

Memorandum for General RFP Configuration

To: Vendors with a valid response for General RFP #3406 for Telecommunications
From: David L. Litchlitter
Date: April 19, 2006
Project Number: 33589
Contact Name: Paula Conn
Contact Phone Number: 601-359-4411
Contact E-mail Address: paula.conn@its.state.ms.us

The Mississippi Emergency Management Agency (MEMA) is relocating from its current facility in Jackson Mississippi to a new facility at #1 MEMA Drive, Pearl, Mississippi 39208. MEMA will utilize ISDN Centrex services at the new location. The purpose of this LOC is to procure the needed Tone Commander multi-button sets and consoles to function with the service.

Our records indicate that your company currently has a valid proposal on file at ITS in response to RFP #3406 for Telecommunications. Our preliminary review of this proposal indicates that your company offers products, software, or services that are appropriate to the requirements of this project. Therefore, we are requesting your configuration assistance for the components below. Please submit a written response for the requested equipment and services.

1. GENERAL LOC INSTRUCTIONS

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the LOC.
- 1.2 The Vendor must respond with "ACKNOWLEDGED," "WILL COMPLY," or "AGREED" to each point in the LOC.
- 1.3 If the Vendor cannot respond with "ACKNOWLEDGED," "WILL COMPLY," or "AGREED," then the Vendor must respond with "EXCEPTION." (See attached instructions 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.
- 1.5 In addition to the above, the Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

2. SPECIFICATIONS

- 2.1 Vendor must propose Tone Commander equipment that is 100% functionally equivalent to the equipment below.

Manufacturer Part No.	Qty.	Description
1010263301	5	ISDN Attendant Console
1010263401	5	DSS/BLF for 120 stations
1010261201	4	Power Supply for up to three 40d and/or 120d consoles
1010282001	3	ISDN Speakerphone, 20 Call Appearances, U Interface, Black
1010282002	7	ISDN Speakerphone, 10 Call Appearances, U Interface, Black
1010288301	4	6030X, VoIP Speakerphone, 20 CA + 30 Button Exp. Module, Black
1090105201	10	48V Wall Plug-in Power Supply for U Interface Telephones, in-line interface, or equivalent

- 2.2 All proposed equipment must be new.
- 2.3 Vendors must be aware that ITS on behalf of MEMA reserves the right to purchase this equipment from multiple vendors if advantageous to the State.
- 2.4 Vendors must provide complete installation and programming for the telephone instruments. (See also section 4)
- 2.5 Since this is a newly constructed building, all required cabling should be in place. However, Vendors should provide a per run (unit) cost should MEMA require a phone to be installed in a new location that is not cabled. Cabling quoted should be category 6 and include parts and labor (jack, cable, termination).

3. EQUIPMENT WARRANTY/MAINTENANCE (POST WARRANTY)

- 3.1 All equipment proposed must include a full parts warranty effective from the date of installation, covering any and all defects in materials and workmanship.
- 3.2 All equipment must be warranted for a minimum of twelve (12) months and include parts and labor.
- 3.3 Warranty/Post Warranty coverage is defined as 8:00 a.m. to 5:00 p.m. Monday through Friday. On-site service will be required for any problems that cannot be expeditiously handled remotely. See item 3.13.4.
- 3.4 Defective equipment will be replaced or repaired.

- 3.5 If a new item was initially purchased, the Vendor will replace the item with new equipment during the warranty period. If Vendor replaces with refurbished equipment, Vendor must warrantee as if the equipment were new.
- 3.6 The warranty must not be nullified or otherwise affected if the user installs the product.
- 3.7 Vendor must include locations of service locations/technicians that will be available to provide maintenance to the MEMA site.
- 3.8 Service technicians must be certified on the Tone Commander equipment.
- 3.9 All prices quoted for service shall be guaranteed for twelve (12) months after acceptance.
- 3.10 Warranty and post warranty coverage must include any damage as a result of lightning or any other foreign voltage. Neither of these events shall be excluded from coverage as acts of God.
- 3.11 Technician should contact the designated person at the customer site concerning expected arrival on-site to perform maintenance/service.
- 3.12 The technician will also notify the customer contact upon arrival on-site. When work is completed, the technician will notify the customer contact as to the work performed and that the technician is departing. If work requires more than an hour on-site or the ordering of parts, technician will provide a status report to the customer contact.
- 3.13 Warranty and Post Warranty Service response times for emergency and non-emergency problems are as follows:
 - 3.13.1 Vendor will respond by telephone within one (1) hour to requests for warranty or post warranty repair service Monday through Friday, 8:00 a.m. to 5:00 p.m. (Central Time).
 - 3.13.2 The State will expect an emergency response of not more than two (2) hours after receipt of call, twenty-four (24) hours per day, seven (7) days per week.
 - 3.13.2.1 An emergency is defined as any problem or equipment failure that materially interferes with the buyer's function.
 - 3.13.2.2 A single set being out does not constitute an emergency. However, if two or more consoles are out of service or more than 25% of the multi-button phones are inoperable, an emergency has occurred.
 - 3.13.3 For non-emergencies, Vendor will respond within four (4) hours from the point the call is made on all repairs not requiring parts ordering, and a maximum of one (1) working day on all other repairs.
 - 3.13.4 Response is defined as a qualified technician on-site or the resolution by a technician remotely.
 - 3.13.5 The State acknowledges that additional labor charges may be required to respond to problems outside of the normal 8 to 5, Monday to Friday repair

schedule. Vendor must include the fully loaded labor cost for after-hours problem resolution. During warranty and as long as a service agreement is in place during post-warranty, there shall be no additional charge for parts.

- 3.14 Vendors are required to propose on-site maintenance pricing for four (4) years after the warranty period.
- 3.15 Vendor must state a fixed price or the percentage increase, if any, of the Vendor's proposed pricing for the post warranty period. Vendor must agree that in no event shall annual increases exceed five percent (5%).
- 3.16 The vendor will notify MEMA in writing 60 days period to the expiration of the initial warranty/maintenance period. Vendor failure to do so will result in Vendor providing post warranty service at no cost until a new post warranty agreement can be negotiated.
- 3.17 Vendor must agree to work closely with the network vendor to resolve technical problems.
- 3.18 Vendor must thoroughly explain the warranty and post warranty services.

4. Installation Requirements

- 4.1 A tentative installation schedule exists as this LOC is being released.
 - 4.1.1 Furniture is to arrive with installation beginning mid-May.
 - 4.1.2 Installation of all multi-button sets should begin approximately June 1, 2006.
- 4.2 Vendor must specify the delivery interval proposed by vendor's company. Vendor will be expected to meet the June 1 date.
- 4.3 All hardware and software as proposed shall be installed and working per manufacturer specifications.
- 4.4 Installation will include, but not be limited to:
 - 4.4.1 Inventorying equipment to ensure all ordered equipment is received
 - 4.4.2 Programming speed-dial buttons on phones
 - 4.4.3 Labeling set buttons
 - 4.4.4 Plugging in and testing sets
- 4.5 The Vendor agrees to comply with all city, county, state, and federal codes, rules, NEC and REA codes, regulations, and /or agencies, regarding the installation of the telephone instruments furnishing the necessary labor and materials to meet the above codes. Vendor must furnish all licenses and permits, etc. required for the installation of the system.
- 4.6 If any additional cables or wires are required, these shall be designed with suitable cross sections to provide safe, current-carrying capacity and intrinsic strength for the purpose for which they will be used.

- 4.7 If any additional cables or wires are required, these shall be firmly held in place. Fastenings and support shall be adequate to support their loads with ample safety factors.
- 4.8 Any splices in the system wiring must meet reasonable standards of strength and continuity.
- 4.9 Vendor will be responsible for replacing, restoring, or bringing to original condition any damage caused by Vendor to floor, ceilings, walls, furniture, grounds, pavements, etc. Any damage or disfigurements shall be restored by Vendor at Vendor's expense. Vendor shall do all repairing by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.
- 4.10 The Vendor shall, upon completion of the work, remove from the premises all construction equipment, unused materials, salvage materials, and debris resulting from the work, and leave all parts of the premises affected by the work clean.
- 4.11 The Vendor must install the telephone instruments utilizing generally accepted telephone industry installation practices.
- 4.12 Installation technicians must be certified to provide installation of the proposed telephone instruments.
- 4.13 Upon installation, the Vendor must provide adequate testing to ensure that the equipment is fully operational and performing properly.

5. Training Requirements

- 5.1 Vendor must not only be familiar with set operation but must be familiar with Centrex operation. ITS Telecommunications Services (TS) will provide the vendor with a list of features to be deployed at the MEMA location.
- 5.2 Vendor will provide one (1) to two (2) classes on-site for those operating the attendant consoles. The number of classes will be determined by MEMA and will depend upon the availability of staff to attend training. These classes will last a minimum of one (1) hour.
- 5.3 MEMA will have approximately 25 employees requiring training on use of the multi-button sets, including Centrex features. Vendor will provide 4classes on-site with 5 to 7 MEMA employees attending each class. Classes should last a minimum of forty-five (45) minutes.
- 5.4 A telephone instrument user's manual/booklet detailing features of the set shall be furnished for each set.
- 5.5 The winning Vendor must have a minimum of two employees who routinely provide training. Only one trainer is required for this installation; the second trainer should be available as a back up.
 - 5.5.1 These trainers must not be installation or service technicians and must have experience in conducting training classes.

5.5.2 Vendor may subcontract training, without further ITS approval, but these trainers must be experienced in training on the installed equipment and must have experience in conducting training classes.

5.6 Vendor must provide a fixed hourly rate for additional training.

6. Additional Requirements

6.1 Vendor must specify the discounted price for each item. Freight is FOB destination. No itemized shipping charges will be accepted.

6.2 All items necessary for a successful implementation not included in the list above must be included in the vendor's proposal. This includes, but is not limited to, all cables, connectors, and interfaces to render the configuration fully operational.

6.3 Vendor must provide a single point of contact throughout the process.

6.3.1 This contact will be responsible for providing status reports to ITS and MEMA regarding timeframes and any delays or issues that may arise.

6.3.2 The contact will coordinate with ITS and BellSouth personnel to conduct a wiring survey, if needed.

6.4 ITS may require a contract with the winning Vendor. A sample Purchase Agreement has been attached for reference. If the winning Vendor has a Master Agreement with ITS, a Supplement may be negotiated instead of a new Agreement. The awarded Vendor must be willing to sign the attached Purchase Agreement within 15 working days of the notice of award. If the Agreement is not executed within the 15 working day period, ITS reserves the right to negotiate with the next lowest and best Vendor in the evaluation.

6.4.1 Vendor must review the sample Purchase Agreement provided. If Vendor has exception to any point in the Agreement, such exception must be listed on the Proposal Exception Summary Form. If no Proposal Exception Summary Form is included, the Vendor is indicating that he takes no exceptions. Vendor may not later take exception to any item in the LOC, including the Agreement, during contract negotiations.

6.4.2 For Vendors who have successfully negotiated a contract with ITS in the past, ITS requests that, prior to taking any exceptions to this LOC, the individual(s) preparing this response 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.

6.4.3 Vendor must provide the State of incorporation of the Company, and a name, title, address, telephone number, and e-mail address for the "Notice" part of the Purchase Agreement.

6.5 The Vendor must be aware that in matters of proposals, clarifications, negotiations, contracts, and resolution of issues and/or disputes, the Vendor represents all contractors, third parties, and/or subcontractors the Vendor has assembled for this

project. The Vendor's commitments are binding on all such parties and, consequently, ITS and MEMA are only required to negotiate with the Vendor.

- 6.6 Vendor will invoice the Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management (BOB) with **GS #516-003**. This GS # must be used on all correspondence and invoices to BOB. **Any invoices must be sent (mailed) to ITS for processing.**
- 6.7 Please be aware that this procurement, in its entirety, is a component of a construction project being managed by BOB. The estimated completion date provided herein is a good-faith estimate based on the current project schedule. Construction delays may occur due to unforeseen circumstances outside of ITS', MEMA's, and/or the awarded Vendor's control that prevent the Vendor from completing some or all of the obligations for this award by the projected date.
- 6.8 The awarded Vendor must agree to the return of any items not needed or required during or immediately after implementation. Vendor will not invoice BOB for these returned items nor will Vendor charge a restocking fee.

7. Scoring Methodology

- 7.1 ITS will use the following items to score proposals received.
 - 7.1.1 Cost
 - 7.1.2 Technical Specifications
 - 7.1.3 Warranty/Post Warranty Support
- 7.2 Each of these categories is assigned a weight between one and 100. The sum of all categories will equal 100 possible points. All information provided by the vendors and other information available to ITS staff will be used to evaluate the proposals.

8. Instructions to Submit Product and Cost Information

- 8.1 Please use the attached CP-6: RFP Information Form to provide product descriptions, part numbers, and cost. Follow the instructions on the form. Incomplete forms will not be processed.
- 8.2 If additional lines are needed, you may copy the form. Please indicate a grand total on one page.
- 8.3 If installation charges are per item, please list those on separate lines.
- 8.4 Vendor must guarantee proposed pricing for twelve (12) months after the LOC due date.

9. Delivery Instructions

Vendor must deliver his response to Paula Conn at ITS by Monday, May 8, 2006, by 3:00 p.m. (Central Time). Response may be delivered by hand, via U. S. mail, via 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 receipt of their proposals. Proposals received after the deadline will be rejected.

If you have any questions concerning this request, please email Paula Conn of ITS at Paula.Conn@its.state.ms.us. **Any questions concerning the specifications detailed in this LOC must be received to Paula Conn by Wednesday, April 26, 2006, by 3:00 p.m. (Central Time).** Only transactions which are in writing from ITS are consider official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

CP-6: RFP INFORMATION FORM –3406

Please submit the **ITS** requested information response under your General RFP proposal 3406 using the following format.

Fax your completed form back to 601-354-6016 addressed to the Technology Consultant listed on the fax cover sheet. If the necessary information is not included, your response cannot be considered.

ITS Technology Consultant Name: Paula Conn

RFP# 3406

Company Name: _____

Date:

Contact Name: _____

Phone Number:

MFG	MFG #*	DESCRIPTION	QTY	UNIT COST	EXTENDED COST**

If any of the items below are included in vendor’s proposal they must be detailed below. Vendors may also provide the information below on the CP-6 in order to show any unit cost.

Warranty:
 Warranty Period:
 Fully loaded after-hours rate:

Installation:**
 Installation of request components:
 Per run unit cost for non-cabled areas:

Maintenance:
 Post Warranty Period:
 Fully loaded after-hours rate:

Training:

Attendant Console Training:
Multi-button set and Centrex Training:

*Manufacturer model number, not Vendor number. If Vendor's internal number is needed for purchase order, include an additional column for that number

**If Vendor travel is necessary to meet the requirements of the LOC, the Vendor should propose fully loaded costs including travel

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)	

STANDARD CONTRACT

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

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

**PROJECT NUMBER 33589
PURCHASE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF BUILDINGS
ON BEHALF OF
MISSISSIPPI EMERGENCY MANAGEMENT AGENCY**

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”), as contracting agent for the Mississippi Department of Finance and Administration, Bureau of Buildings, located at 501 North West Street, Suite 1401-B, Jackson, Mississippi 39201 (hereinafter referred to as “BOB”), on behalf of the Mississippi Emergency Management Agency located at 1410 Riverside Drive, Jackson, Mississippi 39202 (hereinafter referred to as “Purchaser”). ITS, BOB, and Purchaser are sometimes collectively referred to herein as “State”.

WHEREAS, Purchaser, pursuant to Letter of Configuration Number 33589 (hereinafter referred to as “LOC”) dated April 19, 2006, based on General Request for Proposals (“RFP”) No. 3406, requested proposals for the acquisition of certain equipment and software (hereinafter referred to as “Products”) as listed in Exhibit A which is attached hereto and incorporated herein; 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 30, 2006, 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 approval of the project by BOB’s Public Procurement Review Board, 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 ninety (90) days. 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. 3406, and the Seller's Proposals in response thereto.

ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION 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 Seller shall complete installation of the Products pursuant to the requirements set forth in the LOC. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

3.4 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

3.5 Seller shall be responsible for installing all equipment, cable and materials in accordance with all State, Federal and industry standards for such items.

3.6 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. 3406. Purchaser shall notify Seller in writing of its acceptance of the Products.

3.7 In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within two (2) 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. BOB 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 BOB 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. 3406, 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. 3406, 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, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall 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 on any copyright, patent, 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 or software provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against Purchaser. If, in any such suit arising from such claim, the continued use of the Products for the purpose intended is enjoined or threatened to be 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 and/or student body, 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 availability of monies in the applicable IHL and State Agencies Capital Improvements Fund, as provided for by the Mississippi State Legislature via the sale of state general obligation bonds for the cost of this capital improvement. 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 or ITS 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 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 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 give Purchaser prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Seller 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.

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. ITS' 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. BOB's address for notice is: Mr. Burton Spencer, Director of Administration, Mississippi Department of Finance and Administration, Bureau of Buildings, 501 North West Street, Suite 1401-B, Jackson, Mississippi 39201. Purchaser's address for notice is: Ms. Karen Hatten, CPPA, Purchasing Chief, Mississippi Emergency Management Agency, Post Office Box 4501, Jackson, Mississippi 39296-4501. The Seller's address for notice is: **INSERT 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 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, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to any of the Seller's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Seller's office where such records are kept during Seller's 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

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.

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. 3406, 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. 3406 and written addenda, and
- E.** Seller's Proposals, as accepted by Purchaser, in response to the LOC and General RFP No. 3406.

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.

ARTICLE 36 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement.

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, on
behalf of Mississippi Department of
Finance and Administration, Bureau
of Buildings, on behalf of Mississippi
Emergency Management Agency**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____