or diagram(s) depicting the process.
		4. Responding Vendors must describe if and how NIGP (National Institute of Government Purchasing) commodity codes are used by the proposed solution/software, including any assistance or help features available for selection of the most appropriate code(s) for a given reverse auction or electronic bid.
		5. If not using NIGP commodity codes, responding Vendors must describe what codes and/or nomenclature is used by the proposed solution/software, including any assistance or help features available for selection of the most appropriate code(s) for a given reverse auction or electronic bid.
	3. Responding Vendors must list any hardware, access, or other technical requirements for local governmental entities and vendors to effectively use the service/software, including, but not limited to, browser versions, and internet speeds.
	4. Responding Vendors must include any software licensing requirements for local governmental entities and bidding vendors/suppliers to effectively use the service/software. Any cost differences associated with levels of software licensing must be clearly identified in response to Section VIII, Cost Proposal.
	5. Responding Vendors must describe the technical support available to local governmental entities and bidding vendors/suppliers when using the proposed service, including hours and levels of support. Any cost differences associated with levels of support must be clearly identified in response to Section VIII, Cost Proposal.
	6. Responding Vendors must describe the service level agreement offer to local governmental entities and bidding vendors/suppliers when using the proposed service, including guaranteed uptime, scheduled downtime, and unscheduled downtime.
		1. Additionally, responding Vendors must describe their response procedures to unscheduled down time, including what measures are taken when the down time occurs during a reverse auction or electronic bid.
	7. Data Retrieval Requirements
		1. All data associated with each reverse auction and electronic bid is owned by the local governmental entity. Access to such data may not be withheld by an awarded Vendor to this RFP.
			1. Awarded Vendors are required to maintain all reverse auction and electronic bid data for a minimum of one (1) year after the expiration of the Master Software as a Service Agreement.
		2. Responding Vendors must provide the ability for local governmental entities to download the results of each reverse auction and electronic bid conducted.
			1. At a minimum, the download must be offered in pdf format.
			2. Samples of the download must be included with the responding Vendor’s proposal.
5. **Technical Requirements – Reverse Auction Services**
	1. Responding Vendors must describe how their proposed solution sets decrements for bid amounts.
	2. Responding Vendors must describe what safeguards their proposed solution has in place to prevent a bidding vendor/supplier from having multiple users bidding during a single reverse auction (i.e., one supplier bidding against itself.)
	3. Responding Vendors must describe how their proposed solution accommodates qualification of bidding vendors/suppliers before a reverse auction begins (i.e., pre-qualification.)
6. **Technical Requirements – Electronic Bidding Services**
	1. Responding Vendors must describe how their proposed solution complies with the ‘secure electronic system’ requirements of Section 1 of House Bill 1106, as referenced in Section VII.3.1. above.
		1. Responding Vendors must describe technically how bids remain sealed until set time of opening.
	2. Responding Vendors must describe how their proposed solution accommodates a formal question and answer period while the bid is ‘on the street.’
	3. Responding Vendors must describe how their proposed solution accommodates conferences for bidding vendors/suppliers while the bid is ‘on the street.’
7. **Training**
	1. Responding Vendors must describe the training offered to local governmental entities for effective use of the service. Any costs associated with levels or types of training must be clearly identified in response to Section VIII, Cost Proposal.
	2. Responding Vendors must describe the training offered to bidding vendors/suppliers for effective use of the service. Any costs associated with levels or types of training must be clearly identified in response to Section VIII, Cost Proposal.
8. **Additional Requirements**
	1. **ITS** acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed service. Vendors must specify, here, what additional components may be needed and are proposed in order to complete the solution.
	2. If any component(s) necessary for operation of the requested service is omitted from Vendor’s proposal, Vendor must be willing to provide the component(s) at no additional cost. This includes, but is not limited to, any functionality required to provide reverse auction and electronic bidding services.
9. **Scoring Methodology**
	1. An Evaluation Team composed of DFA, local governmental entities, and **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to Evaluation Team, will be used to evaluate the proposals.
		1. Each category included in the scoring mechanism is assigned a weight between one and 100.
		2. The sum of all categories, other than Value-Add, equals 100 possible points.
		3. Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.
		4. For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

|  |  |
| --- | --- |
| **Category** | **Possible Points** |
| Non-Cost Categories: |  |
| Vendor Experience (Items 5-7 and 12) | 25 |
| Services and Training (Items 8-11) | 30 |
| Total Non-Cost Points | 55 |
| Cost | 45 |
| Total Base Points | 100 |
| Value Add | 5 |
| **Maximum Possible Points** | **105** |

* 1. The evaluation will be conducted in four stages as follows:
		1. Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, timely delivery, and must be responsive to all mandatory requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.
		2. Stage 2 – Non-cost Evaluation (all requirements excluding cost)
			1. Non-cost categories and possible point values are as follows:

|  |  |
| --- | --- |
| **Non-Cost Categories** | **Possible Points** |
| Vendor Experience (Items 5-7 and 12) | 25 |
| Services and Training (Items 8-11) | 30 |
| **Maximum Possible Points** | **55**  |

* + - 1. Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.
			2. ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the ‘Vendor Experience’ category was allocated 25 points; a proposal that fully met all requirements in that section would have scored 22.5 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the State.
	1. Stage 3 – Cost Evaluation
		1. The State reserves the right to eliminate Vendors with non-competitive cost proposals from further consideration. The State anticipates awarding to multiple Vendors; however, should a Vendor’s cost proposal be non-competitive, in the sole discretion of the State, then that Vendor may be eliminated from further consideration.
		2. Points will be assigned using the following formula:

(1-((B-A)/A))\*n

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

* + 1. Cost categories and maximum point values are as follows:

|  |  |
| --- | --- |
| **Cost Category** | **Possible Points** |
| Lifecycle Cost | 45  |
| **Maximum Possible Points** | **45**  |

* 1. Stage 4 – Selection of Successful Vendors
		1. On-site Demonstrations and Interviews
			1. At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.
			2. If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the account manager being proposed by the Vendor to oversee procurements using the awarded Vendor’s solution.
			3. Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this on-site visit.
			4. Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.
		2. Site Visits
			1. At the State’s option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven (7) calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.
	2. Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor’s final score.

# SECTION VIII

## COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrices that follow. The matrices must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the elements necessary to compute the cost charged for each reverse auction and/or electronic bid, regardless of who is paying the cost. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or bidding vendors/suppliers, or face disqualification.

|  |
| --- |
| **Cost Table 1 – Percent of Purchase** |
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| --- |
| **Cost Table 2 – License/Use Fee** |
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| **Cost Table 3 - Other / Optional Costs** |
|  |  |  |  |
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|  |  |  |  |

# SECTION IX

## REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. **References**
	1. The Vendor must provide at least three (3)three (3) references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
	2. Any of the following may subject the Vendor’s proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State’s sole discretion:
		1. Failure to provide reference information in the manner described;
		2. Inability of the State to substantiate minimum experience or other requirements from the references provided;
		3. Non-responsiveness of references to the State's attempts to contact them; or
		4. Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
	3. References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
		1. The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
		2. **MANDATORY** – If proposing Reverse Auction Services, each reference account must have successfully used a Reverse Auction at least two (2) times within the last thirty-six (36) months, where ‘successfully used’ is defined as ‘an award having been made.’
		3. **MANDATORY** – If proposing Electronic Bidding Services, each reference account must have successfully used an Electronic Bid at least two (2) times within the last thirty-six (36) months, where ‘successfully used’ is defined as ‘an award having been made.’
	4. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor’s list of references, and to utilize such information in the evaluation of the Vendor's proposal.
	5. Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
		1. As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
		2. To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
	6. The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.
2. **Subcontractors**

The Vendor’s proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3)three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

## REFERENCE FORM

**Complete three (3) Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates for at least two (2) successful Reverse Auction services and/or Electronic Bidding services. For those responding Vendors offering one service, but not both, at least two (2) references for the applicable service must be provided. If offering both services, at least two (2) references for each are required.

## SUBCONTRACTOR REFERENCE FORM

**Complete a separate form for each subcontractor proposed.**

Contact Name:

Company name:

Address:

Phone #:

E-Mail:

Scope of services/products to be provided by subcontractor:

**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:

Company name:

Address:

Phone #:

E-Mail:

Description of product/services/project, including start and end dates:

#

# EXHIBIT A

## STANDARD CONTRACT

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 43766**

## MASTER SOFTWARE AS A SERVICE AGREEMENT

 **BETWEEN**

 **INSERT VENDOR NAME**

 **AND**

 **MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

 **AS CONTRACTING AGENT FOR THE**

 **LOCAL GOVERNMENTAL ENTITIES OF THE STATE OF MISSISSIPPI**

This Master Software as a Service Agreement (hereinafter referred to as “Master Agreement”) is entered into by and between INSERT VENDOR NAME, a INSERT STATE OF INCORPORATION corporation having its principal offices at INSERT VENDOR STREET ADDRESS (hereinafter referred to as “Contractor”) and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the local governmental entities of the State of Mississippi (hereinafter referred to as “Customer”). ITS and Customer are sometimes collectively referred to herein as “State”.

**WHEREAS,** ITS, pursuant to Request for Proposals (“RFP”) Number 4029 requested proposals in order to assemble a list of approved contractors who may provide a Software as a Service (“SaaS”) solution for reverse auctions and/or electronic bidding services; and

**WHEREAS,** the Contractor was one of the successful respondents in an open, fair and competitive procurement process to provide the above mentioned services; and

**WHEREAS,** ITS and Contractor desire to enter into this Master Agreement which contains the terms and conditions which will govern any orders placed by the local governmental entities within the state of Mississippi for reverse auctions and/or electronic bidding services;

**NOW THEREFORE,** in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will continue in effect for two (2) years thereafter, or until all warranties provided by Contractor to Customer have expired, whichever occurs last (“Initial Term”). At the end of the Initial Term, the Master Agreement may, upon the written agreement of ITS and Contractor, be renewed for three (3) additional one (1) year terms. Contractor will notify ITS sixty (60) days in advance prior to the expiration of the initial or any renewal term and ITS shall have thirty (30) days in which to notify Contractor of its intention to either renew or cancel this Master Agreement.

**ARTICLE 2 DEFINITIONS**

The following terms as used herein shall have the following meanings:

**2.1 “Active User”** means vendors submitting proposals for a particular RFP, Customer employees and any third party consultants or outsourcers engaged by Customer who are actively participating on the system in any given month of operation and who shall be bound to the terms and conditions of this Master Agreement.

**2.2 “Application(s)” or “SaaS Application(s)”** means those Contractor software application programs which are made accessible for Active Users to use under the terms of this Master Agreement.

**2.3 “Available Date”** means the date upon which Contractor notifies Customer that the Applications may be accessed on the Contractor’s SaaS server and Customer may begin acceptance testing.

**2.4** **“Cloud Services” or “SaaS Services”** means those services related to Contractor’s private cloud environment provided to Customer, including but not limited to, infrastructure, equipment, bandwidth, server monitoring, backup services, disaster recovery services, storage area network (SAN) services, security services, system administration, connectivity services, performance tuning, update installation and maintenance services related thereto.

**2.5 “Content”** means any data provided by or through Active Users into the Services.

**2.6 “Contractor”** means INSERT VENDOR NAME, and its successors and assigns.

**2.7 “Customer”** means, in each instance, the local governmental entity of the state of Mississippi who engages Contractor to perform reverse auctions and/or electronic bidding services pursuant to this Master Agreement.

**2.8 “Documentation”** means the user and technical manuals and documentation published by Contractor relating to the use of the Services or Applications; the help files included within the Applications, and any files containing presentation materials or manuals or other related materials to train and educate Customer and the Active Users on the use of the Applications.

**2.9 “Initial Term”** means the two (2) year term of Services as indicated in Article 1.

**2.10 “Order Form”** means the document pursuant to which, among other things, Customer orders the Services from Contractor.

**2.11 “Services”** means any Cloud Services, on-line user access, customizations, interface development, consulting, education, SaaS installation, system administration, training, maintenance, support, and Help Desk services provided by Contractor to Customer.

**ARTICLE 3 MODIFICATION OR RENEGOTIATION**

This Master Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the Master Agreement and pertinent Order Forms in the event that federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

# ARTICLE 4 INCLUDED PARTIES AND PRICING

Contractor will accept orders from and furnish the Services under this Master Agreement to any local governmental entity within Mississippi. Pricing will be based on Contractor’s pricing submitted in its proposal in response to RFP No. 4029 and attached hereto as Exhibit A. Contractor guarantees the pricing in the attached Exhibit A for the Initial Term.

**ARTICLE 5 ADDITIONAL TERMS AND CONDITIONS**

All provisions in this Master Agreement are in addition to the requirements of RFP No. 4029 and Contractor’s Proposal in response thereto, which are both incorporated into and made a part of this Master Agreement.

# ARTICLE 6 ORDERS

**6.1** The State does not make any guarantee as to volume of Services procured or dollars to be spent under this Master Agreement.

**6.2** When a Customer decides to procure any Services from Contractor, the Customer shall follow ITS’ then-current, published instructions for use memorandum and applicable laws and shall submit an Order Form to Contractor to request the particular Services to be procured. All Order Forms shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. The terms and conditions of this Master Agreement shall supersede any conflicting terms and conditions set forth in any subsequent documents provided by Contractor or its subcontractors to Customer. The parties agree that the Customer has the right to adjust the quantities of Services procured based upon the availability of funding or as determined necessary by the Customer.

**6.3** Contractor acknowledges and agrees that state agencies within Mississippi can NOT use this Master Agreement. Additionally, Contractor further acknowledges and agrees that this Master Agreement can only be used for reverse auction and/or electronic bidding services and not for any other purpose.

# ARTICLE 7 METHOD AND TIME OF PAYMENT

(To be determined. Dependent upon Contractor’s payment model.)

# ARTICLE 8 DELIVERY AND ACCEPTANCE

**8.1** Contractor shall make available the Software and Documentation to the Contractor’s hosting environment pursuant to the delivery schedule mutually agreed to by the parties.

**8.2** Unless a different acceptance period is agreed upon by Contractor and Customer, the Customer shall have ten (10) business days after the Available Date to evaluate and test the Services to confirm that they perform without any defects and perform in accordance with RFP No. 4029, Contractor’s Proposal in response thereto, and Contractor’s user Documentation. Customer shall immediately thereafter notify Contractor in writing of any defects in the Software or Services which must be corrected prior to payment being made. Thereafter, Contractor shall have ten (10) business days or such other time period as may be agreed upon by the parties, in which to either repair or replace the defective Software or re-perform the Services, all at Contractor’s expense. In the event Contractor is unable to repair the defect within this ten (10) day period, Customer may terminate its Order Form pursuant to the Termination Article herein.

# ARTICLE 9 SCOPE OF SERVICES

# 9.1 The Contractor agrees to provide Customer a SaaS based reverse auction and/or electronic bidding system as described in this Master Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled “Entire Agreement”, a summary of such work is outlined in Article 9.2 below.

**9.2** Contractor shall be responsible for the following:

A. Ensuring that all deliverables are complete and accepted by Customer pursuant to a mutually agreed upon project work plan;

B. Tracking date sensitive items to ensure timely updates;

C. Acknowledging that the Content is and shall remain the sole and exclusive property of Customer. Upon the termination or expiration of Customer’s Order Form or this Master Agreement, Contractor shall provide such Content in its possession to Customer pursuant to a mutually agreed upon release schedule and in a format acceptable to Customer;

D. Working with Customer to achieve access rates that meet Customer’s needs;

E. Providing security for the site that is agreeable to Customer with Contractor responsible for all necessary equipment and software related to security;

F. Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Master Agreement, including but not limited to, those in Article 10.4;

G. Completing daily backups of the site;

H. Notifying Customer at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;

I. Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Contractor’s expense;

J. Participating with Customer in disaster recovery planning and testing based on a mutually agreed upon schedule;

K. Maintaining the confidentiality of the information entered;

L. Providing access to all of the technical information concerning operation of the system, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;

M. Identifying any commercially available software, by vendor and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Contractor;

N. Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the Initial Term not increasing annually beyond three percent (3%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;

O. Providing 24x7x365 support of the site;

P. Providing redundant internet connections;

Q. Providing Transport Layer Security (“TLS”) secure server support;

R. Maintaining sufficient bandwidth and server capacity to meet Customer’s needs and Active Users’ demand as it may fluctuate and increase during the term of this Master Agreement, and;

S. Ensuring that all Customer data remains within the continental United States;

T. Partitioning Customer’s data from other customer data so Customer’s access is not impaired due to e-discovery, seizure, or the like, and

U. Ensuring that upon termination or expiration of the Order Form or this Master Agreement that transition from the Contractor to Customer or to a successor host will be accomplished at no cost to Customer.

**9.3** In the event Contractor creates any revisions to or upgrades of the system, Contractor shall provide thirty (30) days written notification of such revision or upgrade, and shall, upon request of Customer, furnish such revision or upgrade to Customer free of charge as part of the SaaS fees.

**ARTICLE 10 SCOPE OF LICENSE AND RIGHT TO USE**

**10.1** Subject to the terms and conditions of this Master Agreement, Contractor hereby grants to Customer a non-exclusive and non-transferable license to access the Applications over the Internet and to use it for Customer’s business operations and use it on the Contractor’s host server for the term specified in the Order Form and any subsequent renewal terms in accordance with, and subject to, the terms and conditions set forth in this Master Agreement. Customer and Active Users are granted access to the Applications and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs.

**10.2** Contractor will provide Customer storage space on and access to Contractor’s Applications via the Internet and provide Internet access to the Applications and Cloud Services to the Active Users through Contractor’s site (“SaaS Services”).

**10.3** In connection with the SaaS Services, Contractor will provide and maintain all Applications and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Services.

**10.4** The Applications and Services will be accessible at least ninety-nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the SaaS Services due to causes beyond the control of Contractor. In the event that Customer or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Contractor, the State reserves the right to terminate the Order Form and/or this Master Agreement. Contractor shall maintain the server at a secured location with restricted access.

**10.5** Contractor shall provide the Customer with its standard managed firewall service, which shall enable secure delivery of Contractor’s Services using fully redundant hardware-based firewalls. Contractor’s managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

**10.6** The use of the Services by Active Users will be governed solely by the terms and conditions of this Master Agreement.

**10.7** Customer acknowledges that Contractor retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, shall not obtain or claim any rights in or ownership interest to the Services or Applications or any associated intellectual property rights in any of the foregoing. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

**ARTICLE 11 DATA SECURITY**

**11.1** As part of the Services, Contractor shall provide administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Content. Contractor agrees to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Master Agreement.

**11.2** Prior to initiation of the Services under this Master Agreement and on an ongoing basis thereafter, Customer agrees to provide notice to Contractor of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer’s industry and which could be imposed on Contractor as a result of provision of the Services.

**11.3** Contractor shall maintain a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). Contractor’s private cloud shall be evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The data center in which Contractor’s private cloud is located shall undergo pertinent security examinations. Management access to Contractor’s private cloud shall be limited to Contractor’s authorized support staff and Customer’s authorized staff. The Applications shall provide Customer with the ability to configure application security and logical access per Customer’s business processes. In the event Customer identifies a security issue, Customer will notify Contractor.

**11.4** At a minimum, Contractor’s safeguards for the protection of protected health information (“PHI”) and personally identifiable information (“PII”), if any, shall include: (i) limiting access of PHI and PII to authorized employees; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting PII and PHI stored on any mobile media; (vii) encrypting PII and PHI transmitted over public or wireless networks; (viii) strictly segregating PII and PHI from information of Contractor or its other customers so that PII and PHI is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Contractor’s employees. Any and all subcontractors shall adhere to the aforementioned protection and encryption (in transit and at rest) of PHI and PII, as well as follow the stated breach policy.

**11.5** Contractor will comply with all applicable federal and state laws to resolve security breaches, and, to the extent Contractor is responsible for such security breaches, will cover the cost of remedial measures as required by such laws and otherwise consistent with this Master Agreement. Customer may seek equitable relief including a restraining order, injunctive relief, specific performance, and such other relief that may be available from a court in addition to any other remedy to which Customer may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity.

**11.6** At any time during the term of the applicable Order Form or this Master Agreement at Customer’s request or upon the termination or expiration of the Order Form or this Master Agreement for any reason, Contractor shall promptly return to Customer all copies, whether in written, electronic or other form or media, of PHI and PII in its possession, or securely dispose of all such copies, and certify in writing to Customer that such has been returned to Customer or disposed of securely. Contractor shall comply with all reasonable directions provided by Customer with respect to the return or disposal of PHI and PII.

**11.7** Upon Customer’s request, to confirm Contractor’s compliance with this Master Agreement, as well as any applicable laws, regulations and industry standards, Contractor grants Customer or, upon Customer’s election, a third party on Customer’s behalf, permission to perform an assessment, audit, examination or review of all controls in Contractor’s physical and/or technical environment in relation to all PHI or PII being handled and/or services being provided to Customer pursuant to this Master Agreement. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, Documentation, infrastructure and application software that processes, stores or transports PHI or PII for pursuant to this Master Agreement.

**11.8** It is understood and agreed that at least once per year, Contractor shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Master Agreement, including but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Contractor shall make the reports available to Customer for review. Any exceptions noted on the Statement on Standards for Attestation Engagements (SSAE) report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Contractor’s management and resolved, at Contractor’s sole expense, within thirty (30) calendar days of the audit.

**ARTICLE 12 WARRANTIES**

**12.1** Contractor represents and warrants that it has the right to license the Applications provided under this Master Agreement.

**12.2** Contractor represents and warrants that the Services provided by Contractor shall meet or exceed the minimum specifications set forth in RFP No. 4029 and Contractor’s Proposal, as accepted by ITS, in response thereto.

**12.3** During the term of this Master Agreement, the Contractor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Master Agreement. For any breach of this warranty, Contractor shall perform the Services again, at no cost to the State, or if Contractor is unable to perform the Services as warranted, the State reserves the right to terminate the Order Form and/or this Master Agreement.

**12.4** Contractor represents and warrants that the Application shall not contain a disabling code, lockup program or device. Contractor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Customer’s or Active User’s licensed use of the Applications and/or which would restrict Customer from accessing its data files or in any way interfere with the transaction of Customer’s business. For any breach of this warranty, Contractor at its expense shall, within ten (10) business days after receipt of notification of the breach, remove any such disabling code, lockup program or device.

**12.5** Contractor represents and warrants that it has tested and will test (not less than on a daily basis) the Applications using commercially reasonable methods to ensure that the Applications provided to Customer do not and will not contain or incorporate any computer code, programs, procedures, mechanisms or programming devices (including but not limited to, viruses, trojan horses, or worms) that are designed to, or would enable Contractor or any third-party to, disrupt, modify, delete, damage, deactivate, disable, harm or otherwise impede the operation of the Contractor’s system, or any other associated software, firmware, hardware, computer system or network, including Customer’s applications and Content. For any breach of this warranty, Contractor at its expense shall, within five (5) business days after receipt of notification of the breach, be responsible for repairing, at Contractor’s expense, any and all damage done by the virus or such to Customer’s applications and Content.

**12.6** If applicable under the given circumstances, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

# ARTICLE 13 INFRINGEMENT INDEMNIFICATION

**13.1** Contractor represents and warrants, to the best of its knowledge, that neither the Applications and Services provided to Customer under this Master Agreement nor their use by Customer will violate or infringe on any copyright, patent, trade secret or other proprietary right of any person or entity. Contractor, at its own expense, shall defend or settle any and all infringement actions filed against Contractor or Customer which involve the Applications, Services or other items provided under this Master Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against Customer provided that: (a) Customer notifies Contractor in writing of any such claim of which it has knowledge; (b) Contractor has, to the extent authorized by Mississippi law, sole control of the defense of any actions or negotiations related to the defense or settlement of any such claim, and (c) Customer cooperates in the defense of the claim by supplying Contractor all relevant information currently available and in its possession, all at Contractor’s expense. In no event shall the State compromise, settle or adversely impact the defense of any actions or negotiations without the prior, written consent of Contractor. Further, in no event shall Contractor compromise or settle any such actions or negotiations without the prior written consent of Customer if such compromise or settlement would create an obligation or liability upon Customer or the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Contractor shall, at its expense: (a) first procure for Customer the right to continue using such Applications or Services, or upon failing to procure such right; (b) modify or replace them with non-infringing items with equivalent functionality.

**13.2** Contractor shall have no obligation for infringement claims caused by: (a) an unauthorized modification of the Applications or Service by Customer or a third party; (b) use of the Service other than in accordance with the Documentation for the Service or as authorized herein; (c) use of the Services in conjunction with any data, equipment or software not provided by Contractor where the Services would not otherwise be infringing except for such combination; or (d) use of the Services or Application by Customer other than in accordance with this Master Agreement.

# ARTICLE 14 EMPLOYMENT STATUS

**14.1** Contractor shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

**14.2** Contractor represents that it is qualified to perform the duties to be performed under this Master Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Master Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Customer.

**14.3** Any person assigned by Contractor to perform the Services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. Customer may, however, direct Contractor to replace any of its employees under this Master Agreement.

**14.4** Contractor 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. Neither Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

# ARTICLE 15 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer location. Any Contractor employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of Customer’s staff, will be asked to leave the premises and may be suspended from further work on the premises. All Contractor employees and subcontractors who will be working at such locations shall be covered by Contractor’s comprehensive general liability insurance policy.

# ARTICLE 16 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

**16.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Contractor represents all contractors, third parties, and/or subcontractors Contractor has assembled for any given Customer project. The Customer is only required to negotiate with Contractor, as Contractor’s commitments are binding on all proposed contractors, third parties, and subcontractors.

**16.2** Neither Customer nor Contractor may assign or otherwise transfer the Order Form and this Master Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The Order Form and this Master Agreement shall be binding upon the parties’ respective successors and assigns.

**16.3** Contractor must obtain the written approval of the State before subcontracting any portion of the Order Form and this Master Agreement. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Customer in addition to the total fixed price, if any, agreed upon in the Order Form. All subcontracts shall incorporate the terms of the applicable Order Form and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Customer may deem necessary.

**16.4** Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Customer, and that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor and that Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Contractor. Contractor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor’s failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

**16.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Contractor and the Customer, where such dispute affects the subcontract.

# ARTICLE 17 AVAILABILITY OF FUNDS

(Applicability to be determined; dependent upon Contractor’s payment model)

It is expressly understood and agreed that the obligation of Customer to proceed under this Master Agreement and the Order Form is conditioned upon the appropriation of funds by the local governing body and the receipt of same and/or federal funds. If the funds anticipated for the fulfillment of this Master Agreement and the Order Form are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the local governing body to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Customer for the payments or performance due under this Master Agreement, Customer shall have the right to immediately terminate the Order Form and this Master Agreement as to itself only, without damage, penalty, cost or expense to Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Customer shall have the sole right to determine whether funds are available for the payments or performances due under the Order Form and this Master Agreement. In the event of termination due to unavailability of funds, Contractor shall be paid for work completed by Contractor in connection with this Master Agreement and accepted by Customer prior to the date of receipt of notification of termination.

# ARTICLE 18 TERMINATION

**18.1 Termination Upon Mutual Agreement:** An Order Form may be terminated in whole or in part upon the mutual written agreement of Contractor and the Customer.

**18.2 Termination Due To Bankruptcy:** Should Contractor become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Customer may, upon the giving of thirty (30) days prior written notice to Contractor, terminate its Order Form and this Master Agreement without the assessment of penalties, solely as between those parties.

**18.3 Termination Other Than For Cause:** A Customer may terminate an Order Form and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Contractor.

**18.4** **Termination For Cause:** If either party fails to comply with the terms and conditions of the Order Form or this Master Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the other party, then the non-defaulting party has the right to terminate the Order Form and this Master Agreement solely as between those two parties. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**18.5 Termination of Master Agreement:** ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Contractor but any Order Form entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Order Forms.

**18.6** **Pro-Rated Refund Of Unexpended Fees:** Upon termination of an Order Form, Contractor shall refund any and all applicable unexpended pro-rated fees previously paid by the Customer.

# ARTICLE 19 GOVERNING LAW

This Master Agreement and each Order Form shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.Contractor expressly agrees that under no circumstances shall Customer or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Master Agreement shall affect any statutory rights Contractor and Customer may have that cannot be waived or limited by contract.

# ARTICLE 20 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

# ARTICLE 21 SEVERABILITY

If any term or provision of an Order Form or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the Order Form or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Customer’s purpose for entering into the Order Form can be fully achieved by the remaining portions of the Order Form that have not been severed.

# ARTICLE 22 CAPTIONS

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

# ARTICLE 23 HOLD HARMLESS

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect and exonerate Customer, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the Order Form and this Master Agreement.

# ARTICLE 24 THIRD PARTY ACTION NOTIFICATION

Contractor shall notify Customer in writing within five (5) business days of Contractor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or Customer by any entity that may result in litigation related in any way to the Order Form or this Master Agreement and/or which may affect Contractor’s performance under the Order Form or this Master Agreement. Failure of Contractor to provide such written notice to Customer shall be considered a material breach of this Master Agreement and the Customer may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

# ARTICLE 25 AUTHORITY TO CONTRACT

Contractor warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master 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 an Order Form and this Master Agreement.

# ARTICLE 26 NOTICE

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS’ address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Contractor’s address for notice is: INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE. Customer’s address for notice will be set forth in the applicable Order Form. The parties understand and agree that copies of any notices issued hereunder shall also be sent to Mississippi Department of Finance and Administration at the following address: Ms. Aubrey Leigh Goodwin, Deputy Executive Director, Mississippi Department of Finance and Administration, 210 East Capitol Street, Suite 1400, Jackson, Mississippi 39201. 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 or points of contact.

# ARTICLE 27 RECORD RETENTION AND ACCESS TO RECORDS

Contractor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Order Form. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, accountants or attorneys, shall, at their expense and upon prior reasonable notice to Contractor, have unimpeded, prompt access to the Order Form, this Master Agreement, and to any of Contractor’s proposals, books, documents, papers and/or records that are pertinent to the Order Form and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State’s or Contractor’s office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the Order Form shall be retained by Contractor for three (3) years from the date of receipt of final payment under this Master Agreement and the Order Form. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

**ARTICLE 28 INSURANCE**

Contractor represents that it will maintain workers’ compensation insurance as prescribed by law which shall inure to the benefit of Contractor’s personnel, as well as comprehensive general liability and employee fidelity bond insurance. Contractor will, upon request, furnish Customer with a certificate of conformity providing the aforesaid coverage.

# ARTICLE 29 DISPUTES

**29.1** Should disputes arise with respect to an Order Form or this Master Agreement, Contractor and Customer agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Order Form and/or this Master Agreement. Should Contractor fail to continue without delay to perform its responsibilities under the Order Form and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Contractor or Customer as a result of such failure to proceed shall be borne by Contractor and Contractor shall make no claim against Customer for such costs.

**29.2** Any dispute concerning a question of fact under the Order Form and/or this Master Agreement which is not disposed of by agreement of the Contractor and Customer, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

# ARTICLE 30 COMPLIANCE WITH LAWS

**30.1** Contractor shall comply with, and all activities under the Order Form and/or this Master Agreement shall be subject to, all Customer policies and procedures which Contractor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Contractor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Order Form and this Master Agreement because of race, creed, color, sex, age, national origin or disability. Further, if applicable, Contractor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

**30.2** Contractor represents and warrants that it will comply with the state’s data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Contractor represents and warrants that it will comply with the applicable provisions of the Family Educational Rights & Privacy Act (FERPA) of 1974 (34 CFR Part 99); HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) (“Privacy Rule” and “Security Regulations”, individually; or “Privacy and Security Regulations”, collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the “HITECH Act”).

**ARTICLE 31 CONFLICT OF INTEREST**

Contractor shall notify Customer of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Customer’s satisfaction, Customer reserves the right to terminate the Order Form and this Master Agreement as to itself only.

**ARTICLE 32 SOVEREIGN IMMUNITY**

By entering into this Master Agreement with Contractor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

**ARTICLE 33 CONFIDENTIAL INFORMATION**

**33.1** Contractor shall treat all Customer data and information to which it has access by its performance under the Order Form and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Customer. In the event that Contractor 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 such information, Contractor shall promptly inform Customer and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the Order Form or this Master Agreement and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the Order Form or this Master Agreement on behalf of, or under the rights of the Contractor following any termination or completion of the Order Form or this Master Agreement.

**33.2** The parties understand and agree that the Order Form and this Master Agreement do not constitute confidential information, and may be reproduced and distributed by the State without notification to Contractor.

**ARTICLE 34 EFFECT OF SIGNATURE**

Each person signing an Order Form or this Master Agreement represents that he or she has read the Order Form and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the Order Form or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the Order Form and this Master Agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

**ARTICLE 35 STATE PROPERTY**

Contractor shall be responsible for the proper custody of any Customer-owned property furnished for Contractor’s use in connection with work performed pursuant to any Order Form. Contractor shall reimburse the Customer for any loss or damage, normal wear and tear excepted.

### ARTICLE 36 NEWS RELEASES

News releases pertaining to an Order Form or this Master Agreement or the Services to which it relates will not be made without the State’s prior written approval, and then only in accordance with the explicit written instructions from the State.

**ARTICLE 37 SURVIVAL**

Articles 12, 13, 19, 23, 27, 32, 33, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Order Form or this Master Agreement.

# ARTICLE 38 ENTIRE AGREEMENT

**38.1** This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or “shrink-wrap” license included in any package, media or electronic version of Contractor-furnished Software, or any “click-wrap” or “browse-wrap” license presenting in connection with a purchase via the internet. The Order Form, RFP No. 4029, and Contractor’s Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Master Agreement as far as the individual Customer is concerned.

**38.2** The Master Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

**A.** This Master Agreement signed by Contractor and ITS;

**B.** Any Exhibits attached to this Master Agreement;

**C.** The Order Form(s), as applicable;

**D.** RFP No. 4029 and all written clarifications/addenda, and

**E.** Contractor’s Proposal, as accepted by ITS, in response to RFP No. 4029.

**38.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Contractor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. This Master Agreement”) and the lowest document is listed last (“E. Contractor’s Proposal”).

# ARTICLE 39 DEBARMENT AND SUSPENSION CERTIFICATION

Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them 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; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the 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; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

# ARTICLE 40 NON-SOLICITATION OF EMPLOYEES

Contractor agrees not to employ or to solicit for employment, directly or indirectly, any of Customer’s employees until at least one (1) year after the expiration/termination of the Order Form unless mutually agreed to the contrary in writing by the Customer and Contractor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

**ARTICLE 41 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Contractor and Customer understand and agree that all Services provided by Contractor under this Master Agreement must be and remain in compliance with the State of Mississippi’s Enterprise Security Policy. The parties understand and agree that the State’s Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Master Agreement and require Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

**ARTICLE 42 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Customer’s or Contractor’s contractual obligations, financial or otherwise, contained within this Master Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Customer’s funding source.

**ARTICLE 43 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Master Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi’s accountability website at: https://www.transparency.mississippi.gov. Prior to ITS posting the Master Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Master Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

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

**State of Mississippi, Department of INSERT VENDOR NAME**

**Information Technology Services, on**

**behalf of the local governmental entities**

**of the State of Mississippi**

By: By:

 Authorized Signature Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D. Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: Executive Director Title:

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**EXHIBIT A**