



IFB No: 4571

INVITATION: Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office until **3:00 p.m. Central Time on February 23, 2024**, and then publicly opened for furnishing the products and/or services as described below for Mississippi Department of Information Technology Services (ITS).

Mechanical and Metasys Equipment Maintenance

Mandatory Pre-Bid Equipment Review: Wednesday, January 31, 2024 @ 2:00 p.m. Central Time at the Mississippi Department of Information Technology Services located at 3771 Eastwood Drive, Jackson, MS 39211

Bidder Information

Attachment A: Bid Form
Attachment B: Cost Submission
Attachment C: IFB Questionnaire
Attachment D: References
Attachment E: Contract Exceptions
Attachment F: Standard Contract

Bidder must submit bid and attachments to:

Jasmine Grice
Technology Consultant
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8198
jasmine.grice@its.ms.gov

To prevent opening by unauthorized individuals, your bid should be placed in a sealed envelope/package and plainly identified as follows:

SUBMITTED IN RESPONSE TO IFB NUMBER 4571
due February 23, 2024 @ 3:00 p.m. Central Time
ATTENTION: Jasmine Grice

A handwritten signature in blue ink that reads "David Johnson".

David C. Johnson
Executive Director

**INVITATION FOR BID NO. 4571
BIDDER RESPONSE INFORMATION
PROJECT NUMBER 47864**

This document contains general information for bidders responding to an Invitation for Bid issued by ITS.

1. Bidders are expected to examine all documents, forms, specifications, standard provisions, and all instructions. Failure to do so may result in the disqualification of the bidder's IFB response. The State is under the impression that responding Bidders have read and agree to all items in this IFB.
2. Any bid not received in writing at this office by the date and time specified will be declared a late bid. The State will not be responsible for any delays in delivery. It is solely the responsibility of the bidder that bids reach the opening on time. Any bid received after the date and time specified will be returned unopened.
3. Bids or alterations by fax, e-mail, or phone will not be accepted.
4. All bid openings are open to the public. The ITS staff will read the name of bidder responding, along with the total bid price. Bidders wishing to attend the bid opening at 3:00p.m. on the day bids are due may do so via telephone. Bidders may dial 888-822-7517 and use Access Code 727453.
5. ITS reserves the right to reject any bids, including those with exceptions, prior to and at any time during negotiations.
6. A Mandatory Pre-Bid Equipment Review will be held on January 17, 2024, at 2:00 p.m. Central Time at the ITS Eastwood Building located at 3771 Eastwood Drive, Jackson, Mississippi. Any bid received from a Bidder who does not have an authorized representative at the Pre-Bid Equipment Review will be rejected. No exceptions will be granted to this requirement. Bidders may contact Jasmine Grice via email no later than January 30, 2024, at 3PM Central Time to receive driving instructions.
7. ITS reserves the right to waive any defect or irregularity in any bid procedure.
8. The Bidder may intersperse their response following each IFB specification but must not otherwise alter or rekey any of the original text of this IFB. If the State determines that the Bidder has altered any language in the original IFB, the State may, in its sole discretion, disqualify the Bidder from further consideration. The IFB issued by ITS is the official version and will supersede any conflicting IFB language submitted by the Bidder.
9. The Bidder must conform to the following standards in the preparation of the Bidder's bid:
 - 9.1 The Bidder is required to submit one response of the complete bid, including all Attachments, on a USB flash drive. Bidder's documents must be in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.

- 9.2 The Bidder should note that original signatures in blue ink are required on Attachment B. Attachment B should be printed and included in the package/envelope with the Bidder's USB response. Bidders that do not have a printed copy of Attachment B included within their bid envelope may be subject to elimination.
 - 9.3 To prevent opening by unauthorized individuals, the bid must be sealed in a package/envelope. A label containing the information on the IFB cover page must be clearly typed and affixed to the package in a clearly visible location.
 - 9.4 All items in this IFB must be met by the Bidder with the exception of the contract in Attachment F. If the Bidder does not agree with any item in Attachment F, then the Bidder must list the item on the Exception Summary Form in Attachment E.
 - 9.5 Where an outline point asks a question or requests information, the Bidder must respond with the specific answer or information requested.
 - 9.6 When an outline point/attachment is a statement provided for the Bidder's information only, the Bidder need only read that point. The Bidder acknowledges having read and accepting all sections and Attachments by signing Attachment B.
 - 9.7 The Bidder must respond to each requirement by fully describing the manner and degree by which the bid meets or exceeds said requirements. Meeting a requirement means the Bidder has provided a detailed response that demonstrates that the Bidder meets the qualifications and experience required and/or the requested functionality exists in the base solution at time of bid submission. If a Bidder is unable to meet or exceed any requirement, then the Bidder will be disqualified.
10. ITS reserves the right to request additional information or clarification of a Bidder's bid. The Bidder'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 Bidder'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 Bidder's bid.
 11. Unsolicited clarifications and updates submitted after the deadline for bids will be accepted or rejected at the sole discretion of ITS.
 12. Unsolicited clarifications in the evaluation and selection of best bid will be considered only if all the following conditions are met:
 - 12.1 A clarification to a bid 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.
 - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Bidder normally uses to convey customer information.

- 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 - 12.4 The Bidder must follow procedures outlined herein for submitting updates and clarifications.
 - 12.5 The Bidder must submit a statement outlining the circumstances for the clarification.
 - 12.6 The Bidder must submit unsolicited clarifications via USB in the same manner as detailed in Item 8 above.
 - 12.7 The Bidder must be specific about which part of the original bid is being changed by the clarification (i.e., must include exact IFB reference to section and outline point).
13. From the issue date of this IFB until a Bidder is selected and the selection is announced, responding Bidders or their representatives may not communicate, either orally or in writing regarding this IFB 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 Bidder, all questions regarding this IFB 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 Bidder questions provided in this IFB. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this IFB, and they will be posted to the ITS web site. Bidders failing to comply with this requirement will be subject to disqualification.
- 13.1 The State's contact person for the selection process is: Jasmine Grice, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8198, jasmine.grice@its.ms.gov.
 - 13.2 Bidder may consult with State representatives as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Bidder may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.
14. Any interpretation of an ITS IFB will be made by written amendment only. The State will not be responsible for any other explanation of this IFB. A copy of any amendment will be posted on the ITS website, together with the associated IFB specification. Bidders are required to check the ITS website periodically for IFB amendments before the bid opening date at:

<https://www.its.ms.gov/procurement/rfps-and-sole-sources>

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

15. No negotiations, decisions, or actions shall be executed by any Bidder as a result of any discussions with any State employee. Only transactions which are in writing from ITS may be considered official.
16. Bidders must ensure proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this IFB. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Bidder, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.
17. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.
18. All bid material submitted in writing shall become the property of the State.
19. ITS reserves the right to make multiple awards.
20. 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.
21. The State reserves the right to evaluate the awarded bid from this IFB, 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 Bidder is willing to extend a cost less than or equal to that specified in the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects is solely at the discretion of the State and requires the agreement of the proposing Bidder. The State's decision to reuse an awarded bid 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 Bidder, market, and technical environments since the initial award.
22. The State reserves the right to offer the awarded bid from this IFB, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects by governmental entities outside Mississippi (i.e., "piggyback option"), if (a) it is deemed to be in the best interest of the governmental entity desiring to do so; and (b) the Bidder is willing to extend a cost less than or equal to that specified in the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects outside Mississippi is solely at the discretion of the State, and requires the desire of the governmental entity outside Mississippi and the agreement of the proposing Bidder. The State's decision to consent to the reuse of an awarded bid outside Mississippi will be based upon such criteria as: (1) the governmental entity's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Bidder, market, and technical environments since the initial award.
23. 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.
24. All submitted bids must show the net bid price after any and all allowable discounts have been deducted. Any discounts must be clearly stated and shall not have any contingencies.

25. State sales tax and federal excise taxes shall not be included as the ITS is tax exempt for materials sold directly to them.
26. When errors are found in the extension of bid prices, the unit price will govern. Bids having erasures or corrections must be initialed in ink by the bidder.
27. The State reserves the right to solicit Best and Final Offers (BAFOs) from Bidders, principally in situations in which bid costs eclipse available funding or the State believes none of the competing bids presents a Best Value. Because of the time and expense incurred by both the Bidder community and the State, BAFOs are not routinely conducted. Bidders should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Bidders 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 Bidders 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 Bidders. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Bidders under a precise schedule.
28. The successful Bidder should not commence any billable work until a valid contract has been executed. Any work done by the successful Bidder prior to the execution of the contract is done at the Bidder's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.
29. Bidders may request additional information or clarifications to this IFB using the following procedure:
 - 29.1 Bidders must clearly identify the specified paragraph(s) in the IFB that is in question.
 - 29.2 Bidder must deliver a written document to Jasmine Grice at ITS by February 7, 2024, at 3:00 p.m. Central Time. This document may be delivered by hand, mail, e-mail, or fax. Address information is given on page one of this IFB. 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 Bidder that the clarification document reaches ITS on time. Bidders may contact Jasmine Grice to verify the receipt of their document. Documents received after the deadline will be rejected.
 - 29.3 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 Friday, February 16, 2024.

**INVITATION FOR BID NO. 4571
LEGAL AND CONTRACTUAL INFORMATION
PROJECT NUMBER 47864**

1. Failure to Respond as Prescribed

Failure to respond as described to any item in the sections and attachments of this IFB, including the *Standard Contract* attached as Attachment F, if applicable, shall contractually obligate the Bidder to comply with that item.

2. Legal Provisions

- 2.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 2.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Bidder shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 2.3 The Bidder shall have no limitation on liability for claims related to the following items:
 - 2.3.1 Infringement issues;
 - 2.3.2 Bodily injury;
 - 2.3.3 Death;
 - 2.3.4 Physical damage to tangible personal and/or real property; and/or
 - 2.3.5 The intentional and willful misconduct or negligent acts of the Bidder and/or Bidder's employees or subcontractors.
- 2.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 2.5 Any contract negotiated under this IFB 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.
- 2.6 Any contract negotiated under this IFB is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Bidder cannot exceed sixty (60) days.
- 2.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Bidder, Bidder agents, subcontractors, or assignees.
- 2.8 The State will deliver payments to the Bidder within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Bidder'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.

- 2.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Bidder.

3. **Approved Contract**

- 3.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved through:

- 3.1.1 Written notification made to proposers on ITS letterhead, or
- 3.1.2 Notification posted to the ITS website for the project, or
- 3.1.3 CP-1 authorization executed for the project, or
- 3.1.4 The ITS Board's approval of same during an open session of the Board.

- 3.2 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.

- 3.3 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.

4. **Contract Validity**

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

5. **Order of Contract Execution**

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

6. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Bidder of a purchase order from the acquiring State entity.

7. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Bidder under this IFB must be encoded by the Customer agency with a CP-1 approval number assigned by ITS. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

8. **Requirement for Electronic Payment and Invoicing**

- 8.1 Payments to the awarded Bidder for all goods and services acquired under this IFB by state agencies that make payments through the Mississippi State Government's Enterprise Resource Planning (ERP) solution ("MAGIC") will be made electronically, via deposit to the bank account of the Bidder's choice. The awarded Bidder must enroll and be activated in PayMode™, the State's current

vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Bidder to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Bidders should visit the following website: <http://portal.paymode.com/ms>. Bidders may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.ms.gov.

8.2 The awarded Bidder is required to submit electronically all invoices for goods and services acquired under this IFB, along with appropriate supporting documentation, as directed by the State.

9. **Prime Contractor**

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

10. **Sole Point of Contact**

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

10.1 The Bidder must acknowledge and agree that in matters of bids, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Bidder represents all contractors, third parties and/or subcontractors the Bidder has assembled for this project. The Bidder's commitments are binding on all such parties and consequently the State is only required to negotiate with the Bidder.

10.2 Furthermore, the Bidder 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.

10.3 Should a proposing Bidder wish to assign payment of any or all charges resulting from this contract to a third party, Bidder must disclose that fact in his/her bid, along with the third party's name, address, nature of business, and relationship to the proposing Bidder, 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 Bidder, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Bidder must clearly and definitively state in his/her bid whether the bid is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the bid, contract, and assignment document must include language specifically guaranteeing that the proposing Bidder 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 Bidder's bid and subsequently accepted by the State.

11. Outstanding Bidder Obligations

- 11.1 Any Bidder 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 bid, a certified check in the amount due and owing in order for the bid in response to this IFB to be considered. For a Bidder currently in bankruptcy as of the IFB 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 Bidder. If the Bidder has emerged from bankruptcy by the IFB submission date, the Bidder must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any bid being considered.
- 11.2 Any Bidder 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 bid to be considered.
- 11.3 The State, at its sole discretion, may reject the IFB response from a Bidder with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of bid submission.

12. Equipment Condition

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

13. Shipping Charges

For all IFBs 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 IFB bid. Destination is the point of use. No itemized shipping charges will be accepted.

14. Ownership of Developed Software

14.1 When specifications require the Bidder to develop software for the State, the Bidder 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.

14.2 The State may be willing to grant the Bidder 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.

15. Ownership of Custom-Tailored Software

In installations where the Bidder's intellectual property is modified and custom-tailored to meet the needs of the State, the Bidder 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.

16. **Terms of Software License**

The Bidder acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Bidder's bid.

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

The Bidder 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 Bidder must ensure that the State is properly licensed for all software that is proposed for use in a project.

18. **Compliance with Enterprise Security Policy**

Any solution or service proposed in response to this IFB 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 is established to safeguard the State's information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. 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 IFB and require the Bidder to ensure the solution or service complies 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. Bidders wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

19. **Compliance with Cloud and Offsite Hosting Enterprise Security Policy**

Any cloud or vendor-hosted solution proposed in response to this IFB must be in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines and augments the Enterprise Security Policy. 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 IFB and require the Bidder to ensure the cloud or vendor-hosted solution complies 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. Bidders wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

20. **Negotiating with Next-Ranked Bidder**

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

21. **Disclosure of Bid Information**

Bidders should be aware that any information in a bid 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 bid 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=173> 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 Bidder of a request to view or reproduce the Bidder's bid 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 Bidder's bid, 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 IFB.

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.

Bidders should further be aware that requests for disclosure of bid information are sometimes received by ITS significantly after the bid opening date. ITS will notify the signatory "Officer in Bind of Company" provided in Attachment A of this IFB 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, Bidder should provide the alternative contact information in response to this IFB item.

22. **Responsibility for Behavior of Bidder Employees/Subcontractors**

The Bidder will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Bidder 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.

23. **Protests**

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

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=180> or from ITS upon request.

24. **Protest Bond**

Potential Bidders may protest any of the specifications of this IFB 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 IFB, as defined in the ITS Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify IFB Number 4571.

As a condition precedent to filing any protest related to this procurement, the Bidder 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 full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by ITS in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated 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 Bidder until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Bidder'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 Bidder 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 Bidder. 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 Bidder 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.

25. **Mississippi Employment Protection Act**

Effective July 1, 2008, Bidder 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. Bidder 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.

Bidder 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.

Bidder acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Bidder 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 Bidder by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Bidder would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

ATTACHMENT A BID FORM

1. Procurement Schedule

First Advertisement Date for IFB	01/16/2024
Second Advertisement Date for IFB	01/23/2024
MANDATORY Pre-Bid Equipment Review	2:00 p.m. Central Time on 01/31/2024
Deadline for Bidder's Written Questions	3:00 p.m. Central Time on 02/07/2024
Deadline for Questions Answered and Posted to ITS Web Site	02/16/2024
Open Bids	3:00 p.m. Central Time on 02/23/2024
Evaluation of Bids Begins	02/23/2024
Contract Negotiation	03/01/2024
Project Go-Live Deadline	03/26/2024

2. Background and Overview

In October 2018, the Mississippi Department of Finance and Administration (DFA) approved ITS' IFB 2018-01DS to request Premium and Standard mechanical and Metasys equipment maintenance from a qualified Vendor on equipment that was located in the Eastwood Complex and the Robert E. Lee Building for a period of four (4) years with an option to renew for one (1) year. The IFB was awarded to Johnson Controls, Inc. and a Contract for Maintenance Services for the Mechanical and Controls Equipment was executed on February 11, 2019, for a term of four (4) years with an option to renew for one (1) year. ITS's current maintenance is expiring on March 25, 2024.

ITS is requesting Premium and Standard mechanical and Metasys equipment maintenance from a qualified Vendor on equipment that is located in the Eastwood Complex for a period of five (5) years.

3. Scope of Services

Bidders must fully respond to each requirement in this Section 3 by fully describing the manner and degree by which the bid meets or exceeds the following specifications. If a requirement doesn't require a detailed response, bidder must respond with "Will Comply" or "Exception". **If a Bidder is unable to meet or exceed these specifications, then the Bidder will be disqualified.**

3.1. Definitions

- 3.1.1. Premium Maintenance Service – Includes standard maintenance plus any needed repairs, labor and materials. This service is to be available 24/7. Bidder will be solely responsible for all associated costs of premium repairs, labor and materials. See Section 3.5 for a list of equipment currently under premium coverage.
- 3.1.2. Standard Maintenance Service – Regularly scheduled preventative maintenance visit with only the materials included for the scheduled visit. This does not include any repairs or repair materials in accordance with industry standards. See Section 3.5 for a list of equipment currently under standard coverage.

3.2. Functional Technical Specifications

- 3.2.1. Bidder must provide pricing for the Premium Maintenance (as defined in Section 3.1 definitions of this document) and Standard Maintenance (as defined in Section 3.1 for all equipment listed in 3.5.)
- 3.2.2. Bidder must state qualifications to include organization of the company, number of years in business, number of years products/services of similar scope/size to this project have been sold, supported and maintained, partnerships, etc.

3.3. Maintenance Requirements

- 3.3.1. Bidder must propose a fully-loaded fixed price contract that includes all parts, labor, and travel for prime-shift (8 A.M. to 5 P.M., Monday through Friday) on-site Premium maintenance and Standard maintenance support for the equipment in 3.5. Bidder must provide details on what this maintenance includes.
- 3.3.2. Price escalations, if any, for annual support coverage will be permitted but shall not exceed five (5) percent per year. Bidder must state their policy for increasing maintenance payments.
- 3.3.3. The equipment listed in Section 3.5 is either under warranty or has been under a Premium or Standard maintenance agreement. Bidder must accept the equipment for maintenance without recertification or recertify the equipment at no charge.
 - 3.3.3.1. The **MANDATORY** Pre-Bid Equipment Review is a **visual** inspection **ONLY** of the existing mechanical & controls equipment. No additional information will be given at this review. All questions must be submitted in writing via the process outlined in the Bidder Response Information section, Item 29. Answers to all questions submitted in writing will be published as outlined in the Bidder Response Information section, Item 29.
- 3.3.4. ITS reserves the right to add/delete items on a monthly basis without penalties. Bidder agrees to promptly credit ITS for equipment that is deleted from maintenance.
- 3.3.5. Bidder must provide Premium maintenance pricing that includes all services needed to keep the listed equipment operating properly, including periodic testing, repairs to include all necessary parts and labor, preventive, and remedial maintenance.
- 3.3.6. Bidder must provide a one (1) hour telephone response time for all equipment covered under the Premium maintenance service. Bidder must provide onsite response to service requests within four (4) hours of service call for all components in the equipment list in this IFB.
- 3.3.7. Response time for equipment covered by Premium maintenance shall not be longer than four (4) hours after receipt of call on all repairs not requiring parts ordering, and a maximum one (1) working day turnaround from the point the call is made on all repairs requiring parts ordering.

- 3.3.8. For Premium Maintenance coverage, Bidder shall be responsible for repairing or replacing all equipment listed in 3.5. If the equipment is replaced, the replacement must be of equal or greater quality.
- 3.3.9. For Standard Maintenance coverage, ITS shall be responsible for any purchases of equipment. If any projects or the level of work reaches the purview of Bureau of Building or Office of Purchasing, Travel, and Fleet Management, a separate contract or work order must be issued.
- 3.3.10. All equipment must be repaired at the ITS location where the equipment is used.
- 3.3.11. Replacement parts must be original manufacturer equipment or must meet the minimum specifications established by the manufacturer of the equipment.
- 3.3.12. Equipment supplied as a replacement becomes the property of ITS. The Bidder must work with ITS to update the Property Inventory System with the proper serial number information. Bidder is responsible for returning all State of Mississippi property labels to ITS on equipment that will be taken out of service. Title to all replacement parts installed in the equipment will pass to ITS at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to the Bidder.
- 3.3.13. ITS requires that no limitations be placed on the number of authorized ITS staff members who can place a service call to the vendor.
- 3.3.14. Bidder must provide toll free and/or local telephone support for the proposed equipment.
- 3.3.15. Bidder must state the requirements for adding or deleting equipment, and for making modifications to the agreement. Bidder must provide details on:
 - 3.3.15.1. The procedure and timelines associated with making these changes and
 - 3.3.15.2. How pricing is determined when adding equipment to the agreement.
- 3.3.16. Bidder must make the appropriate modifications, serial number, description, or other, to any detailed billing list or invoices when changes have been made to the agreement.
- 3.3.17. Building Management System (BMS) Software Subscription: Bidder must provide the most recent release allowed by the hardware and operation systems of your existing computers and servers for the number of years specified. Labor costs should be included at the proposed price.
- 3.3.18. Bidder must be certified in Metasys BMS to maintain, modify, and operate as needed, or Bidder must be responsible for the replacement of Metasys with a BMS that the Bidder is certified to maintain, modify, and operate as needed. If Bidder replaces Metasys, then the new BMS must provide equivalent functionality incorporating all existing data/control points.

3.3.19. Connected Services/Remote Monitoring: Bidder shall provide secure network connection via cellular gateway for remote monitoring access to transmit, store, and trend data for the purposes of providing maintenance services. The Bidder will not use connected services to remotely operate or make changes to the customer's equipment. Access will be limited to view only and monitored 24/7. Bidder's remote operations center shall notify the local service group of any alarms or deteriorating conditions that may indicate a problem.

3.3.19.1. The following equipment must be included in the remote monitoring services:

3.3.19.1.1. 3 Chillers – Model RTHD

3.3.19.1.2. 2 Chillers – Model YCIV0327EA46

3.3.20. Bidder must specify whether the refrigerant is to be provided by the customer or vendor.

3.4. Manufacturer Direct Maintenance

ITS understands that the maintenance requested in this IFB may be provided directly by the manufacturer. If Bidder is the named manufacturer and will be supplying the maintenance services directly, Items 3.4.6 through 3.4.10 do not have to be completed.

3.4.1. Responding Bidder must clarify whether they are the named manufacturer and will be supplying the maintenance services directly or whether they are a third-party reseller selling the maintenance services on behalf of the manufacturer.

3.4.2. Responding Bidder must explain their understanding of when or whether the manufacturer will ever sell the maintenance services directly and, if so, under what circumstances.

3.4.3. If the responding Bidder to this IFB will only be reselling manufacturer's maintenance services, it is ITS' understanding that this is basically a "pass through" process.

3.4.4. Please provide a detailed explanation of the relationship of who will be providing the requested maintenance, to whom the purchase order is made, and to whom the remittance will be made. If there is a difference in the year one maintenance purchase versus subsequent years of maintenance, the responding Bidder must clarify and explain.

3.4.5. Manufacturer Direct Maintenance when sold directly through the manufacturer:
Fixed Cost

3.4.5.1. If responding Bidder is the direct manufacturer, they must propose annual fixed pricing for four years of the requested maintenance. Bidder must provide all details of the maintenance/support and all associated costs.

3.4.5.2. It is ITS' preference that the Manufacturer's proposal is a not-to-exceed firm commitment. In the event that the manufacturer cannot commit to a

fixed cost for the subsequent years of maintenance after year one, Manufacturer must specify the annual maintenance increase ceiling offered by their company on the proposed products. Bidder must state their policy regarding increasing maintenance charges. Price escalations for Maintenance shall not exceed 5% increase per year.

3.4.6. Manufacturer Direct Maintenance when sold through 3rd Party: Fixed Cost-Plus Percentages

3.4.6.1. In the case of a third-party "pass-through" ITS realizes that the responding reseller may not be able to guarantee a fixed price for maintenance after year one since their proposal is dependent on the manufacturer's pricing or possibly on a distributor's pricing.

3.4.6.2. It is ITS' preference that the responding reseller work with the manufacturer to obtain a commitment for a firm fixed price over the requested maintenance period.

3.4.7. Bidder must also indicate how future pricing information will be provided to the State during the term of the contract.

3.4.8. Bidder must indicate from whom they buy the maintenance: directly from the manufacturer or from what distributor.

3.4.9. Bidder must be aware that only price increases resulting from an increase in price by the manufacturer or distributor will be accepted. The Bidder's proposed percentage markup or markdown for these items, as well as the Bidder's percentage markup or markdown for any new items, MUST stay the same as what was originally proposed. Bidder must provide ITS with the suggested retail price.

3.4.10. Pricing proposed for the State MUST equal the Bidder's invoice cost from the distributor or manufacturer plus the maximum percentage markup that the reseller will add OR the manufacturer's national benchmark minus the cost percentage proposed.

3.5. Equipment List

Site		Address		
MDITS		3771 EASTWOOD DR., JACKSON, MS 39211-6381		
QTY	Equipment	Services Provided	# Per Year	Coverage Type
99	Controls, Digital Thermostat, All			Premium 24x7
		Annual Inspection	1	
5	Controls (Controller/End Devices), Supervisory/Server/UI, Johnson Controls, 0-25000 points			Premium 24x7
		Quarterly Inspection	3	

3	Chiller, Water Cooled, High Pressure Centrifugal, 250-449 Tons Model: RTHD			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	
		Gantry Setup (preparation for water box removal)	1	
		Condenser Tube Brushing (removal and replacement of one head only)	1	
		Oil Sample and Analysis	1	
2	Pump, Condenser, 11-50 HP			Standard
		Operational	3	
		Comprehensive	1	
2	Pump, Hot Water, 11-50 HP			Standard
		Operational	3	
		Comprehensive	1	
2	Pump, Hot Water, 0-10 HP			Standard
		Operational	3	
		Comprehensive	1	
3	Air Handling Unit (AHU), Mixed Air, <15 HP			Standard
		Quarterly Inspection	3	
		Annual Inspection	1	
		Belt Change	1	
11	Air Handling Unit (AHU), Mixed Air, 15-30 HP			Standard
		Quarterly Inspection	3	
		Annual Inspection	1	
		Belt Change	1	
3	Cooling Tower, Gravity Distribution, <300 Tons			Standard
		Quarterly Inspection	3	
		Annual Inspection	1	
		Tower Cleaning	1	
		Belt Change	1	
		Oil Change (Gear Box)	1	
6	Pump, Chilled Water, 11-50 HP			Standard
		Operational	3	
		Comprehensive	1	
2	Chiller, Air Cooled, Screw, 251-400 Tons Model: YCIV0327EA46			Premium 24x7

		Quarterly Inspection	3	
		Annual Inspection	1	
5	Controls (Controller/End Devices), Air Handling Unit (AHU), Johnson Controls, 21-60 points			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	
1	Controls (Controller/End Devices), Central Cooling Plant, Johnson Controls, 351-700 points			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	
1	Controls Software, Supervisory/Server/UI, Johnson Controls, ADX			Premium 24x7
		ADX 10-User Site Dir Software Subscription 1-year - Subscription Only	1	
99	Controls (Controller/End Devices), Variable Air Volume (VAV), Johnson Controls, 0-25 points			Premium 24x7
		Quarterly Inspection	3	
1	Controls (Controller/End Devices), Central Heating Plant, Johnson Controls, 101-350 points			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	
8	Controls (Controller/End Devices), Air Handling Unit (AHU), Johnson Controls, 0-20 points			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	
1	Controls (Makeup Water Tank: 3 Solenoid Valves, 2 Pump Controls, Water Pressure Sensor, 0-20 points)			Premium 24x7
		Quarterly Inspection	3	
		Annual Inspection	1	

**ATTACHMENT B
 COST SUBMISSION**

It is the responsibility of the Bidder to clearly identify all costs associated with any item or series of items in this IFB. The Bidder must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Bidder's cost proposal may be grounds for rejection of the bid. Costs that are not clearly identified will be borne by the Bidder.** The Bidders must complete the table below, which outlines the minimum requirements for providing cost information. The Bidder should supply supporting details as described.

THIS FORM IS TO BE PRINTED AND INCLUDED WITHIN THE BID ENVELOPE. BIDDERS THAT DO NOT COMPLY COULD FACE AUTOMATIC ELIMINATION.

Enter pricing below in the table for the equipment listing per the specifications listed under coverage types.

Period	Eastwood Cost
Year 1 (March 26, 2024-March 25, 2025) Annual Cost	
Year 2 (March 26, 2025-March 25, 2026) Annual Cost	
Year 3 (March 26, 2026-March 25, 2027) Annual Cost	
Year 4 (March 26, 2027-March 25, 2028) Annual Cost	
Year 5 (March 26, 2028-March 25, 2029) Annual Cost	
Five Year Grand Total:	

By signing below, the Bidder is contractually obligated to comply with all items in this IFB, including the Standard Contract in Attachment F, if included herein, except those specifically listed as exceptions on the Exception Summary Form. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who respond to this IFB by signing below may not later take exception to any item in the IFB 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.

If the person responsible for the completion of this bid and/or the State's contact for clarifications to the bid response differs from the Officer in Bind of Company, Bidder must submit additional contact information with their bid response.

Original Signature of Officer in Bind of Company _____ Date _____

Name (Print) _____

Title _____

Company Name _____

Physical Address _____

City, State, Zip _____

Phone Number _____

Email Address _____

ATTACHMENT C IFB 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**

- 1.1 **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:

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

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 above.

All Vendors must furnish ITS with their 10-digit MAGIC Vendor code (begins with the number 3).

MAGIC Vendor Code: _____

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Bidder 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 Bidder will be chosen for the project. Any Bidder 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 bid. A copy of the Minority Vendor Self-Certification Form can be obtained at:

<https://mississippi.org/services/minority/>

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

2. **Certification of Authority to Sell**

- 2.1 Bidders must provide proof, in its response to this procurement, from the Office of the Secretary of State of the State of Mississippi demonstrating that the Bidder is in good standing to do business in Mississippi. Failure to comply with this requirement may subject the Bidder's response being deemed non-responsive and subject to disqualification.

- 2.2 The Bidder must certify Bidder is 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 Bidder make these certifications? (A yes or no answer is required.)
3. **Compliance with National Defense Authorization Act**
The Bidder must state if the equipment provided is in compliance with the National Defense Authorization Act, Section 889. (A yes or no answer is required.)
4. **Compliance with National Security on State Devices and Networks Act**
Vendors shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Miss. Code Ann. Section 25-53-193. Failure to meet this requirement may disqualify vendor from consideration.
5. **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 Bidder must answer and/or provide the following:
- 5.1 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.)
- 5.2 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 bid. The Bidder may be precluded from selling to those institutions where a conflict of interest may exist.
6. **Pending Legal Actions**
- 6.1 Are there any lawsuits or other legal proceedings against the Bidder that pertain to any of the software, hardware, or other materials and/or services which are a part of the Bidder's bid? (A yes or no answer is required.)
- 6.2 Are there any criminal or civil proceedings (federal or state) pending against the Bidder 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.)
- 6.3 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.
- 6.4 The State, at its sole discretion, may reject the bid of a Bidder 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 Bidder's bid.
7. **Non-Disclosure of Social Security Numbers**
Does the Bidder agree that any information system proposed, developed, or modified under this IFB 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 agreement is required by Section 25-1-111 of the Mississippi Code Annotated.

8. Taxpayer Identification Number

Bidder must specify their taxpayer identification number.

9. Certification of Liability Insurance

Bidder must provide a copy of their Certificate of Liability Insurance with their IFB response.

10. Order and Remit Address

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

Order Address:

Remit Address (if different):

11. Web Amendments

ITS will use the ITS website to post amendments regarding IFBs before the bid opening at: <https://www.its.ms.gov/procurement/rfps-and-sole-sources>

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

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

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

12. E-Verify Registration Documentation

Bidder 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. Bidder must provide documentation of their E-Verify compliance with their IFB response.

ATTACHMENT D REFERENCES

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

1. References

- 1.1 The Bidder must provide 3 verifiable references consisting of Bidder accounts that the State may contact. Required information includes customer contact name, address, telephone number, e-mail address, and engagement starting and ending dates. Forms for providing reference information are included in this IFB Attachment. The Bidder 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 Bidder intercession.
- 1.2 Any of the following may subject the Bidder's bid to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
 - 1.2.1 Failure to provide reference information in the manner described;
 - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
 - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
 - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Bidder for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
 - 1.3.1 The reference product/service must be for a project similar in scope and size to the project for which this IFB is issued;
 - 1.3.2 The reference product/service must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Bidder from any previous customer of the Bidder 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 Bidder's list of references, and to utilize such information in the evaluation of the Bidder's proposal.
- 1.5 Unless otherwise indicated, reference information available to the State will be used as follows:

- 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this IFB;
 - 1.5.2 To confirm the capabilities and quality of a Bidder, product, or individual for the bid, prior to finalizing the award.
- 1.6 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 Bidder are known to the State.

2. Subcontractors

The Bidder's bid 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 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 Attachment.

Unless otherwise noted, the requirements found in the References Attachment may be met through a combination of Bidder and subcontractor references and experience. Bidder's bid should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration bids in which the prime Bidder 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 bids in which the prime Bidder is only a brokering agent).

BIDDER REFERENCE FORM

COMPLETE 3 REFERENCE FORMS

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____

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

SUBCONTRACTOR REFERENCE FORM

COMPLETE 3 SEPARATE FORMS FOR EACH PROPOSED SUBCONTRACTOR

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____

Scope of services/products to be provided by subcontractor:

ATTACHMENT E CONTRACT EXCEPTIONS

Please return the *Exception Summary Form* at the end of this Attachment with all exceptions to the Standard Contract, attached as Attachment E, listed and clearly explained or state "No Exceptions Taken." If no *Exception Summary Form* is included, the Bidder is indicating that he takes no exceptions to any item in this IFB document.

1. Unless specifically disallowed herein, the Bidder may take exception to any item within the Standard Contract, as long as the following are true:
 - 1.1 The item is not a matter of State law;
 - 1.2 The bid still meets the intent of the IFB;
 - 1.3 An *Exception Summary Form* is included with Bidder's proposal; and
 - 1.4 The exception is clearly explained, along with any alternative or substitution the Bidder proposes to address the intent of the specification, on the *Exception Summary Form*.
2. The Bidder has no liability to provide items to which an exception has been taken. ITS has no obligation to accept any exception. During the bid evaluation and/or contract negotiation process, the Bidder and ITS will discuss each exception and take one of the following actions:
 - 2.1 The Bidder will withdraw the exception and agree to the language in the manner prescribed;
 - 2.2 ITS will determine that the exception neither poses significant risk to the project nor undermines the intent of the IFB and will accept the exception;
 - 2.3 ITS and the Bidder will agree on compromise language dealing with the exception and will insert same into the contract; or
 - 2.4 None of the above actions is possible, and ITS either disqualifies the Bidder's bid or withdraws the award and proceeds to the next ranked Bidder.
3. Should ITS and the Bidder reach a successful agreement, ITS will sign adjacent to each exception which is being accepted or submit a formal written response to the *Exception Summary* responding to each of the Bidder's exceptions. The *Exception Summary*, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this IFB.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this IFB to a Bidder or Bidders with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's IFB, including the *Standard Contract* in Attachment F, if included herein. As such, Bidders whose bids, in the sole opinion of the State, reflect a

substantial number of exceptions to this IFB, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their bids.

6. For Bidders who have successfully negotiated a contract with ITS in the past, ITS requests that, prior to taking any exceptions to this IFB, the individual(s) preparing this bid first confer with other individuals who have previously submitted bids to ITS or participated in contract negotiations with ITS on behalf of their company, to ensure the Bidder is consistent in the items to which it takes exception.

EXCEPTION SUMMARY FORM

List and clearly explain any exceptions for the Standard Contract in the table below.

ITS Contract Reference	Brief Explanation of Exception	ITS Acceptance
(Reference specific outline point to which exception is taken)	(Short description of exception being made)	(sign here only if accepted)
1)		
2)		
3)		
4)		
5)		
6)		
7)		

**ATTACHMENT F
MAINTENANCE CONTRACT**

A properly executed contract is a requirement of this IFB. After an award has been made, it will be necessary for the winning Bidder 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 Bidder(s) specific to the projects covered by this IFB.

If Bidder cannot comply with any term or condition of this Standard Contract, Bidder must list and explain each specific exception on the Exception Summary Form included in Attachment E. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who fail to take exception to any point in the Standard Contract may not later do so during contract negotiations.

**PROJECT NUMBER 47864
MAINTENANCE AGREEMENT
BETWEEN
VENDOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

This Maintenance Agreement (hereinafter referred to as "Agreement") is entered into by and between VENDOR NAME, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESS (hereinafter referred to as "Contractor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS" and/or "Customer").

WHEREAS, Customer pursuant to Invitation For Bid ("IFB") No. 4571 requested bids for the acquisition of maintenance services (hereinafter referred to as "Services") for the equipment listed in the attached Exhibit A (hereinafter referred to as "Products") which is incorporated herein by reference; and

WHEREAS, Contractor was the successful proposer in an open, fair and competitive procurement process to provide such Services;

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

ARTICLE 1 PERIOD OF PERFORMANCE

1.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, the period of performance of services under this Agreement shall begin on March 26, 2024, and continue until March 25, 2029. At the end of the initial term, this Agreement may, upon the written agreement of the parties, be renewed, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial term or any renewal term of this Agreement, Contractor shall notify Customer and ITS of the impending expiration and any inflation increase allowed for in this Agreement, and Customer shall have thirty (30) days in which to notify Contractor of its intention to either renew or cancel the Agreement.

1.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Customer, following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Form.

ARTICLE 2 SCOPE OF SERVICES

Contractor agrees to provide all travel, labor, and material required to maintain the equipment listed in Exhibit A, which is attached hereto and incorporated herein. Further, Contractor warrants that it will provide services to the Customer as follows:

2.1 Contractor shall provide all preventive and remedial maintenance necessary to maintain the equipment listed in Exhibit A in good operating condition.

2.2 Contractor shall respond by telephone within one (1) hour to requests for unscheduled remedial maintenance service, Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), and come on site with the necessary crash kit within four (4) hours from the point the call is made to service components deemed critical by Customer and within eight (8) hours from the point the call is made to service all other peripherals and related computer equipment. Should the Contractor fail to respond within such time, Contractor shall pay the Customer \$50.00 per hour for every hour of delay.

2.3 Contractor shall maintain in house the most frequently used supply replacement parts needed to service the equipment. Replacement parts will be new and not used or refurbished and will either be manufactured by and/or meet the minimum specifications established by the manufacturer of the equipment. Title to all replacement parts installed in the equipment will pass to the Customer at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to the Contractor.

2.4 Contractor agrees to a maximum four (4) hour turnaround from the point the call is made on all repairs not requiring parts ordering and a maximum one (1) working day on all other repairs. If the repairs have not been made within these designated time frames, Contractor shall pay the Customer \$50.00 per hour for every hour of delay. If after two (2) days the item has not been repaired, a compatible loaner unit will be provided by Contractor at no cost to Customer.

2.5 Contractor agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in IFB No. 4571 and Contractor's Bid as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Contractor must record all activities related to preventive maintenance on a log to be retained on-site.

2.6 The parties understand and agree that Customer reserves the right to add other equipment to be maintained or to cancel maintenance on all or part of the equipment, as Customer deems necessary.

2.7 The parties understand and agree that this Agreement does not cover the following: print heads (normal wear), batteries, ribbons, and all disposable parts; damage to equipment caused by Customer's abuse or neglect; damage caused by an act of God (flood, earthquake, lightning, etc.); loss due to fire or theft; cost of repair or maintenance of any kind which results from a breach of the terms of this Agreement by the Customer; neglect, misuse, alterations, or deviation from intended machine use; maintenance or repair of the machine performed by persons other than Contractor; or maintenance or removal of alterations or attachments.

ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT

3.1 During the initial term of this Agreement, Customer shall pay Contractor annually for maintenance services. Contractor shall submit annual invoices and supporting documentation to

Customer electronically during the term of this Agreement using the processes and procedures identified by the State. In no event will the total compensation to be paid hereunder for the initial term exceed the specified sum of \$TOTAL COMPENSATION, unless prior written authorization from ITS has been obtained. Customer agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer is exempt from the payment of taxes.

3.2 In no event shall the cost for maintenance services for any renewal term increase by more than five percent (5%) per year or an increase consistent with the percent increase in the consumer price index, all Urban Consumer US City Average (C.P.I.-u) for the preceding year ("inflation increase"), whichever is less. Customer shall submit payments to **VENDOR PAYMENT ADDRESS**. All payments should be made in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Contractor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

ARTICLE 4 EMPLOYMENT STATUS

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

4.2 Contractor represents that it is qualified to perform the duties to be performed under this 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 Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Customer. 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.

4.3 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by Customer for any purpose from said contract sum.

ARTICLE 5 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 Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Contractor's bids, books, documents, papers and/or records that are pertinent to this 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 Agreement shall be retained by the Contractor for three (3) years from the date of receipt of final payment under this Agreement. 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 6 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 7 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

7.1 In matters of bids, 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 this project. The Customer is required to negotiate only with Contractor, as Contractor's commitments are binding on all proposed contractors, third parties, and subcontractors.

7.2 Neither party may assign or otherwise transfer this 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. This Agreement shall be binding upon the parties' respective successors and assigns.

7.3 Contractor must obtain the written approval of Customer before subcontracting any portion of this Agreement. No such approval by Customer 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 agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Customer may deem necessary.

7.4 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, that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor, and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The 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.

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

ARTICLE 8 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. 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 9 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or 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 Agreement, Customer shall have the right to immediately terminate this Agreement 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 this Agreement.

ARTICLE 10 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 of every kind and nature whatsoever, 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 this Agreement.

ARTICLE 11 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 12 GOVERNING LAW

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

ARTICLE 13 SEVERABILITY

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

ARTICLE 14 DISPUTES

Any dispute concerning a question of fact under this 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 Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 15 NON-SOLICITATION OF EMPLOYEES

Contractor agrees not to employ or to solicit for employment, directly or indirectly, any of the Customer's employees until at least one (1) year after the expiration/termination of this Agreement, unless mutually agreed to the contrary in writing by the Customer and the 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 16 COMPLIANCE WITH LAWS

16.1 Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures 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 this Agreement because of race, creed, color, sex, age, national origin, or disability. Further, if applicable, Seller 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.

16.2 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 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 17 CONFLICT OF INTEREST

Contractor shall notify the Customer of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the Customer's satisfaction, the Customer reserves the right to terminate this Agreement.

ARTICLE 18 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 this Agreement and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to Customer shall be considered a material breach of this 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 19 AUTHORITY TO CONTRACT

Contractor warrants that it is a validly organized business with valid authority to enter into this Agreement, that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 20 CONFIDENTIAL INFORMATION

20.1 Contractor shall treat all Customer data and information to which it has access by its performance under this 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 this Agreement, 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 this Agreement on behalf of or under the rights of the Contractor, following any termination or completion of this Agreement.

20.2 The parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Contractor. ITS will provide third party notice to Contractor of any requests received by ITS documents marked confidential in Contractor's bid so as to allow Contractor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

20.3 The parties understand and agree 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 Agreement shall not be deemed confidential information.

ARTICLE 21 CAPTIONS

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

ARTICLE 22 SPECIAL TERMS AND CONDITIONS

Services hereunder shall be performed by the Contractor in conformity with generally accepted standards for such services in the data-processing and information technology fields as a whole. Should the Contractor fail to perform any services hereunder in compliance with such standards, Contractor shall, at its sole expense, re-perform such services, provided Customer furnishes any media and data necessary for Contractor to re-perform such services.

ARTICLE 23 NOTICE

Any notice required or permitted to be given under this 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 business address listed herein. ITS' address for notice is: David C. Johnson, Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. The Contractor's address for notice is: **VENDOR NOTICE INFORMATION**. 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.

ARTICLE 24 WARRANTIES

Contractor makes the following warranties:

24.1 Contractor represents and warrants that it shall perform all work hereunder in a good and workmanlike manner.

24.2 Contractor represents and warrants that neither the replacement parts provided to Customer under this Agreement nor their use by Customer will violate, infringe, or constitute an infringement of any patent, copyright, trademark, servicemark, trade secret, or other proprietary right of any person or entity.

24.3 Contractor represents and warrants that it has and will obtain and pass through to Customer any and all warranties obtained or available from any manufacturer of the replacement parts supplied to Contractor for use by Customer.

24.4 Contractor represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq. and any breach of Mississippi Employment Protection Act may subject Contractor to the consequences set forth under Miss. Code Ann § 71-11-3.

24.5 Contractor represents and warrants that no official or employee of Customer or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Contractor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Contractor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

24.6 The Contractor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Contractor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

ARTICLE 25 SYSTEM CONFIGURATION

Contractor acknowledges that Customer will pursue continuous growth and enhancement of the existing systems operations. As such, Contractor agrees to fully support the integration of additional hardware and software provided by sources selected as lowest and best on future projects, in accordance with state law. Such upgrades would be subject to full compatibility with the baseline hardware and software technology comprising this system.

ARTICLE 26 TERMINATION

26.1 Customer has the option of canceling maintenance without the assessment of any penalties on all or part of the equipment upon a thirty (30) day notice to Contractor. Upon termination, Contractor shall refund any and all applicable unexpended prorated annual service fees previously paid by Customer.

26.2 Notwithstanding the above, Contractor shall not be relieved of liability to Customer for damages sustained by Customer by virtue of breach of this Agreement by Contractor, and Customer may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due to Customer from Contractor is determined. Customer shall also have the right to pursue all remedies in law or in equity that may be available to it for damages incurred.

ARTICLE 27 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties, and agrees to be bound by the terms contained herein. Accordingly, this 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 28 SOVEREIGN IMMUNITY

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

ARTICLE 29 ENTIRE AGREEMENT

29.1 This Contract 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 thereto. The IFB No. 4571 and Contractor's Bid in response to IFB No. 4571 are hereby incorporated into and made a part of this Contract.

29.2 The Contract made by and between the parties hereto shall consist of and precedence is hereby established by the order of the following:

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** IFB No. 4571 and written addenda; and
- D.** Contractor's Bid, as accepted by Customer, in response to IFB No. 4571.

29.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the 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 Agreement") and the lowest document is listed last ("D. Contractor's Bid").

ARTICLE 30 SURVIVAL

Articles 5, 10, 12, 15, 20, 28, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 31 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 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 Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

ARTICLE 32 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Contractor and Customer understand and agree that all products and services provided by Contractor under this Agreement must allow Customer to 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 Agreement and require the 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 33 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY

If applicable, Contractor and Customer understand and agree that all products and services provided by the Contractor under this Agreement must allow Customer to be and remain in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State's Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Agreement and require the 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 34 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 employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the 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 to install or repair Products shall be covered by Contractor's comprehensive general liability insurance policy.

ARTICLE 35 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 Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.ms.gov>.

ARTICLE 36 FORCE MAJEURE

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

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

**State of Mississippi, Department of
Information Technology Services**

VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David C. Johnson

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

