

Memorandum for General RFP Configuration

To: Vendors with a current valid proposal for General RFP # 3303 for Consulting Services
From: David L. Litchlitter
Date: September 26, 2003
Project Number: 34816
Due Date: Thursday, October 2, 2003; 3:00p.m.
Contact Name/Number: Patricia Whitley / 601 359-2634 Fax Number: 601 354-6016
Contact Email Address: whitley@its.state.ms.us
Re: Letter of Configuration (LOC) for up to six (6) months of Sybase DBA Consultant Services for Mississippi Department of Transportation

The Mississippi Department of Information Technology Services (ITS) is seeking consulting services to provide senior level database administration support services for the Mississippi Department of Transportation (MDOT). Due to recent employee resignations, the agency's need for supplemental database administrative staff is immediate. Our records indicate that your company currently has a valid proposal on file at ITS in response to General RFP #3303 for Consulting Services. Our preliminary review of this proposal indicates that your company offers services that are appropriate to the requirements of this project. Therefore, we are requesting your configuration assistance to provide the services described below. Please submit a written response for the requested services.

1. GENERAL LOC REQUIREMENTS

- 1.1 Vendor must be aware that the specifications detailed below are minimum requirements. Should vendor choose to propose services that exceed the requirements, it is the vendor's responsibility to specify in what manner the proposed services exceed the requirements.
- 1.2 Vendor must respond to each outline point and exhibit as it is labeled in this LOC by providing **the information requested**, or by indicating "ACKNOWLEDGED," "WILL COMPLY," "AGREED" or "NOT APPLICABLE", as appropriate.

2. BACKGROUND INFORMATION

- 2.1 MDOT desires to contract with one Senior level Sybase DBA consultant to provide problem resolution, troubleshooting and database stability services during the interim period while they seek to interview and hire replacement employee(s). The agency estimates the need for this project to require a 6-month contract. The agency has established a Sybase standard for its database product. Currently, the agency's infrastructure applications identified below utilize a Sybase database.
 - 2.1.1 FMS – The agency's Financial Management System by Tier Technologies
 - 2.1.2 TMIS – Transportation Management System (in-house developed)
 - 2.1.3 CATS - Contract Administration Tracking System (in-house developed)
 - 2.1.4 PTS – Parcel Tracking System – In-house developed system to migrate the parcel tracking function from a mainframe ADATABASE environment.
 - 2.1.5 AASHTO's Site Manager –The Construction Management System
- 2.2 The list above is not all inclusive, but will provide an idea of the existing systems and/or projects that require database administration and assistance.
- 2.3 The FMS system is currently under maintenance agreement with Tier Technologies, Inc.
- 2.4 Please be aware that the Parcel Tracking system is a new implementation scheduled for go-live production by 9/28/03.
- 2.5 Vendor must also understand that the AASHTO Site Manager project is currently in the requirements definition stage. This project is scheduled for implementation in the Spring, 2004.
- 2.6 MDOT currently has two (2) existing Jr. Level Database Administrators who will be responsible to provide the 1st level of support on database troubleshooting and problem resolution. Therefore, the agency is seeking onsite vendor personnel to provide 2nd level support for agency applications. This task will also include mentoring and guidance of these persons on a daily basis to assure the functionality of the database(s) is maintained and managed appropriately.
- 2.7 The agency will provide proposed individual with workspace and computer access to the necessary Information Systems.

3. **EXISTING ENVIRONMENT** - Currently MDOT's processing environment includes a Sun Enterprise 10000 Server environment running Sun Solaris 2.6 operating system software, Sybase Adaptive Server Enterprise version 11.9.2 and utilizing Sybase Open Client and Open Server.

4. **CONSULTANT SPECIFICATIONS**

4.1 **Required Skills and Experience**

- 4.1.1 Vendor must have a verifiable background in the following areas. Vendor's resume and references should be able to substantiate this requirement. Vendor must provide one individual who possesses the following demonstrated abilities. These are mandatory requirements.

Experience in each of the areas below must be clearly identifiable and detailed in the vendors experience resume' (as requested below). The individual must have working experience in the products designated below.

	Skill	Minimum Experience (Years)	Actual Experience (Please Specify)
4.1.2	Sybase Adaptive Server Enterprise (Specify Version(s) and length of experience): _____ _____ _____	5	_____
4.1.3	Sybase Adaptive Server Enterprise Server 11.9.2 (Experience must also be included above to meet 4.1.2 require.)	3	_____
4.1.4	Sun Solaris 2.6	5	_____

4.2 Optional Skills Requirement - Vendor should have a verifiable background in the following areas. If this experience is offered, Vendor's resume and references should be able to substantiate this requirement. Vendor must identify experience with the following software tools:

	Skill	Minimum Experience	Actual Experience (Please Specify)
4.2.1	DbArtisian by Embarcadero	1	_____
4.2.2	ErWin Data Modeling software by Logic Works	1	_____

4.3 Additional consideration will be given for persons with verifiable Department of Transportation experience. Vendor must identify any such experience, specify the length of experience and provide reference information to substantiate the identified experience.

4.4 Vendor must fully detail the depth of his/her application experience. Include in this discussion any products/applications experience, in addition to those listed above that Vendor believes to be relevant to this project. The requested information must include identification of the product, length of experience, the capacity in which the proposed individual worked (that is, design, development, testing, support, etc.), general project description, and a description of the individual's responsibilities relating to the products.

5. FUNCTIONAL SERVICE REQUIREMENTS

- 5.1 Vendor must provide on-site services for database management and administration to support troubleshooting and the day-to-day operations of the agency. This support must include, but is not limited to the following:
- 5.1.1 **Types of Service to be Provided**
 - 5.1.1.1 Sybase application support
 - 5.1.1.2 Database modeling
 - 5.1.1.3 Database management
 - 5.1.1.4 Performance tuning
 - 5.1.1.5 Maintenance of data integrity
 - 5.1.1.6 Problem resolution
 - 5.1.1.7 Second Level support for Jr. Level DBA staff
 - 5.1.1.8 Knowledge transfer to Jr. Level DBAs
 - 5.1.2 **Other Service Requirements** - Vendor personnel must provide the following services
 - 5.1.2.1 Must work onsite at MDOT Administration Building, Jackson Mississippi
 - 5.1.2.2 Must work 8-5, Monday through Friday. (Exceptions include State designated holidays and pre-arranged personal leave.)
 - 5.1.2.3 Must be available for limited weekend work hours on a pre-arranged basis.
 - 5.1.2.4 Must provide on-call service support weekdays, 24 hours per day, Monday through Friday.
 - 5.1.2.5 Must provide general DBA ad hoc support services as the need arises.
 - 5.1.2.6 Must provide written weekly status reports.
 - 5.1.2.7 Must provide daily input and feedback and must work with existing DBA staff as well as MDOT management personnel.
 - 5.2 **Database Enhancements** – Proposed personnel must work with MDOT staff to design, develop, and implement database system enhancements by mutual agreement between vendor and agency.
 - 5.3 **Structured Migration Services** - Vendor must discuss his/her preference for structured migration procedures. Describe the process or processes that proposed personnel have performed. Identify two verifiable references for projects in which this (or these) approaches were used by the proposed individual.

6. **Mentoring And Training Services** – Vendor must provide training and mentoring services to MDOT DBA staff to familiarize them with best practices, uses, and operations in utilizing the Sybase database application enhancements and/or fixes as they apply to the MDOT applications. Vendor must:

- 6.1 Assist in training up to three (3) DBA staff in database administration, maintenance and other DBA specific issues.
- 6.2 Provide lesson's-learned knowledge transfer to agency staff on all enhancements and changes made to the existing database environment during the resulting contract period.
- 6.3 Vendor must develop recommended guidelines for consistent continuation of the database administration functions by the agency staff after completion of this project. This must be provided as written documentation of processes, procedures, changes, etc.

7. **REFERENCE/INTERVIEW REQUIREMENTS**

- 7.1 Vendor must provide a telephone number for the proposed individual to be contacted directly for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 7.2 Individuals may be required to attend an on-site interview at MDOT. All costs associated with the on-site interview will be the responsibility of the vendor.
- 7.3 The proposed individual must be proficient in spoken and written English.
- 7.4 The proposed individual must be a U.S. citizen or the individual must meet and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 7.5 An Experience Questionnaire must be completed and submitted with vendor's response for the proposed individual. A copy of the Experience Questionnaire is attached. The information provided in the Experience Questionnaire must meet the minimum length of time per specification. Individuals who do not meet the minimum specifications required may be eliminated from consideration.
- 7.6 A copy of the individual's resume must be included with this proposal response. Proposals received without resumes will be eliminated from consideration. However, ITS will not use a resume to add experience to the Experience Questionnaire. The Experience Questionnaire must certify the amount of experience in months and the applicable specification(s) met by each project.

8. **OTHER REQUIREMENTS**

- 8.1 Vendor must provide one individual to work for a maximum of 1,200 hours to provide database administration, maintenance, and support for MDOT.
- 8.2 The contract period for this assignment will begin as soon as all parties agree on the contractual arrangements and will extend for a minimum six (6) month period. At the end of the initial contract period, the agency reserves the right to negotiate an additional term.
- 8.3 Vendor must specify the cost in terms of an hourly rate to provide an individual with the needed skills and the experience level designated in this LOC. The rate must be fully loaded and include all necessary expenses, including travel expenses to post an individual onsite at the Jackson, Mississippi location.
- 8.4 Vendor must specify the total project costs below:
 - 8.4.1 Hourly Rate \$ _____
 - 8.4.2 Total Cost for 1200hours \$ _____
 - 8.4.3 Other Cost (Specify) \$ _____
 - _____ \$ _____
 - _____ \$ _____
 - _____ \$ _____
 - 8.4.4 Change Order Rate \$ _____
 - 8.4.5 Change Order Rate Period _____ years
- 8.5 Vendor must specify a change order rate (or rates) that will be guaranteed should the agency identify a need for future enhancements or for services outside the scope of this project. The rate must be fully loaded and include all necessary expenses, with the exception of travel expenses. Vendor must specify the time period for which his/her company is willing to extend this change order rate.
- 8.6 The State will use all cost, reference, experience, interview(s) and value added information to evaluate the lowest and best responder.

9. DELIVERY INSTRUCTIONS

- 9.1 Vendor must label each page of proposal with the following information:
Response to Project #34816 – MDOT DBA Services
 _____ (Insert Company Name) Page ____ of ____
- 9.2 Vendor must deliver this response to **Patricia Whitley** at ITS by the date and time specified above. Responses may be delivered by hand, via mail or by fax. **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 Patricia Whitley at telephone number 601 359-2634 (email address: whitley@its.state.ms.us) to verify the receipt of their proposals. Proposals received after the deadline will be rejected.

EXPERIENCE QUESTIONNAIRE – Joe Smoe – Network Administrator

The information provided below will be used to calculate experience points and to contact references. If one project included more than one specification, you can reference the specifications in one table (See example below). The information provided below must meet the minimum length of time per specification.

Example below:

Specification	4.1.2.Sybase Server –; 4.2.1. DB Artisian
Entity	ABC Company
Supervisor’s Name	Joe Smoe
Supervisor’s Title	Head Honcho
Supervisor’s Telephone #	555-555-5555
Supervisor’s E-Mail Address	jsmoe@abccompany.com
Length of Project	May 1999 – May 2001 (24 months)
Brief Description of Project	The ABC project allows bankers to share information on-line pertaining to individuals credit reports.

Specification	
Entity	
Supervisor’s Name	
Supervisor’s Title	
Supervisor’s Telephone #	
Supervisor’s E-Mail Address	
Length of Project	
Brief Description of Project	

Specification	
Entity	
Supervisor’s Name	
Supervisor’s Title	
Supervisor’s Telephone #	
Supervisor’s E-Mail Address	
Length of Project	
Brief Description of Project	

PROJECT NUMBER 34816
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
INSERT NAME OF VENDOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
MISSISSIPPI DEPARTMENT OF TRANSPORTATION

This Professional Services Agreement (hereinafter referred to as “Agreement”) is entered into by and between INSERT NAME OF VENDOR, a SPECIFY STATE OF INCORPORATION corporation having its principal place of business at SPECIFY BUSINESS ADDRESS (hereinafter referred to as “Contractor”), 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 Mississippi Department of Transportation located at 401 North West Street, Suite 2041, MDOT Administration Building, Jackson, Mississippi 39201 (hereinafter referred to as “Customer”). ITS and Customer are sometimes collectively referred to herein as “State”.

WHEREAS, Customer has a need for the professional services described herein in Article 2, and

WHEREAS, Contractor agrees to render said services;

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

ARTICLE 1 PERIOD OF PERFORMANCE

1.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue until the close of business on INSERT DATE CONTRACT ENDS. At the end of the initial term, this Agreement may, upon the written agreement of the parties, be renewed for an additional term, the length of which will be agreed upon by the parties. Under no circumstances, however, shall this Agreement be renewed beyond INSERT A SPECIFIC DATE. Sixty (60) days prior to the expiration of the initial term or any renewal term of this Agreement, Contractor shall notify Customer and ITS of the impending expiration and Customer shall have thirty (30) days in which to notify Contractor of its intention to either renew or cancel the Agreement.

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

ARTICLE 2 SCOPE OF SERVICES

Contractor shall perform all work specified in the Statement of Work attached hereto as “Exhibit A” and incorporated herein by reference. NOTE TO TECHNOLOGY CONSULTANT: IF CONTRACTOR IS TO BE PAID BY THE HOUR, YOU MAY TYPE THE SCOPE OF SERVICES HERE OR ATTACH A SEPARATE EXHIBIT A. HOWEVER, IF CONTRACTOR’S PAYMENT IS BASED ON HIS COMPLETION OF DELIVERABLES, YOU MUST USE AN EXHIBIT A SIMILAR TO THE ONE INCLUDED WITH THIS CONTRACT AT THE END.

ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT

3.1 As consideration for the performance of this Agreement, Customer shall pay Contractor \$INSERT AMOUNT per hour for the actual number of hours worked, not to exceed INSERT # hours. It is understood by the parties that travel, subsistence and any related project expenses are included in this hourly rate. No additional costs will be added to the monthly invoices for such expenses. It is expressly understood and agreed that in no event will the total compensation to be

paid hereunder exceed the specified sum of \$INSERT AMOUNT . Contractor shall keep daily records of the actual number of hours worked and of the tasks performed and shall immediately supply such records to Customer upon request.

3.2 Contractor shall submit an invoice monthly with the appropriate documentation to Customer for any month in which services are rendered. Upon the expiration of this Agreement, Contractor shall submit the final invoice with appropriate documentation to Customer for payment for the services performed during the final month of this Agreement. Customer agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

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

ARTICLE 4 WARRANTY

The Contractor represents and warrants for a period of ninety (90) days from performance of the service, 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, Contractor shall perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services.

ARTICLE 5 EMPLOYMENT STATUS

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

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

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

5.4 Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

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

ARTICLE 6 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or student body, will be asked to leave the premises and may be

suspended from further work on the premises. All Contractor employees and subcontractors who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy.

ARTICLE 7 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 8 ASSIGNMENT AND SUBCONTRACTS

8.1 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.

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

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

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

ARTICLE 9 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Customer for the payments or performance due under this Agreement, Customer shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Customer shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 10 TERMINATION

10.1 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) Customer may terminate the Agreement in whole or in part upon thirty (30) days written notice to Contractor if Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Customer may terminate the Agreement for any reason after giving thirty (30) days written notice specifying the effective date thereof to Contractor. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

10.2 In the event Customer terminates this Agreement, Contractor shall receive just and equitable compensation for satisfactory work completed by Contractor and accepted by Customer prior to the termination. Such compensation shall be based upon the amounts set forth in the Article herein on “Consideration and Method of Payment”, but in no case shall said compensation exceed the total fixed price of this Agreement.

10.3 Notwithstanding the above, Contractor shall not be relieved of liability to Customer for damages sustained by Customer by virtue of any breach of this Agreement by Contractor, and Customer may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due Customer from Contractor are determined.

ARTICLE 11 GOVERNING LAW

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

ARTICLE 12 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 13 SEVERABILITY

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

ARTICLE 14 CAPTIONS

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

ARTICLE 15 HOLD HARMLESS

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

ARTICLE 16 THIRD PARTY ACTION NOTIFICATION

Contractor shall give Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor’s performance under this Agreement.

ARTICLE 17 AUTHORITY TO CONTRACT

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

ARTICLE 18 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, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchlitter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Customer's address for notice is: SPECIFY NAME, TITLE, AGENCY NAME & ADDRESS FOR CUSTOMER. The Contractor's address for notice is: SPECIFY NAME, TITLE, COMPANY NAME & ADDRESS. 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 19 RECORD RETENTION AND ACCESS TO RECORDS

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

ARTICLE 20 INSURANCE

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

ARTICLE 21 DISPUTES

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

ARTICLE 22 COMPLIANCE WITH LAWS

Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Contractor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 23 CONFLICT OF INTEREST

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

ARTICLE 24 SOVEREIGN IMMUNITY

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

ARTICLE 25 CONFIDENTIAL INFORMATION

Contractor shall treat all Customer data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Customer. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering

divulgence of such information, Contractor shall promptly inform Customer and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Contractor following any termination or completion of this Agreement.

ARTICLE 26 EFFECT OF SIGNATURE

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

ARTICLE 27 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

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

ARTICLE 28 NON-SOLICITATION OF EMPLOYEES

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

ARTICLE 29 ENTIRE AGREEMENT

29.1 This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto. The RFP No. 3303 and Contractor's Proposal in response to RFP No. 3303 are hereby incorporated into and made a part of this Contract.

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

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 3303 and written addenda, and
- D.** Contractor's Proposal, as accepted by Customer, in response to RFP No. 3303 .

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

ARTICLE 30 STATE PROPERTY

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

ARTICLE 31 SURVIVAL

Articles {list the article numbers which pertain to Awarranty; Agoverning laws; Ahold harmless; Arecord retention; Asovereign immunity; Aconfidential information; Aownership of documents; Anon-solicitation of employees} 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 32 DEBARMENT AND SUSPENSION CERTIFICATION

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

ARTICLE 33 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions.

ARTICLE 34 NETWORK SECURITY

Contractor and Customer 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, Contractor and Customer 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. Contractor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Contractor'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 Contractor 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 35 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 Customer's or Contractor's contractual obligations, financial or otherwise, contained within this Agreement.

ARTICLE 36 PERSONNEL ASSIGNMENT GUARANTEE

Contractor guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement as long as the personnel are employed by the Contractor and are not replaced by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Contractor further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Contractor to so provide these persons shall entitle the State to terminate this Agreement for cause. Contractor agrees to pay the Customer fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Contractor's employment or replacement by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Contractor may substitute qualified persons in the event of the separation of the incumbents therein from

employment with Contractor or for other compelling reasons that are acceptable to the State, and may assign additional staff to provide technical support to Customer. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Customer. The Contractor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Customer. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

ARTICLE 37 LIQUIDATED DAMAGES

NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON LIQUIDATED DAMAGES.

It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Customer. In the event of a delay as described herein, Contractor shall pay Customer, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of SPECIFY AMOUNT dollars (\$INSERT #) per day for each calendar day of delay caused by Contractor. Customer may offset amounts due it as liquidated damages against any monies due Contractor under this Agreement. Customer will notify Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date Customer deducts such sums from money payable to Contractor. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Customer.

ARTICLE 38 RETAINAGE

NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON RETAINAGE/HOLD-BACK, WHEN THE CONTRACTOR IS PAID BY DELIVERABLE

To secure the Contractor's performance under this Agreement, the Contractor agrees the Customer shall hold back as retainage INSERT AMOUNT OF RETAINAGE percent (INSERT NUMBER %) of each amount payable under this Agreement. The retainage amount will continue to be held until final acceptance of the deliverables by the Customer.

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

**State of Mississippi, Department
of Information Technology Services,
on behalf of Mississippi Department of
Transportation**

Insert Name of Vendor

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter _____

Printed Name: _____

Title: Executive Director _____

Title: _____

Date: _____

Date: _____

Exhibit A

Scope of Services

Schedule of Payment Deliverables

Deliverable	Description	Date Due	Payment Amount