

## Memorandum for General RFP Configuration

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**To:** Vendor with current valid proposal for General RFP #3539 for Telecommunications Equipment and Services

**From:** David L. Litchliter 

**CC:** ITS Project File Number 37646

**Date:** May 7, 2008

**Subject:** Letter of Configuration (LOC) Number 37646 for the procurement of equipment to upgrade telecommunication cabinets for the Mississippi Department of Information Technology Services (ITS)

**Contact Name:** Paula Conn

**Contact Phone Number:** 601-359-4411

**Contact E-mail Address:** conn@its.state.ms.us

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The Mississippi Department of Information Technology Services (ITS) is seeking the hardware described below. Our records indicate that your company currently has a valid proposal on file at ITS in response to General RFP #3539 for Telecommunications Equipment and Services. Our preliminary review of this proposal indicates that your company offers products, software, and/or services that may meet the requirements of this project; therefore, we are requesting your configuration assistance for the components described below.

### 1. GENERAL LOC INSTRUCTIONS

- 1.1 Beginning with Item 3, label and respond to each outline point as it is labeled in the LOC.
- 1.2 The Vendor must respond with "ACKNOWLEDGED," "WILL COMPLY," or "AGREED" to each point in the LOC including the attached *Standard Purchase Agreement*, (Attachment C), as follows:
  - 1.2.1 "ACKNOWLEDGED" should be used when a Vendor response or Vendor compliance is not required. "ACKNOWLEDGED" simply means the Vendor is confirming to the State that he read the statement. This is commonly used in sections where the agency's current operating environment is described or where general information is being given about the project.

- 1.2.2 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the Vendor will adhere to the requirement. These terms are used to respond to statements that specify that a Vendor or Vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.3 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See instructions in Item 8 regarding Vendor exceptions.)
- 1.4 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested in addition to “WILL COMPLY” or “AGREED”.
- 1.5 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

## 2. GENERAL OVERVIEW AND BACKGROUND

ITS is seeking the AVAYA equipment listed in Attachment A, *Product List and Cost Proposal*. This equipment will be installed at the Mississippi Department of Agriculture and Commerce located at 121 North Jefferson Street and at the Mississippi Department of Archives and History located at 200 North Street. Both locations are in Jackson, Mississippi. The equipment installed at these locations will upgrade the existing equipment and will interface directly with the host processor located in the Robert E. Lee Building at 239 North Lamar Street, Jackson, Mississippi. The Telecommunications Services Division of ITS (ITS-TS) will manage the equipment.

## 3. PROCUREMENT PROJECT SCHEDULE

Task	Date
Release of LOC	Wednesday, May 7, 2008
Deadline for Vendors’ Written Questions	Tuesday, May 13, 2008
Addendum with Vendors’ Questions and Answers	Thursday, May 15, 2008
Proposals Due	Thursday, May 22, 2008
Proposal Evaluation	May 22—May 28, 2008
Notification of Award	Thursday, May 29, 2008
Contract Negotiations	May 29—June 11, 2008
Delivery of Equipment	Monday, June 23, 2008

## 4. STATEMENTS OF UNDERSTANDING

- 4.1 The Vendor must propose AVAYA equipment that is 100% functionally equivalent to the equipment listed in Attachment A.
- 4.2 Proposed equipment must be new from the manufacturer and qualify for warranty and maintenance services.
- 4.3 Vendor must be aware that ITS reserves the right to make additional purchases at the proposed prices for a six (6) month period.
- 4.4 Vendor must be aware that any specifications detailed in Section 5 below, as well as the equipment listed in Attachment A, are minimum requirements. Should Vendor choose to exceed the requirements, Vendor must indicate in what manner the requirements are exceeded.
- 4.5 Vendors must be aware that ITS reserves the right to purchase this equipment from multiple vendors if advantageous to the State.
- 4.6 Equipment must be delivered by June 23, 2008. ITS-TS requests that all equipment be delivered to ITS, Attention Dennis Bledsoe, 239 North Lamar Street, Room 401, Jackson, Mississippi 39201.
- 4.7 From the issue date of this LOC until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this LOC with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this LOC must be submitted in writing to the State's Contact Person for the selection process, no later than the last date for accepting responding Vendor questions provided in this LOC. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this LOC. **Vendors failing to comply with this requirement will be subject to disqualification.**
  - 4.7.1 The State contact person for the selection process is: Paula Conn, Technology Consultant, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201, 601-359-4411, conn@its.state.ms.us.
  - 4.7.2 Vendor may consult with State representatives as designated by the State contact person identified in 4.7.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

## 5. FUNCTIONAL/TECHNICAL SPECIFICATIONS

- 5.1 Vendor must provide pricing for the equipment listed in Attachment A.
- 5.2 Vendor must detail (by part number and/or description) any items that are functionally equivalent and substituted for an item listed in Attachment A.
- 5.3 Installation shall be provided directly by AVAYA.

**6. EQUIPMENT WARRANTY AND POST-WARRANTY MAINTENANCE**

- 6.1 Vendor must state the warranty period for each item proposed (both hardware and software), during which time maintenance need not be paid.
- 6.2 Vendor must provide a brief description of warranty services (include days and hours of coverage, coverage type [onsite, depot], response time, etc.)
- 6.3 Post-warranty maintenance shall be provided directly by AVAYA due to the fact that ITS-TS will require remote expert systems support.

**7. OTHER REQUIREMENTS**

- 7.1 ITS acknowledges that the specifications within this LOC are not exhaustive. Rather, they reflect the known requirements ITS must have met by the proposed system. Vendors must specify what additional components may be needed and are proposed in order to complete each configuration.
  - 7.1.1 An example of an item that may not be listed is a power cord required to make an item function.
- 7.2 Vendor must specify the delivery interval proposed by Vendor's company, particularly if Vendor cannot meet the June 23, 2008, delivery date.
- 7.3 Freight is FOB destination. No itemized shipping charges will be accepted.
- 7.4 Vendor must provide all technical specifications and manuals (documentation) at the point of sale.
- 7.5 The awarded Vendor must provide an "exploded" equipment list directly to AVAYA to be used for an onsite inventory prior to implementation. If there are any discrepancies, issues, or missing parts, the awarded Vendor will work directly with AVAYA to a resolution.
- 7.6 The awarded Vendor must agree to the return of any items not needed or required during or immediately after implementation. Vendor will not invoice ITS for these returned items nor will Vendor charge a restocking fee.

- 7.7 Vendor must provide the state of incorporation of the company and a name, title, address, email address, and telephone number for the "Notice" article of the contract.
- 7.8 A properly executed contract is a requirement of this LOC. After an award has been made, it will be necessary for the winning Vendor to execute a Purchase Agreement with ITS.
  - 7.8.1 A *Standard Purchase Agreement* is included as Attachment C, for your review. The inclusion of this Purchase Agreement does not preclude ITS from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the project(s) covered by this LOC.
  - 7.8.2 If Vendor can not comply with any term or condition of this Purchase Agreement, Vendor must list and explain each specific exception on Attachment B, *Proposal Exception Summary Form*. The exception process is further, explained in Item 8 below.
  - 7.8.3 Winning Vendor must be willing to sign the attached Purchase Agreement within 10 working days of the notice of award. If the Purchase Agreement is not executed within the 10 working day period, ITS reserves the right to terminate negotiations with the winning Vendor and proceed to negotiate with the next lowest and best Vendor in the evaluation.

## 8. PROPOSAL EXCEPTIONS

- 8.1 Vendor must return the attached *Proposal Exception Summary Form*, Attachment B, with all exceptions listed and clearly explained or state "No Exceptions Taken." If no *Proposal Exception Summary Form* is included, the Vendor is indicating that no exceptions are taken.
- 8.2 Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this memorandum, including a specification denoted as mandatory, as long as the following are true:
  - 8.2.1 The specification is not a matter of State law;
  - 8.2.2 The proposal still meets the intent of the procurement;
  - 8.2.3 A *Proposal Exception Summary Form* (Attachment B) is included with Vendor's proposal; and
  - 8.2.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form* (Attachment B).

- 8.3 The Vendor has no liability to provide items to which an exception has been taken. ITS has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and ITS will discuss each exception and take one of the following actions:
- 8.3.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 8.3.2 ITS will determine that the exception neither poses significant risk to the project nor undermines the intent of the procurement and will accept the exception;
  - 8.3.3 ITS and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or,
  - 8.3.4 None of the above actions is possible, and ITS either disqualifies the Vendor's proposal or withdraws the award and proceeds to the next ranked Vendor.
- 8.4 Should ITS and the Vendor reach a successful agreement, ITS will sign adjacent to each exception which is being accepted or submit a formal written response to the Proposal Exception Summary responding to each of the Vendor's exceptions. The Proposal Exception Summary, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this procurement.
- 8.5 An exception will be accepted or rejected at the sole discretion of the State.
- 8.6 Prior to taking any exceptions to this procurement, ITS requests that, to the extent possible, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to ITS or participated in contract negotiations with ITS on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

## **9. SCORING METHODOLOGY**

ITS will use cost to determine the lowest and best proposal.

## **10. INSTRUCTIONS TO SUBMIT PRODUCT AND COST INFORMATION**

Please use Attachment A, *Product List and Cost Proposal* to provide product and cost information. Follow the instructions on the form. Incomplete forms will not be processed.

## **11. DELIVERY INSTRUCTIONS**

- 11.1 **Vendor must deliver the response to Paula Conn at ITS no later than Thursday, May 22, 2008, at 3:00 P.M. (Central Time).** Responses may be delivered by hand,

via regular mail, overnight delivery, email, or by fax. Fax number is (601) 354-6016. ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF PROPOSALS. It is solely the responsibility of the Vendor that proposals reach ITS on time. Vendors should contact Paula Conn to verify the receipt of their proposals. Proposals received after the deadline will be rejected.

- 11.2 If you have any questions concerning this request, please e-mail Paula Conn of ITS at [conn@its.state.ms.us](mailto:conn@its.state.ms.us). **Any questions concerning the specifications detailed in this LOC must be received no later than Tuesday, May 13, 2008, at 3:00 P.M. (Central Time).**

Enclosures: Attachment A, RFP Information Form  
Attachment B, Proposal Exception Summary Form  
Attachment C, Standard Purchase Agreement

**ATTACHMENT A  
Product List and Cost Proposal**

**Company Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

**Contact E-mail:** \_\_\_\_\_

MFG #	DESCRIPTION	QTY	UNIT COST	EXTENDED COST	WARRANTY PERIOD
	Mississippi Department of Agriculture and Commerce, 121 North Jefferson Street				
113090	ENTERPRISE CONFIG. TO QUOTE	1			
199990	PROJECT SYSTEM CONFIGURATION	1			
199995	INTRICACY LEVEL 5 IMPLEMENTATION	1			
185446	AVAYA COMMUNICATIONS SOLUTION	1			
185840	CM MODEL ADDITIONS	1			
177616	DEF CC VRU C&D TONES TRACK	1			
195250	IPSI2 CP TN2312BP RHS	1			
195251	C-LAN INTERFACE CIRCUIT PACK TN	1			
203071	IP 320 MEDIA RESOURCE TN26	1			
405362641	POWER CORD USA	2			
700178056	CABLE GREEN 25 METER	1			
700394497	BUS TERMINATOR CP AHF110 R	2			
700394950	G650 MEDIA GATEWAY RHS	1			
700406135	G650 AC/DC POWER SUPPLY 655A	1			
184816	POWER MODEL	1			
408357077	POWER BYPASS DIST MOD 120V 700-	1			
700290273	S9RM MODEL 1000VA 120V W/S	1			
700404411	UPS EXT BAT MOD W/700-1000	2			
700404502	UPS 4-POST RK MT KIT W/700	3			
700434798	UPS ENVIRONMENTAL PROBE	1			
104164	BCS INSTL CUSTOMER SOLUTION	1			
199999	SERVICES MAINTENANCE BOM	1			
199009	UPS ENTERPRISE MAINTENANCE	1			

MFG #	DESCRIPTION	QTY	UNIT COST	EXTENDED COST	WARRANTY PERIOD
104155	MAINTENANCE INTERNAL AMORTIZATION	1			
104156	ANN PREPAID	1			
	<b>TOTAL EXTENDED COST</b>				

MFG #	DESCRIPTION	QTY	UNIT COST	EXTENDED COST	WARRANTY PERIOD
	Mississippi Department of Archives and History, 200 North Street				
113090	ENTERPRISE CONFIG. TO QUOTE	1			
199990	PROJECT SYSTEM CONFIGURATION	1			
199995	INTRICACY LEVEL 5 IMPLEMENTATION	1			
185446	AVAYA COMMUNICATIONS SOLUTION	1			
185840	CM MODEL ADDITIONS	1			
177616	DEF CC VRU C&D TONES TRACK	1			
195250	IPS12 CP TN2312BP RHS	1			
195251	C-LAN INTERFACE CIRCUIT PACK TN	1			
203071	IP 320 MEDIA RESOURCE TN26	1			
405362641	POWER CORD USA	2			
700178056	CABLE GREEN 25 METER	1			
700393408	FACILITY TEST CP TN771DP R	1			
700394497	BUS TERMINATOR CP AHF110 R	2			
700394950	G650 MEDIA GATEWAY RHS	1			
700406135	G650 AC/DC POWER SUPPLY 655A	1			
184816	POWER MODEL	1			
408357077	POWER BYPASS DIST MOD 120V 700-	1			
700290273	S9RM MODEL 1000VA 120V W/S	1			
700404411	UPS EXT BAT MOD W/700-1000	2			
700404502	UPS 4-POST RK MT KIT W/700	3			
700434798	UPS ENVIRONMENTAL PROBE	1			
104164	BCS INSTL CUSTOMER SOLUTION	1			
199999	SERVICES MAINTENANCE BOM	1			
199009	UPS ENTERPRISE MAINTENANCE	1			
104155	MAINTENANCE INTERNAL AMORTIZATION	1			

MFG #	DESCRIPTION	QTY	UNIT COST	EXTENDED COST	WARRANTY PERIOD
104156	ANN PREPAID	1			
	<b>TOTAL EXTENDED COST</b>				

**ATTACHMENT B**  
**PROPOSAL EXCEPTION SUMMARY FORM**

ITS LOC Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	

**ATTACHMENT C  
STANDARD PURCHASE AGREEMENT**

**PROJECT NUMBER 37646  
PURCHASE AGREEMENT  
BETWEEN  
INSERT VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between INSERT VENDOR NAME, a INSERT STATE OF INCORPORATION corporation having its principal place of business at INSERT VENDOR ADDRESS (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS" and/or "Purchaser"),

**WHEREAS**, Purchaser, pursuant to Letter of Configuration Number 37646 dated May 7, 2008 (hereinafter referred to as "LOC"), based on General Request for Proposals ("RFP") No. 3539, requested proposals for the acquisition of certain Avaya equipment and software (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein to upgrade Purchaser's telecommunications cabinets; and

**WHEREAS**, Seller was the successful proposer in an open, fair and competitive procurement process;

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

**ARTICLE 1 TERM OF AGREEMENT**

**1.1** This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on June 23, 2008, or within such other period as may be agreed to by the parties.

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

**ARTICLE 2 FURNISHING OF EQUIPMENT**

**2.1** Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of \$INSERT AMOUNT unless prior written authorization from ITS

has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of six (6) months from the effective date of this Agreement. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

**2.2** The Products provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3539 and the Seller's Proposals in response thereto.

### **ARTICLE 3 DELIVERY, RISK OF LOSS, AND ACCEPTANCE**

**3.1** Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

**3.2** Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

**3.3** Purchaser shall accept or reject the Products provided by Seller after a five (5) working day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in the LOC and General RFP No. 3539. Purchaser shall notify Seller in writing of its acceptance of the Products.

**3.4** In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense and to cancel this Agreement.

### **ARTICLE 4 TITLE TO EQUIPMENT**

Title to the equipment provided under this Agreement shall pass to Purchaser upon its acceptance of the equipment.

### **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

**5.1** Once the Products have been accepted by Purchaser as prescribed in Article 3 herein, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. The State may, at its sole discretion, require Seller to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. Payments by SAAS agencies shall be deposited into the bank account of the

Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

5.2 Acceptance by the Seller of the last payment from the Purchaser shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under this Agreement.

## ARTICLE 6 WARRANTIES

6.1 Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

6.2 Seller represents and warrants that Purchaser shall acquire good and clear title to the equipment purchased hereunder, free and clear of all liens and encumbrances.

6.3 Seller represents and warrants that each unit of equipment delivered shall be delivered new and not as "used, substituted, rebuilt, refurbished or reinstalled" equipment.

6.4 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the equipment.

6.5 Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of SPECIFY WARRANTY PERIOD from the date of acceptance of each item of equipment, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller can not repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment, and refund any fees paid for services that directly relate to the defective hardware.

6.6 Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3539 and Seller's Proposals in response thereto.

6.7 Seller represents and warrants that all software furnished shall be free from material defects for a period of SPECIFY WARRANTY PERIOD after acceptance and will function in accordance with the specifications as stated in the LOC, General RFP No. 3539 and the Seller's Proposals in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for the software and for any services that directly relate to the defective software.

6.8 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's

use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**6.9** Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

**6.10** Seller represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

#### **ARTICLE 7 INFRINGEMENT INDEMNIFICATION**

Seller represents and warrants that neither the hardware, replacement parts nor software, their elements or the use thereof violates or infringes upon any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the hardware, software or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such products, or upon failing to procure such right; (b) modify or replace them with non-infringing products, or upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

#### **ARTICLE 8 EMPLOYMENT STATUS**

**8.1** Seller 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.

**8.2** Seller 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 Purchaser. Seller 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 Seller nor employees of Seller are entitled to state retirement or leave benefits.

**8.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**8.4** 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 Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

#### **ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser 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 Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

#### **ARTICLE 10 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 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**11.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is only required to negotiate with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

**11.2** 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.

**11.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser 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 Purchaser may deem necessary.

**11.4** Seller represents and warrants that any subcontract agreement Seller 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 Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller 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 Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

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

#### **ARTICLE 12 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser 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 Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

#### **ARTICLE 13 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement without the assessment of any penalties for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 14 GOVERNING LAW**

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

#### **ARTICLE 15 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 16 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 17 CAPTIONS**

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

#### **ARTICLE 18 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, 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 Seller and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 19 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser in writing within five (5) business days of Seller 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 Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser 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 20 AUTHORITY TO CONTRACT**

Seller 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 21 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile 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. Purchaser's address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. The Seller's address for notice is: INSERT VENDOR NAME AND 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 22 RECORD RETENTION AND ACCESS TO RECORDS**

Seller 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 Purchaser, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's proposals, 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 Seller's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Seller 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 23 INSURANCE**

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

#### **ARTICLE 24 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser, 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 25 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser 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, Seller 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.

#### **ARTICLE 26 CONFLICT OF INTEREST**

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

#### **ARTICLE 27 SOVEREIGN IMMUNITY**

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

#### **ARTICLE 28 CONFIDENTIAL INFORMATION**

**28.1** Seller shall treat all Purchaser 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 Purchaser. In the event that Seller 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, Seller shall promptly inform Purchaser 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 Seller 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 Seller following any termination or completion of this Agreement.

**28.2** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

#### **ARTICLE 29 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 Seller on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

### **ARTICLE 31 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser'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 Purchaser and the Seller 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 32 ENTIRE AGREEMENT**

**32.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The LOC, General RFP No. 3539 and Seller's Proposals in response thereto are hereby incorporated into and made a part of this Agreement.

**32.2** The Agreement 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 both parties;
- B. Any exhibits attached to this Agreement;
- C. LOC;
- D. General RFP No. 3539 and written addenda, and
- E. Seller's Proposals, as accepted by Purchaser, in response to the LOC and General RFP No. 3539.

**32.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. 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 ("E. Seller's Proposals").

**ARTICLE 33 SURVIVAL**

Articles 6, 7, 14, 18, 22, 27, 28, 30, 31, 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 34 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller 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 transaction (federal, state or local) terminated for cause or default.

**ARTICLE 35 NETWORK SECURITY**

Seller and Purchaser understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Seller and Purchaser agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device ( i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Seller agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Seller's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Seller to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

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

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

**INSERT VENDOR NAME**

**By:** \_\_\_\_\_  
**Authorized Signature**

**By:** \_\_\_\_\_  
**Authorized Signature**

**Printed Name: David L. Litchliter**

**Printed Name:** \_\_\_\_\_

**Title: Executive Director**

**Title:** \_\_\_\_\_

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

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

**EXHIBIT A**