

**Title 12: Mississippi Department of Finance and Administration
Part 9: Office of Personal Service Contract Review Rules and Regulations**



**OFFICE OF PERSONAL SERVICE
CONTRACT REVIEW
RULES AND REGULATIONS**

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INTRODUCTION: Procurement in Mississippi

0.1 Procurement Organization

State government procurement of goods and services is administered by the Mississippi Department of Finance and Administration (“DFA”) with approval by the Public Procurement Review Board (“PPRB”) and the Mississippi Department of Information Technology Services (“ITS”) with approval by the ITS Board. Agencies who are unsure which rules and regulations govern the procurement of specific goods or services should contact DFA or ITS for assistance in determining the appropriate purview. Contact information can be found on each Agency’s website:

- **DFA:** www.dfa.ms.gov
- **ITS:** www.its.ms.gov

0.2 DFA and the PPRB

Administrative staff for the PPRB is housed at DFA. PPRB has authority to approve:

0.2.1 Building and Construction

Mississippi Code Annotated §§ 31-11-1, *et seq.* defines the duties and responsibilities of the Bureau of Building, Grounds, and Real Property Management (BOB) at DFA, which acts as the building authority for the state. BOB contracts with architects, engineers, contractors, and suppliers. Certain BOB actions shall be approved by PPRB as required by Mississippi Code Annotated § 27-104-7. More information can be found in the BOB Manual on the DFA website.

0.2.2 Real Property (Leases)

Mississippi Code Annotated § 29-5-2(c) gives DFA and PPRB authority to approve leases or rental agreements by any state Agency. The Real Property Management (“RPM”) division of the Bureau of Building, Grounds, and Real Property Management at DFA is responsible to supervise the lease and rental of space by state Agencies. Such rentals and leases shall be compliant with Mississippi Code Annotated § 27-104-7 and the RPM Leasing Manual, which can be found on the DFA website.

0.2.3 Commodities and Equipment (non-IT)

The Office of Purchasing, Travel, and Fleet Management (“OPTFM”) at DFA supervises the purchase, lease-purchase, lease, and rental of any commodities or equipment by Agencies under the purview of PPRB. OPTFM has approval authority over all sales or transfers of personal property owned by Agencies other than items under the jurisdiction of ITS. Procurement of non-information technology (“IT”) related commodities is governed by Mississippi Code Annotated §§ 31-7-1, *et seq.* and the OPTFM Procurement Manual, which can be found on the DFA website.

0.2.4 Personal and Professional Services (non-IT)

These rules and regulations govern the procurement of *non-IT personal and professional services and all contract workers*, including contract workers who work in an Agency IT department. Additional information about the purview of these rules and the authority of the PPRB as it relates to personal and professional services can be found in Chapter 1. Agencies may also contact the Office of Personal Service Contract Review (“OPSCR”) at DFA for additional information.

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0.3 ITS and the ITS Board

ITS was created to maximize the use and benefit of IT in state government. Mississippi Code Annotated §§ 25-53-1, *et seq.* outlines the duties and responsibilities of ITS, including the acquisition of IT for all state Agencies and the institutions of higher learning. The ITS procurement policies and procedures can be found in the Procurement Handbook on the ITS website.

0.4 The Procurement Portal and the Transparency Website

Procuring Agencies can post items on the procurement portal and the Transparency website using MAGIC.¹ The Mississippi Management and Reporting System (“MMRS”) office at DFA is responsible for the operation and management of MAGIC. Agencies who encounter technical issues with or have any questions regarding MAGIC, the procurement portal, or the Transparency website should contact MMRS for additional information or assistance. As of the effective date of these rules and regulations, the easiest way to contact MMRS is to email mash@dfa.ms.gov. Additional information can be found on the DFA website.

0.5 Additional Resources

In addition to these Agencies, the following organizations provide excellent opportunities for education and networking for any government employee involved in purchasing and procurement. Additional information can be found on each organization’s website.

- **MAGPPA:** Mississippi Association of Government Purchasing and Property Agents
www.magppa.org
- **NASPO:** National Association of State Procurement Officials
www.naspo.org
- **NIGP:** National Institute of Governmental Purchasing
www.nigp.org

¹ The procurement portal, the Transparency website, and MAGIC are defined in Chapter 2.

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CHAPTER 1:
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1.1 Public Procurement Review Board

The Public Procurement Review Board (“PPRB”) promulgates rules and regulations for the selection of personal and professional service contractors pursuant to its authority in Mississippi Code Annotated § 27-104-7.

1.1.1 Membership of PPRB

Mississippi Code Annotated § 27-104-7 (1) provides that PPRB is to be composed of three individuals appointed by the Governor with the advice and consent of the Senate; two individuals appointed by the Lieutenant Governor with the advice and consent of the Senate; and the Executive Director of the Mississippi Department of Finance and Administration (“DFA”) serving as an *ex officio* and nonvoting member. The PPRB appoints the Executive Director of DFA to make day-to-day administrative decisions on behalf of the Board.

The terms of PPRB members shall be a period of four years from the expiration date of the previous term. PPRB members shall continue to serve until such time as the member’s successor is duly appointed and qualified, regardless as to whether the four-year term has expired.

1.1.2 Authority and Duties of PPRB

As it relates to personal and professional service contracts, the powers and responsibilities of PPRB are delineated in Mississippi Code Annotated § 27-104-7. As of the effective date of these rules, those powers include:

- Promulgating the rules and regulations herein;
- Approving personal and professional service contracts in excess of \$75,000.00;
- Requiring mandatory standards for competitive procurement, record keeping, financial responsibility, and monitoring contract performance;
- Reject any contract submitted for review or approval;
- Establishing a list of preapproved vendors with whom Agencies may contract without prior approval of PPRB;
- Approving contracts with other state entities not under the purview of PPRB;
- Evaluating and presenting recommendations on governmental privatization;
- Authorizing personal and professional service contracts be effective for more than one year provided the Agency is appropriated the funding;
- Requesting the Office of the State Auditor (“OSA”) to conduct a performance audit on any personal or professional service contract;
- Preparing an annual report to the Legislature regarding contracts for services;
- Developing standards for approval of sole source contracts;
- Enforcing Mississippi Code Annotated §§ 31-7-401 through 31-7-423, which are the Best Practices for using Requests for Proposals and Requests for Qualifications; and
- In conjunction with the Mississippi State Personnel Board, to define the allowable legal relationship between contract workers (as opposed to independent contractors) and the Agencies under PPRB purview.

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1.1.3 Prohibition Against Undue Influence

No member of PPRB shall use their official authority or influence to coerce, by threat of discharge from employment, or otherwise, the contracting for personal and professional services.

1.1.4 Scope of PPRB Purview

PPRB has authority to promulgate rules and regulations governing the solicitation and selection of personal and professional services for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the following exceptions:

- personal and professional service contracts entered into by Agencies employing only non-state service employees as defined in Mississippi Code Annotated § 25-9-107(c), the individual state institutions of higher learning, and the Mississippi Department of Transportation;
- personal and professional service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services;
- contracts with the professions specifically exempted from PPRB oversight by Mississippi Code Annotated § 27-104-7. As of the effective date of these rules, contracts with the following professionals to provide services in their professional capacity are exempt: attorneys, accountants, actuaries, auditors, architects, engineers, anatomical pathologists, and utility rate experts.
- Agency-specific contracts for which the Legislature granted a specific exemption in Mississippi Code Annotated § 27-104-7 or any other section of the Mississippi Code. It is the responsibility of each Agency to assert its own exemptions. *See Chapter 12.*

1.1.4.1 Limitation on PPRB Purview

Any relationship which is something *other than* a contractual relationship is not governed by these rules and regulations and is outside the scope of PPRB's oversight authority.

1.1.5 Substance of PPRB Approval

The sole issue presented to and approved by PPRB with regard to procurement and contracting for personal and professional services is whether the Agencies under PPRB's purview are in compliance with the *PPRB OPSCR Rules and Regulations*. PPRB does *not* approve:

- the validity or extent of the Agency's need for personal and professional services;
- the Agency's legal authority to contract for the personal and professional services;
- whether the contract at issue complies with its funding source requirements; or
- any issue other than compliance with these rules and regulations.

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Any subjective decision not specifically enunciated herein is left to the discretion of the procuring Agency. The judgment of PPRB will not be substituted for that of a procuring Agency where the procuring Agency has a legitimate business reason supporting any such decision.

For example, Agencies have full discretion as to the pricing structure used in a particular solicitation (i.e., unit pricing, flat fees, contingency fee, etc.). The Agency should use that discretion to obtain maximum value for itself and to maximize the purchasing power of the public funds with which it has been entrusted. Where the Agency has a legitimate business reason supporting its choice of pricing structure, it is left to the sole discretion of the procuring Agency as to whether the pricing structure chosen achieves maximum value.

1.1.6 Amendments to Mississippi Code Annotated § 27-104-7

Should Mississippi Code Annotated § 27-104-7 be revised such that the powers and duties of PPRB are expanded, modified, or removed, these rules shall be interpreted to reflect the statutory powers and duties of PPRB as of the date of the Board’s exercise of any such power or duty.

1.1.7 Policy and Procedure for PPRB Meetings

1.1.7.1 Chair and Vice-Chair

The members of PPRB shall elect a Chair from among the membership, and he or she shall preside over the meetings of PPRB. PPRB shall elect a Vice Chair, who shall preside over the meetings in the absence of the Chair.

1.1.7.2 Quorum

No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three members shall be a quorum.

1.1.7.3 Valid Action

No action shall be valid unless approved by a majority of the members present and voting, entered upon the minutes of the Board and signed by the Chair.

Even so, procuring Agencies may execute contracts immediately after being approved at a PPRB meeting. Agencies are not required to delay contract execution until minutes are approved by the Board and signed by the Chair.

1.1.7.4 Meeting Minutes

Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Chairs of the Accountability, Efficiency and Transparency Committees (“AET Chairs”) and the Chairs of the Appropriations Committees (“Appropriations Chairs”) of the Mississippi State Senate and the Mississippi House of Representatives.

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1.1.7.5 Contract Rejection

If PPRB rejects any contract submitted for approval, PPRB shall clearly set out the reasons for its action, including, but not limited to, the policy that the Agency has violated in its submitted contract and any corrective action the Agency may take to amend the contract to comply with the rules and regulations.

1.1.7.6 Notice of Public Meeting

Notice of PPRB meetings, meeting Agendas, and meeting Minutes may be found posted on the DFA website.

1.1.8 PPRB's Discretionary Authority

PPRB shall have the discretion to grant exceptions to these rules and regulations when it is determined the deviation from these rules and regulations did not affect the competition, fairness, or transparency of the procurement process. Additionally, statutory irregularities will not result in rejection of the procurement by PPRB² where PPRB determines *all* of the following criteria are met:

- The statutory noncompliance at issue has no specifically legislated consequence;
- There was not a substantial departure from the statutory requirements;
- The parties did not act intentionally, willfully, or knowingly;
- The optimal result was achieved by the procurement;
- There would be no actual loss or harm to the Agency;³
- There is no prejudice to any party or the Agency;
- The integrity and trustworthiness of the procurement was not affected; and
- The competition, fairness, or transparency of the procurement process was not affected.

Agencies seeking an exception for a statutory irregularity shall submit a memorandum stating the reasons PPRB should grant the exception pursuant to the standard set forth in this Section.

² PPRB administers the law as enacted by the Legislature and interpreted by the Courts. Where there has been no declaration from the judicial branch regarding any statute which affects the procurement process governed by these rules and regulations, PPRB is left to determine what the statute means and how it should be applied. In so doing, PPRB will assume that the Legislature did not intend that the statute would have an absurd purpose or would lead to an absurd result. PPRB recognizes Mississippi Courts have held statutes are directory rather than mandatory where the statute does not express a specific consequence for failure to comply. Finally, PPRB adopts the common law harmless error doctrine such that a procurement will not be rejected due to statutory noncompliance if PPRB can confidently say, after reviewing the entire procurement file, the noncompliance was harmless. *See Clark v. Bryant*, 253 So. 3d 297, 301-302 (Miss. 2018); *King v. Mississippi Military Department*, 245 So. 3d 404, 408 (Miss. 2018); *USF&G v. Conservatorship of Melson*, 809 So. 2d 647, 660 (Miss. 2002); *Cook v. Mardi Gras Casino Corp.*, 697 So. 2d 378, 382 (Miss. 1997); and *Smith v. State*, 986 So. 2d 290, 300 (2008).

³ To determine whether there is an actual loss, PPRB will consider whether the Agency has demonstrated that the personal and professional services received are valued at or above the price the Agency will pay for those services. *See Paxton v. Baum*, 59 Miss. 531 (1882) (Where a contract was deemed unenforceable, the county would be liable for the value of the benefit received, which does not necessarily mean the contract price). The procuring Agency shall have the burden to demonstrate the price paid represents fair market value ("FMV") to the satisfaction of the PPRB.

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In addition to authority to grant exceptions, PPRB shall encourage Agencies to take any corrective action needed to bring an Agency into compliance with these rules and regulations and any relevant statutory requirements. Where corrective action results in compliance, no exception is required.

1.1.9 Rule Making Oral Proceedings and Declaratory Opinions

Any rule making oral proceedings or declaratory opinion issued by PPRB shall be governed by the *Mississippi Administrative Procedures Law*, codified at Mississippi Code Annotated §§ 25-43-1.101, *et seq.* Any request for such a proceeding or opinion shall be submitted to the Director of the Office of Personal Service Contract Review, who shall forward it to PPRB. PPRB will issue appropriate orders regarding procedure for the requested action and vote on final resolution of any such request at a regularly scheduled meeting.

1.2 Office of Personal Service Contract Review

With regard to contracts for personal and professional services, the Office of Personal Service Contract Review (“OPSCR”) at DFA serves as necessary administrative support to PPRB, as provided for by Mississippi Code Annotated § 27-104-7(1)(e).

1.2.1 Submission for PPRB Approval

Pursuant to Mississippi Code Annotated § 27-104-7(3), submissions for PPRB approval shall be made to OPSCR sufficiently in advance of the PPRB meeting and in the manner prescribed by PPRB. Submission deadlines and other requirements set by PPRB may be found on the DFA website.

If, after review of the contract submission, OPSCR does not intend to recommend that PPRB approve the contract, OPSCR shall have the sole discretion to retain the contract for one additional month before it will be presented to PPRB in the event OPSCR needs additional time to further review the Agency’s procurement process and/or work with the procuring Agency to remedy deficiencies.

1.2.2 Submission Requirements

The entire Agency Procurement File (*see Appendix D*) shall be submitted to OPSCR when an Agency is requesting PPRB approval of any new contracts, including unredacted copies of every response to the solicitation (*e.g., all bids received*).

When contract modifications are submitted, the original contract and all prior contract modifications shall be contained in the contract number in MAGIC⁴ such that OPSCR is able to evaluate the history of the contract.

⁴ As of the effective date of these rules and regulations, this does not apply to contracts for contract workers. The original contract worker contract and all prior contract modifications shall be made available to OPSCR when a new modification is submitted for PPRB approval. If, at any point after the effective date of these rules and regulations, MAGIC or MAGIC EC (or any subsequent state enterprise resource management system) has the capacity to store contract documents for contract workers and transmit those documents to OPSCR for review, submission through that system will be required.

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PPRB delegates to the Director of OPSCR the authority to require any documentation necessary to ensure contracts submitted for PPRB approval are compliant with the rules and regulations herein. Additional information regarding documentation required for submission to OPSCR can be found on the DFA website.

1.2.3 Compliance Reviews Throughout the Solicitation Process

An Agency may request a review of its solicitation document and/or the action taken at any point in the solicitation process to ensure compliance with the rules and regulations herein. To request such a review, the procuring Agency shall contact the Director of OPSCR. OPSCR shall have the sole direction as to whether to grant such a request, to impose any reasonable requirements it deems necessary for review, and to identify the timeline for completion of the review. Absent extraordinary circumstances, OPSCR shall advise any Agency requesting a compliance review whether it will grant the request and identify the timeline to complete the review within five business days of receiving the request.

1.2.4 Agency Procurement Officials

On or before January 1 of each year, and every time a procurement officer is hired, each state Agency shall provide to the Director of OPSCR the names, titles, telephone numbers, and email addresses of every Agency official responsible for the procurement of and contracting for personal and professional services.

1.3 PPRB OPSCR Rules and Regulations

The regulations herein, which are promulgated by PPRB in accordance with Mississippi Code Annotated § 27-104-7, shall be referred to collectively as the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, which may also be cited as “*PPRB OPSCR Rules and Regulations*.” The purpose of the *PPRB OPSCR Rules and Regulations* is to set forth rules and regulations, along with other pertinent information, which Agencies should follow in the procurement of personal and professional services. Further, this manual shall serve as a source of information for personal and professional service contractors as to the proper procedures that shall be followed in doing business with the State of Mississippi.

1.3.1 Application of the PPRB OPSCR Rules and Regulations

The policies and procedures set forth herein apply only to contracts for personal and professional services requiring approval by PPRB and the process used to procure those contracts. *See Section 1.1.4.*

1.3.2 Conflicts with Guidelines of Funding Source

These regulations shall apply to every expenditure of public funds via a contract for personal or professional services, irrespective of source; however, in the event of a conflict, the guidelines of the funding source shall prevail, including but not limited to a grant, a gift, or self-generated funds. In the event of such a conflict, the Agency shall make a written determination citing the funding source requirement, the basis of the conflict with these regulations, and the action taken by the Agency to be compliant with the funding source.

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1.3.3 Interpretation of, Purpose, and Policies of the Regulations

These regulations establish policies, procedures, and guidelines relating to the procurement, management, and control of personal and professional service contracts under the authority of these regulations. These regulations shall be construed and applied primarily to promote competition, fairness, and transparency in the procurement process in order to obtain maximum value for the procuring Agency. The regulations shall also be construed and applied to make public procurement processes more reliable, to provide for increased public confidence in the procedures used to obtain personal and professional services, to maximize to the fullest extent practicable the purchasing value of public funds of the state, and to provide safeguards which promote integrity in the procurement process.

1.3.4 Gender References and Singular/Plural

In these regulations, unless the context requires otherwise, words in the singular include the plural, and those in the plural include the singular; and words of a particular gender include any gender and the neutral, and words of a neutral gender may refer to any gender.

1.3.5 Severability

If any provision of the *PPRB OPSCR Rules and Regulations* or any application thereof is held invalid, such invalidity shall not affect any other provision or application of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

1.3.6 Duration

These regulations, when approved by PPRB as authorized by Mississippi Code Annotated § 27-104-7(f), shall be in effect as written until amended or repealed by PPRB or by law.

1.3.7 Amendments to the *PPRB OPSCR Rules and Regulations*

Any changes to the rules and regulations governing personal and professional service contracts shall be submitted to the AET Chairs and the Appropriations Chairs at least 15 calendar days before PPRB votes on the proposed changes. Any changes to the rules and regulations adopted by PPRB shall be promulgated in accordance with the *Mississippi Administrative Procedures Law*, codified at Mississippi Code Annotated § 25-43-1.101, *et seq.*

1.3.8 Service and Calculation of Time

Service of any notice required by these rules and regulations shall be in compliance with Mississippi Code Annotated § 25-43-1.106. Unless specifically stated otherwise, all time limitations in these rules and regulations shall be calculated as described in Mississippi Code Annotated § 25-43-1.106.

1.3.9 Effective Date

The rules and regulations herein shall become effective on September 6, 2024. Compliance with these rules and regulations is required for: (1) any solicitation issued after this date; (2) any contract entered after this date which did not require a formal solicitation; and (3) any contract amendments entered after this date. Where there is a conflict between these

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rules and regulations and any Order of the PPRB issued prior to the effective date, the Order shall no longer be considered precedent.

1.3.10 Conflicts with Agency Solicitation Document

Agencies are discouraged from including language in the solicitation document which conflicts with these rules and regulations. However, where an Agency's solicitation language plainly conflicts with any of the rules and regulations herein, the language providing wider latitude or more expansive opportunities to the participating vendors controls. While an Agency may provide more flexibility to vendors participating in the procurement process than allowed for in these rules and regulations, the Agency shall not provide less.

For example, if an Agency's solicitation document provides potential bidders more than three business days to request reconsideration of the terms of the solicitation, in conflict with Section 5.2.4, the number of days provided for in the solicitation document would control. However, if an Agency's solicitation document provided less than three business days to request reconsideration, Section 5.2.4's three-day requirement would control.

1.3.11 Notice

All vendors participating in a procurement pursuant to these rules and regulations are deemed to be on notice of all the rights and obligations imposed upon the vendor herein.

1.4 Rights and Responsibilities

These rules and regulations do *not* confer rights on any participant in the procurement process unless explicitly so stated. The following rights and responsibilities apply to any solicitation, contract, decision, or action which is subject to the *PPRB OPSCR Rules and Regulations*.

1.4.1 Requirement of Good Faith

All parties are required to act in good faith at all times during the processes governed by these rules and regulations.

1.4.1.1 Discovery of Bad Faith

Should any party discover an act of bad faith by any other party during the course of a procurement or an ongoing contract with the state, such discovery shall be reported to the Agency Head of the procuring Agency, PPRB, the AET Chairs, OSA, and where appropriate, the Public Integrity Division ("PID") of the Office of the Attorney General ("AGO").

Any such report to PPRB shall be made by reporting the matter to the Director of OPSCR, who will provide the information to PPRB. PPRB shall have full discretion to handle such reports on a case-by-case basis and may take any action it deems appropriate including, but not limited to, rescinding prior approval of a contract.

Vendors and the state have any and all remedies available in equity and/or at law if it is discovered a party or parties acted in bad faith. Any such remedies may be pursued in a Court of competent jurisdiction or under any relevant regulatory

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scheme. Any such action would be separate and distinct from the administrative procurement and approval process governed by these rules and regulations and shall have no effect on the processes herein.

1.4.2 Competition, Fairness, and Transparency

Agencies seeking to contract for personal and professional services have the responsibility to maximize competition to the extent practical, to treat all offerors or potential offerors fairly and equitably, and to provide a transparent and reliable process through which contract(s) will be awarded.

Because the procurement process governed by these rules and regulations is aimed at maximizing value in the provision of personal and professional services which meet the procuring Agency's needs, the requirement that an Agency promote the principles of competition, fairness, and transparency do not require that an Agency sacrifice its own legitimate business needs to do so. However, a procuring Agency shall not use this flexibility to limit the qualified offerors to a single vendor and/or declare a service provider a sole source.

The PPRB will not substitute its judgment for that of the procuring Agency where an Agency has made a subjective decision implicating the principles of competition, fairness, or transparency *and* the Agency has a legitimate business reason supporting the decision.

Where procuring Agencies are making decisions which implicate the principles of competition, fairness, or transparency at any point during the procurement process, a best practice is to place a contemporaneous memorandum in the Agency Procurement File explaining the decision and documenting the legitimate business reason(s) therefore.

1.4.3 Contract and Property Rights

Contract rights do not vest in any party until the contract is legally executed. Agencies procuring personal and professional services under these rules and regulations are under no obligation to award a contract following issuance of a solicitation.⁵

Property rights do not inure to any vendor until such time as services have been provided under a legally executed contract. No party responding to a solicitation issued pursuant to these rules and regulations has a legitimate claim of entitlement to be awarded a contract or to the provision of work thereunder.⁶ Procuring Agencies are under no obligation to award a contract following issuance of a solicitation and an Agency may terminate a legally executed contract at any time for the Agency's own convenience.

1.4.4 Cost of Participation in the Procurement Process

All parties shall bear their own respective costs incurred in participating in the procurement process. This includes, but is not limited to, the cost of preparation of any response to a

⁵ See *Miss. Dept. of Environmental Quality v. Pacific Chlorine, Inc.*, 100 So. 3d 432 (Miss. 2012).

⁶ A property interest protected by due process requires that the party claiming that interest have a "legitimate claim of entitlement" to a benefit. *The Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

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solicitation issued pursuant to these rules and regulations, cost associated with travel to pre-submission conferences and/or site visits, and any costs related to pursuit of a request for reconsideration regardless of the outcome. Nothing in Section 1.4.4 shall prevent an Agency from requiring a bond from any vendor requesting reconsideration.

1.4.5 Anti-Competitive Practices Prohibited

An anti-competitive practice is a practice among vendors which reduces or eliminates competition or restrains trade. Such practices include, but are not limited to, identical bidding, price fixing, rotating low bids, sharing business, tie-in sales, and group boycotts. Vendors are prohibited by federal and Mississippi law from collectively responding to a solicitation in a manner that controls directly or indirectly the price of the personal or professional service sought. Mississippi Code Annotated § 75-21-15.

1.4.5.1 Independent Price Determination

Every solicitation shall provide that by submitting a bid or other response, the bidder or offeror certifies that the price submitted was independently arrived at without collusion.

1.4.5.2 Reporting Anti-Competitive Practices

Anti-competitive practices shall be treated as an issue of bad faith as discussed in Section 1.4.1.1.

1.4.6 Ethics in Contracting

Ethics in any solicitation and/or contract entered, approved under, or otherwise subject to these rules and regulations shall be governed by the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121 and any opinions issued by the Mississippi Ethics Commission. Any questions regarding ethics in public procurement shall be directed to the Mississippi Ethics Commission. Failure of any party to comply with the Mississippi Ethics in Government laws shall be reported to the Mississippi Ethics Commission and shall also be treated as an issue of bad faith as discussed in Section 1.4.1.1.

1.4.7 Personal Liability

Pursuant to Mississippi Code Annotated § 31-7-57, state officials may be held personally liable for contracting in violation of law.

1.4.8 Right to Preserve Procurement

State Agencies spend significant staff time and resources issuing, evaluating, and awarding contracts. All Agencies have the right to make every reasonable effort to preserve any solicitation issued to the extent it can be preserved in compliance with these rules and regulations and any relevant statutory requirements.

For example, if an Agency issues a Notice of Intent to Award following a Request for Proposals to a vendor who will not accept the contract award, the Agency has the right to rescind the original Notice of Intent to Award and issue a new Notice of Intent to Award to the vendor with the second highest score, rather than cancel the solicitation.

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1.4.8.1 Written Determination Required

Where any Agency takes any action or makes a determination aimed at preserving its procurement, the Agency shall make a written determination explaining the action taken or the decision made and providing the Agency's reason therefor. Such determination shall be made part of the Agency Procurement File.

1.4.8.2 Preservation of Procurement is Not Required

An Agency is not required to preserve its procurement when the Agency determines it is in the Agency's best interest to cancel the solicitation. Nothing in these rules and regulations shall be construed to confer any grievance right to any participant in the procurement process due to cancellation of a solicitation.

1.4.9 Contractors Authorized to do Business in the State

All vendors who are awarded contracts shall be in compliance with Mississippi Code Annotated § 79-4-15.01 regarding authorization to transact business in Mississippi.

1.4.10 Agency Head Delegation

The Agency Head of any Agency procuring personal and professional services under these rules shall delegate the following responsibilities to one or more members of the Agency's staff:

- Procuring all personal and professional services needed by the Agency;
- Establishing programs for the inspection, testing, and acceptance of services;
- Ensuring Agency compliance with these rules and regulations;
- Ensuring contractor compliance with all contract terms and conditions.

1.4.11 Resolution of Contract Controversies

Any controversies arising under a contract subject to these rules and regulations shall be governed by the terms of the contract and relevant principles of contract law.

1.4.12 Appeal of Administrative Decision

There is no statutory right to seek judicial review of a decision made pursuant to these rules and regulations. A procuring Agency may proceed with contract execution and implementation immediately following PPRB approval of its contract(s). *See Section 1.1.7.3.*

1.5 Public Access to Procurement Documents

The Public shall have access to procurement records pursuant to the requirements of the *Mississippi Public Records Act of 1983* codified at Mississippi Code Annotated §§ 25-61-1 through 25-61-19. Additionally, any person or vendor who has submitted documents to an Agency in response to a solicitation issued under these rules and regulations has the protections provided in Mississippi Code Annotated §§ 75-26-1 through 75-26-19 and 79-23-1 with regard to its trade secrets and confidential commercial and financial information. *All Agencies and vendors involved in the procurement process should consult with their legal counsel regarding the applicability of the Mississippi Public Records Act.*

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1.5.1 Deadlines for Production of Public Records Tolled

When a procuring Agency is preparing or conducting a competitive procurement, the time limitations for producing public records regarding the procurement shall be tolled until the procuring Agency determines it will not issue the procurement, cancels the procurement, or issues a notice naming its intended awardee. Mississippi Code Annotated § 25-61-5(4).

1.5.2 Delay of Procurement Process Not Required

There is no requirement in these rules and regulations that a procuring Agency delay any aspect of the procurement process due to an outstanding request for public records.

1.5.3 Efficient Administration of Agency Obligations

Agencies have discretion under these rules and regulations to require vendors responding to Agency solicitations to take any action necessary for the efficient and effective administration of the Agency's procurement and obligations under the *Mississippi Public Records Act*, unless such action directly violates the *Mississippi Public Records Act*.

1.5.4 Public Information in Awarded Contracts

For all personal and professional service contracts which have been awarded (i.e., legally executed after all required approvals), the provisions of the contract containing services to be provided, the unit prices and overall price to be paid, and the term of the contract shall not be deemed a trade secret or confidential commercial or financial information, and shall be available for examination, copying, or reproduction in accordance with the Mississippi Public Records Act. Mississippi Code Annotated § 25-61-9(7).

1.5.5 Record Retention

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules of the Mississippi Department of Archives and History.

1.6 Statewide Strategic Sourcing

As required in Mississippi Code Annotated § 27-104-7(2)(f)(ii), from and after July 1, 2024, DFA shall conduct solicitations for personal and professional services where the total contract value will exceed \$75,000.00 for the following Agencies:

- Mississippi Department of Marine Resources
- Mississippi Department of Wildlife, Fisheries, and Parks
- Mississippi Emergency Management Agency
- Mississippi Development Authority

The role of the Statewide Strategic Sourcing staff at DFA shall be administration of the solicitation process. The Agencies shall provide any assistance required by DFA, including, but not limited to, evaluating the Agency's procurement needs, establishing a reasonable timeline for acquisitions, conducting market research, preparing the scope of services and specifications, evaluating offers, etc.

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DFA shall conduct solicitations in compliance with the rules and regulations herein and obtain initial approval of the resulting contract from PPRB. DFA shall *not* act as contracting agent for the listed Agencies.

Following the initial approval of the contract by PPRB, the Agency shall be responsible for execution, renewal, and general management of the contract, including any future approval by PPRB. The Agency shall be responsible for maintenance of all data in MAGIC at all times during the procurement and contracting process.

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2.1 Definitions

Unless specifically stated otherwise, the words defined in this chapter shall have the meaning set forth below whenever they appear in these rules and regulations. Any words or phrases which are not defined in this chapter shall have their usual and customary meaning.

- **Agency:** An entity under PPRB’s purview which is subject to these rules and regulations for the procurement of personal and professional services.
- **Agency Head:** The chief executive of an Agency, whether that person has the title Executive Director, Commissioner, or another title, and regardless of whether that person is appointed by the Governor, appointed by a governing Board, or otherwise appointed. The Agency Head shall also include those appointed as the chief executive of an Agency in an interim or temporary capacity, throughout the tenure of such an appointment.
- **Agency Procurement File:** The file maintained throughout the procurement process by the Agency which shall contain all documents required to demonstrate compliance with these rules and regulations, and/or otherwise relevant to the procurement, including all solicitation responses. *See Appendix D.*
- **Applicant:** A person or vendor submitting an application in response to a Request for Applications.
- **Award:** The act by an Agency of entering a contract with a particular vendor or vendors for personal or professional services pursuant to the requirements of these rules and regulations. An Agency may state its intention to award the contract immediately after evaluation of all responses to a solicitation, but the award does not occur until such time as (1) all required approvals have been obtained, including but not limited to PPRB approval, and (2) the contract is executed by all parties.
- **Best and Final Offer:** A vendor’s response to a procuring Agency’s request that vendors submit their last and most attractive price.
- **Bid:** A vendor’s response to an Invitation for Bids.
- **Bidder:** A person or vendor submitting a bid in response to an Invitation for Bids.
- **Contract:** Any agreement between at least two parties regardless of what the agreement may be called. As it relates to these rules and regulations, the contract shall be for the procurement of personal and professional services, shall be in writing, and shall contain all of the essential elements required to form a contract under Mississippi law.⁷

⁷ The Mississippi Supreme Court has held the essential elements required to form a contract are “(1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, *and* (6) no legal prohibition precluding contract formation.” *Mississippi Dep’t of Corr. v. Roderick & Solange MacArthur Just. Ctr.*, 220 So. 3d 929, 935 (Miss. 2017).

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- **Contract Modification:** Any alteration in any contract term(s) or provision(s) which is accomplished by mutual action of the parties to the contract. With regard to contracts procured pursuant to these rules and regulations, any such modification shall be in writing, signed by all parties, and where applicable, approved by PPRB.
- **Contractor:** Any person or vendor having a contract with a governmental body.
- **Contract Worker:** Contract personnel who do not meet the criteria to be deemed independent contractors by the Internal Revenue Service and who do not meet the criteria to be deemed state service or non-state service employees pursuant to Mississippi Code Annotated § 25-9-120. Such personnel are classified using a worker identification number (“WIN”).
- **Day:** Unless otherwise specified, a calendar day.
- **Designee:** Duly authorized representative of a person holding a superior position.
- **Discussions:** As allowed by Mississippi Code Annotated § 31-7-419(2), Discussions may be held with offerors who responded to an RFP or RFQ to promote understanding of the Agency’s requirements and the offeror’s proposal or qualification and/or to facilitate arriving at a contract that will be the most practicable and advantageous to the procuring Agency taking into consideration price and the other evaluation factors set forth in the RFP or RFQ. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals or qualifications.
- **Employee:** An individual who performs services for a governmental body by virtue of an employee/employer relationship with the governmental body.
- **Exclusion:** A process by which a specific vendor is deemed ineligible for future contract awards pursuant to Chapter 15 herein or similar processes by other federal, state, or local governmental entities. Sometimes called “Debarment”.
- **Fixed Price Contract:** A contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances.
- **Gratuity:** Anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- **Invitation for Bids:** All documents, whether attached or incorporated by reference, utilized for soliciting bids. Award is made to the responsive and responsible offeror who submitted the lowest price. Pursuant to Mississippi Code Annotated § 31-7-403, an Invitation for Bids is the preferred method of procurement.
- **MAGIC:** Mississippi’s Accountability System for Government Information and Collaboration; the state’s enterprise resource management system. Where applicable,

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references to MAGIC may also include MAGIC EC, which is the human resources function of the state's enterprise resource management system.

- **May:** Denotes the permissive.
- **No Cost Contract:** A contract in which there is no expenditure of state funds from any funding source (state, federal or other).
- **Offeror:** Person or vendor who submits a response to a Request for Proposals or Request for Qualifications.
- **Personal or Professional Services:** The provision of labor, time, or effort by a contractor, not usually involving the delivery of a specific end product other than that which is incidental to the required performance.
- **Proposal:** The document submitted by an offeror in response to a Request for Proposals. A proposal is usually requested in cases where the selection of a contractor is to be made on the basis of the performance that is offered rather than on that of price alone. A proposal may require an outline of details such as the vendor's qualifications and experience and the identification of problems and proposed solutions in addition to details of price.
- **Procurement:** The means of acquiring personal or professional services, including all functions which pertain to obtaining services (developing requirements, issuing solicitations, contract award, contract drafting) and all phases of contract administration.
- **Procurement Portal:** The Buying and Selling to Government in Mississippi website, which was created pursuant to Mississippi Code Annotated §§ 25-53-151 and 27-104-165. Agencies post procurement opportunities on the procurement portal through use of MAGIC. As of the effective date of these rules, the web address is https://www.ms.gov/dfa/contract_bid_search/.
- **Procuring Agency:** An Agency which is seeking to contract with a person or vendor for personal and professional services pursuant to the rules and regulations herein.
- **Qualifications:** The document submitted by an offeror to a Request for Qualifications to be used as the basis for a determination that the offeror is qualified or has specialized expertise to perform the scope of work or services required by the Agency. A qualification is usually requested in cases where the selection of a contractor is to be made on the basis of qualifications and experience rather than on that of price alone.
- **Request for Proposals:** All documents, whether attached or incorporated by reference, utilized for soliciting proposals from potential vendors. Award is made to the offeror who receives the highest score based on weighted evaluation criteria outlined in the Request for Proposals ("RFP") and may include discussions with offerors.
- **Request for Qualifications:** All documents, whether attached or incorporated by reference, utilized for soliciting qualifications from potential vendors. Award is made to the offeror who

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receives the highest score based on weighted evaluation criteria outlined in the Request for Qualifications (“RFQ”) and may include discussions with offerors.

- **Responsible:** A determination that a bidder, offeror, or applicant meets the minimum qualifications established by the Agency which were included in the solicitation. The procuring Agency shall have the sole discretion to establish minimum qualifications aimed at determining whether a vendor has the capability in all respects to fully perform the contract requirements, determining whether a vendor has the integrity and reliability which will assure good faith performance, and reducing the risk of a subsequent default or unsatisfactory performance by a vendor which would result in additional administrative costs to the Agency.
- **Responsive:** A determination that a bidder, offeror, or applicant submitted a response which conforms in all material respects to the requirements of the Agency’s solicitation.
- **Shall:** Denotes the imperative.
- **SPAHRs:** State Payroll and Human Resources System or any other state system that replaces SPAHRs, including MAGIC EC.
- **Solicitation:** Any document issued by an Agency for the purpose of soliciting responses from potential contractors relative to performing a state contract. The responses will be evaluated by the Agency to determine which, if any, potential contractor will be awarded a contract.
- **Transparency Website:** A portal created to promote transparency in government and spending, on which Agencies post executed copies of awarded contracts through use of MAGIC. As of the effective date of these rules, the web address is <https://www.transparency.ms.gov/>.

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2.2 Acronyms

As used in these rules and regulations, the following acronyms shall have the meaning set forth below:

- **AET:** Accountability, Efficiency, and Transparency (Legislative Committees)
- **AGO:** Mississippi Attorney General’s Office
- **BAFO:** Best and Final Offer
- **BOB:** Bureau of Building, Grounds, and Real Property Management (DFA)
- **DFA:** Mississippi Department of Finance and Administration
- **FMV:** Fair Market Value
- **IFB:** Invitation for Bids
- **IRS:** Internal Revenue Service of the United States Government
- **IT:** Information Technology
- **ITS:** Mississippi Department of Information Technology Services
- **MAGIC:** Mississippi Accountability System for Government Information and Collaboration
- **MAGIC EC:** MAGIC “Employee Central” - the Human Resources function of MAGIC
- **MAGPPA:** Mississippi Association of Government Purchasing and Property Agents
- **MMRS:** Mississippi Management and Reporting System (DFA)
- **NASPO:** National Association of State Procurement Officials
- **NIGP:** National Institute of Governmental Purchasing
- **OPSCR:** Office of Personal Service Contract Review (DFA)
- **OPTFM:** Office of Purchasing, Travel, and Fleet Management (DFA)
- **OSA:** Office of the State Auditor of Mississippi
- **PID:** Public Integrity Division (AGO)
- **PPRB:** Public Procurement Review Board
- **PVL:** Preapproved Vendor List
- **RFA:** Request for Applications
- **RFI:** Request for Information
- **RFP:** Request for Proposals
- **RFQ:** Request for Qualifications
- **RPM:** Real Property Management Division (BOB at DFA)
- **SPAHRS:** State Payroll and Human Resources System
- **WIN:** Worker Identification Number for Contract Workers

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Agencies have discretion to choose a procurement method which will result in obtaining the best value for the Agency. This chapter is intended to assist Agencies in determining which procurement method will best meet their needs.

- *When choosing a procurement method, determine whether the personal and professional services are exempt from procurement laws and regulations. If exempt, the Agency has full discretion as to how to procure the services.*

3.1 Exempt Contracts

3.1.1 Statutory Exemption

Various service-specific and Agency-specific statutes exempt some contracts from PPRB purview. Statutorily exempt contracts are discussed in Chapter 12.

3.1.2 No Cost Contracts

No cost contracts do not involve expenditure of public funds, regardless of source, and are not subject to PPRB purview. No cost contracts are discussed in Chapter 12.

- *If the services are not exempt, determine whether the price of the personal and professional services will exceed the dollar threshold requiring PPRB approval.*

3.2 Small Purchases

A small purchase involves a contract for personal or professional services with a total value of \$75,000.00 or less. Small purchase contracts are not subject to PPRB purview. Regulations governing small purchases are in Chapter 13.

- *If the price of services would require PPRB approval, determine whether the personal or professional services can be obtained through cooperative contracting or are provided by another state entity. Agencies are not required to use cooperative contracts or government-to-government contracts, but it is recommended that these procurement methods be considered because they entail far less administrative burden on the Agency than an individual procurement.*

3.3 Cooperative Contracts and Government-to-Government Contracts

3.3.1 Preapproved Vendor List: Statewide Contracts

PPRB is authorized by Mississippi Code Annotated § 27-104-7(2)(i) to establish lists of preapproved vendors with whom Agencies may contract without the need to individually procure the service. Statewide Preapproved Vendor Lists (“PVLs”) are competitively procured by OPSCR and are available on the DFA website. PVLs generally include services widely used by numerous Agencies such as janitorial services or armed security services. Regulations governing PVLs are in Chapter 8.

3.3.2 Preapproved Vendor List: National Cooperative Contracts

PPRB may approve vendors procured through national cooperatives as PVLs where the Agency requesting such approval can demonstrate that the procurement was open,

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competitive, in compliance with the laws and regulations governing the procuring entity, and would provide an economic benefit to the Agency. Regulations governing national cooperatives being approved as PVLs are in Chapter 8.

3.3.3 In-State Cooperative Procurement: “Piggybacking”

Agencies may “piggyback” or contract using a procurement run by another Agency under the purview of PPRB if the Contractor will agree to the same terms and conditions as those originally procured. The piggybacking Agency shall demonstrate the services and pricing are limited to those procured by the procuring Agency. PPRB approval of a piggybacking contract valued at more than \$75,000.00 is required. Regulations governing piggybacking are in Chapter 8.

3.3.4 Government-to-Government Contracts

If the State of Mississippi offers programs through other government entities which meet the Agency’s needs, a procuring Agency may contract with another government entity to provide personal and professional services without undertaking a formal procurement. The Agency Head shall certify the price being paid by the Agency represents fair market value. Contracts between two government entities are governed by regulations in Chapter 11.

- *If neither cooperative contracting nor government-to-government contracting are available, the Agency will need to conduct an individual procurement to obtain the personal and professional services. Agencies should always choose a competitive procurement method unless one is not available.*

3.4 Competitive Procurement by Contracting Agency

3.4.1 Invitation for Bids

An Invitation for Bids (“IFB”) is the statutorily preferred method of procurement. The Agency provides a detailed scope of services and the minimally acceptable vendor qualifications. The Agency is required to contract with the responsive and responsible vendor(s) who submitted the lowest bid price(s). An IFB requires that the Agency use objective factors to determine whether the vendor is responsive, responsible, and submitted the lowest bid. Where an Agency wishes to compare the quality of services offered by vendors or believes trade-offs between price and quality of services is most advantageous to the Agency, an IFB should not be used. Regulations governing IFBs are in Chapter 5.

3.4.2 Request for Proposals

A Request for Proposals (“RFP”) is primarily used when the procuring Agency needs vendors to provide unique plans or methodologies for providing personal or professional services. An RFP does not require a scope of work which is as detailed as an IFB. Responsive and responsible proposals are evaluated on their relative merits using factors in addition to Price, such as Technical or Management factors. Price shall receive at least 35% of the available points and shall be the highest weighted individual factor. Mississippi Code Annotated §§ 31-7-401 through 31-7-423 shall be implemented by procuring Agencies. In order to solicit services using an RFP, PPRB shall approve a request from the

CHAPTER 3: Method of Source Selection

Agency to use an RFP as the procurement method (i.e., a petition for relief). Regulations governing RFPs are in Chapter 6.

3.4.3 Request for Qualifications

The requirements and procedure for a Request for Qualifications (“RFQ”) is identical to that of an RFP. Agencies have discretion as to which of these procurement methods to use. RFQs are primarily used when the Agency needs to evaluate the experience and qualifications of vendors to provide the services needed by the Agency. Regulations governing RFQs are in Chapter 6.

3.4.4 Request for Applications

A Request for Applications (“RFA”) can be used to procure WIN contract workers only. The Agency will set minimum qualifications and the rate of pay. Regulations governing RFAs are in Chapter 7. Contracts with WIN contract workers which exceed \$75,000.00 in a 12-month period shall be approved by PPRB.

- *Because competition is believed to result in higher quality services at more competitive pricing, non-competitive procurement of personal and professional services is discouraged and may only be used in specific circumstances.*

3.5 Non-Competitive Procurement

All non-competitive procurements are reported to the PPRB and to the AET Chairs.

3.5.1 Sole Source Procurement

Sole Source Procurement may only be used in two circumstances: (1) when there is a single personal or professional service which will meet the needs of the Agency and only a single provider of that service in the marketplace, and (2) when a Court has ordered an Agency to contract with a particular vendor to provide a specific service. The Agency Head shall make a written determination that the service provider meets the definition of a sole source. Regulations governing sole source procurement are in Chapter 9.

3.5.2 Emergency Contracts

An emergency contract may be made if the Agency Head makes a written determination that an emergency exists such that the delay incident to undertaking any other method of procurement allowed by these rules and regulations would threaten the health or safety of a person or the preservation or protection of property. Emergency contracts do not require PPRB approval. Emergency contracts are limited to one year or less and to the scope of services necessary to meet the emergency situation. Regulations governing emergency contracts are in Chapter 10.

3.5.3 Exigent Circumstances Contracts

Where exigent circumstances which do not constitute an emergency exist, giving rise to a pressing need which cannot be met by undertaking any other method of procurement allowed by these rules and regulations, an Agency may request PPRB approve a contract where certain conditions are met, unless otherwise prohibited by law. Contracts made due to exigent circumstances are governed by regulations in Chapter 10.

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CHAPTER 4: Requests for Information

A Request for Information is *not* a method to solicit personal and professional services. Agencies may issue Requests for Information (“RFI”) to the vendor community and other stakeholders *prior to issuing a solicitation* to aid in developing solicitation requirements which will result in the best value for the Agency. Issuing an RFI does not obligate an Agency to issue a solicitation.

4.1 Uses and Limitations

An RFI is used by a procuring Agency to gather information relevant to an upcoming procurement of personal or professional services. It is an information request and is not binding on the Agency or any party who participates.

The purpose of an RFI is to gain familiarity with the current market for a particular service and to gather information in a formal, structured, and comparable way. Use of an RFI prior to issuing a solicitation may be valuable in developing a well-conceived solicitation document and clarifying the competitive requirements.

However, the RFI may not be used as a source selection method to procure a personal or professional service. Any meetings or conferences referenced in this chapter are held prior to issuance of a solicitation and therefore are not considered pre-bid or pre-submission conferences.

4.2 Public Notice

Agencies shall ensure that any potential offeror and, where applicable, any potential stakeholder has the same opportunity to participate and respond to the RFI as incumbent vendors and other vendors and stakeholders which have a pre-existing relationship with the procuring Agency. This shall be accomplished by posting the RFI publicly on the Agency website for a minimum of 14 calendar days prior to the deadline for responses to the RFI and/or any telephonic conference, video conference, or in-person meetings with vendors and/or stakeholders regarding the RFI. Agencies shall also make reasonable efforts to advertise the RFI through any other means available, such as email, social media, or the procurement portal.

4.2.1 Posting the RFI on the Procurement Portal

Agencies may use the procurement portal to publicly post the RFI and to send the RFI directly to all vendors who have registered in the service category code selected in MAGIC. Agencies are not required to post the RFI on the procurement portal but are strongly encouraged to do so. Agencies who do *not* post the RFI on the procurement portal shall include a specific explanation as to why they chose not to do so in the written determination required in Section 4.5.

4.3 Content of the RFI

The Public Notice of the RFI shall contain, at minimum, the following information:

- The personal or professional services the Agency needs;
- The subject(s) on which the Agency is seeking information;
- The parties from whom information is sought (vendors, specific stakeholders);
- The means of providing information to the Agency;
- The deadline for providing such information;
- The date of any meeting or conference relevant to the RFI, if applicable;

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- The means of attending any meeting or conference relevant to the RFI, if applicable.

4.4 Method of Conducting the RFI

To the extent no potential offeror or stakeholder would be precluded from participation, an Agency may conduct an RFI in any manner it chooses. Traditional methods for conducting an RFI include written responses, meetings, and telephone or video conferences.

4.5 Written Determination Required

Any Agency issuing an RFI shall make a written determination that it provided fair access for participation to all potential offerors and, where applicable, all potential stakeholders to the best of the Agency's ability. The written determination shall include an explanation of how the Agency achieved this goal. This determination shall be maintained in the Agency Procurement File.

4.6 Vendor Participation in the RFI Process

Vendors who participate in the RFI process are *not* precluded from responding to the resulting solicitation. Vendors shall neither be rewarded nor penalized during the evaluation process for their participation in or lack of participation in the RFI process.

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CHAPTER 5: Invitations for Bids

An Invitation for Bids (“IFB”) is the statutorily preferred method of procurement. An IFB is used to solicit bids.

5.1 Content of an Invitation for Bids

An IFB shall include information which is sufficient to put prospective bidders on notice of the means of and requirements for submitting a bid. This includes, but is not limited to:

- bid submission requirements;
- a bid form and any other forms the bidder is required to submit;
- a description of the objective minimum qualifications required and any documentation needed to demonstrate the bidder objectively meets the minimum qualifications;
- a description of the personal and professional services required which is detailed enough to allow prospective bidders to adequately calculate their bid price and meet the needs of the Agency throughout the life of any resulting contract. All requirements of the procuring Agency shall be included in the IFB in order to be enforceable as to the successful bidder(s) during the contract term. Specifications shall *not* be unduly restrictive, but instead shall seek to promote overall economy and encourage competition in satisfying the Agency’s needs;
- the contract terms and conditions;
- all clauses in Appendix E identified as required clauses for solicitations;
- a statement that the Agency may cancel the solicitation or reject any bid submitted if the Agency determines it is in the Agency’s best interest to do so;
- a statement that, in submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion.
- notice of the opportunity to request reconsideration of the solicitation which can be accomplished by reference to Section 5.2.4 of the *PPRB OPSCR Rules and Regulations*;
- a requirement that, in addition to the complete unredacted version of the bid, the bidder shall also submit a copy of the bid with information the bidder deems confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1 redacted in black;
- notice to the bidder that it may be subject to exclusion pursuant to Chapter 15 of the *PPRB OPSCR Rules and Regulations* if the Agency or the PPRB determine that redactions made by the bidder were made in bad faith in order to prohibit public access to the portions of the bid which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1; and

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- notice to the bidder that the redacted version of the bid – or if a bidder does not produce a redacted version, the full bid document – will be released at the Agency’s sole discretion, without notice to the bidder and will be produced as a public record exactly as submitted. It is recommended, but not required, that the Agency include the following language on the Bid Form:

Bidders shall acknowledge which of the following statements is applicable regarding release of its bid document as a public record. A bidder may be deemed non-responsive if the bidder does not acknowledge either statement, acknowledges both statements, or fails to comply with the requirements of the statement acknowledged. Choose one:

_____ *Along with a complete copy of its bid, bidder has submitted a second copy of the bid document in which all information bidder deems to be confidential commercial and financial information and/or trade secrets is redacted in black. Bidder acknowledges that it may be subject to exclusion pursuant to Chapter 15 of the PPRB OPSCR Rules and Regulations if the [Agency] or the Public Procurement Review Board determine redactions were made in bad faith in order to prohibit public access to portions of the bid which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. Bidder acknowledges and agrees that [Agency] may release the redacted copy of the bid document at any time as a public record without further notice to bidder. A bidder who selects this option but fails to submit a redacted copy of its bid may be deemed non-responsive.*

_____ *Bidder hereby certifies that the complete unredacted copy of its bid may be released as a public record by the [Agency] at any time without notice to bidder. Bidder explicitly waives any right to receive notice of a request to inspect, examine, copy, or reproduce its bid as provided in Mississippi Code Annotated § 25-61-9(1)(a). The bid contains no information bidder deems to be confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. A bidder who selects this option but submits a redacted copy of its bid may be deemed non-responsive.*

5.1.1 Incorporation by Reference

The IFB may incorporate documents by reference provided that the IFB specifies where such documents can be obtained.

5.1.2 Requirement that Bidders Acknowledge Amendments

The IFB shall require all bidders to acknowledge receipt of any IFB amendment issued.

5.1.3 Uniform Bid Form

The IFB shall provide a form to be signed by the bidder and which shall include a space for insertion of the bid price. The bid form shall be uniform for all bidders who may respond to the IFB.

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5.1.4 Manner for Receipt of Bids

The Agency may receive written bids in any manner it chooses (*e.g., hand delivery, electronic mail, e-procurement system, etc.*). The IFB shall provide specific information as to the manner the Agency has chosen to receive bids.

5.2 Public Notice

5.2.1 Manner of Providing Public Notice

Issuance of the IFB shall be advertised in the newspaper in the county or municipality in which the Agency is located and/or the county or municipality where the services will be performed once a week for two consecutive weeks. The IFB shall also be concurrently: (1) posted publicly, in full, on the Agency website; (2) posted publicly, in full, on the procurement portal; *and* (3) directly furnished, in full, to a minimum of three prospective bidders. The Agency may provide notice that the IFB has been issued in any other manner it deems appropriate to encourage and increase competition.

Agencies shall retain documentation proving the time, date, and means of all public notice required by this rule. When calculating any time requirements in these rules and regulations, the earliest date on which all requirements of this Section have been met will be considered the date of public notice.⁸ The IFB posted on the Agency website shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

5.2.2 Content of the Newspaper Advertisement

The newspaper advertisement shall provide as much information as possible to maximize competition. At minimum, the advertisement shall contain the:

- Agency name;
- the personal or professional services sought;
- the RFX number of the solicitation;
- the name of the Agency official responsible for the procurement;
- the means of contacting the Agency official responsible for the procurement;
- the bid submission deadline; and
- the means of obtaining a full copy of the IFB.

5.2.3 Advertising Time

There shall be a minimum of 30 calendar days between the date of public notice described in Section 5.2.1 and the bid submission deadline, unless the Agency Head or their designee determines, in writing, that a shorter time is deemed necessary for a particular procurement. Any such written determination shall be included in the Agency Procurement File. Bidders shall be given a reasonable amount of time to prepare bids. Under no circumstances shall there be less than 14 calendar days between the date of public notice and the bid submission deadline unless permission for a shortened timeframe is explicitly granted by PPRB.

⁸ With respect to the requirement to advertise in the newspaper, the date of public notice requires only the first of the two required advertisements to have run.

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5.2.4 Request for Reconsideration of the Terms of the Solicitation

Any potential bidder has an opportunity to request that the procuring Agency reconsider the terms of the solicitation. Any such request shall be filed with the Agency official primarily responsible for the procurement *and* the Director of OPSCR within three business days following the date of public notice as defined in Section 5.2.1. It shall be the sole responsibility of the requesting vendor to ensure the request is timely *received* by all required parties. Failure to timely request reconsideration in compliance with this Section results in waiver of any claim regarding the terms of the solicitation.

The request shall contain the requesting vendor's name, a single contact person, all contact information for the contact person, the RFx number of the solicitation, and the date the IFB was issued. The request shall identify which of these rules and regulations the requesting vendor believes to have been violated by the solicitation, as written. The request may not be based on anything other than the solicitation document and these rules and regulations. Exhibits shall not be included with the request. Rather, the requesting vendor shall clearly identify the section(s) of the solicitation document at issue in its request. The request shall not be supplemented.

These rules and regulations provide the opportunity to request reconsideration of the terms of an IFB which may result in a contract requiring PPRB approval. No such opportunity exists for an IFB which will not result in a contract requiring PPRB approval unless explicitly so stated by the procuring Agency.

5.2.4.1 Agency Decision on Request for Reconsideration

The Agency shall consider whether the solicitation document, as written, contains the violation alleged by the requesting potential bidder and issue a written response to the request. The Agency's discretion to make subjective decisions in response to a request for reconsideration is limited *only* by the requirement that such discretion be supported by a legitimate business reason and exercised in a manner that is fair to all potential bidders.

The Agency's decision shall be issued in a sufficient amount of time for the requesting bidder to consider the Agency response in preparation of its bid, even if this requires the bid submission deadline to be amended. If the Agency decision is issued less than 14 days prior to the bid submission deadline, the Agency shall make a written determination that the amount of time allotted between the issuance of the Agency decision and the bid submission deadline is reasonable under the circumstances and shall state the facts supporting that conclusion.

To issue the Agency decision, both the request for reconsideration *and* the Agency decision shall be (1) sent directly to all potential bidders known to have received a copy of the IFB, including the requesting bidder; (2) posted, publicly, on the procurement portal; *and* (3) posted, publicly, on the Agency website. The request for reconsideration and the Agency decision shall also be made part of the Agency Procurement File.

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The request for reconsideration and the Agency decision do not amend the IFB.
If the Agency decision requires an amendment to the IFB, the Agency shall adhere to all rules regarding Amendments to an IFB in Section 5.3.4.

5.3 Pre-Submission Requirements

5.3.1 Letters of Intent

Agencies may choose to require prospective bidders to submit a letter stating their intent to submit a bid as a pre-requisite to submitting a bid. The date for submission of a letter of intent, if required in the procurement, shall not be less than 14 calendar days after the date of public notice described in Section 5.2.1.

5.3.2 Pre-Bid Conferences

Pre-bid conferences may be conducted to explain the procurement requirements. The Agency may determine whether to make attendance at such conference mandatory or optional. Notice of such conference shall be prominently placed in the IFB, or in an amendment to the IFB if the decision to hold a pre-bid conference is made after the IFB is issued. The notification shall include the date, time, and location of the conference.

A pre-bid conference may not be held earlier than 14 calendar days after date of public notice described in Section 5.2.1. In determining when the pre-bid conference will be held, the Agency shall consider the complexity of the procurement and the potential modifications to the IFB that may be made following the conference. The conference shall be held long enough after the IFB has been issued to allow bidders to become familiar with the IFB's requirements but sufficiently before bid opening to allow consideration of the conference results in preparing bids.

A record of all bidders who attended the conference shall be made. An amendment to the IFB shall be issued containing any questions and answers from the conference and any revisions to the IFB resulting from the conference. Nothing stated at the pre-bid conference shall change the IFB unless stated in a written amendment.

5.3.3 Questions and Answers

An Agency may choose to allow written questions to be submitted by potential bidders following issuance of the IFB, may allow questions to be asked at a pre-bid conference, or both. The Agency shall create a register of all such questions, exactly as submitted, along with their corresponding answers. The register of all questions and answers shall be issued as an Amendment to the IFB.

5.3.4 Amendments to IFBs

Amendments to IFBs are used to:

- make changes to the IFB (*e.g., scope changes, bid submission date changes, etc.*);
- correct defects or ambiguities in the IFB; or

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- furnish to all prospective bidders information given to one prospective bidder where the lack of information would prejudice a potential bidder. Any such information not provided to all potential bidders may be cause for rejection by PPRB.

Amendments shall be identified as such and shall require that the bidder acknowledge receipt thereof. Any amendment shall reference the section(s) of the IFB it amends.

5.3.4.1 Distribution

Amendments shall be: (1) sent directly to all prospective bidders known to have received a copy of the IFB; (2) posted publicly, in full, on the procurement portal; *and* (3) posted publicly, in full, on the soliciting Agency's website.

Agencies shall retain documentation proving the time, date, and means of distribution required by this rule. Amendments to the IFB shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

5.3.4.2 Timeliness

Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time and date set for receipt of bids shall be extended. Any such extension of the bid submission deadline shall be communicated to all prospective bidders via an amendment.

Should the Agency distribute an amendment less than 14 calendar days prior to the bid submission deadline, the Agency shall make a written determination that the amount of time allotted is reasonable under the circumstances and shall state the facts supporting that conclusion.

5.4 Bid Receipt and Bid Opening

5.4.1 Receipt and Register of Bids

Each bid received, in any manner so received, shall be date-stamped but not opened, and shall be stored in a secure place until the time and date set for bid opening.⁹ The Agency shall create a register of the bidders and the time and date their bid was received.

5.4.2 Bids to Remain Sealed

The Agency is also responsible to ensure that all bids remain sealed until the bid opening in the format in which they are submitted.

⁹ Storage in a secure place requires bids be stored in such a manner that: (1) all timely submitted bids are available, in full, to the Agency official primarily responsible for the procurement at the time of the bid opening, *and* (2) the bids remain unopened at the time of the bid opening or, where the bids could not remain unopened in order to be available for the bid opening (*e.g., submitted electronically and had to be printed*), the bids have not been accessed prior to the bid opening to any person other than the Agency official primarily responsible for the procurement.

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5.4.3 Late Bids

Any bid received after the time and date set for receipt of bids is late. No late bid shall be considered for an award unless the Agency has determined, in writing, that considering such a bid is in the Agency's best interest and does not prejudice the other bidders.

5.4.4 Bid Opening

Bids shall be opened in the presence of one or more Agency officials on the date and time designated in the IFB. Bids should *not* be opened publicly. The name of each bidder and such other information as is deemed appropriate by the Agency shall be recorded. This information shall be available to the public via the *Mississippi Public Records Act of 1983* as discussed in Section 1.5.

5.5 Bid Evaluation

Only objectively measurable criteria set forth in the IFB shall be applied in bid evaluation. Criteria not set forth in the IFB may not be used to evaluate the bids. Contract(s) may only be awarded to the lowest responsive and responsible bidder(s).

In order to determine which bidder is the lowest responsive and responsible bidder, the Agency shall evaluate: (1) whether each bidder was responsive and provided all required information in the format required by the IFB; (2) whether each bidder is responsible and objectively meets the minimum qualifications or other criteria listed in the IFB required to determine whether the bidder has the skills, experience, and/or qualifications to successfully provide the services; and (3) which of the responsive and responsible bidders submitted the lowest overall price.

5.5.1 Modification of Bids

To the extent it is not contrary to the interest of the Agency or the fair treatment of other bidders, any bidder may withdraw his bid and submit a modified bid at any point prior to the bid submission deadline. Modified bids shall not be opened until the bid opening. Unless the IFB provides otherwise, any bidder submitting more than one bid will be deemed to have withdrawn the bid submitted earlier in time in favor of the bid submitted later in time.

5.5.2 Withdrawal of Bids

A bidder may withdraw a bid at any time by written notice to the Agency official designated in the IFB. If any such withdrawal occurs by the successful bidder(s) after the bid opening and/or issuance of the Notice of the Intent to Award, the Agency may cancel the solicitation or proceed with award of a contract as if the withdrawn bid had not been submitted.

5.5.3 Confirmation of Bid

When the Agency knows or has reason to conclude that a mistake has been made, the Agency may request the bidder to confirm the bid. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid which is unreasonably lower than the other bids submitted. If the bidder alleges a mistake, the bid shall be considered withdrawn unless correction meets the definition of a minor informality. The Agency shall have the sole discretion as to whether confirmation of a bid

CHAPTER 5: Invitations for Bids

is warranted, but the Agency shall exercise that discretion in a manner that is fair to all bidders.

5.5.4 Minor Informalities

Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Agency may waive such informalities or allow the bidder to correct them depending on which the Agency determines to be in the Agency's best interest. Any Agency waiving or allowing correction of a minor informality shall make a written determination that the issue constitutes a minor informality as described herein.

5.5.5 Receipt of Acknowledgement of Amendments

Written acknowledgement of *all* amendments to the IFB shall be received from *all* bidders prior to issuance of the Notice of Intent to Award.

Should any bidder fail to submit all necessary acknowledgement(s) with its bid, the Agency shall have the sole discretion as to whether to request a bidder to submit the required acknowledgement(s) after the bid submission deadline but prior to issuance of the Notice of Intent to Award. The Agency shall exercise that discretion in a manner that is fair to all bidders. Any bidder who does not provide the Agency acknowledgement(s) of every amendment issued may be deemed non-responsive and not eligible for award.

5.5.6 Bidder Submitting More Comprehensive Services

The contract shall be awarded to the bidder who submitted the lowest responsive and responsible bid based on the criteria set forth in the IFB. Where a bidder has offered more comprehensive services than those solicited, such unsolicited offers *shall not* be considered in determining which bidder(s) will be awarded a contract. An Agency may accept more comprehensive services offered by a bidder, as long as (1) the unsolicited services are offered at no cost to the Agency *and* (2) the bidder would have been the awardee regardless of whether the unsolicited services had been offered (i.e., the unsolicited services were not considered in determining which bidder would be the intended awardee.)

5.5.7 Multiple or Alternate Bids

It shall be at the sole discretion of the procuring Agency as to whether bidders may submit multiple or alternate bids to be considered by the Agency. If such bids will be considered by the Agency, the solicitation document shall specifically so state. The solicitation document shall also state the maximum number of multiple or alternate bids which will be accepted from an individual bidder, if any.

Where a bidder submits multiple or alternate bids, but the solicitation document does not specifically contemplate that multiple or alternate bids will be considered, the Agency has the sole discretion to either reject all bids submitted by the bidder or evaluate only the bid offering the lowest overall price. The Agency shall exercise its discretion in a manner that is fair to all bidders.

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5.5.8 Low Tie Bids

Where more than one responsive and responsible bidder submitted identical prices which are the lowest overall bid prices and meet all the requirements set forth in the IFB:

- Resident vendors shall be given preference over non-resident vendors, pursuant to Mississippi Code Annotated § 31-7-47;
- If, after evaluation of this criterion, there continue to be low tie bids, each of the low tie bidders may be informed of their status as a low tie bidder and a Best and Final Offer (“BAFO”) may be requested;
- If, after receiving responses to the request for a BAFO, there continue to be low tie bids, an award may be made, in the discretion of the Agency Head, in any permissible manner that will discourage tie bids; and
- If no permissible method will be effective in discouraging tie bids, and a written determination is made so stating, award may be made by drawing lots. In such case, those bidders involved shall be invited to attend the procedure.

5.5.9 Single Bid Received

If only a single bid is received which is responsive and responsible, an award may be made to the single bidder if the Agency makes a written determination that (1) other prospective bidders had a reasonable opportunity to respond *and* (2) to the best of the Agency’s knowledge, the intended awardee reasonably anticipated competing bids may be submitted. It is presumed that an Agency choosing to award a contract when only a single responsive and responsible bid is received has determined the price was reasonable when considering all relevant circumstances.

5.5.10 Conditional Bids Prohibited

Any bid which is conditioned upon receiving award of the particular contract being solicited and another contract shall be deemed non-responsive and not eligible for award.

5.6 Contract Award

5.6.1 Notice of Intent to Award

Following evaluation and determination of the intended awardee, but prior to submission of the contract for PPRB approval, a Notice of Intent to Award shall be prepared, explaining the basis for determining the successful bidder. The Notice shall:

- list the names of all bidders who submitted a bid in order of overall price (from lowest to highest);
- specify each bidder’s overall bid price and/or attach a copy of the bid form submitted by each bidder;
- identify which of the bidders, if any, were deemed non-responsive or non-responsible;
- identify the bidder(s) the Agency recommends be awarded a contract;
- notify the bidders of the opportunity for a debriefing, if applicable;
- notify the bidders of the opportunity to request reconsideration of the intent to award, which can be accomplished by referring to Section 5.6.3; and

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- notify the bidders and the public that the Agency Procurement File is available on the Agency's website.

5.6.1.1 Distribution of the Notice of Intent to Award

The Notice of Intent to Award shall be: (1) distributed directly to all bidders who responded to the solicitation, (2) posted publicly on the Agency's website, *and* (3) posted publicly on the procurement portal.

5.6.1.2 Public Posting of the Agency Procurement File

A complete copy of the Agency Procurement File shall be made available to the public on the procuring Agency's website at the time the Notice of Intent to Award is posted on the procuring Agency's website. *See Appendix D.* In addition to all documents related to the procurement and/or required by these rules and regulations, the Agency Procurement File posted on the Agency website shall include a copy of all bids received. Where any bidder submitted a redacted bid (trade secrets and confidential commercial and financial information redacted) the redacted copy of the bid, rather than the complete copy of the bid, shall be posted on the Agency website.

5.6.1.3 Review for Confidential Information Prior to Posting

Prior to posting the Notice of Intent to Award and Agency Procurement File, procuring Agencies are strongly encouraged to consult with their legal counsel and redact information in the file which may violate Mississippi Code Annotated §§ 25-61-9, 79-23-1, and 75-26-1, *et seq.* However, such redactions should be used sparingly, and where there is doubt, Agencies should err on the side of transparency in the procurement process.

5.6.1.4 Posting on the Agency Website

The Notice of Intent to Award and the Agency Procurement File shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

5.6.2 Debriefings

Agencies are encouraged to exchange information with vendors in an effort to build and strengthen business relationships and improve the procurement process. In the sole discretion of the procuring Agency, debriefings may be offered to bidders following issuance of the Notice of Intent to Award.

An Agency choosing to offer debriefings shall notify the bidders of the opportunity to request a debriefing in the Notice of Intent to Award. That notice shall include the deadline and specific process to request a debriefing (*e.g., Send a request for debriefing via email to agencyofficial@agency.ms.gov on or before 3:00 p.m. CST on October 11, 2024.*)

If a debriefing is offered, the Agency shall provide one to every bidder who requests one. The means of conducting the debriefing and information discussed shall be at the sole

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discretion of the Agency. However, a debriefing shall *not* provide a point-by-point comparison of the debriefed vendor's response with any other responses to the solicitation.

In the sole discretion of the procuring Agency, the contract and Agency Procurement File may be submitted to OPSCR for PPRB approval as described in Sections 1.2.1, 1.2.2, and 14.8 before, during, or after resolution of any requests for debriefing. However, all requested debriefings shall be completed prior to the contract being presented to PPRB for approval. At the point all requested debriefings have been conducted, the Agency shall include a list of all bidders who requested a debriefing and the date each requested debriefing was conducted in the Agency Procurement File.

5.6.3 Request for Reconsideration of the Intent to Award

A bidder who responded to an IFB has an opportunity to request that the procuring Agency reconsider its intent to award the contract to a specific bidder or bidders. Any such request shall be filed with the Agency official primarily responsible for the procurement *and* the Director of OPSCR within three business days following issuance of the Notice of Intent to Award and posting of the Agency Procurement File in compliance with Sections 5.6.1, 5.6.1.1, and 5.6.1.2. It shall be the sole responsibility of the requesting bidder to ensure the request is timely *received* by all required parties. Failure to timely request reconsideration in compliance with this Section results in waiver of any claim a bidder may have as to the Agency's decision to award the contract.

The request shall contain the requesting vendor's name, a single contact person, all contact information for the contact person, the RFX number of the solicitation, the date the IFB was issued, and the date the Notice of Intent to Award was issued. The request shall identify which of these rules and regulations and/or the terms of the IFB the requesting bidder believes were violated by the Agency during the bid evaluation process, explain the factual basis for the alleged violation(s), *and* specify how the alleged violation(s) affected the outcome of the procurement. The request shall not be based on anything other than the Agency Procurement File, these rules and regulations, and the terms of the solicitation. The request shall not be supplemented.

Exhibits shall not be included with the request. Rather, the requesting vendor shall clearly identify the portion(s) of the Agency Procurement File and/or the IFB at issue in the request. Reference to documents outside of or facts not supported by the Agency Procurement File or the IFB shall not be considered by the Agency when responding to the request.

If the requesting bidder believes the Agency Procurement File posted on the Agency website is incomplete (i.e., does not contain a document or documents required by these rules and regulations), the requesting bidder shall so state in the request and shall specify what it believes to be missing.

Should the requesting bidder believe the trade secrets and/or confidential commercial and financial information which were redacted from the Agency Procurement File posted on the Agency website contain issues related to its request, the requesting bidder shall state

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those concerns in the request – even if speculative – in a manner which is specific enough for the Agency to provide a response.

These rules and regulations provide the opportunity to request reconsideration of an Agency’s decision to award a contract requiring PPRB approval. No such opportunity exists where the contract will not require PPRB approval unless explicitly so stated by the procuring Agency.

5.6.3.1 Agency Decision on Request for Reconsideration

The Agency shall consider whether the violation alleged by the requesting bidder is reflected in the Agency Procurement File and shall issue a written response to the request. The Agency’s discretion to make subjective decisions in response to a request for reconsideration is limited **only** by the requirement that such discretion be supported by a legitimate business reason and exercised in a manner that is fair to all bidders.

The Agency shall respond to any questions or issues raised related to documents missing from the Agency Procurement File posted pursuant to Section 5.6.1.2. If the Agency failed to post the complete Agency Procurement File, the three-day time limitation for bidders to request reconsideration of the intent to award was not triggered and shall not be triggered until the complete Agency Procurement File is posted.¹⁰ *See Appendix D.*

The Agency shall provide the most complete response possible to any questions or issues raised related to the trade secrets and/or confidential commercial or financial information of another bidder without revealing any trade secrets or confidential commercial or financial information.

The Agency decision on the request for reconsideration shall be issued **prior to** submitting the contract and Agency Procurement File to OPSCR for PPRB approval as described in Sections 1.2.1, 1.2.2, and 14.8. To issue the Agency decision, both the request for reconsideration **and** the Agency decision shall be (1) sent directly to all bidders, including the requesting bidder; (2) posted, publicly, on the procurement portal; **and** (3) posted, publicly, on the Agency website. The Agency decision shall be made part of the Agency Procurement File.

Should the Agency determine that its intent to award should be reconsidered in accordance with a bidder’s request, the Agency may take any reasonable steps to preserve its procurement pursuant to Section 1.4.8 or may cancel the procurement.

¹⁰ If the Agency determines the Agency Procurement File posted on the Agency website is incomplete, the Agency shall provide notice to all bidders when the updated Agency Procurement File is posted. Such notice shall be (1) posted publicly on the Agency website, (2) posted publicly on the procurement portal, **and** (3) sent directly to all bidders who responded to the solicitation. This notice triggers the three-day time limitation to request reconsideration.

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5.6.4 Approval of PPRB

Any contract resulting from an IFB in which the total contract value exceeds \$75,000.00 and which is not otherwise exempt from PPRB's purview shall be submitted for PPRB approval prior to contract execution. Agencies shall refer to Sections 1.2.1, 1.2.2, and 14.8 regarding submission to OPSCR.

Prior to presenting the contract to PPRB, OPSCR shall review all aspects of the procurement process for compliance with these rules and regulations, including the Agency decision(s) following any request(s) for reconsideration. That review shall be the basis of OPSCR's recommendation to PPRB regarding approval of the contract.

Agencies may execute a contract following oral approval of the contract by the PPRB and are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

5.6.5 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other boards or required entities, if applicable; *and* (3) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website and shall be accompanied by an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

5.7 Cancellation of Solicitation or Rejection of Individual Bids

At the Agency's sole discretion, an IFB may be canceled, all bids may be rejected, or individual bids may be rejected when the Agency determines that it is in the Agency's best interest to do so. A memorandum stating the reasons for the cancellation or rejection shall be made part of the Agency Procurement File.

The solicitation process requires expenditure of time and resources for both public Agencies and private businesses. Accordingly, solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. However, nothing in this Section shall be construed as conferring any grievance right on any party when an Agency chooses to cancel a solicitation.

5.7.1 Notice of Cancellation of IFB

When an IFB is canceled, a Notice of Cancellation shall be prepared. The Notice shall identify the solicitation being canceled and provide any information the Agency deems appropriate. The Notice of Cancellation shall: (1) be posted publicly on the Agency website; (2) be posted publicly on the procurement portal; *and* (3) be distributed to all potential offerors known to have received a copy of the IFB. A memorandum containing the reasons for the cancellation shall be made part of the Agency Procurement File.

5.7.2 Rejection of Individual Bids

Reasons for rejecting individual bids include but are not limited to:

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- the bid was non-responsive to the solicitation;
- the bidder is deemed non-responsive;
- the Agency – in its sole discretion – determined the proposed price is unreasonable even if it was the lowest responsive and responsible bid;
- lack of competitiveness by reason of collusion or knowledge that reasonably available competition did not occur.

5.7.3 Disposition of Bids

Where bids are individually rejected, or the solicitation is canceled after bids are received, the Agency shall have the sole discretion to determine whether to return bids to the bidder or retain the bids in the Agency Procurement File. If the Agency chooses to return the bids to the bidders, the Agency shall ensure enough information is retained in the Agency Procurement File to support the decision to reject the bid.

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A Request for Proposals (“RFP”) is used to solicit proposals. A Request for Qualifications (“RFQ”) is used to solicit qualifications. The requirements of this chapter apply to procurement of personal and professional services using an RFP or RFQ, unless otherwise exempt by law.

6.1 Best Practices

The Mississippi Legislature codified the Best Practices for Soliciting Requests for Proposals or Requests for Qualifications at Mississippi Code Annotated §§ 31-7-401 through 31-7-423 (“the best practices statutes”). The expressed intent of the best practices statutes was to “ensure that the best practices for soliciting [RFPs] or [RFQs] are implemented,” particularly for personal or professional service contracts which require PPRB approval. ***Agencies are strongly encouraged to review these sections of the Mississippi Code prior to and during any procurement of personal or professional services using an RFP or RFQ.*** Where an Agency has failed to meet any of the standards set forth in the best practices statutes, PPRB will conduct the analysis required by Section 1.1.8 to determine whether an exception can be granted.¹¹

6.2 Choosing the Procurement Method

6.2.1 Requests for Proposals

An RFP is issued to solicit proposals. Use of this procurement method communicates to potential respondents that the Agency is seeking various ideas and approaches as to how to provide the required personal or professional services. The aim of an RFP is to obtain the best value for the Agency such that the most qualified vendor is providing the most effective and creative solution to meet the Agency’s need at a competitive price.

6.2.2 Requests for Qualifications

An RFQ is issued to solicit qualifications. Use of this procurement method communicates to potential respondents that the Agency is seeking the vendor with the most relevant experience, credentials, and other qualifications to provide the required personal and professional services. Generally, a unique or creative approach to the work is not needed or is less important to the Agency than the vendor’s qualifications. The aim of an RFQ is to obtain the best value for the Agency such that the vendor who is most qualified is retained to meet the Agency’s need at a competitive price.

6.2.3 Agency Discretion as to Procurement Method

Agencies have the sole discretion to choose which procurement method best meets their needs. While use of an RFP or RFQ generally communicates to the vendor community what the Agency deems most important, there is no regulatory or statutory requirement that an Agency choose one instead of the other. The regulatory and statutory requirements for conducting an RFP or RFQ are identical.

¹¹ Courts have recognized that best practices are not mandatory minimum standards of conduct but rather aspirational standards by which optimal results can be achieved. *See e.g., Mitchell v. Advanced HCS, LLC*, 28 F.4th 580, 590-91 (5th Cir. 2022) (publishing of best practices deemed to “set forth aspirations and expectations, not mandates”). *See also Ewans v. Wells Fargo Bank, N.A.*, 389 F. App’x 383, 390 (5th Cir. 2010); *Gross v. NCH Corp.*, 691 F. App’x 203 (5th Cir. 2017); *Amos v. Taylor*, No. 4:20-CV-7-DMB-JMV, 2020 WL 1978382, at *10 (N.D. Miss. Apr. 24, 2020).

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6.3 Request for PPRB Approval to Use an RFP or RFQ

An IFB is the preferred method of procurement. *See Chapter 5.* When it is not practicable or advantageous for an Agency to use an IFB as the procurement method, the Agency shall seek approval from PPRB to use an RFP or RFQ. Approval is sought by filing a petition for relief from the requirement to use an IFB.

6.3.1 Practicable and Advantageous¹²

The terms “practicable” and “advantageous” are to be given ordinary dictionary meanings. Practicable¹³ means what may be accomplished or put into practical application. Advantageous¹⁴ means an assessment of what is in the Agency’s best interest.

6.3.2 PPRB Approval of the Petition for Relief

6.3.2.1 Procedure for Submitting the Petition for Relief

The Agency shall use the form provided on the DFA website to submit a petition for relief for PPRB approval.

The petition shall contain a written determination and detailed explanation that the use of an IFB is either not practicable, not advantageous, or both. When use of an IFB is practicable but not advantageous, the petition for relief shall state the reason use of an IFB is not advantageous with particularity.

The petition shall also contain a list and brief explanation of the categories of evaluation factors the Agency intends to use to evaluate the proposals or qualifications and the percentage of points that will be assigned to each category.

¹² In addition to whether it is practicable to use an IFB and whether it is advantageous to use an IFB, Mississippi Code Annotated § 31-7-403(4) provides the following considerations: whether quality, availability, or capability are overriding in relationship to price; whether an RFP or RFQ would be more advantageous if procuring research and development or technical services; whether both installation and maintenance are needed and what priority each should be given in the evaluation process; and whether the marketplace will respond better to an RFP or RFQ such that the Agency can evaluate a range of proposals and conduct discussions prior to awarding the contract.

¹³ Mississippi Code Annotated § 31-7-403(2) provides the following considerations as to whether something is practicable: whether the Agency needs a pricing structure other than fixed price; whether oral or written discussions may need to be conducted; whether offerors may need the opportunity to revise proposals; whether the Agency would like to request a Best and Final Offer; whether the award may need to be based upon comparative evaluation of methodology or qualifications; whether the primary consideration is something other than price. An Agency may also consider whether there is sufficient time or information suitable to prepare a scope of services specific enough to use an IFB; whether the nature of the procurement permits award to the low bidder who will agree to unconditionally perform the scope of services without reservation; and whether any law or professional code of conduct prohibits certain services providers from competitive bidding.

¹⁴ Mississippi Code Annotated § 31-7-403(3) provides the following considerations as to whether something is advantageous: the need for flexibility; the type of evaluation that will be needed after offers are received; whether an RFP or RFQ would result in advantageous contract terms; whether the Agency would benefit from evaluating degrees of experience, expertise, and the relative ability of the offerors to perform; whether factors such as artistic or aesthetic value need to be considered; and whether prior procurements indicate that an RFP or RFQ would be more beneficial to the Agency.

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The petition shall be signed by the Agency Head or their designee and shall be submitted to OPSCR pursuant to the deadlines established by PPRB for contract approval.

6.3.2.2 PPRB Determination and Approval

The petition will be granted where PPRB determines use of an IFB is either not practicable, not advantageous, or both. If PPRB determines that the services the Agency requires should be procured using an IFB, the petition will not be granted.

To the extent the proposed categories of evaluation factors are compliant with these rules and regulations, PPRB delegates authority to OPSCR staff to approve petitions for relief where the procuring Agency will set the price for the services being solicited.

PPRB may modify or revoke its determination at any time, and the determination should be reviewed for current applicability from time to time. PPRB approval of petitions for relief expire one year from the date of approval unless an extension is granted by PPRB.

6.3.3 Prohibition Against Combining Services Which Should be Solicited by IFB

Agencies may not combine services in an RFP or RFQ which are required to be procured using an IFB in order to avoid the statutory preference of procurement using an IFB. Mississippi Code Annotated § 31-7-403(4).

6.4 Content of the RFP or RFQ

The RFP or RFQ shall include the following:

- instructions and information to offerors concerning proposal submission requirements, including, but not limited to:
 - the time and date set for receipt of proposals or qualifications;
 - the address of the office to which proposals or qualifications are to be delivered or specific instructions as to how proposals or qualifications are to be delivered to the Agency if submission is to be made electronically or by any other means;
 - the manner in which the proposals or qualifications are to be submitted, including any forms for that purpose; and
 - a statement of when and how price should be submitted.
- the types of services required, a description of the work involved, the delivery or performance schedule, and any other inspection and acceptance requirements. Specifications shall *not* be unduly restrictive, but instead should seek to promote overall economy for the purposes intended and encourage competition in satisfying the Agency's needs;
- the contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

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- a statement that, in submitting a proposal or qualification, the offeror certifies that the price submitted was independently arrived at without collusion.
- a description of the objective minimum qualifications required, and any documentation needed to demonstrate the offeror objectively meets minimum qualifications;
- the evaluation factors to be used in the evaluation and selection process and the order of importance of the evaluation factors (either by the order listed, weights, or some other manner);
- a statement that discussions may be conducted with offerors who submit proposals or qualifications determined to be reasonably susceptible of being selected for award, but that proposals or qualifications may be accepted without such discussions;
- a statement that the RFP or RFQ, its amendments, the offeror's proposal or qualification, and the Best and Final Offer, if applicable, shall be incorporated into the successful offeror(s)' contract;
- a requirement that all offerors acknowledge every amendment to the RFP or RFQ in writing on or before the proposal or qualification submission deadline;
- the RFP or RFQ may incorporate documents by reference provided that the RFP or RFQ specifies where such documents can be obtained;
- a statement that the RFP or RFQ may be canceled at the sole discretion of the Agency pursuant to the requirements in Section 6.10;
- a statement that any proposals or qualifications may be rejected in whole or in part when in the best interest of the Agency pursuant to the requirements in Section 6.10;
- a requirement that all offerors list their principals, parent organizations, and subsidiary organizations in their proposal or qualification. The Agency shall define what "principal" of the offeror means as it relates to the specific procurement and that definition shall also be included in the RFP or RFQ;
- all clauses in Appendix E which are identified as required clause for solicitations;
- notice of the opportunity to request reconsideration of the terms of the solicitation, which can be accomplished by referencing Section 6.5.4 of the *PPRB OPSCR Rules and Regulations*;
- a requirement that, in addition to the complete unredacted version of the proposal or qualification, the offeror shall also submit a copy of the proposal or qualification with information the offeror deems confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1 redacted in black;

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- notice that the offeror may be subject to exclusion pursuant to Chapter 15 of the *PPRB OPSCR Rules and Regulations* if the Agency or the PPRB determine that redactions made by the offeror were made in bad faith in order to prohibit public access to the portions of the proposal or qualification which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1; and
- notice to the offeror that the redacted version of the proposal or qualification – or if an offeror does not produce a redacted version, the full proposal or qualification – will be released at the Agency’s sole discretion, without notice to the offeror, and will be produced as a public record exactly as submitted. It is recommended, but not required, that the Agency include the following language on a form the offeror will be required to execute and submit with its proposal or qualification:

Offerors shall acknowledge which of the following statements is applicable regarding release of its [proposal, qualification] as a public record. An offeror may be deemed non-responsive if the offeror does not acknowledge either statement, acknowledges both statements, or fails to comply with the requirements of the statement acknowledged. Choose one:

_____ *Along with a complete copy of its [proposal, qualification], offeror has submitted a second copy of the [proposal, qualification] in which all information offeror deems to be confidential commercial and financial information and/or trade secrets is redacted in black. Offeror acknowledges that it may be subject to exclusion pursuant to Chapter 15 of the PPRB OPSCR Rules and Regulations if the [Agency] or the Public Procurement Review Board determine redactions were made in bad faith in order to prohibit public access to portions of the [proposal, qualification] which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. Offeror acknowledges and agrees that [Agency] may release the redacted copy of the [proposal, qualification] at any time as a public record without further notice to offeror. An offeror who selects this option but fails to submit a redacted copy of its [proposal, qualification] may be deemed non-responsive.*

_____ *Offeror hereby certifies that the complete unredacted copy of its [proposal, qualification] may be released as a public record by the [Agency] at any time without notice to offeror. The [proposal, qualification] contains no information offeror deems to be confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. Bidder explicitly waives any right to receive notice of a request to inspect, examine, copy, or reproduce its bid as provided in Mississippi Code Annotated § 25-61-9(1)(a). An offeror who selects this option but submits a redacted copy of its [proposal, qualification] may be deemed non-responsive.*

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6.5 Public Notice

When the amount of the contract is anticipated to exceed \$75,000.00, public notice shall be given in accordance with the following requirements.

6.5.1 Manner of Providing Public Notice

Issuance of the RFP or RFQ shall be advertised in the newspaper in the county or municipality in which the Agency is located and/or the county or municipality where the services will be performed once a week for two consecutive weeks. The RFP or RFQ shall also be concurrently: (1) posted publicly, in full, on the Agency website; (2) posted publicly, in full, on the procurement portal; *and* (3) directly furnished, in full, to a minimum of three prospective offerors. The Agency may provide notice that the RFP or RFQ has been issued in any other manner it deems appropriate to encourage and increase competition.

Agencies shall retain documentation proving the time, date, and means of all public notice required by this rule. When calculating any time requirements in these rules and regulations, the earliest date on which all requirements of this Section have been met will be considered the date of public notice.¹⁵ The RFP or RFQ posted on the Agency website shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

6.5.2 Content of the Newspaper Advertisement

The newspaper advertisement shall list as much information as possible with the intent to promote competition. At minimum, the advertisement shall list the:

- Agency name,
- the personal or professional services sought,
- the RFx number of the solicitation,
- the name of the Agency official responsible for the procurement,
- the *phone number* of the Agency official responsible for the procurement,
- the proposal or qualification submission deadline, and
- a means of obtaining a full copy of the RFP or RFQ.

6.5.3 Advertising Time

There shall be a minimum of 30 calendar days between the date of public notice described in Section 6.5.1 and the proposal or qualification submission deadline, unless the Agency Head or their designee determines, in writing, that a shorter time is deemed necessary for a particular procurement. Any such written determination shall be included in the Agency Procurement File. Offerors shall be given a reasonable amount of time to prepare proposals or qualifications. Under no circumstances shall there be less than 14 calendar days between the date of public notice and the submission deadline unless permission for a shortened timeframe is explicitly granted by PPRB.

¹⁵ With respect to the requirement to advertise in the newspaper, the date of public notice requires only the first of the two required advertisements to have run.

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6.5.4 Request for Reconsideration of the Terms of the Solicitation

Any potential offeror has an opportunity to request that the procuring Agency reconsider the terms of the solicitation. Any such request shall be filed with the Agency official primarily responsible for the procurement *and* the Director of OPSCR within three business days following the date of public notice as defined in Section 6.5.1. It shall be the sole responsibility of the requesting vendor to ensure the request is timely *received* by all required parties. Failure to timely request reconsideration in compliance with this Section results in waiver of any claim regarding the terms of the solicitation.

The request shall contain the requesting vendor's name, a single contact person, all contact information for the contact person, the RFX number of the solicitation, and the date the RFP or RFQ was issued. The request shall identify which of these rules and regulations the requesting vendor believes to have been violated by the solicitation, as written. The request may not be based on anything other than the solicitation document and these rules and regulations. Exhibits shall not be included with the request. Rather, the requesting vendor shall clearly identify the section(s) of the solicitation document at issue in its request. The request shall not be supplemented.

These rules and regulations provide the opportunity to request reconsideration of the terms of an RFP or RFQ which may result in a contract requiring PPRB approval. No such opportunity exists for an RFP or RFQ which will not result in a contract requiring PPRB approval unless explicitly so stated by the procuring Agency.

6.5.4.1 Agency Decision on Request for Reconsideration

The Agency shall consider whether the solicitation document, as written, contains the violation alleged by the requesting potential offeror and issue a written response to the request. The Agency's discretion to make subjective decisions in response to a request for reconsideration is limited *only* by the requirements that such discretion be supported by a legitimate business reason and be exercised in a manner that is fair to all potential offerors.

The Agency's decision shall be issued in a sufficient amount of time for the requesting offeror to consider the Agency response in preparation of its proposal or qualification, even if this requires the submission deadline to be amended. If the Agency decision is issued less than 14 days prior to the proposal or qualification submission deadline, the Agency shall make a written determination that the amount of time allotted between the issuance of the Agency decision and the submission deadline is reasonable under the circumstances and shall state the facts supporting that conclusion.

To issue the Agency decision, both the request for reconsideration *and* the Agency decision shall be (1) sent directly to all potential offerors known to have received a copy of the RFP or RFQ, including the requesting offeror; (2) posted, publicly, on the procurement portal; *and* (3) posted, publicly, on the Agency website. The request for reconsideration and the Agency decision shall also be made part of the Agency Procurement File.

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The request for reconsideration and the Agency decision do not amend the RFP or RFQ. If the Agency decision requires amendment to the RFP or RFQ, the Agency shall adhere to all rules regarding Amendments to an RFP or RFQ in Section 6.6.4.

6.6 Pre-Submission Requirements

6.6.1 Letters of Intent

Agencies may choose to require prospective offerors to submit a letter stating their intent to submit a proposal or qualification as a prerequisite to submitting a proposal or qualification in response to the RFP or RFQ. The date for submission of a letter of intent, if required in the procurement, shall not be less than 14 calendar days after the date of public notice.

6.6.2 Pre-Submission Conferences

Pre-submission conferences may be conducted to explain the procurement requirements.

6.6.2.1 Mandatory or Optional Attendance

The Agency may determine whether to make attendance at such conference mandatory or optional.

6.6.2.2 Notice of Pre-Submission Conference

Notice of such conference shall be prominently placed in the RFP or RFQ, or in an amendment to the RFP or RFQ if the decision to hold a pre-submission conference is made after the RFP or RFQ is issued. The notification shall include the date, time, and location of the conference.

6.6.2.3 Timing of the Pre-Submission Conference

A pre-submission conference shall not be held less than 14 calendar days after the date of public notice. In determining when the pre-submission conference will be held, the Agency shall consider the complexity of the procurement and the potential modifications to the solicitation and/or the solicitation responses that may need to be made following the conference. The conference shall be held long enough after the RFP or RFQ has been issued to allow offerors to become familiar with the requirements of the RFP or RFQ but sufficiently before the submission deadline to allow consideration of the conference results in preparing proposals or qualifications.

6.6.2.4 Requirements for Pre-Submission Conference

Any Agency conducting a pre-submission conference shall meet the following requirements:

- The Agency procurement official primarily responsible for conducting the procurement shall chair the conference.
- Offerors attending the conference shall be required to sign an attendance sheet or their attendance shall be otherwise recorded.

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- At the beginning of the conference, the chair shall announce how the conference will be handled (i.e., state the agenda for the conference).
- The conference shall be recorded; when the conference is over, a complete transcript of the recording *or* the full audio or video recording shall be made publicly available on the Agency website.
- Any questions and answers from the conference shall be put in writing.

6.6.2.5 Amendment to RFP or RFQ following the Pre-Submission Conference

An Amendment to the RFP or RFQ shall be issued following the pre-submission conference which includes (1) the transcript of the recording and/or instructions as to how the full audio or video recording of the pre-submission conference may be accessed, (2) the questions and answers from the conference, *and* (3) any other amendments to the RFP or RFQ which the Agency wishes to make as a result of the conference. Nothing stated at the pre-submission conference shall change the RFP or RFQ unless explicitly stated in the written amendment. The Amendment shall be compliant with the requirements of Section 6.6.4.

The transcript of the pre-submission conference recording and/or access to the full audio or video recording of the pre-submission conference shall remain publicly available on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

6.6.3 Questions and Answers

An Agency may choose to allow written questions to be submitted by potential offerors following issuance of the RFP or RFQ, at a pre-submission conference, or both. The Agency shall create a register of all such questions exactly as submitted along with their corresponding answers. The register of all questions and answers shall be issued as an Amendment to the RFP or RFQ.

6.6.4 Amendments to RFPs or RFQs

Amendments to RFPs or RFQs are used to:

- revise the RFP or RFQ such as updating the quantity, scope, or submission date;
- correct defects or ambiguities in the RFP or RFQ; or
- to furnish to all prospective offerors information given to one prospective offeror where the lack of information would prejudice other potential offerors. Any such information not provided to all potential offerors may be cause for rejection by PPRB.

Amendments shall be identified as an amendment, shall reference the portion of the RFP or RFQ amended, and shall require all offerors to acknowledge receipt of the amendment.

6.6.4.1 Distribution

Amendments shall be: (1) sent directly to all prospective offerors known to have received a copy of the RFP or RFQ; (2) posted publicly, in full, on the procurement portal; and (3) posted publicly, in full, on the soliciting Agency's website.

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Agencies shall retain documentation proving the time, date, and means of distribution required by this rule. Amendments to the RFP or RFQ shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

6.6.4.2 Timeliness

Amendments shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their proposals or qualifications. If the time and date set for receipt of proposals or qualifications will not permit such preparation, the time and date set for receipt of proposals or qualifications shall be extended. Any such extension of the submission deadline shall be communicated to all prospective offerors via an amendment.

Should the Agency distribute an amendment less than 14 calendar days prior to the bid submission deadline, the Agency shall make a written determination that the amount of time allotted is reasonable under the circumstances and shall state the facts supporting that conclusion.

6.7 Receipt and Acceptance of Proposals or Qualifications

6.7.1 Receipt of Proposals or Qualifications

Each proposal or qualification shall be time and date stamped upon receipt, but not opened. All proposals and qualifications received shall be securely stored¹⁶ until the submission deadline has passed. Electronic proposals received shall also be securely stored until the submission deadline has passed.

6.7.2 Proposal or Qualification Opening

At the time designated in the RFP or RFQ, proposals or qualifications shall be opened in the presence of at least two Agency officials, but should *not* be opened publicly. Agencies shall take every precaution in opening proposals or qualifications to avoid the disclosure of the contents of competing proposals or qualifications to offerors or members of the public prior to issuance of the Notice of Intent to Award. *See Section 1.5.*

6.7.3 Proposal or Qualification Acceptance

Unless the solicitation states otherwise, proposals and qualifications need not be unconditionally accepted without alteration or correction.

¹⁶ The requirement that proposals or qualifications be securely stored means the proposals or qualifications are stored in such a manner that: (1) all timely submitted proposals or qualifications are available, in full, to the Agency official primarily responsible for the procurement at the time the Agency opens proposals or qualifications, *and* (2) the proposals or qualifications remain unopened at the time of the opening or, where the proposals or qualifications could not remain unopened in order to be available for the opening (*e.g., submitted electronically and had to be printed*), the contents of the proposals or qualifications have not been accessed prior to the opening by any person other than the Agency official primarily responsible for the procurement. To the extent this requirement is met, PPRB deems the requirement in Mississippi Code Annotated § 31-7-417 to store electronic proposals or qualifications in an electronic lock box to have been met.

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6.7.3.1 Withdrawals Before Submission Deadline

Proposals or qualifications may be withdrawn prior to the submission deadline by written notice to the Agency official responsible for the procurement. At the sole discretion of the Agency, the withdrawn proposal or qualification may be returned to the offeror or remain in the Agency Procurement File.

6.7.3.2 Modifications Before Submission Deadline

Proposals or qualifications may be modified prior to the time and date set for submission by written notice to the Agency official primarily responsible for the procurement. An offeror intending to modify its proposal or qualification shall withdraw the proposal or qualification originally submitted and resubmit the modified proposal or qualification, in its entirety, prior to the submission deadline. At the sole discretion of the Agency, the withdrawn proposal or qualification may be returned to the offeror or remain in the Agency Procurement File.

6.7.3.3 Late Proposals or Qualifications

Proposals or qualifications received after the time and date set for submission shall not be considered for award unless the Agency Head or his or her designee has determined, in writing, that considering such a proposal or qualification is in the best interest of the Agency and does not prejudice the other offerors. At the sole discretion of the Agency, any late proposal or qualification may be returned to the offeror or remain in the Agency Procurement File.

6.7.3.4 Withdrawal After Submission Deadline

An offeror may withdraw its proposal or qualification after the submission deadline by submitting a written request to the Agency official responsible for the procurement. In the Agency's sole discretion, any such proposal or qualification may be returned to the offeror or maintained in the Agency Procurement File.

6.7.3.5 Modifications After Submission Deadline

No changes in the proposal or qualifications shall be permitted after the submission deadline, unless the Agency determines such a change is *not* prejudicial to the interest of the Agency or fair competition.

6.7.3.6 Confirmation of Proposals or Qualifications

When the Agency knows or has reason to conclude before award that a mistake has been made in a proposal or qualification, the Agency, in its sole discretion, may request that the offeror confirm that the proposal or qualification is correct.

If the offeror alleges a mistake, the proposal or qualification may be corrected if allowing such a correction is not to be prejudicial to the Agency or prejudicial to the equal and fair treatment of the other offerors.

If the offeror asserts there is no mistake, or if the Agency chooses not to request confirmation, the proposal or qualification shall be evaluated as submitted. Should

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the offeror be awarded a contract, any mistake in the proposal or qualification shall be managed by the Agency as a contract compliance issue.

6.7.3.7 Minor Informalities

Minor informalities are matters of form rather than substance; are evident from the proposal or qualification; are insignificant mistakes which can be waived or corrected without prejudice to other offerors; *and* the effect of a correction on price, quantity, quality, delivery, or contractual conditions is negligible. The Agency may waive such informalities or allow the offeror to correct them depending on which the Agency determines is in its own best interest and does not prejudice the other offerors.

6.7.3.8 Memorandum for the Agency Procurement File

The Agency shall briefly summarize any determinations made or action taken under Section 6.7.3 and its subsections in a memorandum which shall be maintained in the Agency Procurement File.

6.7.4 Multiple or Alternate Proposals or Qualifications

It shall be at the sole discretion of the procuring Agency as to whether offerors may submit multiple or alternate proposals or qualifications to be considered by the Agency. If such proposals or qualifications will be considered by the Agency, the solicitation document shall specifically so state and shall state the maximum number of multiple or alternate proposals or qualifications which will be accepted from an individual offeror.

Where an offeror submits multiple or alternate proposals or qualifications, but the solicitation document does not specifically contemplate that multiple or alternate proposals or qualifications will be considered, the Agency may – at its sole discretion – reject all proposals or qualifications submitted by the offeror or contact the offeror and ask them to withdraw all but one of the proposals or qualifications submitted.

6.8 Evaluation of Proposals or Qualifications

Criteria that are not set forth in the RFP or RFQ may not be used to evaluate proposals or qualifications. The contract(s) shall be awarded to the responsive and responsible offeror(s) who was awarded the highest overall score(s) during the evaluation process.

6.8.1 Conflict of Interest Certifications

The Agency official responsible for the procurement shall create a list of all offerors who submitted proposals or qualifications, their principals¹⁷, their parent organizations, and their subsidiary organizations. Prior to beginning the evaluation process all Agency officials responsible for management of the procurement, all members of the evaluation

¹⁷ For each RFP or RFQ issued, the Agency shall define who constitutes a “principal” of the offerors. The Agency has discretion to tailor the definition to the specific procurement, but that discretion must be exercised in good faith. The RFP or RFQ shall clearly state the Agency’s chosen definition. (e.g., “A principal of an offeror is a person or entity who has a 5% or greater ownership interest in the offeror and all individuals in senior-level management positions, regardless of whether those individuals have an ownership interest in the offeror.”)

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committee, and all advisors to the evaluation committee shall be provided the list of offerors and shall certify, in writing, that they have no personal, financial, or familial interest in any of the offerors or principals thereof. The certification shall restate the conflict of interest standards found in the Mississippi Ethics in Government laws, Mississippi Code Annotated §§ 25-4-101 through 25-4-121. The certification shall also state:

“I hereby certify that I have no personal, financial or familial interest in any of the contract offerors, or principals thereof. I have reviewed the conflict of interest standards prescribed herein, and I do not have a conflict of interest with respect to the evaluation of this proposal or qualification. I further certify that neither I nor any member of my immediate family are engaged in any negotiations or arrangements for prospective employment or association with any of the offerors submitting proposals or qualifications or their parent or subsidiary organization.”

Persons who are unable to execute the conflict of interest certification shall not participate further in the procurement process. All executed conflict of interest certifications shall be maintained in the Agency Procurement File.

See Exhibit 1 to this chapter for a sample Conflict of Interest Certification.

6.8.2 Responsive and Responsible Determination

In order to determine which offerors are responsive and responsible, the Agency official conducting the procurement shall evaluate: (1) whether each offeror was responsive and provided all information in the format required by the RFP or RFQ; (2) whether each offeror is responsible and objectively meets the minimum qualifications set forth in the RFP or RFQ.¹⁸

The procuring Agency shall notify all offerors whose proposals or qualifications are deemed non-responsive or non-responsible. Such notice shall be promptly made *either* within five business days following the determination that the offeror is non-responsive or non-responsible *or* at the time the Notice of Intent to Award is issued, whichever the Agency determines is in the best interest of the Agency for the particular procurement.

6.8.2.1 Receipt of Acknowledgement of Amendments

Written acknowledgement of *all* amendments shall be received from *all* offerors prior to issuance of the Notice of Intent to Award.

¹⁸ [This note provides an explanation of how the responsive and responsible determination complies with the statutory mandate to determine acceptability of offers. This note requires no additional action by a procuring Agency.] In compliance with Mississippi Code Annotated § 31-7-419(1), an Agency which has deemed a proposal or qualification responsive and responsible has determined that the offeror is acceptable; an Agency which needs to hold discussions with the offeror to determine whether its proposal or qualification is responsive and responsible has determined that the offeror is potentially acceptable (*See Section 6.8.4.5*); and an Agency which has determined that a proposal or qualification is non-responsive and/or non-responsible has deemed the offeror unacceptable.

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Should any offeror fail to submit all necessary acknowledgement(s) with its proposal or qualification, the Agency shall have the sole discretion as to whether to request that an offeror submit the required acknowledgement(s) after the proposal or qualification submission deadline but prior to issuance of the Notice of Intent to Award. The Agency shall exercise that discretion in a manner that is fair to all offerors. Any offeror who does not provide the Agency acknowledgement(s) of every amendment issued may be deemed non-responsive and not eligible for award.

6.8.2.2 Conditional Proposals and Qualifications Prohibited

Any proposal or qualification which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not eligible for award.

6.8.3 Evaluation Committee and Advisors

A committee shall be used to evaluate proposals or qualifications to determine which offeror(s) will be awarded the contract(s). Persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the proposals or qualifications. The Agency Head or his or her designee has the sole discretion to determine who has the relevant experience necessary to serve as a member of or advisor to the evaluation committee. PPRB shall not substitute its judgment for that of the Agency regarding the experience of the evaluation committee.

When evaluating proposals or qualifications, the evaluation committee members may conduct their work separately or together. Where the evaluation committee chooses to conduct its work together (commonly referred to as “consensus scoring”), it is recommended, but not required, that all members of the evaluation committee be present at all evaluation sessions. If an Agency chooses to use consensus scoring but all members of the evaluation committee are not present at all evaluation sessions, the Agency must demonstrate that the evaluation sessions were conducted in a fair and reasonable manner.

The evaluation committee may also use advisors who provide opinions regarding the proposals and qualifications being evaluated. Advisors to the evaluation committee are individuals who provide significant input to a member or members of the evaluation committee such that the advisor’s opinions are fundamental in shaping the committee member(s)’ evaluation of the submitted proposals or qualifications. Advisors provide advice and opinions only, and do not act as a substitute for members of the evaluation committee.

The members of and advisors to the evaluation committee may be employees and/or non-employees of the procuring Agency. There is no minimum or maximum number of people who may serve as members of and advisors to the evaluation committee.

6.8.3.1 Public Notice of Evaluation Committee Members

The members of and advisors to the evaluation committee’s names shall not be publicly disclosed until the Evaluation Committee Report is published with the Notice of Intent to Award. The members’ and advisors’ names and job titles shall

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be made available to the public in the Evaluation Committee Report. Where any evaluation committee member is not an employee of the state, that member's educational qualifications, professional qualifications, and practical experience (*i.e., curriculum vitae*) shall also be made available to the public with the Evaluation Committee Report.

See Exhibit 2 to this chapter for a sample Evaluation Committee Report.

6.8.4 Evaluation

The process of evaluating proposals and qualifications on the basis of weighted factors shall result in either the proposal(s) or qualification(s) which is most advantageous to the Agency – price and other factors considered – being recommended for contract award(s) or all proposals or qualifications being rejected.

6.8.4.1 Evaluation Factors Generally¹⁹

Agencies may use any factors to evaluate proposals or qualifications the Agency feels will result in obtaining the best value for the Agency.

6.8.4.2 Mandatory Evaluation Factor: Price

Other than as discussed in Section 6.8.4.2.1, Agencies shall evaluate the Price submitted by offerors as an evaluation factor in every RFP or RFQ. Price is the ***only required evaluation factor***. Price constitutes the monetary cost (*i.e., the dollar amount bid*) to the Agency to obtain the personal and professional services needed.

As required by Mississippi Code Section 31-7-413, Price shall be (1) given at least 35% of the available points, (2) the highest weighted individual factor, ***and*** (3) objectively scored. To meet the requirement of objective scoring, the lowest priced proposal or qualification shall receive the maximum points allotted to Price and the other offerors shall be assigned points proportionally.

The following formula is an example of how Agencies may objectively assign Price points:

$$(X / Y) * 35 = Z$$

*X = lowest price submitted
Y = offeror's price
Z = offeror's assigned price points*

This formula assumes Price was assigned 35 points. If Price is assigned more than 35 points, the multiplier shall reflect the number of points assigned to Price.

6.8.4.2.1 Agency Sets the Rate of Pay

Where the Agency sets the rate of pay, the Agency is ***not*** required to use Price as an evaluation factor.

¹⁹ Mississippi Code Annotated § 31-7-413 distinguishes between factors which require the identity of the offeror to be revealed and those which do not. PPRB has determined that all factors in RFPs and RFQs for personal and professional services require the identity of the offeror to be revealed.

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However, if an Agency sets the rate of pay and chooses to include Price as an evaluation factor: (1) Price must be given at least 35% of the available points; (2) Price must be the highest weighted individual factor; and (3) all vendors shall receive the maximum number of points available for Price.

6.8.4.3 Commonly Used Categories of Evaluation Factors

Mississippi Code Annotated § 31-7-413 requires a procuring Agency *to consider* whether these commonly used categories of evaluation factors would result in best value for the Agency. A procuring Agency is *not required to include* any of these categories in its solicitation. Agencies have the sole discretion to use the factors which meet the needs of the particular solicitation and will achieve best value for the Agency – whether that includes all, some, one, or none of the categories of evaluation factors discussed here.

6.8.4.3.1 Technical Factors²⁰

These factors aid in determining the offeror’s technical ability to perform the service, such as proposed methodology, understanding of the scope of work and objectives, or the use of innovative technology and techniques.

6.8.4.3.2 Management Factors²¹

These factors aid in determining the offerors’ qualifications to provide the service and can include the capability and experience of the offeror’s proposed staff, the offeror’s record of reliability in performing similar services, or work plans and schedules.

6.8.4.3.3 Cost Factors²²

These factors aid in determining the value which the vendor’s proposal or qualification would provide to the Agency and/or the vendor’s financial viability.²³

²⁰ Mississippi Code Annotated § 31-7-413 provides the following examples of technical factors which may be used to evaluate proposals or qualifications: a clear understanding of the scope of work and related objectives; capability to provide the personal or professional services required; previous record of work similar to what is proposed; and use of innovative technology and techniques.

²¹ Mississippi Code Annotated § 31-7-413 provides the following examples of management factors which may be used to evaluate proposals or qualifications: timeline; project management plan; experience performing the work; record of producing on budget and on time; prior contract compliance issues; industry experience; record of business ethics; availability of resources; qualification and experience of personnel; and cultural sensitivity in hiring and training staff.

²² Mississippi Code Annotated § 31-7-413 provides the following examples of cost factors which may be used to evaluate proposals or qualifications: relative cost when compared to other offerors; cost is adequately explained and documented; suitable bonds, warranties, insurance, or guarantees are provided; quality control measures; and financial stability of the offeror.

²³ Pursuant to Mississippi Code Annotated § 31-7-413(2)(b)(iii), PPRB hereby approves all Agencies under its purview procuring personal and professional services to submit cost factors to the evaluation committee at any point in the evaluation process which the procuring Agency deems to be in its own best interest.

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6.8.4.4 Weight of Evaluation Factors

Agencies shall weight evaluation factors in a manner that helps achieve best value of the Agency. The weight of the factors shall have been approved by PPRB when the petition for relief was approved.²⁴ See Section 6.3.2.

The Agency shall develop a total number of points available during evaluation and assign each individual factor a percentage of those points. The total percentage of all individual factors in a category shall equal the percentage of points that corresponds with the weight approved by PPRB.

At minimum, the RFP or RFQ shall show the relative importance of each category of evaluation factors by stating the number of points each category will be assigned, stating the percentage of points each category will be assigned, listing the categories in order of importance, *or* by all of the above. An Agency may provide more detailed information about the weight of the evaluation factors, if it so chooses.

6.8.4.5 Discussions with Offerors

Discussions may be conducted to promote understanding of the Agency's requirements and the offeror's proposal or qualification, or to facilitate arriving at a contract which will be most advantageous to the Agency. The offeror may update its proposal or qualification to reflect clarifications needed following discussions.

The Agency shall ensure information gleaned from one proposal or qualification is not disclosed to other offerors and shall conduct the discussions in a manner which maintains the essential integrity of the procurement process. Each offeror shall be treated fairly with regard to the opportunity to engage in discussions.

The Agency shall prepare a memorandum with the date, place, purpose, attendees, and outcome of any discussions. The memorandum shall become part of the Evaluation Committee Report.²⁵

6.8.4.6 Best and Final Offers

An Agency requesting offerors to submit a Best and Final Offers ("BAFO") are asking those offerors to submit their lowest price. If allowed by the RFP or RFQ, the Agency may request BAFOs in accordance with the requirements in the RFP or RFQ. Offerors shall be informed that if they do not submit a BAFO, the immediate previous offer will be considered their BAFO.

The Agency shall request BAFOs only once unless the Agency makes a written determination it is in the Agency's best interest to require additional submission(s)

²⁴ It is not required that PPRB approve every individual factor in the petition for relief, but PPRB must have approved the weight of the *categories* of evaluation factors the Agency will use to evaluate proposals or qualifications.

²⁵ The requirement in Mississippi Code Annotated § 31-7-419(3) that discussions be recorded is met when the Agency creates a record of all discussions in a memorandum.

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of BAFO(s). The Agency shall maintain the written determination in the Agency Procurement File.

The Agency shall recalculate price points after the BAFOs are received. *See Section 6.8.4.2.*

6.8.4.7 Offeror Submitting More Comprehensive Services

The awardee(s) shall be the offeror(s) who submitted the proposal(s) or qualification(s) which received the highest score(s) following evaluation of the factors listed in the RFP or RFQ. Where an offeror has offered more services than those solicited, such unsolicited offers may not be considered in determining which offeror(s) will be awarded a contract. An Agency may accept services beyond the scope solicited only if (1) those services are offered at no cost to the Agency *and* (2) the offeror would have been the awardee regardless of whether the unsolicited services had been offered (i.e., the unsolicited services were not considered in the evaluation of proposals or qualifications.)

6.8.4.8 Single Proposal or Qualification Received

If only a single responsive and responsible proposal or qualification is received, an award may be made to the single offeror if the Agency makes a written determination that (1) other prospective offerors had a reasonable opportunity to respond *and* (2) to the best of the Agency's knowledge, the intended awardee reasonably anticipated that competing proposals or qualifications may be submitted. It is presumed that an Agency awarding a contract when only a single responsive and responsible proposal or qualification is received has determined the price was reasonable when considering all relevant circumstances.

6.8.5 Post Evaluation Affidavits

It is recommended, but *not* required, that all Agency officials responsible for management of the procurement, all members of the evaluation committee, and all advisors to the evaluation committee execute affidavits when the evaluation process is complete and all scores have been tabulated.

It is recommended that the affidavit identifies the affiant's role in the procurement process, affirms the affiant acted in good faith and in compliance with the Mississippi Ethics in Government laws, and affirms that the final tabulation of scores is true and correct. Any affidavits executed under this Section shall be made under penalty of perjury and notarized by an actively commissioned notary public.

Agencies who choose to have affidavits executed by those participating in the procurement process shall work with Agency legal counsel to draft an appropriate affidavit for the procurement at issue and to ensure the affidavits are properly executed.

See Exhibit 3 to this chapter for a sample Post Evaluation Affidavit.

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6.9 Contract Award

After proposals or qualifications have been evaluated, the Agency shall issue a Notice of Intent to Award to the responsible and responsive offeror(s) whose proposal(s) or qualification(s) is determined in writing to be the most advantageous to the Agency taking into consideration price and the evaluation factors set forth in the RFP or RFQ. No other factors or criteria shall be used in the evaluation.

6.9.1 Notice of Intent to Award and Evaluation Committee Report

Following evaluation and determination of the intended awardee(s), a Notice of Intent to Award shall be prepared, explaining the basis for determining the successful offeror(s). The Notice of Intent to Award shall include an Evaluation Committee Report with the following information:

- the names of all offerors who submitted a proposal or qualification;
- the names of offerors who were non-responsive and/or non-responsible;
- a ranking of the responsive and responsible offerors in order of highest overall score;
- the offeror(s) the Agency recommends be awarded a contract;
- the reason(s) why the intended awardee(s) has been selected (a statement such as “the intended awardee received the highest overall score during evaluation” is sufficient);
- the terms, conditions, and scope of services of the contract;
- a copy of the evaluation committee’s score sheets;
- a copy of the record of discussions held, as required by Section 6.8.4.5;
- the identities of the members of and advisors to the evaluation committee, as required by Section 6.8.3.1;
- a copy of the post evaluation affidavits as discussed in Section 6.8.5, if applicable;
- notice of an offeror’s opportunity to request a debriefing, if applicable;
- notice of an offeror’s opportunity to request reconsideration of the intent to award, which can be accomplished by referring to Section 6.9.3 of the *PPRB OPSCR Rules and Regulations*; and
- notice to the offerors and the public that the Agency Procurement File is available on the Agency’s website.

See Exhibit 2 to this chapter for a sample Evaluation Committee Report.

6.9.1.1 Distribution²⁶

The Notice of Intent to Award and Evaluation Committee Report shall be (1) posted publicly on the Agency website, (2) posted publicly on the procurement portal, **and**

²⁶ [This note provides an explanation of how distribution of the Notice of Intent to Award complies with the statutory 48-hour notice requirement. This note requires no additional action by the procuring Agency.] In compliance with Mississippi Code Annotated § 31-7-423(1), the Evaluation Committee Report shall be available to the public at least 48 hours prior to awarding the contract. The 48 hour period is triggered when the Evaluation Committee Report is distributed with the Notice of Intent to Award as described in Section 6.9.1. Contract Award, as defined in Chapter 2 herein, occurs at execution of a contract following approval of all required entities, including but not limited to PPRB. Thus, to the extent the Evaluation Committee Report has been posted at least 48 hours prior to contract execution, the statutory 48 hour public notice requirement has been met.

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(3) sent directly to all offerors who responded to the solicitation. Evidence of the time and date of distribution shall be maintained in the Agency Procurement File.

6.9.1.2 Public Posting of the Agency Procurement File

A complete copy of the Agency Procurement File shall be made available to the public on the procuring Agency's website at the time the Notice of Intent to Award is posted on the procuring Agency's website. *See Appendix D.* In addition to all documents related to the procurement and/or required by these rules and regulations, the Agency Procurement File posted on the Agency website shall include a copy of all proposals or qualifications received. Where any offeror submitted a redacted proposal or qualification (proposal or qualification submitted by an offeror which has trade secrets and confidential commercial and financial information redacted) the redacted copy of the proposal or qualification, rather than the complete copy, shall be posted on the Agency website.

6.9.1.3 Review for Confidential Information Prior to Posting

Prior to posting the Notice of Intent to Award, Evaluation Committee Report, and Agency Procurement File on the Agency website, procuring Agencies are strongly encouraged to consult with their legal counsel and redact information which may be considered trade secret and/or confidential commercial and financial information. *See Mississippi Code Annotated §§ 25-61-9, 79-23-1, and 75-26-1, et seq.* However, such redactions should be used sparingly and where there is doubt, Agencies should err on the side of transparency in the procurement process.

6.9.1.4 Posting on the Agency Website

The Notice of Intent to Award, Evaluation Committee Report, and the Agency Procurement File shall remain publicly posted on the Agency's website until the procurement is cancelled or a contract resulting from the RFP or RFQ is fully executed following PPRB approval.

6.9.2 Debriefings

Agencies are encouraged to exchange information with vendors in an effort to build and strengthen business relationships and improve the procurement process. In the sole discretion of the procuring Agency, debriefings may be offered to offerors following issuance of the Notice of Intent to Award.

An Agency choosing to offer debriefings shall notify the offerors of the opportunity to request a debriefing in the Notice of Intent to Award. That notice shall include the deadline and specific process to request a debriefing. (*e.g., Submit a request for a debriefing via email to agencyofficial@agency.ms.gov on or before 3:00 p.m. CST on October 11, 2024.*)

If a debriefing is offered, the Agency shall provide one to every offeror who requests one. The means of conducting the debriefing and information discussed shall be at the sole discretion of the Agency. However, a debriefing shall **not** provide a point-by-point comparison of the debriefed vendor's response with any other responses to the solicitation.

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In the sole discretion of the procuring Agency, the contract and Agency Procurement File may be submitted to OPSCR for PPRB approval as described in Sections 1.2.1, 1.2.2, and 14.8 before, during, or after resolution of any requests for debriefing. However, all requested debriefings shall be completed prior to the contract being presented to PPRB for approval. At the point all requested debriefings have been provided, the Agency shall prepare a list of all offerors who requested a debriefing and the date each requested debriefing was completed. That list shall be placed in the Agency Procurement File.

6.9.3 Request for Reconsideration of the Intent to Award

An offeror who responded to an RFP or RFQ has an opportunity to request that the procuring Agency reconsider its intent to award the contract to a specific offeror(s). Any such request shall be filed with the Agency official primarily responsible for the procurement *and* the Director of OPSCR within three business days following issuance of the Notice of Intent to Award and posting of the Agency Procurement File in compliance with Sections 6.9.1, 6.9.1.1, and 6.9.1.2. It shall be the sole responsibility of the requesting offeror to ensure the request is timely *received* by all required parties. Failure to timely request reconsideration in compliance with this Section results in waiver of any claim an offeror may have as to the Agency's decision to award the contract.

The request shall contain the requesting vendor's name, a single contact person, all contact information for the contact person, the RFX number of the solicitation, the date the RFP or RFQ was issued, and the date the Notice of Intent to Award was issued. The request shall identify which of these rules and regulations and/or the terms of the RFP or RFQ the requesting offeror believes were violated by the Agency during the evaluation process, explain the factual basis for the alleged violation(s), and specify how the alleged violation(s) affected the outcome of the procurement. The request shall not be based on anything other than the Agency Procurement File, these rules and regulations, and the terms of the RFP or RFQ. The request shall not be supplemented.

Exhibits shall not be included with the request. Rather, the requesting vendor shall clearly identify the portion(s) of the Agency Procurement File, the RFP, or the RFQ at issue in the request. Reference to documents outside of or facts not supported by the Agency Procurement File, the RFP, or the RFQ shall not be considered by the Agency when responding to the request.

If the requesting offeror believes the Agency Procurement File posted on the Agency website is incomplete (i.e., does not contain a document or documents required by these rules and regulations), the requesting offeror shall so state in the request and shall specify what it believes to be missing.

Should the requesting offeror believe the trade secrets and/or confidential commercial or financial information which were redacted from the Agency Procurement File posted on the Agency website contain issues related to its request, the requesting offeror shall state those concerns in the request – even if speculative – in a manner which is specific enough for the Agency to provide a response.

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These rules and regulations provide the opportunity to request reconsideration of an Agency's decision to award a contract requiring PPRB approval. No such opportunity exists where the contract will not require PPRB approval unless explicitly so stated by the procuring Agency.

6.9.3.1 Agency Decision on Request for Reconsideration

The Agency shall consider whether the violation alleged by the requesting offeror is reflected in the Agency Procurement File and shall issue a written response to the request. The Agency's discretion to make subjective decisions in response to a request for reconsideration is limited *only* by the requirement that such discretion be supported by a legitimate business reason and be exercised in a manner that is fair to all offerors.

The Agency shall respond to any questions or issues raised related to documents missing from the Agency Procurement File posted pursuant to Section 6.9.1.2. If the Agency failed to post the complete Agency Procurement File, the three-day time limitation for offerors to request reconsideration of the intent to award was not triggered and shall not be triggered until the complete Agency Procurement File is posted.²⁷ *See Appendix D.*

The Agency shall provide the most complete response possible to any questions or issues raised related to the trade secrets and/or confidential commercial or financial information of another offeror without revealing any trade secrets or confidential commercial or financial information.

The Agency decision on the request for reconsideration shall be issued *prior to* submitting the contract and Agency Procurement File to OPSCR for PPRB approval as described in Sections 1.2.1, 1.2.2, and 14.8. To issue the Agency decision, both the request for reconsideration *and* the Agency decision shall be (1) sent directly to all offerors, including the requesting offeror; (2) posted, publicly, on the procurement portal; *and* (3) posted, publicly, on the Agency website. The Agency decision shall be made part of the Agency Procurement File.

Should the Agency determine that its intent to award should be reconsidered in accordance with an offeror's request, the Agency may take any reasonable steps to preserve its procurement pursuant to Section 1.4.8 or may cancel the procurement.

6.9.4 Approval of PPRB

Any contract resulting from an RFP or RFQ in which the total contract value exceeds \$75,000.00 and which is not otherwise exempt from PPRB's purview shall be submitted for PPRB approval prior to contract execution. Agencies shall refer to Sections 1.2.1, 1.2.2, and 14.8 regarding submission to OPSCR.

²⁷ If the Agency determines the Agency Procurement File posted on the Agency website is incomplete, the Agency shall provide notice to all offerors when the updated Agency Procurement File is posted. Such notice shall be (1) posted publicly on the Agency website, (2) posted publicly on the procurement portal, *and* (3) sent directly to all offerors who responded to the solicitation. This notice triggers the three-day time limitation to request reconsideration.

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Prior to presenting the contract to PPRB, OPSCR shall review all aspects of the procurement process for compliance with these rules and regulations, including the Agency decision(s) following any request(s) for reconsideration. That review shall be the basis of OPSCR's recommendation to PPRB regarding approval of the contract.

Agencies may execute a contract at any point following oral approval of the contract by the PPRB. Agencies are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

6.9.5 Notice of Contract Award

A Notice of Contract Award which complies with the requirements of Mississippi Code Annotated § 31-7-423(2) shall be prepared following (1) approval of PPRB, if required; (2) approval by any other required boards or entities, if required; *and* (3) full execution of the contract, renewal, or amendment. The Notice of Contract Award shall contain the nature, duration, and amount of the contract; the name of the contracting vendor; a statement that the contract is available for public inspection by contacting the Agency; and an analysis as to why the contract was awarded, renewed, or amended. The Notice of Contract Award shall be (1) posted publicly on the Agency website *and* (2) posted publicly on the Transparency website. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

6.10 Cancellation of Solicitation or Rejection of Individual Proposals or Qualifications

At the Agency's sole discretion, an RFP or RFQ may be canceled or any or all responses to the solicitation may be rejected when the Agency determines that it is in the Agency's best interest to do so. A memorandum stating the reasons for the cancellation or rejection shall be made part of the Agency Procurement File.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation process requires expenditure of public sector time and resources, and preparing responses requires expenditure of private sector time and resources. However, nothing in this Section shall be construed as conferring any grievance right on any party when an Agency chooses to cancel its solicitation.

6.10.1 Notice of Cancellation of RFP or RFQ

When a solicitation is canceled, Notice of Cancellation shall identify the solicitation being canceled and provide any information the Agency deems appropriate. The Notice of Cancellation shall: (1) be posted publicly on the Agency website; (2) be posted publicly on the procurement portal; *and* (3) be distributed to all potential offerors known to have received a copy of the RFP or RFQ. A memorandum containing the reasons for the cancellation shall be made part of the Agency Procurement File.

6.10.2 Rejection of Individual Proposals or Qualifications

Unless the solicitation states otherwise, proposals or qualifications need not be unconditionally accepted without alteration or correction. The stated requirements may be revised or clarified pursuant to Section 6.7.3 and any relevant subsections or Section

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6.8.4.5. Agencies shall consider this flexibility in determining whether reasons exist for rejecting a proposal or qualification.

Reasons for rejecting individual proposals or qualifications include but are not limited to:

- the proposal or qualification was non-responsive to the solicitation;
- the offeror is deemed non-responsible;
- the proposal or qualification fails to meet the requirements of the Agency;
- the proposed price is clearly unreasonable;
- lack of competitiveness by reason of collusion or knowledge that reasonably available competition did not occur.

6.10.3 Disposition of Proposals or Qualifications

Where proposals or qualifications are individually rejected or the solicitation is canceled after proposals or qualifications are received, the Agency shall have the sole discretion to determine whether to return proposals or qualifications to the offeror or retain the proposal or qualification in the Agency Procurement File. If the Agency chooses to return rejected proposals or qualifications to the offeror, the Agency shall ensure enough information is retained in the Agency Procurement File to support the Agency's decision to reject it.

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Exhibit 1: Sample Conflict of Interest Certification

This is a sample document. Agencies are not required to use this specific format.

[Agency Name] Request for [Proposals, Qualifications]
[Type of Services Solicited] RFX # [1234567890]

CONFLICT OF INTEREST CERTIFICATION

Name: _____

I am a(n) _____ member of the Evaluation Committee.
_____ advisor to the Evaluation Committee.
_____ Agency official responsible for management of the procurement.

I _____ have reviewed a list of all Offerors who responded to RFX # [1234567890].
_____ have not reviewed a list of all Offerors who responded to RFX # [1234567890].

I _____ have reviewed the Mississippi Ethics in Government laws.*
_____ have not reviewed the Mississippi Ethics in Government laws.*

**The Mississippi Ethics in Government laws are codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121 and are attached hereto.*

I hereby certify that I have no personal, financial, or familial interest in any of the contract offerors, or principals thereof. I have reviewed the conflict of interest standards prescribed herein and I do not have a conflict of interest with respect to the evaluation of this proposal or qualification. I further certify that neither I nor any member of my immediate family are engaged in any negotiations or arrangements for prospective employment or association with any of the offerors submitting proposals or qualifications or their parent or subsidiary organization.

Signature: _____

Date/Time: [Must be *prior to* Date/Time Evaluation Begins]

Date/Time Evaluation Begins: [Must be *after* Date/Time Certification Executed]

[Attach a copy of the most current version of the Mississippi Ethics in Government Law, Mississippi Code Annotated §§ 25-4-101 through 25-4-121.]

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Exhibit 2: Sample Evaluation Committee Report

*** This is a sample document. Agencies are not required to use this specific format. ***

[Agency Name] Request for [Proposals, Qualifications]
[Type of Services Solicited] RFX # [1234567890]

EVALUATION COMMITTEE REPORT

The [Agency] received [proposals, qualifications] from the following Offerors:

-
-
-

[Offeror 1] was deemed non-responsive and/or non-responsible. The evaluation committee did not evaluate [Offeror 1]’s [proposal, qualification]. The remaining offerors’ [proposals, qualifications] were evaluated and received the following scores:

| Offeror Name | Technical Score | Management Score | Cost Score | Overall Score | Overall Rank |
|--------------|-----------------|------------------|------------|---------------|--------------|
| | | | | | |
| | | | | | |

The Agency intends to award contract(s) to: _____
The intended awardee(s) was selected because: _____

Evaluation Committee Members and Advisors

| Name | Job Title | Member or Advisor | State Employee or Non-State Employee* |
|------|-----------|-------------------|---------------------------------------|
| | | | |
| | | | |
| | | | |

*The *curriculum vitae* of all non-state employees, evaluation committee scoresheets, record of discussions, and post-evaluation affidavits are attached hereto. The full Agency Procurement File is available for public inspection at [Agency web address].

Any offeror may submit a written request for a debriefing to [agencyofficial@agency.ms.gov] at any time prior to [time] on [date]. Any request shall list the names and titles of all individuals who will attend the debriefing on behalf of the offeror and all questions or issues the offeror wishes to discuss at the debriefing.

Any unsuccessful offeror may request reconsideration of the Agency’s intent to award the contract in accordance with Section 6.9.3 of the *PPRB OPSCR Rules and Regulations*.

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Exhibit 3: Sample Post Evaluation Affidavit

This is a sample document. Agencies are not required to use this specific format. Agencies are encouraged to tailor the content to the specific affiant and the specific RFP or RFQ.

AFFIDAVIT

1. My name is [Name]. I am above the age of legal majority and am a resident of the State of Mississippi. I am of sound mind and judgment and suffer no legal disabilities. I have personal knowledge of all statements herein.
2. From [Start Date] to [End Date], I participated as a(n) [procurement officer, evaluator, advisor] in the procurement process in which [Agency Name] issued a Request for [Proposals, Qualifications], RFX Number [1234567890] seeking [Services].
3. I participated in the procurement process described in Paragraph 2 in good faith. At all relevant times, I acted with integrity. I was not motivated by bias for or against any particular offeror, any other unethical consideration, or by achieving a specific outcome from the procurement.
4. My participation in the process was limited to [evaluating, advising] the [proposals, qualifications] received in response to the solicitation described in Paragraph 2 solely on the criteria stated in the Request for [Proposals, Qualifications]. I did not consider factors outside of the criteria stated in the Request for [Proposals, Qualifications] when [evaluating, advising].
5. I have reviewed the final calculation of points awarded and have determined the final scores are a true and correct representation of the evaluation committee's collective assessment of the [proposals, qualifications] received in response to the solicitation described in Paragraph 2.
6. I understand that the goal of the procurement process is to obtain best value for [Agency Name] in a competitive, fair, and transparent process. It is my belief that the intended awardee's [proposal, qualification] represents the best value for [Agency] based on the criteria in the Request for [Proposals, Qualifications].
7. I have reviewed the Mississippi Ethics in Government laws, Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and am not in violation of such laws with regard to my participation in procurement process described in Paragraph 2.
8. I have no personal knowledge that any other participant in the procurement process described in Paragraph 2 acted in violation of the Mississippi Ethics in Government laws or otherwise acted with dishonesty, bias, or other unethical conduct.

Under penalty of perjury, I declare that, to the best of my knowledge and belief, the information contained herein is true, correct, and complete.

[SIGNATURE BLOCK FOR NOTARY]

[SIGNATURE BLOCK FOR AFFIANT]

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7.1 Procurement of Contract Workers

Pursuant to Mississippi Code Annotated § 27-104-7, PPRB has authority to develop and promulgate rules and regulations governing solicitation and selection of contract workers, as defined in Mississippi Code Annotated § 25-9-120.

7.1.1 Contract Workers vs. Independent Contractors

A contract worker is a worker under contract with an Agency who meets the requirements for an employee under the Internal Revenue Service (“IRS”) code for federal employment tax purposes.²⁸ Evidence of lawful behavioral control, lawful financial control, and the lawful relationship of the parties shall demonstrate the contract worker is *not* an independent contractor. The Agency shall make a written determination of this finding and maintain it in the Agency Procurement File.

7.1.1.1 Federal vs. State Definition of Employee

In order to prevent potential confusion caused by the differences in the terminology of the IRS and the Mississippi Code, contractual personnel determined not to be (nor working for) independent contractors will be referred to as “contract workers” and are subject to the proper withholding of employment taxes. Mississippi Code Annotated §§ 25-9-120 and 27-104-7(5).

7.1.1.2 Employment Taxes for Contract Workers

IRS Code stipulates that compensation paid to contract workers is subject to the same federal employment tax requirements as that of salaried workers. The contracting Agency is responsible for withholding and paying employment taxes for contract workers.

7.1.1.3 Contract Worker vs. Independent Contractor Determination

Agencies shall look to the most current IRS guidance regarding the definitions of an employee vs. an independent contractor to make the required written determination as to whether the Agency needs a contract worker as opposed to an independent contractor. Additional information can be found at www.irs.gov.

Generally, the Agency will issue an IRS Form 1099 to an independent contractor and an IRS Form W2 to a WIN contract worker. However, Agencies should make this determination on a case-by-case basis with the Agency’s legal counsel and are discouraged from relying solely on the type of IRS Form issued.

7.1.2 Procuring Contract Workers Not Exceeding \$75,000.00

The Agency Head or their designee shall adopt a standard operating procedure for procuring contract workers where the total contract value does not exceed \$75,000.00. Such procedures shall provide for obtaining adequate and reasonable competition under the circumstances and for maintaining records of the procurement process. PPRB approval is not required.

²⁸ Contract workers are assigned a worker identification number (“WIN”) in MAGIC EC and SPAHRS.

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7.1.3 Procuring Contract Workers Exceeding \$75,000.00

Other than the procurement methods in Chapter 13, a procuring Agency may use any procurement method in these rules and regulations to procure contract workers whose total contract value will exceed \$75,000.00.

7.1.4 No Maximum Period of Performance for Contract Workers

Contract workers often function as staff augmentation or support a specific long-term project for the procuring Agency. Thus, the maximum period of performance in Section 14.3.1 does not apply to contracts with contract workers and a procuring Agency may choose to contract with a contract worker indefinitely. The contract worker shall be performing the scope of services and being paid the rate of pay contemplated in the original procurement (including any price adjustment language) at all points during the life of the contract. Should a change be needed to the scope of services and/or the rate of pay, the Agency shall issue a new solicitation in accordance with the rules and regulations herein seeking a contract worker to provide the revised scope of services and/or to be compensated at the revised rate of pay.

7.1.5 State Retiree Contract Workers

Agencies contracting with Mississippi state retirees as contract workers shall complete PERS Form 4B as required by Mississippi Code Annotated § 25-11-127. Additional information can be found at www.pers.ms.gov. A copy of the completed PERS Form 4B shall be contained in the Agency Procurement File.

7.2 Request for Applications

A Request for Applications (“RFA”) is the most commonly used method of procurement when the procuring Agency is seeking a contract worker.

7.2.1 Limitations on Use

An RFA is not an allowable method of procurement to contract with an independent contractor. RFAs may *only* be used to procure WIN contract workers as defined in Section 7.1. Prior to issuing an RFA, a written determination that the Agency needs a contract worker – as opposed to an independent contractor – shall be maintained in the Agency Procurement File.

7.2.2 Content of the Request for Applications

The only information required to be included in the Request for Applications is that which is required to be included in the public notice. *See Section 7.3.1.* Agencies may include any other information the Agency deems relevant.

Specifications shall *not* be unduly restrictive, but instead shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Agency’s needs.

7.3 Public Notice

The RFA shall be *either* advertised in a newspaper published in the county or municipality in which the Agency is located and/or the county or municipality where the services will be

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performed once per week for two consecutive weeks *or* advertised on one or more third party recruiting websites, such as Indeed or LinkedIn, for two consecutive weeks, or both. The RFA shall also be concurrently (1) posted publicly, in full, on the procurement portal, (2) posted publicly, in full, on the Agency's website, *and* (3) to the extent reasonably possible, sent, in full, directly to a minimum of three potential applicants. The Agency may provide notice that the RFA has been issued in any other manner it deems appropriate to encourage and increase competition.

If it is not reasonably possible to send the RFA directly to a minimum of three potential applicants, the Agency shall include a memorandum in the Agency Procurement File which explains why this was not reasonably possible and how the Agency otherwise encouraged competition.

Agencies shall retain documentation proving the time, date, and means of all public notice required by this rule. Public Notice shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

7.3.1 Content of the Publication

The publication shall include:

- the name of the Agency official primarily responsible for the procurement;
- a means of contacting the Agency official primarily responsible for the procurement;
- the minimum qualifications for the contract worker position;
- the period of performance for the contract;
- the rate of pay for the position;
- the deadline by which applications must be submitted; and
- the manner in which to submit applications.

7.3.2 Advertising Time

The RFA shall be advertised for no less than 14 calendar days prior to the application submission deadline, starting with and including, the date first published in the newspaper.

7.4 Amendments to the Request for Applications

Amendments to RFAs are used to:

- revise the RFA such as updating the quantity, scope, or submission date;
- correct defects or ambiguities in the RFA; or
- to furnish to all prospective applicants information given to one prospective applicant where the lack of information would prejudice a potential applicant. Any such information not provided to all potential applicants may be cause for rejection by PPRB.

Amendments shall be identified as an amendment, shall reference the portion of the RFA amended, and shall require all offerors to acknowledge receipt of the amendment.

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7.4.1 Distribution

Amendments shall be: (1) sent directly to all prospective applicants known to have received a copy of the RFA; (2) posted publicly, in full, on the procurement portal; *and* (3) posted publicly, in full, on the soliciting Agency's website.

Agencies shall retain documentation proving the time, date, and means of distribution required by this rule. Amendments to the RFA shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

7.4.2 Timeliness

Amendments shall be distributed within a reasonable time to allow prospective applicants to consider them in preparing their applications. If the time and date set for receipt of applications will not permit such preparation, the time and date set for receipt of applications shall be extended. Any such extension of the submission deadline shall be communicated to all prospective applicants via an amendment.

Should the Agency distribute an amendment less than seven calendar days prior to the application submission deadline, the Agency shall make a written determination that the amount of time allotted is reasonable under the circumstances and shall state the facts supporting that conclusion.

7.5 Receipt of Applications

7.5.1 Receipt of Acknowledgement of Amendments

Written acknowledgement of *all* amendments to the RFA shall be received from *all* applicants prior to issuance of the Notice of Intent to Award. Should any applicant fail to submit all necessary acknowledgement(s) with its application, the Agency shall have the sole discretion as to whether to request that the applicant submit the required acknowledgement(s) after the application submission deadline but prior to issuance of the Notice of Intent to Award. The Agency shall exercise that discretion in a manner that is fair to all applicants. Any applicant who does not provide the Agency acknowledgement(s) of every amendment issued may be deemed non-responsive and not eligible for award.

7.5.2 Single Application Received

If only a single responsive and responsible application is received, an award may be made to the single applicant if the Agency makes a written determination that (1) other prospective applicants had a reasonable opportunity to respond *and* (2) to the best of the Agency's knowledge, the intended awardee reasonably anticipated competing applications may be submitted.

7.5.3 Conditional Applications Prohibited

Any application which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not eligible for award.

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7.5.4 Late Applications

Applications received after the time and date set for submission shall not be considered for award unless the Agency Head or his or her designee has determined, in writing, that considering such an application is in the best interest of the Agency and does not prejudice the other applicants.

7.6 Evaluation of Applications

Applications shall be evaluated to determine if the applicant was responsive to the RFA and whether the applicant meets the minimum qualifications such that the applicant can be deemed responsible.

Pre-determined criteria shall be used to evaluate the responsive and responsible applicants. At the sole discretion of the Agency, interviews may be conducted with all responsive and responsible applicants.

It is recommended that evaluations and interviews, if applicable, be conducted by the same person or committee for each responsive and responsible applicant. Where an Agency is using multiple evaluators, it is recommended, but not required, that all members of the evaluation/interview committee be present at all times the applicants are being evaluated. If an Agency does not use the same evaluation/interview committee throughout the evaluation process, the Agency must demonstrate that the evaluation sessions were conducted in a fair and reasonable manner.

7.7 Contract Award

The applicant(s) receiving the highest score following evaluation shall be awarded the contract(s).

7.7.1 Notice of Intent to Award

Following evaluation and determination of the intended awardee(s), a Notice of Intent to Award shall be prepared, explaining the basis for determining the successful applicant. The Notice shall:

- list the names of all applicants;
- state which applicants were deemed non-responsive or non-responsible;
- state which applicant(s) the Agency recommends be awarded a contract.

7.7.1.1 Distribution of the Notice of Intent to Award

The Notice of Intent to Award shall be: (1) distributed directly to all applicants who responded to the solicitation, (2) posted publicly on the Agency's website, *and* (3) posted publicly on the procurement portal.

The Notice of Intent to Award shall remain publicly posted on the Agency's website until a contract resulting from the procurement is fully executed following PPRB approval or the procurement is canceled.

7.7.2 PPRB Approval

Any contract resulting from an RFA in which the total contract value exceeds \$75,000.00 and which is not otherwise exempt from PPRB's purview shall be submitted for PPRB

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approval prior to contract execution. Agencies shall refer to Sections 1.2.1, 1.2.2, and 14.8 regarding submission to OPSCR.

Agencies may execute a contract at any point following oral approval of the contract by PPRB. Agencies are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

7.7.2.1 OPSCR Staff Approval Authority

PPRB delegates to OPSCR staff the authority to approve WIN contracts in SPAHRS and/or MAGIC EC, whichever is applicable, without prior approval of PPRB where the total contract value, including modifications, does not exceed \$75,000.00 during any 12-month period. OPSCR staff shall ensure the contract meets the requirements of this chapter.

7.7.2.2 New Contract with Prior Contract Worker

When an Agency enters a new contract with a contract worker with whom the Agency has previously contracted, the Agency shall obtain a new contract number in MAGIC EC, SPAHRS, or any statewide system which succeeds MAGIC EC or SPAHRS.

7.7.3 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other required boards or entities; *and* (3) execution of the contract, renewal, or amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The notice shall be accompanied with an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

7.8 Cancellation of Solicitation or Rejection of Individual Applications

At the Agency's sole discretion, an RFA may be canceled or any or all responses to the solicitation may be rejected when the Agency determines that it is in the Agency's best interest to do so. A memorandum stating the reasons for the cancellation or rejection shall be made part of the Agency Procurement File.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation process requires expenditure of public sector time and resources, and preparing responses requires expenditure of private sector time and resources. However, nothing in this Section shall be construed as conferring any grievance right on any party when an Agency chooses to cancel its solicitation.

7.8.1 Notice of Cancellation of RFA

When a solicitation is canceled, Notice of Cancellation shall identify the solicitation being canceled and provide any information the Agency deems appropriate. The Notice of Cancellation shall: (1) be posted publicly on the Agency website; (2) be posted publicly on the procurement portal; *and* (3) be distributed to all potential offerors known to have

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received a copy of the RFA. A memorandum containing the reasons for the cancellation shall be made part of the Agency Procurement File.

7.8.2 Rejection of Individual Applications

Reasons for rejecting individual applications include but are not limited to:

- the application was non-responsive to the solicitation;
- the applicant is deemed non-responsible;
- the applicant fails to meet the requirements of the Agency;
- lack of competitiveness by reason of collusion or knowledge that reasonably available competition did not occur.

7.8.3 Disposition of Applications

Where applications are individually rejected, or the solicitation is canceled after application are received, the Agency shall have the sole discretion to determine whether to return applications to the applicant or retain the applications in the Agency Procurement File. If the Agency chooses to return the application to the applicants, the Agency shall ensure enough information is retained in the Agency Procurement File to support the Agency's decision to reject any application.

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CHAPTER 8:
Preapproved Vendor Lists and Cooperative Procurement

This chapter applies to contracts for personal and professional services which were procured by an entity other than the contracting entity.

8.1 Authority to Establish Preapproved Vendor Lists

Mississippi Code Annotated § 27-104-7(2)(i) authorizes PPRB to, “establish a preapproved list of providers of various personal and professional services for set prices with which state [A]gencies may contract without bidding or prior approval from the [B]oard.” PPRB, at its discretion, may exercise its authority and establish preapproved vendor lists (“PVL”) for use by entities under PPRB purview. Creation of PVLs and other cooperative purchasing is intended to provide opportunities for volume discounts through statewide and national purchasing and to lower transaction costs for procuring Agencies and to the private sector. Use of PVLs is optional for Agencies under the purview of PPRB.

8.2 Preapproved Vendor Lists: Statewide Contracts

PPRB has approved statewide lists of preapproved vendors which were procured by OPSCR or DFA for various commonly used services. Any statewide PVL procured by OPSCR or DFA shall be solicited using one of the competitive methods of procurement described in Chapter 3. OPSCR or DFA shall follow the rules and regulations applicable to the chosen method of procurement.

8.2.1 Procedure for Contracting with a Statewide PVL Vendor

The PVLs shall be posted on the DFA website. The contracting Agency should locate the PVL for the service needed and locate the region where the service is to be provided. The Agency is encouraged, but not required, to contact the lowest bidder in the region first.

Once a vendor is selected, the Agency and the vendor should negotiate a contract. The Agency may use the contract template for the selected service provided on the DFA website. Use of the contract template is optional. The Agency may use its own contract if it is compliant with the relevant solicitation and contains the terms and conditions required by these rules and regulations.

8.2.2 OPSCR Staff Authority for Approval of Statewide PVL Contracts

PPRB has delegated authority to OPSCR staff to approve Agency contracts with vendors from any PVL created by PPRB, to the extent the scope of services is consistent with the solicitation used to establish the PVL and the unit prices are consistent with the amount bid by the PVL vendor.

8.3 Preapproved Vendor Lists: National Cooperatives

PPRB has approved national cooperative portfolios of various personal and professional services as PVLs. Any national cooperatives an Agency wishes to have approved as a PVL shall have been procured through full and open competition using a source selection method substantially equivalent to those described in Chapter 3. The procurement shall have been in compliance with the laws and regulations governing the procuring entity, and shall have promoted the principles of competition, fairness, and transparency. Agencies seeking to have a national cooperative approved as a PVL shall provide a market analysis demonstrating the pricing is competitive and that adopting the cooperative will provide an economic advantage to the Agency.

CHAPTER 8:
Preapproved Vendor Lists and Cooperative Procurement

8.3.1 Procedure for Contracting with a National PVL Vendor

Any Agency identifying a national cooperative portfolio for personal and professional services which will meet the needs of the Agency may request that the portfolio be approved by PPRB as a PVL. Such a request shall be directed to the Director of OPSCR and shall be submitted using the same deadlines applicable to contract submission.

Once the portfolio is approved, the vendors will be placed on the DFA website. Any Agency under PPRB's purview may contract with any vendor in the approved portfolio. Agencies are encouraged, but not required, to contact the lowest priced vendor in the portfolio first.

Once a vendor is selected, the contracting Agency shall work with OPSCR and the vendor to negotiate a contract. Such contract shall include any documents required by the procuring entity or the national organization which sponsored the procurement. The contract shall also comply with the rules and regulations herein and contain all required clauses. Where Mississippi law or regulation conflicts with any other documents or requirements, the vendor shall agree that Mississippi law will prevail.

8.3.2 OPSCR Staff Authority for Approval of National PVL Contracts

PPRB has delegated authority to OPSCR staff to approve Agency contracts with vendors from any PVL created by PPRB, including PVLs created through national cooperatives, to the extent the scope of services is consistent with the solicitation used to establish the PVL and the unit prices are consistent with the amount bid by the PVL vendor.

8.4 In-State Cooperative Procurement: "Piggybacking"

Any Agency under the purview of PPRB may "piggyback" or contract using a procurement conducted by another Agency under the purview of PPRB. The personal and professional services shall have been solicited in compliance with these rules and regulations. The piggybacking Agency may use all or part of the scope of services solicited by the procuring Agency. Services which were not solicited by the procuring Agency shall not be included in the piggybacking contract.

The piggybacking Agency may only contract with a vendor who was awarded a contract by the procuring Agency following the underlying procurement. Where the procuring Agency made multiple awards, the piggybacking Agency may award less – but not more – contracts than the procuring Agency. However, such awards shall be made as if the piggybacking Agency had conducted the procurement (i.e., in the order of lowest responsive and responsible bidder if the procuring Agency issued an IFB or in order of highest scoring responsive and responsible offeror if the procuring Agency issued an RFP or RFQ).

The piggybacking Agency shall pay the same or lower pricing than that which was competitively procured by the procuring Agency and shall have the burden to demonstrate it is doing so. Where a piggybacking Agency's needs are not identical to the scope of services solicited by the procuring Agency, only those services which were procured so that the price per service (i.e., unit price) is readily apparent are candidates for piggybacking contracts.

CHAPTER 8:
Preapproved Vendor Lists and Cooperative Procurement

8.4.1 PPRB Approval Required

If the value of the piggybacking contract exceeds \$75,000.00, the contract shall be approved by PPRB regardless of whether the procuring Agency's contract has or has not been approved by PPRB. Thus, the underlying contract must have been procured in a manner that would allow for PPRB approval.

When submitting a contract for PPRB approval, as described in Sections 1.2.1, 1.2.2, and 14.8, the piggybacking Agency shall either submit the minutes of the PPRB meeting in which a contract resulting from the original procurement was approved or submit the full Agency Procurement File from the procuring Agency. The piggybacking Agency shall submit any documentation OPSCR requests to ensure compliance with the rules and regulations herein.

The piggybacking Agency shall contract individually with the awarded vendor(s) and the contract shall include a full description of all services, pricing, and terms and conditions. The piggybacking contract may not simply incorporate the terms of the procurement by reference.

Piggybacking Agencies may execute a contract following oral approval of the contract by the PPRB and are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

8.5 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other boards or required entities, if applicable; *and* (3) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

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CHAPTER 9:
Sole Source Procurement

Regardless of the value of the contract, any contract which the Agency declares a sole source shall follow the rules and regulations herein. Sole source procurement is available in only two circumstances: (1) when there is a single personal or professional service which will meet the Agency's need and a single vendor in the marketplace which provides the required service and (2) when a Court has ordered that an Agency contract with a specific vendor to provide a personal or professional service.

9.1 Agency Head Determination

Where an Agency believes it has either type of sole source contract for personal and professional services, the Agency Head shall sign a written determination stating:

- An explanation of the Agency's need, including why the particular service is the only one which will meet the Agency's need;
- A certification that the Agency has determined there is only a single provider of the service in the marketplace, including an explanation of the market research conducted; and
- An explanation as to why the amount to be expended by the Agency on the personal or professional service is reasonable, including the efforts made to obtain the best price possible.

9.2 Single Provider of Personal or Professional Service

9.2.1 Public Notice

The Agency shall publish the following documents publicly on (1) the procurement portal *and* (2) the Agency website:

- the Agency Head's signed written determination described in Section 9.1.,
- a complete copy of the proposed contract, and
- instructions for filing an objection to the sole source determination, as described in Sections 9.2.1.2 and 9.2.2.

Agencies shall retain documentation proving the time, date, and means of all public notice required by this rule. Public Notice shall remain publicly posted on the Agency's website until a contract resulting from the sole source procurement is fully executed following PPRB approval or the procurement is canceled.

9.2.1.1 Time for Publication

The Agency shall publish the documents listed in Section 9.2.1 for a minimum of 21 calendar days prior to submitting the contract for approval by PPRB, or in the case of a contract which does not require approval by PPRB, prior to awarding the contract.

9.2.1.2 Instructions for Filing Objection to Sole Source Determination

The instructions for filing an objection to the sole source determination shall include, at a minimum:

- contact information for the Agency official responsible for the procurement;
- contact information for the Director of OPSCR;

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Sole Source Procurement

- the deadline to file an objection to the sole source determination, which shall be a minimum of 21 calendar days following the date of first publication;
- the reasonable requirements for the Agency to determine it has received the objection (*e.g., received upon personal delivery to the Agency, received when the Agency acknowledges receipt of an emailed objection, etc.*). The Agency shall have discretion to determine what constitutes receipt of the objection so long as the requirement is reasonable under the circumstances.

9.2.2 Objection to Sole Source Determination

If any person or entity objects to the Agency’s determination that the service provider is a sole source and alleges the service can be provided by another person or entity, the objecting person or entity shall notify the Agency official primarily responsible for the procurement *and* the Director of OPSCR. The objecting party shall submit a written, detailed explanation of the basis for the objection to the Agency’s sole source determination.

9.2.2.1 Timing for Filing an Objection

Any objection shall be *received* by the Agency official primarily responsible for the procurement *and* the Director of OPSCR in accordance with the instructions in the Agency’s published sole source determination prior to deadline in the Agency’s sole source determination. The objecting party shall bear all risk of delivery.

9.2.2.2 Review of Objection

9.2.2.2.1 Determination Provider is Not a Sole Source

If, after reviewing the objection, the Agency determines that the service provider *is not* a sole source, then the Agency shall withdraw the sole source determination and use another valid procurement method to procure the required personal or professional services.

9.2.2.2.2 Determination Provider is a Sole Source

If, after reviewing the objection, the Agency determines that the service provider *is* a sole source, the Agency may submit the contract along with its sole source determination and the objection for review and approval by PPRB. The contracts shall be submitted to OPSCR using the same deadlines established for any other contract submission. The Agency shall submit any additional documentation requested by OPSCR to ensure compliance with these rules and regulations and the relevant sections of Mississippi Code Annotated § 27-104-7.

The Agency shall have the burden to prove the service provider is a sole source. Should PPRB have any reasonable doubt that the service provider is a sole source, the Agency will be required to use another valid procurement method to procure the required personal or professional services.

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9.2.3 PPRB Approval Required

If the contract amount is greater than \$75,000.00, it shall be approved by PPRB prior to execution.

Neither PPRB nor OPSCR are required to do an independent investigation to determine whether the provider is a sole source. OPSCR shall review the documentation submitted by the Agency and determine whether the Agency was compliant with Sections 9.1 and 9.2 prior to recommending that PPRB approve a sole source contract.

Agencies may execute a contract following oral approval of the contract by the PPRB and are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

9.3 Court Ordered Sole Source

If a binding, valid court order has been issued mandating that a particular service provider be engaged for the required personal or professional service, the Agency shall submit to OPSCR (1) the Agency Head determination required by Section 9.1, (2) a full copy of the contract, *and* (3) a copy of the court order.

9.3.1 OPSCR Staff Authority

PPRB delegates authority to OPSCR staff to approve any contract with a court ordered sole source provider, regardless of the value of the contract. OPSCR staff shall confirm that the scope of services, price, and period of performance in the contract are strictly in accordance with the court order. The Agency shall have full discretion as to any other terms and conditions of the contract.

9.4 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other boards or required entities, if applicable; *and* (3) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

9.5 Reporting Sole Source Contracts

OPSCR shall report all Sole Source Procurements to PPRB and the AET Chairs. Agencies submitting sole source contracts shall cooperate with DFA in providing the information necessary for such reports.

**CHAPTER 10:
EMERGENCY and EXIGENT CIRCUMSTANCES CONTRACTS**

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CHAPTER 10:
Emergency and Exigent Circumstances Contracts

10.1 Emergency Contracts

PPRB does *not* approve or reject emergency contracts. Any determination as to whether such a contract meets the applicable emergency standard is in the sole discretion of the Agency Head of the procuring Agency.

10.1.1 Emergency Standard

If the Agency Head determines that an emergency exists in regard to the procurement of personal or professional services such that the delay incident to undertaking any other available method of procurement would *threaten the health or safety of any person or the preservation or protection of property*, then the Agency may contract for personal and professional services using an emergency contract.

10.1.2 Agency Head Determination

The Agency Head shall make a written determination stating:

- the conditions and circumstances of the emergency situation,
- a detailed description of the events leading up to the emergency situation,
- an explanation of why the Agency Head determined the health of safety of a person or persons and/or the preservation or protection of property would be threatened if the Agency is required to undertake another available method of procurement, and
- the basis for the selection of the particular contractor.

10.1.3 Limitations on Emergency Contracts

10.1.3.1 Competition

Emergency contracts shall be made with such competition as is practicable under the circumstances.

10.1.3.2 Scope of Services

Emergency contracts shall be limited to those personal or professional services necessary to meet the emergency.

10.1.3.3 Period of Performance

The term of an emergency contract shall be limited to the time necessary to meet the emergency, but in no circumstances shall the term exceed one year. If the Agency will continue to need the personal or professional services beyond the term of the emergency contract, the Agency shall take the necessary steps to competitively procure the services before the emergency contract expires.

10.1.4 Documentation in MAGIC

The Agency Head determination and the emergency contract shall be uploaded to the contract file in MAGIC and made available for public inspection on the Transparency website within 10 business days of contract execution.

CHAPTER 10:
Emergency and Exigent Circumstances Contracts

10.1.5 OPSCR Review of an Emergency Contract

When an emergency contract is routed to OPSCR in MAGIC, OPSCR will review the contract to ensure the contractor is providing personal or professional services. If so, OPSCR will immediately approve the contract in MAGIC without further review. Such approval is for processing purposes only and does not represent review or approval by PPRB or OPSCR.

Upon request of the Agency or at the discretion of OPSCR, emergency contracts will undergo a post-approval audit for technical compliance with the requirements in this chapter. It is the sole responsibility of the Agency to correct any errors and ensure full compliance with the requirements of this chapter.

10.1.6 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval by any boards or required entities, if applicable, *and* (2) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

10.1.7 Reporting Emergency Contracts

OPSCR shall report all emergency contracts to PPRB and to the AET Chairs. Agencies submitting emergency contracts shall cooperate with OPSCR in providing the information necessary for such reports.

10.2 Exigent Circumstances Not Qualifying as an Emergency

PPRB may approve new contracts or contract renewals beyond those originally contemplated in the original solicitation where exigent circumstances warrant such approval.

10.2.1 Definition of Exigent Circumstances

Exigent circumstances are circumstances giving rise to a pressing need which cannot be met by undertaking another method of procurement allowed by these rules and regulations, such as supply chain disruptions or impending loss of funding source.

10.2.2 Agency Head Determination

The Agency Head shall make a written determination that exigent circumstances exist, including an explanation of the circumstances and why the need cannot be met through other available methods of procurement. The determination shall also explain how the Agency sought to maximize competition or provide a detailed description of why competition is unobtainable.

10.2.3 Contracting with Incumbent Vendor under Exigent Circumstances

In the event a contract or contract renewal is entered under this Section with an incumbent vendor, the incumbent shall agree to extend all terms and conditions in the existing contract, including price.

CHAPTER 10:
Emergency and Exigent Circumstances Contracts

10.2.4 PPRB Approval Required

The Agency shall submit (1) the Agency Head determination *and* (2) the exigent circumstances contract to OPSCR pursuant to the deadlines established for submission of all contracts.²⁹ OPSCR will review all documentation to determine if the Agency is procedurally in compliance with Section 10.2 and all requirements governing such contracts. If so, OPSCR will submit the contract to PPRB for approval at the next regularly scheduled meeting.

It shall be the sole responsibility of the contracting Agency to explain the exigent circumstances to PPRB and advocate for approval of the contract. OPSCR will advise PPRB as to procedural compliance only. PPRB shall agree that the exigent circumstance requires contracting for personal and professional services outside of any other method of procurement allowed by these rules and regulations.

PPRB must approve an exigent circumstances contract prior to contract execution. Agencies may execute a contract following oral approval of the contract by the PPRB and are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

10.2.5 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other boards or required entities, if applicable; *and* (3) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

10.3 Circumvention of Procurement Requirements

If the PPRB reasonably suspects an Agency is using emergency or exigent circumstances contracts to circumvent the requirement to use other available methods of procurement, the PPRB shall make a report of any such suspicions first to the Agency Head of the procuring Agency. If the PPRB is not satisfied with the explanation or corrective action of the Agency, the PPRB shall make a report to OSA and the AET Chairs.

²⁹ As of the effective date of these regulations, Agencies shall submit exigent circumstances contracts as a "Purchasing (General)" contract (82000#####) in MAGIC.

**CHAPTER 11:
GOVERNMENT-TO-GOVERNMENT CONTRACTING**

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CHAPTER 11:
Government-to-Government Contracting

Where another Agency or other public entity in the State of Mississippi offers personal or professional services which would meet the procuring Agency's needs, Mississippi Code Annotated § 27-104-7(2)(i) allows the procuring Agency to contract with the state Agency or other public entity for provision of the services without soliciting the private sector.

11.1 Contracting with a State Agency Under Purview of PPRB

Where an Agency under the purview of PPRB contracts with another Agency under the purview of PPRB to provide personal and professional services, PPRB approval is not required. Such contracts shall be entered into MAGIC and shall be available for public inspection on the Transparency website.

11.2 Contracting with a Governmental Entity Not Under Purview of PPRB

Where the procuring Agency is under PPRB's purview and the state Agency or other public entity with whom the procuring Agency is contracting is not under PPRB's purview, PPRB approval *is required* if the contract value is greater than \$75,000.00.

11.2.1 Agency Head Determination Required

The Agency Head shall submit a written determination explaining that : (1) such services meet the Agency's requirements, *and* (2) the price represents a fair market value ("FMV") for such services. This determination shall be made by the Agency Head and may not be made by a designee. The Agency shall provide sufficient documentation supporting the determination that the price represents FMV.

11.2.1.1 Adequate Determination of FMV

PPRB shall have authority to determine whether the Agency's method of determining FMV was sufficient to show a reasonable, good faith effort to demonstrate FMV. However, neither OPSCR nor PPRB shall be responsible to determine whether the cost of personal and professional services is a true representation of FMV; that determination shall be made solely by the procuring Agency.

11.2.2 Approval of PPRB

Government-to-government contracts described in Section 11.2 shall be submitted for PPRB approval prior to contract execution. Agencies shall refer to Sections 1.2.1, 1.2.2, and 14.8 regarding submission to OPSCR. Agencies may execute a contract at any point following oral approval of the contract by the PPRB. Agencies are not required to delay contract execution until the PPRB's minutes are final. *See Section 1.1.7.3.*

11.3 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval of PPRB, if applicable; (2) approval by any other boards or required entities, if applicable; *and* (3) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

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CHAPTER 12:
Statutory Exemptions and No Cost Contracts

12.1 Statutory Exemptions

Mississippi Code Annotated § 27-104-7 contains numerous Agency-specific and/or service-specific contracts which do not require PPRB approval. Various other sections of the Mississippi Code may contain additional exemptions from PPRB's purview. Where an Agency is claiming a contract for personal or professional services is statutorily exempt and does not require PPRB approval, the Agency shall submit a memorandum signed by the Agency Head *and* the Agency's legal counsel citing the statutory exemption and explaining how the exemption is applicable to the contract submitted.

12.1.1 Responsibility to Determine Applicability of Exemption

It shall be the sole responsibility of the procuring Agency to determine whether a contract for personal or professional services meets any relevant statutory exemptions. OPSCR will accept a memorandum executed by the Agency Head and the Agency's legal counsel without independent analysis as to whether the exemption applies. OPSCR will approve the contract in MAGIC where the requirements of Section 12.1 are met.

12.1.2 Exemptions for Any Element of the Procurement Process

The Mississippi Code may contain certain Agency-specific or service-specific exemptions for one or more elements of the procurement process rather than a contract being fully exempt from all procurement requirements and PPRB approval. The requirements and responsibilities in Sections 12.1 and 12.1.1 shall be applicable to any such exemption.

For example, Agencies which are required to issue an RFP for certain services are exempt from the requirement to have PPRB approve a petition for relief approving the Agency's request to use an RFP.

12.1.3 Professional Exemptions

As of the effective date of these rules and regulations, Mississippi Code Annotated § 27-104-7 exempts contracts with attorneys, accountants, actuaries, auditors, architects, engineers, anatomical pathologists, and utility rate experts from requiring approval by PPRB. To qualify for the exemption, the Agency shall be contracting with a professional to provide the exempt professional service.

As examples, a contract with a paralegal for legal support services is not exempt under the "attorneys" exemption as the contracting party is not an attorney. Similarly, a contract with an accounting firm to provide call center services is not exempt under the "accountants" exemption as the firm is not providing professional accounting services.

12.1.3.1 Contracts with Attorneys

Although exempt from the requirements herein, contracts with attorneys are not exempt from Mississippi Code Annotated § 27-104-105, the relevant regulations promulgated by the Mississippi State Personnel Board, the relevant regulations promulgated by the Office of the Attorney General, or any other relevant laws.

CHAPTER 12:
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12.1.3.2 Contracts with Engineers and Architects

Although exempt from the requirements herein, contracts with engineers and architects are not exempt from Mississippi Code Annotated § 31-11-3(7), the relevant regulations promulgated by the Bureau of Building, Grounds, and Real Property Management at DFA, or any other relevant laws.

12.2 No Cost Contracts

A no cost contract is a contract in which there is no expenditure of public funds from any funding source (state, federal, or other). PPRB does not have purview over these contracts. Where any Agency is claiming a contract for personal or professional services is a no cost contract, the Agency shall submit a memorandum signed by the Agency's legal counsel *and* the Agency's chief financial officer with an explanation as to the source of funding such that the contract meets the definition of no cost contract.

For example, a contract for commissary services at a prison in which inmates purchase items from the commissary using their personal money is a no cost contract if the prison does not directly pay the contractor for any goods or services because the contract is paid entirely with non-public funds (i.e., money from inmates' personal accounts).

*Alternatively, a contractor recovering overpayments made by an Agency administering a public benefit program on a contingency fee basis is **not** a no cost contract, even where the contractor withholds its payment from the recovered funds prior to returning the remainder of the recovered funds to the Agency. The full amount of recovered funds belongs to the Agency and therefore the percentage of recovered funds paid to the contractor constitutes public funds even if that payment is not processed by the Agency.*

12.2.1 Responsibility to Determine Applicability of Exemption

It shall be the sole responsibility of the procuring Agency to determine whether a contract for personal or professional services is a no cost contract. OPSCR will accept a memorandum executed by the Agency's legal counsel and the Agency's chief financial officer without independent analysis as to whether the contract meets the definition of a no cost contract and OPSCR will approve the contract in MAGIC where the requirements of Section 12.2 are met.

12.3 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval by any boards or required entities, if applicable *and* (2) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

12.4 Reporting Exempt and No Cost Contracts

All contracts approved in MAGIC as statutorily exempt and/or no cost contracts shall be regularly reported to PPRB and the AET Chairs.

CHAPTER 12:
Statutory Exemptions and No Cost Contracts

12.5 Circumvention of Procurement Requirements

If DFA and/or PPRB reasonably suspect an Agency is declaring its contracts to be statutorily exempt and/or no cost contracts in circumvention of the law or other procurement regulations, PPRB shall make a report of any such suspicion first to the Agency Head of the procuring Agency. If PPRB is not satisfied with the explanation or corrective action of the Agency, PPRB shall make a report to OSA and the AET Chairs.

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PPRB is statutorily obligated to review and either approve or disapprove personal and professional service contracts which exceed \$75,000.00 and which are not otherwise exempt from PPRB's purview. Mississippi Code Annotated § 27-104-7(2)(g). Any procurement of personal or professional services which does not result in a contract exceeding \$75,000.00 is a small purchase and does not require PPRB approval. Competition is encouraged. Small purchases may be made in accordance with the procedures provided herein.

13.1 Application of this Regulation

Agencies may use the procedures set forth in this chapter to procure personal and professional services when the contract value will not exceed \$75,000.00. If the Agency chooses not to use the procedures in this chapter, one of the other methods of source selection discussed in Chapter 3 shall be used.

13.1.1 Artificial Division of Requirements Prohibited

Procurement requirements, including the total funds to be expended, the scope of services, or the timeframe in which such services will be needed, shall neither be artificially divided nor underestimated so as to constitute a small purchase under this chapter. There should be only one contract between a single Agency and a single vendor for a particular service type unless a written justification as to why the Agency requires more than a single contract has been signed by the Agency Head and the Agency's chief financial officer and uploaded to MAGIC. Agencies should construe this regulation in favor of competition where there is any uncertainty.

13.1.2 Multiple Small Purchase Contracts with the Same Vendor

If any Agency has multiple contracts for personal and professional services with the same vendor and the cumulative total of those contracts exceeds \$75,000.00, SPAHRS and/or MAGIC will automatically route the contract to OPSCR for review. PPRB has delegated authority to OPSCR to approve any such contracts *only* after the Agency has posted the written justification required by Section 13.1.1 in MAGIC. OPSCR will review the letter for procedural compliance only and will not substitute its judgment for that of the procuring Agency with regard to whether a service has been artificially divided.

13.2 Procuring Services Not Exceeding \$50,000.00

The Agency Head shall adopt standard operating procedures for making small purchases which do not exceed \$50,000.00. Such procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and facilitate auditing of the procuring Agency.

13.3 Procuring Services Exceeding \$50,000.00 but Not Exceeding \$75,000.00

13.3.1 Solicitation of Quotes

Insofar as it is practical for small purchases of services greater than \$50,000.00 and not exceeding \$75,000.00, no less than three quotes shall be solicited. The Agency should request offerors to submit written responses which identify the offeror.

CHAPTER 13:
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The names of the vendors submitting quotes and the date and amount of each quotation shall be recorded and maintained in the Agency Procurement File. In the event three written responses are not obtained, the Agency shall include a memorandum in the Agency Procurement File explaining why this was not accomplished.

13.3.2 Award

Award shall be made to the vendor submitting the lowest-priced responsive and responsible quote unless a written justification as to why the lowest-priced response did not meet the Agency's needs. All vendors submitting responses shall be promptly notified in writing of the contract award. A copy of each notification letter shall be kept in the Agency Procurement File.

13.4 Notice of Contract Award

A Notice of Contract Award shall be prepared following (1) approval by any boards or required entities, if applicable *and* (2) execution of the contract, contract renewal, or contract amendment. The Notice of Contract Award shall be posted publicly on the Agency website and on the Transparency website. The Notice of Contract Award shall include an analysis as to why the personal or professional services contract was awarded, renewed, or amended. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

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CHAPTER 14: Contracts

This chapter contains descriptions of the various contract types which Agencies may use to contract with vendors providing personal and professional services. This chapter also discusses various contract terms and requirements for contract administration.

14.1 Selection of Contract Type

The selection of an appropriate contract type depends on the nature of the services to be procured, the uncertainties which may be involved in contract performance, and the extent to which the Agency or the contractor is to assume the risk of the cost of contract performance.

The objective when selecting a contract type is to obtain the services needed in the time required and in a way that provides best value to the Agency. In order to achieve this objective, the procuring Agency should review those elements of the procurement which directly affect the cost, time, risk, and profit incentive prior to selecting the contract type.

Factors to consider in selecting any type of contract include, but are not limited to:

- the type and complexity of services being procured;
- the difficulty of estimating performance costs;
- the administrative costs to both parties;
- the degree to which the Agency will need to provide technical coordination;
- the effect on the amount of competition to be expected;
- the stability of market prices or wage levels;
- the urgency of the requirement; and
- the length of contract performance.

It is self-defeating for a procuring Agency to select a type of contract which would place an unreasonable economic risk on the contractor, since such action may jeopardize satisfactory performance of the contract and/or result in inflated contract pricing.

14.2 Types of Contracts

Subject to the limitations herein, any type of contract which will promote the Agency's best interests may be used.

14.2.1 Fixed-Price Contracts

A fixed-price contract places responsibility on the contractor for the performance of the service at a price that may be firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet requirements can be reasonably specified and the cost can be reasonably estimated.

Fixed-price contracts are preferred and should be used whenever possible. However, when risks are unknown or not readily measurable, use of fixed price contracts may result in inflated prices, inadequate competition, and/or poor performance.

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14.2.1.1 Firm Fixed-Price Contract

A firm fixed-price contract provides a price that is not subject to adjustment. It should be used whenever prices which are fair and reasonable for the life of the contract can be established at the outset.

For example, an Agency agrees to pay \$200.00 per hour [fixed price] for 10 hours per week for three years. Another example is where an Agency agrees to pay \$10,000.00 per month [fixed price] for four years regardless of the amount of services provided each month.

14.2.1.2 Fixed-Price Contract with Price Adjustment

A fixed-price contract with price adjustment provides for variation in the contract price under specific conditions defined in the contract. The Agency shall define the terms and conditions of any price adjustment in the solicitation document.

For example, an Agency agrees to pay \$200.00 per hour [fixed price] for 10 hours per week. In the solicitation document and the initial contract, the parties agree that upon satisfactory annual performance evaluation, the hourly rate will increase by 5% [price adjustment]. Thus, assuming the performance evaluation was satisfactory each year, the hourly rate would be \$210 in the second year of the contract, \$220.50 in the third year, \$231.53 in the fourth year, and \$243.10 in the fifth year.

14.2.1.3 Definite Quantity Contracts

A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of services.

For example, an Agency agrees to pay \$2,000.00 per month [fixed price] for a janitorial service to clean Agency bathrooms once per day every business day of the month. [definite quantity].

14.2.1.4 Indefinite Quantity Contracts

An indefinite quantity contract is a contract for an indefinite amount of services to be furnished at specified times, or as ordered, that establishes fixed unit prices. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation.

For example, an Agency will pay \$100.00 per hour for a human resources consultant on an as-needed basis. In one month, the Agency did not require any services, in the second month the Agency required 200 hours of services, and in the third month the Agency required 40 hours of services. The Agency paid \$0.00, \$20,000.00, and \$4,000.00 for months one through three, respectively. The solicitation for this type of contract may have evaluated the historic average use of the human resources consultant to allow offerors to develop a price.

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14.2.2 Requirements Contracts

A requirements contract is an indefinite quantity contract that obligates the procuring Agency to order its actual requirements from the Contractor on an as-needed basis during a specified period of time. This is sometimes referred to as a “stand-by” contract.

The example provided in Section 14.2.1.4 is a Requirements Contract.

14.2.3 Cost Reimbursement Contract

A cost reimbursement contract is one in which the Agency directly reimburses the vendor for costs in addition to a fee for the personal and professional services provided. A cost reimbursement contract should be used only when such a contract is less costly to the Agency than any other type of contract or when it is impracticable to obtain the services required except under such a contract. Unless a contract specifically allows for cost reimbursement, the contract pricing shall be considered all-inclusive and does not include reimbursement for individual costs to the Contractor.

For example, in addition to the hourly rate agreed upon, the human resources consultant described in the example in Section 14.2.1.4 would also be reimbursed for expenses described in the contract such as mileage, travel, and presentation materials.

14.2.4 Cost-Plus-a-Percentage-of-Cost Contract

A cost-plus-a-percentage-of-cost contract is one in which, prior to beginning the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work, creating a scenario in which the contractor’s fee increases proportionally with increases in contract expenditures. The contractor’s incentive may, therefore, be to incur cost at the expense of the Agency. Agencies are urged to avoid the use of cost-plus-a-percentage-of-cost contracts.

For example, an Agency retains a janitorial service and agrees to pay the service provider its labor costs plus an additional 25%. This type of arrangement may incentivize the vendor to overstaff the janitorial services at the Agency in order to increase its income.

14.2.5 Use of Contract Types Not Herein Described

Any type of contract which is in the Agency’s best interest may be used.

14.3 Multi-Term Contracts

Multi-term contracts are those contracts which (1) have a period of performance lasting more than one year; (2) have a period of performance which spans two or more state fiscal years; and/or (3) have renewal clauses which, if exercised, would make the period of performance more than one year or make the period of performance span two or more state fiscal years. (*The state fiscal year runs from July 1 to the following June 30.*)

A multi-term contract is appropriate when it is in the Agency’s best interest to obtain uninterrupted services, where performance of such services involves high start-up costs, or where implementation of a new service contractor involves high transition costs to the incumbent vendor, the new vendor, or both.

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Any such contract shall contain the Availability of Funds clause found in Appendix E.

14.3.1 Maximum Period of Performance

Unless otherwise provided by law, a contract for personal and professional services may be entered into for a maximum period of performance of five years. This limitation does not apply to contracts for contract workers.

The original period of performance and conditions for renewal, if any, shall be included in the solicitation. Funds shall be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

If an Agency believes it is in the Agency's best interest for a specific contract to have a period of performance which is longer than the maximum period described above, the Agency may petition PPRB to approve a longer period of performance. It shall be in PPRB's sole discretion to grant or deny the petition. Such approval shall occur prior to issuance of the solicitation and the period of performance approved by PPRB shall be included in the solicitation. Such a request shall be signed by the Agency Head and submitted to the Director of OPSCR pursuant to the deadlines established by PPRB for contract approval.

14.3.2 Circumstances in Which to Use a Multi-Term Contract

Multi-term contracts should only be used when the Agency's need for personal and professional services is reasonably firm and continuing, when use of a multi-term contract would encourage effective competition and promote economies in public procurement, and when use of a multi-term contract is in the Agency's best interest.

Factors which an Agency may consider in deciding whether to use a multi-term contract include:

- whether the vendor would need to recover high startup costs;
- whether continuity of performance would result in lower pricing or better quality;
- whether continuity of performance would stabilize the contractor's workforce;
- the administrative burden of the procurement process may be reduced.

Any other relevant factors may also be considered. It is presumed that an Agency using a multi-term contract has made this determination by choosing to use a multi-term contract.

14.3.3 Solicitation for a Multi-Term Contract

The solicitation for a multi-term contract shall state the term of the contract the Agency is soliciting and instruct potential offerors as to how the Agency intends for the offerors to submit pricing for the life of the contract. The Agency may require pricing which will remain firm and fixed throughout the life of the contract, but if the Agency will allow a price adjustment, the price adjustment allowed shall be adequately defined in the solicitation such that all pricing is known at the time of contracting. The Availability of

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Funds clause in Appendix E shall also be included in the solicitation. Award shall be made as stated in the solicitation and permitted under the source selection method utilized.

14.4 Multiple Source Contracting

Contract arrangements in which the Agency establishes contracts with multiple providers of a single service may only be used when necessary to ensure adequate provision of the personal and professional services required. An Agency shall state its intent to award a contract to multiple bidders, offerors, or applicants in the solicitation document.

14.4.1 Limitations on Multiple Source Contracting

Multiple source contracting shall not be made when a single source will meet the Agency's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, avoiding the resolution of tie bids, or for making vendor selection available to allow for Agency preference without regard to utility or economy. Any such awards shall be limited to the least number of contractors necessary to meet the valid requirements of the Agency.

14.5 Contract Requirements

All contracts for personal and professional services shall:

- be in writing,
- include a description of the services and deliverables to be provided,
- state the period of performance,
- list the price for the services, including any price adjustment allowed,
- include all clauses required for contracts in Appendix E, and
- include any additional clauses the Agency deems appropriate.

The contract terms shall reflect the personal and professional services solicited, the length of performance stated in the solicitation, the price as submitted by the contracting vendor and/or as described in the solicitation, any price adjustment allowed by the solicitation, and any other modifications which are allowed by the solicitation.

14.5.1 Description of Services to be Provided

The description of services to be performed should be result-oriented, not procedure-oriented, and shall include any information necessary to ensure the service will meet the Agency's needs.

14.5.2 Monitoring Contract Performance

The description of services to be performed, the list of specifications or deliverables, and any other applicable contract terms shall be used as evaluation criteria when monitoring contract performance.

14.5.3 Insurance, Bonds, and other Requirements

Insurance, performance bonds, or other security may be required for service contracts to protect the interest of the Agency. Any such requirements shall be set forth in the solicitation. Insurance, performance bonds, or other security should not be used as a

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substitute for a determination of offeror responsibility. Agencies may not specify a specific company or insurance agency from which required insurance, bonds, or other security should be purchased. If the requirement for insurance, bond, or other requirement is included in the solicitation document, it cannot be waived during the life of the contract.

14.6 Contract Assignment

A contractor may assign all rights and obligations under a contract to another entity only with the express, written consent of the Agency with whom it has contracted. The Agency shall determine if the assignment is in the Agency's best interest prior to providing consent.

14.6.1 Novation Required to Document a Contract Assignment

The assignment of the contract to a successor in interest shall be recognized in a Novation document. A Novation is appropriate to recognize an assignment of contract rights and obligations from a contractor to a different private sector entity, as well as from one state Agency to another.

On the Novation document, the original contractor shall be identified as the Transferor and the contractor to whom the rights and obligations will be assigned shall be identified as the Transferee. The Novation agreement shall explicitly state that the Transferor and the Transferee agree:

- the Transferee assumes all of the Transferor's obligations;
- the Transferor waives all rights under the contract as to the Agency and the state; and
- either the Transferor guarantees performance of the contract by the Transferee, or the Transferee shall provide a performance bond which is satisfactory to the Agency.

14.6.2 OPSCR Staff Authority

PPRB has delegated authority to approve contract assignments to OPSCR staff.

14.7 Contractor's Change of Name

When a contractor requests to change the name in which it holds a contract with any Agency, the Agency shall, upon receipt of a document indicating such change of name (*for example, an amendment to the articles of incorporation*), enter into a contract amendment to effect the change. The amendment shall specifically indicate that no other terms and conditions of the contract are changed because of the contractor's change of name. The Contractor shall be solely responsible to update its vendor profile in MAGIC as a result of a Contractor's change of name.

14.7.1 OPSCR Staff Authority

PPRB has delegated authority to approve a name change to OPSCR staff.

14.8 Submission of Contracts for PPRB Approval

14.8.1 Submission Deadlines

Contracts shall be submitted 30 days prior to the PPRB meeting at which you are seeking approval. In order for the contract to be considered for placement on the PPRB Agenda, the contract, the Agency Procurement File, all forms required by OPSCR, and all

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documents required to demonstrate the Agency acted in compliance with the rules and regulations herein shall be submitted prior to the submission deadline.

The submission deadlines are applicable for contracts requiring PPRB approval and contracts for which PPRB has delegated approval authority to OPSCR (staff approvals).

See Section 1.2.1 regarding OPSCR's discretionary authority to retain the contract for an additional month where OPSCR does not intend to recommend PPRB approve the contract.

14.8.2 Renewals and Modifications

Any renewals or modifications shall be submitted using the deadlines for the original contract described in Section 14.8.1. Such submission shall include the contract document which amends the contract, any forms required by OPSCR, and all documents necessary to prove compliance with the rules and regulations herein. In order for the contract renewal or modification to be approved, it shall have been contemplated by and in accordance with the solicitation.

Modifications shall not grant extra compensation, fee, or allowance to any contractor after service is rendered or contract is made, unless contemplated within the solicitation and original contract or unless the scope of services is increased.

*See Exhibit 1 to this chapter for sample **solicitation** language where the Agency may need a price adjustment during the life of the contract.*

Any modifications to a contract's scope of work shall have been contemplated in the solicitation. An Agency cannot modify a contract to include services which were not competitively procured. Any price increases or decreases due to modifications in the scope of work shall reflect the competitive pricing contemplated at the time of initial contracting which corresponds to the scope change.

PPRB delegates to OPSCR the ability to approve contract renewals in which the period of contract performance and the compensation are modified to reflect renewal year(s) in a manner which is strictly in conformance with the solicitation and no other terms and conditions of the contract are changed.

Modifications cannot be made to expired contracts.

14.8.2.1 Modification in Accordance with a Change in Law

Where laws or regulations governing the procuring Agency are amended during the life of the contract which affect the scope, quantity, or price of services provided, the contract may be amended to reflect those changes where the Agency can demonstrate the modification is narrowly tailored to meet the requirements of the amended law or regulation, the amended law does not fundamentally alter the scope of the services originally procured, and the pricing for the modification reflects the competitively procured price. Any Agency seeking an amendment under this paragraph shall submit a memorandum to OPSCR and the Agency Procurement

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File documenting compliance with this Section and signed by the Agency Head and the Agency's legal counsel.

14.8.2.2 OPSCR Staff Authority

PPRB has delegated authority to OPSCR to approve the following modifications:

- Previously approved contracts which contain scrivener's errors or have other technical problems which do not change the originally approved terms and conditions;
- Modifications which reduce the dollar amount of contracts only;
- Modifications in which the dollar amount and services are unchanged, including contracts with unit pricing in which the volume of services is modified but the scope and price of services is unchanged;
- Modifications extending the period of performance and increasing the contract funds strictly in accordance with the solicitation, as described Section 14.8.2;
- Short-term extension(s) of period of performance only, as described in Section 14.12.2.2.
- Modifications in which the contract is terminated in part or in full.

14.8.3 Regulatory Board Approval

Any contract, modification, or renewal requiring approval by a regulatory board other than PPRB shall be submitted to and approved by the appropriate regulatory board prior to submission for approval by PPRB. Prior to final processing of the contract in MAGIC by OPSCR, the Agency shall submit either minutes demonstrating regulatory board approval or written communication from the chair of the regulatory board confirming the date the contract was approved by the regulatory board. The requirements of this Section also apply where approval is required by an entity other than a regulatory board.

14.8.4 SPAHRS and MAGIC Procedures

Agencies shall enter the complete information required by SPAHRS and/or MAGIC which will transmit personal and professional service contracts to OPSCR for review and PPRB approval, where necessary. The Agency shall follow all procedures specified by DFA for entry of such information.

Agencies who encounter technical issues with or have any questions regarding SPAHRS or MAGIC should contact MMRS for additional information or assistance. As of the effective date of these rules and regulations, the easiest way to contact MMRS is to email mash@dfa.ms.gov. Additional information can be found on the DFA website.

14.9 Executed Contracts

After approval of a contract by PPRB, the contract may be fully executed. The executed contract shall be identical to the proposed contract approved by PPRB. The contract shall be executed by the Agency Head, or by an Agency official to whom the Agency Head has delegated authority, in writing, to execute such contract on behalf of the Agency.

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Unless exempted from disclosure due to a court-issued protective order, a copy of the executed contract is required to be posted to the Transparency website. Mississippi Code Annotated §§ 27-104-151, *et seq.* The contract, including any accompanying exhibits, attachments, and appendices, is subject to the Mississippi Public Records Act of 1983 and its exceptions. Mississippi Code Annotated §§ 25-61-1, *et seq.* and Mississippi Code Annotated § 79-23-1. The personal or professional services to be provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying, or reproduction. Mississippi Code Annotated § 25-61-9(7).

14.10 Notice of Contract Award, Renewal, or Amendment

For each new contract and every time a contract is modified, the Agency shall publish on the Agency website and the Transparency website an analysis describing why the personal or professional services contract was awarded, renewed, or amended. The published document shall include a summary of the award, which shall include but is not limited to, the nature, duration and amount of the contract, the name of the contractor, and a statement that the contract is on file at the Agency and available for public inspection. Executive Order 1362, Governor Phil Bryant: Promoting Transparency in Public Contracting, July 31, 2015.

14.11 Contract Auditing and Monitoring

14.11.1 Agency Responsibility

14.11.1.1 Continuous Internal Audit Required

Any Agency procuring services pursuant to these rules and regulations shall maintain continuous internal audit of personal and professional service contracts affecting the Agency's revenue and expenditures, as required under Mississippi Code Annotated §§ 7-7-3(6)(d) and 27-104-7(f). Each Agency shall maintain an internal system of pre-auditing claims, demands, and accounts against the Agency to adequately ensure that only valid claims, demands, and accounts will be paid.

14.11.1.2 Monitoring Contract Performance

The Agency Head shall ensure that contracts are monitored at least monthly to confirm acceptable performance, timely fulfillment of deliverables, and compliance with terms of the agreement. The Agency Head shall designate Agency official(s) to review and approve contract deliverables; ensure compliance with contractual terms; coordinate the flow of information between the parties; respond to requests of the contractor; monitor disbursements against the contract budget; monitor actual progress against work schedules; and complete any other task needed for successful contract management.

14.11.2 Audits Requested by PPRB

Audits requested by PPRB shall be performed by OSA. PPRB may request an audit to ensure an Agency has used competitive procedures to contract for personal and professional services or to ensure satisfactory performance of any contract for personal or professional services, as allowed by Mississippi Code Annotated § 27-104-7(2)(m).

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14.11.3 Contractor's Books and Records

The procuring Agency and/or OSA shall be entitled to audit the books and records of a contractor or any subcontractor which are related to the contract or subcontract. Unless a shorter time is authorized in writing, the contractor shall maintain such books and records for a period of three years from the date of final payment.

14.12 Expired or Expiring Contracts

Where an Agency intended to renew a contract under the terms and conditions therein, and a good faith administrative mistake results in the contract having expired and/or being due to expire prior to PPRB approval of a renewal term, the Agency has the following options:

14.12.1 Expired Contracts

Once a contract has expired, the contract cannot be retroactively modified or renewed. *Stringer*, 1999 WL 529131 (Miss. A.G. June 25, 1999). However, where the contract has expired, but had been legally procured for additional contract terms, the Agency may enter a new contract with the same vendor under the same terms and conditions – including price – which would have applied had the renewal year(s) been exercised. Any new contract entered into under this Section shall be limited to the amount of time remaining in the procurement which resulted in the expired contract.

*For example, if an Agency procured a service to be provided for three years with two optional one-year renewals, but the Agency mistakenly failed to renew the contract prior to the first renewal year being exercised, the Agency may enter into a **new** contract with the same vendor for one year with one optional one-year renewal under the same terms and conditions (including, but not limited to, price) as the original contract.*

Under no circumstances may an Agency use this Section to contract with a different vendor than the vendor whose contract inadvertently expired or to contract for services which were not included in the expired contract.

The period of performance for any new contract entered into under this Section shall not be extended beyond the date the expired contract would have terminated by its own terms had all renewal periods been exercised.

14.12.2 Expiring Contracts

Where an Agency has a contract that has not yet expired, but which will expire prior to the next regular meeting of PPRB, the Agency has the following two options:

14.12.2.1 Retroactive PPRB Approval

Execute a renewal under the same terms and conditions which would have been applicable had the renewal been timely executed and approved by PPRB. The Agency shall petition PPRB for retroactive approval of the contract renewal. If PPRB declines to grant retroactive approval of the renewal, the contract renewal is deemed void and no payment shall be made thereon.

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14.12.2.2 Short Term Extension of Period of Performance

Execute a contract modification which extends the period of performance and makes no other changes to the contract. The modification is limited to the amount of time necessary to allow the Agency to obtain PPRB approval of a full contract renewal. PPRB has delegated authority to OPSCR staff to approve these limited “bridge” contracts.

14.13 Contract Termination

Where an Agency has determined it is in the Agency’s best interest to terminate a contract procured under these rules and regulations, PPRB delegates authority to OPSCR to process and approve any such termination. OPSCR shall confirm the period of performance and contract value in MAGIC, SPAHRS, or any subsequent statewide enterprise resource management system reflects the termination prior to processing the termination.

14.14 Remedies

For any contracts which have been approved by PPRB and executed by the parties, the remedies available for subsequent disputes are those available in the contract or those generally available under the common law principles governing contracts in the State of Mississippi.

14.15 Contracting Following Default

Where the successful vendor following a competitive procurement (“the original awardee”) ultimately defaults on the resulting contract, the Agency may contract with the vendor who would have been awarded the contract had the original awardee been disqualified during the competitive procurement process (“the second place vendor”).

14.15.1 Parameters of Default

In this context, default requires that the original awardee either abandoned the contract or objectively failed to perform such that contract termination was in the Agency’s best interest. Where the Agency can demonstrate an objective failure by the original awardee to perform the contract requirements, it shall be in the sole discretion of the Agency to determine whether contract termination is in its own best interest.

The PPRB shall not approve contracts under this Section where the Agency has terminated a contract with the original awardee simply because the Agency preferred to contract with the second place vendor. It shall be the Agency’s burden to demonstrate to PPRB that the original awardee’s default was objectively caused by action or inaction on the part of the original awardee and not the preferences of the procuring Agency.

14.15.2 Terms and Conditions

Other than as limited by Section 14.15.3, any contract entered into under Section 14.15 shall include the same terms and conditions – including price – which would have applied had the second place vendor been awarded the contract following the competitive procurement. Under no circumstances may an Agency contract under Section 14.15 for services outside of those included in the original procurement.

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14.15.3 Period of Performance

The period of performance for any new contract entered into under Section 14.5 shall be limited to the amount of time remaining from the original procurement.

For example, if an Agency procured a service to be provided for three years (36 months) but the original awardee terminates the contract after 18 months, the Agency may enter into a new contract with the second place vendor for the 18 months remaining from the procurement under the pricing and all other terms and conditions the second place vendor agreed to in responding to the procurement.

When in the Agency's best interest to contract with the second place vendor for a period of performance longer than the time which remains from the original procurement, the Agency may submit a written request for PPRB approval to do so. The request shall:

- Explain the circumstances leading to the request;
- Explain why the amount of additional time requested is reasonable;
- Explain the detriment to the Agency if limited to the time remaining from the original competitive procurement and the benefit to the Agency if not so limited;
- Explain that the terms and conditions, including price, in the new contract reflect those which the second place vendor agreed to in response to the original procurement; and
- Be signed by the Agency Head.

14.15.4 PPRB Approval

PPRB approval is required for any contract entered into under Section 14.15 which would require PPRB approval if entered into under any other circumstances.

For example, a \$60,000.00 contract entered into pursuant to Section 14.15 does not require PPRB approval because it does not meet the dollar threshold for Board approval.

The Agency may use the process described in Section 14.12.2.1 to contract with the second place vendor under this Section where circumstances are such that the Agency needs to enter a contract under Section 14.15 prior to receiving PPRB approval.

For example, if the original awardee is providing mission-critical services and terminates its contract without notice on the 15th of the month, but PPRB is not scheduled to meet until the first Wednesday of the following month, the Agency may contract under Section 14.15 and request retroactive approval of that contract as described in Section 14.12.2.1.

14.15.5 Where Vendor Refuses to Contract

If the second place vendor refuses to contract under Section 14.15, the Agency may attempt to contract with other vendors who responded to the original competitive procurement in the order they would have been awarded the contract (*i.e., the Agency may go to the third place vendor if the second place vendor refuses, the Agency may go to the fourth place vendor if the third place vendor refuses, and so on*) if the Agency – in its sole discretion – determines doing so is in its best interest. The Agency must maintain documentation of the higher ranked vendors' refusal to contract in the Agency Procurement File.

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Exhibit 1: Sample Solicitation Language for Price Adjustments

***This language is not required for use in any solicitation.*

*Where an Agency chooses to include a Price Adjustment clause, only one of the clauses below (or a single Price Adjustment clause crafted by the Agency) should be utilized.***

Price Adjustment Due to Unanticipated Market Disruptions

A price adjustment may be allowed in the event unanticipated market disruptions occur such that the [unit prices] bid by the Contractor in response to [the solicitation] are no longer viable for the provision of services required by [the Agency]. The Contractor shall provide a market analysis regarding the viability of the originally bid rates and rates the Contractor contends would be viable under the current market conditions. The Contractor shall also provide any other support for the request for a price adjustment required by [the Agency]. [The Agency] has the sole discretion to determine whether a price adjustment will be allowed, the amount of the price adjustment, and the duration of the price adjustment. Any price adjustment made under this provision shall be limited to only that which is required to accommodate the precipitating market disruption. Under no circumstances shall a price adjustment result in the adjusted [unit prices] exceeding 110% of the original [unit price]. (For example, an original [unit price] of \$100.00 could be increased up to, but not to exceed, \$110.00 under this clause.) No price adjustment will be allowed other than as described in this paragraph. When preparing [bids, proposals, qualifications] Offerors shall assume no such price adjustment will occur during the life of the contract. Any approval of a price adjustment shall be contained in a duly executed written amendment to this Contract.

Price Adjustment to Account for Inflation

A price adjustment may be allowed which does not exceed the lesser of either 5% or the annual increase in the Consumer Price Index for all Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics. Any such price adjustment will be effective only once per 12-month period, on the anniversary of the contract start date. If the CPI-U is a negative number, no adjustment in price shall be allowed. A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating any price adjustment relative to later contract years. The Contractor shall provide any support for the request for a price adjustment required by [the Agency]. [The Agency] has the sole discretion to determine whether a price adjustment will be allowed. No price adjustment will be allowed other than as described in this paragraph. Any approval of a price adjustment shall be contained in a duly executed written amendment to this Contract.

Price Adjustment for Variation of Need in an Indefinite Quantity, Unit Price Contract

This is an indefinite quantity contract. The volume of services specified in the [solicitation] is an estimate based on past history. No guarantee is made with regard to the volume of services the Agency will need under this contract. A volume-based price adjustment will be allowed when there is a fluctuation in the demand for services under this contract which exceeds 10%. Where that fluctuation represents an increase of more than 10% in the need for services, the [unit price] shall be decreased by 5%. Where that fluctuation represents a decrease of more than 10% in the need for services, the [unit price] shall be increased by 5%. In no event shall this price adjustment constitute a guarantee of minimum payment. Payment will only be made for services rendered on an as-needed basis by [the Agency]. No price adjustment will be allowed other than as described in this paragraph.

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EXCLUSION OF VENDOR FROM FUTURE CONTRACT AWARDS**

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CHAPTER 15:
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A vendor's failure to adequately perform the services required by a contract with an Agency, or other acts in violation of law, the rules and regulations herein, or the terms of its contract may result in the vendor being excluded from future contract awards. This is also referred to as "debarment."

15.1 Exclusion by a Single Agency

Where a vendor which has contracted with an Agency failed to satisfactorily perform the services required under the contract, the Agency shall have all remedies available to it under the contract. Should the vendor's performance be such that the Agency determines it is in the Agency's best interest to exclude the vendor from a future contract award, the Agency may use the minimum qualifications of its future procurement(s) to disqualify the vendor as non-responsible where:

- the Agency has written documentation of the vendor's objective failure to adequately perform its contractual obligations, the Agency provided the vendor a reasonable amount of time – but no less than 30 calendar days – to correct such deficiency, and the Agency has documentation demonstrating that the vendor did not correct the deficiency; or
- the Agency has written documentation of the vendor's objective failure to adequately perform its contractual obligations such that the Agency determined immediate contract termination was necessary to protect the interests of the Agency.

In either circumstance, the vendor shall have been notified, in writing, that the failure to cure and/or contract termination may result in exclusion from future contract awards pursuant to this chapter.

Any vendor which feels it has wrongly been excluded from a contract award due to the minimum qualifications set forth in a solicitation may request reconsideration of the terms of the solicitation.

15.2 Exclusion by PPRB

An Agency may petition PPRB to exclude a specific vendor from future contract awards from *any or all* Agencies under the purview of PPRB.

15.2.1 Request for Exclusion

To initiate such a request, the Agency shall submit to the Director of OPSCR a written request for exclusion which is signed by the Agency Head. The request for exclusion shall state the reasons for the request and identify all documentation supporting the request. The request shall also state why excluding the vendor from contract awards by some or all agencies under PPRB purview is in the best interest of those Agencies. PPRB will not consider any issues or documentation which are not identified in the request. No supplementation of the request will be allowed.

15.2.1.1 Notice to Vendor

On or before the day the request for exclusion is submitted to the Director of OPSCR, the Agency shall provide the vendor or its registered agent a copy of the request via certified mail, return receipt requested, or via personal service. Should the Agency choose to provide notice by personal service, proof of such service is

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required via affidavit of the individual who served the request. Proof of service shall be provided to the Director of OPSCR when the request is submitted.

The request for exclusion shall inform the vendor that exclusion is being sought pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and that the vendor has the right to be represented by counsel.

15.2.2 Vendor's Opportunity to Respond

If the vendor wishes to file a response to the request for exclusion, it shall be received by the Agency Head of the requesting Agency *and* the Director of OPSCR within 25 business days of the Agency's submission of the request to the Director of OPSCR. Supplementation of the response is prohibited.

It shall be the sole responsibility of the vendor to ensure the Agency Head and Director of OPSCR timely *receive* the response. Failure to timely file a response results in waiver of the vendor's opportunity to do so.

Because the only issues PPRB will consider in determining whether to exclude the vendor from future contract awards are those issues raised by the Agency, it is not necessary for the vendor to raise or address any issue not raised by the Agency.

15.2.3 Hearing on Request to Exclude

A hearing on a request to exclude shall be conducted by a hearing officer, who shall make a written recommendation to the PPRB. The hearing shall be scheduled at the earliest opportunity the hearing officer is available and has had sufficient time to review the Agency's request and the vendor's response. A court reporter shall transcribe the hearing. As the hearing is administrative, the *Mississippi Rules of Evidence* are relaxed.

At least 30 business days prior to the hearing, the hearing officer shall issue an order stating the date, time, and location of the hearing. Within one business day of receiving the order, the Director of OPSCR shall publicly post the order on the DFA website and provide a copy of the order via email to all persons who have been reported to DFA as required by Section 1.2.4.

The email shall advise all persons reported to DFA under Section 1.2.4 of the opportunity to attend the hearing in objection to or in support of the request for exclusion. The email shall further instruct any persons who plan to object to or support the request for exclusion to notify the Director of OPSCR in writing at least 20 business days prior to the hearing. That notification shall state the basis for his or her objection to or support of the request for exclusion.

The hearing officer shall have the sole discretion to allow written submissions and/or oral arguments by such parties and shall provide the vendor notice of and an opportunity to respond to any such submissions. The hearing officer shall revise the scheduling order if

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necessary to provide a fair opportunity to the vendor to respond and to ensure the hearing officer has sufficient time to review all information relevant to the request for exclusion.

If the requesting Agency, the vendor, or any other party allowed to participate in oral arguments have questions about the hearing, those shall be submitted, in writing, to the Director of OPSCR at least 15 business days prior to the hearing. At least 10 business days prior to the hearing, the hearing officer shall issue an order providing the time allotted for oral arguments; any procedural limitations; responses to any timely received, reasonable, relevant questions; and any other matter the hearing officer deems appropriate or necessary for the efficient conduct of the hearing. The Director of OPSCR shall publicly post the order on the DFA website within one business day of receipt.

15.2.4 PPRB Decision on Request to Exclude

Absent extraordinary circumstances, a recommendation shall be provided to PPRB for consideration within 60 days of the hearing date. The written recommendation shall recite the evidence relied upon and the reasons for the action taken.

If PPRB grants the request to exclude the vendor, the Chair of the PPRB shall sign an order so stating. Within one business day of receiving the order signed by the PPRB Chair, the Director of OPSCR shall send a copy of such order to all persons who have been reported to DFA as required by Section 1.2.4 and post the order on the DFA website.

Any vendors who are excluded by PPRB from future contract awards shall be listed publicly on the DFA website for the duration of their exclusion. No contracts shall be approved by PPRB which are in contradiction to the exclusion order.

15.2.5 Exceptions to the Process for Requesting Exclusion

Any party seeking an exception to the procedural rules in Section 15.2 shall direct their request to the Director of OPSCR. The hearing officer shall have authority to unilaterally issue orders on any such request.

15.3 Standard for Exclusion

Where the Agency or PPRB is considering whether a vendor should be excluded from future contract awards, the Agency or PPRB shall determine that – based on the totality of evidence presented – it is in the best interest of the Agency(ies) to exclude the vendor from future contract awards. The requesting Agency shall have the burden to demonstrate by clear and convincing evidence that the extraordinary remedy of exclusion – and the extent of any such exclusion – is in the best interest of the Agencies from which the vendor would be excluded. In making the determination, the Agency and/or PPRB shall consider the effect such exclusion would have on the competitiveness of any solicitations from which the vendor would be excluded.

It shall be considered *per se* in the best interest of the Agencies under PPRB’s purview to exclude any person or vendor which has been convicted – or whose principal(s) have been convicted – of a criminal offense demonstrating moral turpitude or a lack of business integrity or convicted of a criminal offense related to efforts to obtain or perform under a contract with any governmental entity.

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15.4 Scope of Exclusion

The Agency and/or PPRB shall have the discretion to determine the parameters of the exclusion in both scope and time. PPRB shall specifically list in its order the Agencies from which the vendor has been excluded from future contract award(s). Should PPRB fail to state the Agencies from which the vendor is excluded, the vendor is excluded from all Agencies under PPRB's purview for personal and professional service contracts.

**APPENDIX A:
RELEVANT STATUTES**

Mississippi Code Annotated §§

| | |
|---------------------------------------|---|
| 7-7-3(6)(d)..... | Continuous Internal Audit Required |
| 11-46-1 through 11-46-23 | Mississippi Tort Claims Act |
| 25-4-101 through 25-4-121 | Ethics in Government / Conflict of Interest / Improper Use of Office |
| 25-9-107 | Statewide Personnel System Definitions / State Service v. Non-State Service |
| 25-9-120 | Abolishes PSCRB / Transfers Powers to PPRB / Defines “Contract Worker” |
| 25-11-127 | Limitations on Reemployment of PERS Retirees as Contract Workers |
| 25-43-1.101 through 25-43-3.114 | Mississippi Administrative Procedures Law |
| 25-53-151 | Development of the Procurement Portal |
| 25-61-1 through 25-61-19 | Mississippi Public Records Act of 1983 |
| 27-104-7 | Authority of PPRB |
| 27-104-105..... | Approval Requirements for Legal Service Contracts |
| 27-104-151 through 27-104-167 | Mississippi Accountability and Transparency Act of 2008 |
| 31-7-47 | Resident Contractor Preference |
| 31-7-57 | Personal Liability for Unlawful Expenditures |
| 31-7-301 through 31-7-317 | Timely Payment for Purchases by Public Bodies |
| 31-7-401 through 31-7-423 | Best Practices for Requests for Proposals and Requests for Qualifications |
| 31-11-3(7) | Approval Requirements for Contracts with Architects and Engineers |
| 71-11-1 and 71-11-3 | Mississippi Employment Protection Act |
| 75-21-15 | Penalty for Fraud in Public Contracts |
| 75-26-1 through 75-26-19 | Mississippi Uniform Trade Secrets Act |
| 79-4-15.01..... | Foreign Corporations: Registration with Secretary of State |
| 79-23-1 | Public Records and Trade Secrets |

*** This list does not include statutes cited in the Introduction which are not applicable to the procurement of personal and professional services. ***

APPENDIX B: OPSCR STAFF AUTHORITY

| | |
|--|---------------------------------|
| Retain Contract for Additional Month if OPSCR will not Recommend PPRB Approval | Section 1.2.1 |
| Require Any Documentation for Contract Submission | Section 1.2.2 |
| Grant or Deny Agency Request for Compliance Review and Establish Timeline | Section 1.2.3 |
| Approve Petition for Relief Where Agency Sets the Price | Section 6.3.2.2 |
| Approve WIN Contract Workers; Total Value Less than \$75,000.00 in a 12 Month Period | Section 7.7.2.1 |
| Approve Contracts Consistent with Statewide PVLs | Section 8.2.2 |
| Approve Contracts Consistent with National Cooperatives Adopted as PVLs | Section 8.3.2 |
| Approve Court Ordered Sole Source Contracts Consistent with the Court Order | Section 9.3.1 |
| Approve Multiple Small Purchase Contracts with a Single Vendor..... | Section 13.1.2 |
| Approve Contract Assignments | Section 14.6.2 |
| Approve Contractor Change of Name | Section 14.7.1 |
| Approve Renewal Years and Spending Authority in Accordance with Original Procurement..... | Sections 14.8.2 and 14.8.2.2 |
| Approve Correction of Scrivener’s Errors or Technical Issues | Section 14.8.2.2 |
| Approve Modification Reducing Dollar Amount of Contract Only..... | Section 14.8.2.2 |
| Approve Modifications in Which Dollar Amount and Scope of Services are Unchanged | Section 14.8.2.2 |
| Approve Modification to Period of Performance Only as a “Bridge” Contract | Sections 14.8.2.2 and 14.12.2.2 |
| Approve Contract Termination (in whole or in part) | Sections 14.8.2.2 and 14.13 |
| Approve Exceptions to Required Clauses | Appendix E |

APPENDIX C: LEGISLATIVE REPORTS

| | |
|--|-----------------|
| Annual Report Regarding Contracts for Personal and Professional Services | Section 1.1.2 |
| Minutes of PPRB Meetings | Section 1.1.7.4 |
| Proposed Revisions to <i>PPRB OPSCR Rules and Regulations</i> | Section 1.3.7 |
| Discovery of an Act of Bad Faith | Section 1.4.1.1 |
| Anti-Competitive Practices | Section 1.4.5.2 |
| Violation of Ethics in Government Laws | Section 1.4.6 |
| Sole Source Contracts | Section 9.5 |
| Emergency Contracts..... | Section 10.1.7 |
| Suspected Use of Emergency or Exigent Circumstances in Circumvention of Procurement Requirements ... | Section 10.3 |
| Statutorily Exempt Contracts..... | Section 12.4 |
| No Cost Contracts | Section 12.4 |
| Suspected Claims of Statutory Exemptions or No Cost in Circumvention of Procurement Requirements | Section 12.5 |

*** The report required by Section 1.1.2 is made to the Legislative Budget Office. All other reports are made to the AET Chairs. The reports required by Sections 1.1.7.4 and 1.3.7 are also made to the Appropriations Chairs.***

**APPENDIX D:
THE AGENCY PROCUREMENT FILE**

The following documents shall be included in the Agency Procurement File, as applicable. Any documents listed in *italics* are documents which may or may not be applicable to a specific procurement. Pursuant to Section 1.2.2, the Director of OPSCR may require any additional documentation be submitted to OPSCR which is needed to ensure compliance with these rules and regulations.

Agencies shall include all documentation relevant to the procurement in the Agency Procurement File, even if not specifically listed here or specifically required by these rules and regulations. (*For example, if an Agency provides its evaluation committee a PowerPoint presentation explaining the evaluation process, the slide deck from that presentation shall be included in the Agency Procurement File.*)

Neither documentation regarding the development of the solicitation specifications nor internal Agency communication during the procurement process are required to be included in the Agency Procurement File. However, Agencies are encouraged to include all substantive documentation as a matter of transparency. The absence of any documentation described in this paragraph shall not be the basis for deeming the Agency Procurement File incomplete.

REQUIRED FOR ALL PROCUREMENT FILES

| | |
|---|---------------|
| <i>Purview Determination</i> | Section 0.1 |
| Communication with DFA and/or ITS regarding purview of the procurement | |
| <i>PPRB Discretionary Authority</i> | Section 1.1.8 |
| Any requests for exceptions to regulatory or statutory requirements | |
| <i>Compliance Review</i> | Section 1.2.3 |
| Documentation regarding any compliance review(s) previously conducted by OPSCR | |
| <i>Funding Source Conflict</i> | Section 1.3.2 |
| Written determination of conflict with funding source procurement rules and action taken | |
| <i>Competition, Fairness, and Transparency</i> | Section 1.4.2 |
| Legitimate business reason(s) for decisions impacting competition, fairness, or transparency of procurement | |

APPENDIX D:
The Agency Procurement File

| | |
|--|------------------|
| <i>Preservation of Procurement</i> | Section 1.4.8 |
| A memorandum explaining any decisions made to preserve procurement | |
| <i>Authorized to do Business in the State</i> | Section 1.4.9 |
| Contractor’s registration with the Mississippi Secretary of State, currently in good standing | |
| <i>Public Records Requests</i> | Section 1.5 |
| All public records request(s) regarding the procurement and a memorandum of the current status of those requests | |
| <i>Request for Information</i> | Chapter 4 |
| Content of RFI, proof of publication, all responses received, and the required written determination | |
| <i>Contract</i> | Chapter 14 |
| Full contract document submitted to OPSCR; trade secrets redacted in version posted to Agency website | |
| <i>Contract Modifications</i> | Section 14.8.2.1 |
| Contract amendment document, any other documents requested by OPSCR | |
| <i>Regulatory Board Approval</i> | Section 14.8.3 |
| Board minutes or letter from board chair confirming approval | |
| <i>Agency Head Designee for Contract Execution</i> | Section 14.9 |
| Written delegation by the Agency Head of authority of a person other than the Agency Head to execute contracts | |
| <i>Exception to Required Clauses</i> | Appendix E |
| Letter from Agency legal counsel regarding exception needed; documentation of approval by OPSCR | |

APPENDIX D:
The Agency Procurement File

INVITATION FOR BIDS

| | |
|--|-------------------------|
| Invitation for Bids | Section 5.1 |
| Full solicitation document as issued by the Agency | |
| Public Notice | Section 5.2 |
| Proof of publication in the newspaper, procurement portal, website, and direct solicitation of 3 bidders; written determination if advertising less than 30 days prior to submission deadline (if applicable) | |
| <i>Request for Reconsideration of the Terms of the Solicitation</i> | Section 5.2.4 |
| Any requests received and all related correspondence; the Agency response; proof of distribution of the Agency response directly to bidders, on website, and on procurement portal; memorandum regarding reasonable time between response to request and submission deadline (if applicable) | |
| <i>Letters of Intent</i> | Section 5.3.1 |
| A copy of all letters of intent received by the Agency | |
| <i>Pre-Bid Conference</i> | Section 5.3.2 |
| Record of attendees, recording of the conference (if one is made), any documentation provided to conference attendees, amendments issued to the IFB | |
| <i>IFB Amendments (including Q&A)</i> | Section 5.3.4 |
| All amendments issued; proof of distribution directly to bidders, on website, and on procurement portal; memorandum regarding reasonable time for distribution (if applicable) | |
| Receipt and Register of Bids | Section 5.4 |
| Register of bids; proof of date and time all bids were received; bid opening record; written determination regarding consideration of late bids (if applicable) | |
| All Bids Received | Sections 5.4 and 5.7 |
| Full copies of all bids submitted to OPSCR; redacted copies of all bids posted on Agency website; documentation regarding any bid returned to the bidder and the reason(s) therefor. | |

APPENDIX D:
The Agency Procurement File

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|---|-------------------------------|
| <i>Acknowledgement of Amendments</i> | Section 5.5.5 |
| Every bidder’s acknowledgement of every amendment (in writing) | |
| Evaluation of Bids | Section 5.5 |
| Any documentation created regarding the responsive and responsible determination and evaluation of price | |
| <i>Bid Irregularities</i> | Sections 5.5.1 through 5.5.10 |
| Documentation regarding the modification, withdrawal, or confirmation of bids; any minor informalities waived by the Agency; resolution of low tie bids; or where only a single bid is received | |
| Notice of Intent to Award | Section 5.6.1 |
| Notice of Intent to Award and proof of distribution directly to bidders, on website, and on procurement portal, information regarding debriefings, requests for reconsideration, and the Agency Procurement File on the website | |
| <i>Debriefings</i> | Section 5.6.2 |
| List of bidders requesting a debriefing and when each debriefing was conducted; any other documentation | |
| <i>Request for Reconsideration of the Intent to Award</i> | Section 5.6.3 |
| Any requests received and all related correspondence; the Agency response; proof of distribution of the Agency response directly to bidders, on website, and on procurement portal | |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Section 5.6.4 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | |
| <i>Cancellation or Rejection of Individual Bids</i> | Section 5.7 |
| Notice of cancellation and proof of distribution; required written determination; correspondence regarding rejection of individual bids; information regarding disposition of bids | |

APPENDIX D:
The Agency Procurement File

REQUEST FOR PROPOSALS OR REQUEST FOR QUALIFICATIONS

| | |
|--|---------------|
| Petition for Relief | Section 6.3 |
| Petition for relief as approved by PPRB, PPRB minutes showing approval | |
| Request for Proposals or Request for Qualifications | Section 6.4 |
| Full solicitation document as issued by the Agency | |
| Public Notice | Section 6.5 |
| Proof of publication in the newspaper, procurement portal, website, and direct solicitation of 3 offerors; written determination if advertising less than 30 days prior to submission deadline (if applicable) | |
| <i>Request for Reconsideration of the Terms of the Solicitation</i> | Section 6.5.4 |
| Any requests received and all related correspondence; the Agency response; proof of distribution of the Agency response directly to bidders, on website, and on procurement portal; memorandum regarding reasonable time between response to request and submission deadline (if applicable) | |
| <i>Letters of Intent</i> | Section 6.6.1 |
| A copy of all letters of intent received by the Agency | |
| <i>Pre-Submission Conference</i> | Section 6.6.2 |
| Record of attendees, transcript or audio/video recording of the conference, documents provided to conference attendees, amendments issued to the RFP/RFQ | |
| <i>RFP or RFQ Amendments (including Q&A)</i> | Section 6.6.4 |
| All amendments issued; proof of distribution directly to offerors, on website, and on procurement portal; memorandum regarding reasonable time for distribution (if applicable) | |
| Receipt of Proposals or Qualifications | Section 6.7 |
| Proof of date and time all proposals or qualifications were received; written determination regarding consideration of late proposals or qualifications (if applicable) | |

APPENDIX D:
The Agency Procurement File

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|---|--------------------------|
| <i>Proposal or Qualification Acceptance</i> | Section 6.7.3 |
| Documentation regarding the modification, withdrawal, or confirmation of proposals or qualifications and/or any minor informalities waived by the Agency (if applicable) | |
| All Proposals or Qualifications Received | Section 6.7 |
| Full copies of all proposals or qualifications submitted to OPSCR; redacted copies posted on Agency website | |
| <i>Acknowledgement of Amendments</i> | Section 6.8.2.1 |
| Every offeror’s acknowledgement of every amendment (in writing) | |
| Conflict of Interest Certifications | Section 6.8.1 |
| The list of offerors, their principals, their parent organizations, and their subsidiary organizations which was provided to those executing conflict of interest certifications; all executed certifications with the Mississippi Ethics in Government laws attached | |
| Evaluation of Proposals or Qualifications | Sections 6.8.4 and 6.8.5 |
| Any documentation created by the procurement officials, the evaluation committee, or the advisors to the evaluation committee regarding the responsive and responsible determination and points allocated to the offerors; documentation of any discussions with offerors; post evaluation affidavits (if applicable) | |
| <i>Best and Final Offers</i> | Section 6.8.4.6 |
| Documentation regarding any requests for BAFOs; all responses received; recalculation of Price points; and memorandum regarding BAFO being requested more than once (if applicable) | |
| <i>Single Proposal or Qualification Received</i> | Section 6.8.4.8 |
| Required written determination | |
| Notice of Intent to Award and Evaluation Committee Report | Section 6.9 |
| Notice of Intent to Award and Evaluation Committee Report, including all required documents; proof of distribution directly to offerors, on website, and on procurement portal; information regarding debriefings, reconsideration, and the Agency Procurement File on the website | |

APPENDIX D:
The Agency Procurement File

| | |
|--|--------------------------|
| Debriefings | Section 6.9.2 |
| List of offerors requesting a debriefing and when each debriefing was completed; any other documentation | |
| Request for Reconsideration of the Intent to Award | Section 6.9.3 |
| Any requests received and all related correspondence; the Agency response; proof of distribution of the Agency response directly to bidders, on website, and on procurement portal | |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Sections 6.9.4 and 6.9.5 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | |
| Cancellation or Rejection of Individual Proposals or Qualifications | Section 6.10 |
| Notice of cancellation and proof of distribution; required written determination; correspondence regarding rejection of individual proposals or qualifications; information regarding disposition of proposals or qualifications | |

REQUEST FOR APPLICATIONS AND CONTRACT WORKERS

| | |
|--|---------------|
| Written Determination of Need for Contract Worker | Section 7.1.1 |
| Contract Worker Contract Not Exceeding \$75,000.00 | Section 7.1.2 |
| Agency standard operating procedure for procurement; documentation demonstrating compliance with SOP | |
| State Retiree Contract Worker | Section 7.1.5 |
| Completed PERS Form 4B | |
| Request for Applications | Section 7.2 |
| Full solicitation issued by Agency | |
| Public Notice | Section 7.3 |
| Proof of publication in the newspaper and/or third party recruiting website, procurement portal, website, and direct solicitation of 3 applicants or memorandum that it was not reasonably possible to do so | |

APPENDIX D:
The Agency Procurement File

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|--|---------------|
| <i>RFA Amendments</i> | Section 7.4 |
| All amendments issued; proof of distribution directly to applicants, on website, and on procurement portal; memorandum regarding reasonable time for distribution (if applicable) | |
| All Applications Received | Section 7.5 |
| Full copy of all applications received; memorandum regarding single application received (if applicable); memorandum regarding consideration of late applications (if applicable) | |
| <i>Acknowledgement of Amendments</i> | Section 7.5.1 |
| Every applicant’s acknowledgement of every amendment (in writing) | |
| Evaluation of Applications | Section 7.6 |
| All documents to determine the responsive and responsible determination, evaluation of application, interviews (if applicable), and identity of the evaluator(s) | |
| Notice of Intent to Award | Section 7.7.1 |
| Notice of Intent to Award; proof of distribution directly to applicants, on website, and on procurement portal | |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Section 7.7.2 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | |
| <i>Cancellation or Rejection of Individual Applications</i> | Section 7.8 |
| Notice of cancellation and proof of distribution; required written determination; correspondence regarding rejection of individual applications; information regarding disposition of applications | |

APPENDIX D:
The Agency Procurement File

OPSCR PREAPPROVED VENDOR LIST

| | |
|--|-------------|
| Preapproved Vendor List | Section 8.2 |
| Notice of Contract Award (<i>after contracting</i>) | Section 8.5 |

NATIONAL COOPERATIVE CONTRACT

| | |
|---|---------------|
| [Initial Requestor] Portfolio of Vendors Procured by Cooperative | Section 8.3 |
| Information from the portfolio sponsor regarding means of procurement, scope of services, and vendors awarded; contract documents required by the portfolio sponsor; solicitation response of intended contractor | |
| [Subsequent Contract] Documents Specific to Intended Contractor | Section 8.3.1 |
| PPRB minutes approving the portfolio as a PVL; solicitation response of intended contractor; contract documentation required by portfolio sponsor | |
| Determination of Economic Advantage to the Agency to use a National Cooperative | Section 8.3 |
| Notice of Contract Award (<i>after contracting</i>) | Section 8.5 |

PIGGYBACKING CONTRACT

| | |
|---|-------------|
| [Underlying Contract PPRB Approved] PPRB Minutes | Section 8.4 |
| Minutes of PPRB meeting at which underlying contract was approved | |
| [Underlying Contract Not Approved by PPRB] Underlying Procurement File | Section 8.4 |
| Entire Agency Procurement File for underlying contract (submit what is required for the procurement method) | |
| Notice of Contract Award (<i>after contracting</i>) | Section 8.5 |

APPENDIX D:
The Agency Procurement File

SOLE SOURCE: SINGLE PROVIDER IN THE MARKETPLACE

| | |
|---|----------------------------|
| Agency Head Determination of Sole Source | Section 9.1 |
| Public Notice | Section 9.2.1 |
| A copy of all documents posted on the procurement portal and the Agency website | |
| Objection to Sole Source Determination | Sections 9.2.1.2 and 9.2.2 |
| The instructions for filing an objection, any objections received, the Agency determination on the objection, any documentation regarding determination by PPRB (if applicable) | |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Section 8.5 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | |

SOLE SOURCE: COURT ORDERED

| | |
|--|-------------|
| Agency Head Determination of Sole Source | Section 9.1 |
| Court Order | Section 9.3 |
| Notice of Contract Award (<i>after contracting</i>) | Section 9.4 |

EMERGENCY CONTRACT

| | |
|--|----------------|
| Agency Head Determination | Section 10.1.2 |
| Notice of Contract Award (<i>after contracting</i>) | Section 10.1.6 |

APPENDIX D:
The Agency Procurement File

EXIGENT CIRCUMSTANCES CONTRACT

| | |
|---|-----------------|
| Agency Head Determination | Section 10.2.2 |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Sections 10.2.4 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | and 10.2.5 |

GOVERNMENT-TO-GOVERNMENT CONTRACT: ENTITY UNDER PPRB PURVIEW

| | |
|---|---------------------------|
| Notice of Contract Award (<i>after contracting</i>)..... | Sections 11.1 and 11.3 |
|---|---------------------------|

GOVERNMENT-TO-GOVERNMENT CONTRACT: ENTITY NOT UNDER PPRB PURVIEW

| | |
|---|-----------------|
| Agency Head Determination | Section 11.2.1 |
| Documentation supporting the fair market value determination must be included | |
| PPRB Approval (<i>for Agency benefit only – not available when submitted to OPSCR</i>) | Sections 11.2.2 |
| Correspondence with OPSCR, PPRB agenda, PPRB minutes with approval, Notice of Contract Award | and 11.3 |

STATUTORILY EXEMPT CONTRACT

| | |
|---|--------------|
| Written Determination of Agency Head and Legal Counsel | Section 12.1 |
| Notice of Contract Award (<i>after contracting</i>)..... | Section 12.3 |

APPENDIX D:
The Agency Procurement File

NO COST CONTRACT

| | |
|--|---------------------|
| Written Determination of Agency Legal Counsel and Chief Financial Officer | Section 12.2 |
| Notice of Contract Award (after contracting)..... | Section 12.3 |

SMALL PURCHASE CONTRACT: NOT EXCEEDING \$50,000.00

| | |
|--|-----------------------|
| <i>Agency Head and Chief Financial Officer Memo: Multiple Small Purchase Contracts with Same Vendor</i> | Section 13.1.2 |
| Agency Standard Operating Procedure | Section 13.2 |
| Documentation demonstrating compliance with Agency standard operating procedure | |
| Notice of Contract Award (after contracting)..... | Section 13.4 |

SMALL PURCHASE CONTRACT: EXCEEDING \$50,000.00, NOT EXCEEDING \$75,000.00

| | |
|---|------------------------|
| <i>Agency Head and Chief Financial Officer Memo: Multiple Small Purchase Contracts with Same Vendor</i> | Section 13.1.2 |
| Solicitation of Quotes | Section 13.3.1 |
| Documentation that quotes were solicited; how and to whom those quotes were solicited | |
| Quotes Received | Sections 13.3.1 |
| A copy of all quotes received; documentation registering all quotes; written determination as to why three quotes were not obtained (if applicable); written determination if award not made to low price (if applicable) | and 13.3.2 |
| Notice of Contract Award (after contracting)..... | Section 13.4 |

APPENDIX E: CONTRACT and SOLICITATION CLAUSES

The following clauses are available for use in solicitations issued pursuant to these rules and regulations and any resulting contracts. Some clauses are applicable to a solicitation document, others are applicable to a contract, while still others are applicable to both. *Agency legal counsel is encouraged to review this Appendix to ensure the clauses used in a solicitation or contract best meet the needs of the Agency.*

Any clauses which are not required may be modified as the Agency deems appropriate for their particular solicitation or contract. PPRB delegates to OPSCR staff the authority to grant exceptions to the required clauses on a case-by-case basis. A request for an exception shall be submitted in writing, explaining the reasons the Agency is requesting the exception and the considerations the Agency made to determine it is in the Agency’s best interest that the exception be granted. The written request shall be signed by Agency legal counsel.

Any information in [brackets] shall be edited by the Agency as appropriate for the specific solicitation or contract. Required clauses are identified with an “X” on the right side of the page. Clauses which are not identified as required are optional for use at the Agency’s sole discretion. The required clauses shall be included in contracts and solicitations as indicated below:

- **IC:** Contracts with Independent Contractors
- **CW:** Contracts with Contract Workers
- **S:** Solicitations (IFB, RFP, RFQ)

| | REQUIRED | | |
|--|-----------------|-----------|----------|
| | IC | CW | S |

ACKNOWLEDGMENT OF AMENDMENTS

[Bidders, Offerors, Applicants] shall acknowledge receipt of any amendment to the [IFB, RFP, RFQ, RFA] in writing. The acknowledgement shall be submitted [Agency shall specify the manner of submitting acknowledgements of amendments]. Each [bidder, offeror, applicant] shall submit a written acknowledgement of every amendment to the [Agency] on or before the submission deadline.

| | |
|--|----------|
| | X |
|--|----------|

APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi.

| | | | |
|--|----------|----------|----------|
| | X | X | X |
|--|----------|----------|----------|

APPENDIX E:
Contract and Solicitation Clauses

| | REQUIRED | | |
|---|----------|----------|----------|
| | IC | CW | S |
| APPROVAL | | | |
| It is understood that if this contract requires approval by the Public Procurement Review Board (“PPRB”) and/or the Department of Finance and Administration Office of Personal Service Contract Review (“OPSCR”), and this contract is not approved by PPRB and/or OPSCR, it is void and no payment shall be made hereunder. | X | X | X |
| ATTORNEYS’ FEES AND EXPENSES | | | |
| In the event Contractor defaults on any obligations under this Agreement, Contractor shall pay to [Agency] all costs and expenses, without limitation, incurred by [Agency] in enforcing this Agreement or reasonably related to enforcing this Agreement. This includes but is not limited to investigative fees, court costs, and attorneys’ fees. Under no circumstances shall [Agency] be obligated to pay attorneys’ fees or legal costs to Contractor. | | | |
| AUTHORITY OF SIGNATORY | | | |
| Contractor acknowledges that the individual executing the contract on behalf of the [Agency] is doing so in his or her official capacity only. To the extent any provision contained in the contract exceeds the signatory’s authority, Contractor agrees that it will not look to that individual in his or her personal capacity or otherwise seek to hold him or her individually liable for exceeding such authority. | | | |
| AUTHORITY TO CONTRACT | | | |
| Contractor warrants: (1) that it is a validly organized business with valid authority to enter into this agreement; (2) that it is qualified to do business and in good standing in the State of Mississippi; (3) 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, (4) 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. | | | |

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of [Agency] to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt the appropriated funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, regardless of the source of funding, [Agency] shall have the right upon 10 business days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expense to the [Agency] of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

X X X

BID ACCEPTANCE PERIOD [clause is for receipt of physical bids, modify to receive electronic bids]

The original and [number] copies of the bid form, [number] copies total, shall be signed and submitted in a sealed envelope or package to [place for receipt of bids] no later than [the time and date specified for receipt of bids]. Timely submission of the bid form is the responsibility of the bidder.

The envelope or package shall be marked with the bid opening date and time, and the RFX number of the IFB. The time and date of receipt shall be indicated on the envelope or package when received by the [Agency]. Each page of the bid form and all attachments shall be identified with the name of the bidder. Failure to submit a bid on the bid form provided may be considered just cause for rejection of the bid. Modifications or additions to any portion of the bid document may be cause for rejection of the bid.

The [Agency] reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, the [Agency] may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service. *(Non-responsive portions of the bid that do not affect service quality, quantity, price or delivery may be, for example, clauses that specify the state in which litigation is to be brought or that provide for high interest charges for late payment.)*

APPENDIX E:
Contract and Solicitation Clauses

| | REQUIRED | | |
|--|----------|----|---|
| | IC | CW | S |
| CERTIFICATION OF INDEPENDENT PRICE DETERMINATION | | | |
| By submitting a [bid, proposal, qualification], the [bidder, offeror] certifies that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication, or agreement with any other [bidder, offeror] or competitor for the purpose of restricting competition. | | | X |
| COMPLIANCE WITH EQUAL OPPORTUNITY IN EMPLOYMENT POLICY | | | |
| Contractor understands that the [Agency] is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. | X | X | X |
| COMPLIANCE WITH LAWS | | | |
| Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified. | X | X | X |
| CONFIDENTIALITY | | | |
| [Agency] is a public agency of the State of Mississippi and is subject to the <i>Mississippi Public Records Act of 1983</i> . Mississippi Code Annotated §§ 25-61-1, <i>et seq.</i> If a public records request is made for any information provided to [Agency] by Contractor, [Agency] shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information – unless Contractor has previously indicated the information is not a trade secret or confidential commercial and financial information. The [Agency] shall not be liable to the Contractor for disclosure of information required by court order or required by law. | | | |

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

CONTRACT ASSIGNMENT AND SUBCONTRACTING

Contractor acknowledges that it was selected by [Agency] to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of [Agency], which may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of Contractor's obligations hereunder without consent of the [Agency] shall be null and void. Approval of a subcontract by the [Agency] shall not be deemed to be approval of the incurrence of any additional obligation of the [Agency]. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that [Agency] may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

CONTRACT RIGHTS

Contract rights do not vest in any party until a contract is legally executed. The [Agency] is under no obligation to award a contract following issuance of this solicitation.

X

CONTRACTOR PERSONNEL

The [Agency] shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the [Agency] reasonably rejects staff or subcontractors, Contractor shall provide replacement staff or subcontractors satisfactory to the [Agency] in a timely manner and at no additional cost to the [Agency]. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

COPYRIGHTS

Contractor agrees that the rights and title to any copyrightable material first produced under this agreement belongs to [Agency]. Contractor hereby grants to [Agency] a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or copyrightable work which is incorporated in the material furnished under the agreement regardless of whether it was first produced under this agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others.

DISCLOSURE OF CONFIDENTIAL INFORMATION REQUIRED BY LAW

In the event that either party to this Agreement receives notice that a third-party has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the other party's data or other information, the party subject to the subpoena or other legal process shall promptly inform the other party at the earliest reasonable opportunity, unless prohibited by law from doing so. Thereafter, the party subject to the legal process shall respond to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1, *et seq.*

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Agency agrees to make payment in accordance with Mississippi "Timely Payments for Purchases by Public Bodies" laws, which generally provide for payment of undisputed amounts by the Agency within 45 calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301, *et seq.*

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X

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the *Mississippi Employment Protection Act* and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 and 71-11-3. Contractor agrees to provide a copy of each verification upon request of the [Agency] subject to approval by any agencies of the United States Government. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

X X

The breach of this clause may subject Contractor to the following: (1) termination of this contract and exclusion pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*; (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department, or governmental entity for the right to do business in Mississippi; or (3) both. In the event of such termination, Contractor would also be liable for any additional costs incurred by the Agency due to Contract cancellation or loss of license or permit to do business in the state.

ENTIRE AGREEMENT

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the [Agency] and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the [Agency] or Contractor on the basis of draftsmanship or preparation hereof.

EXCEPTIONS TO SOLICITATION (*cannot be used in IFBs*)

Offerors taking exception to any part of the solicitation shall clearly indicate such exceptions in its offer. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written. Conditional or qualified offers, unless specifically allowed, shall be subject to rejection in whole or in part.

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

EXCLUSION OR DEBARMENT

By submitting a [bid, proposal, qualification, application] in response to the [IFB, RFP, RFQ, RFA], the [bidder, offeror, applicant] certifies that it is not currently excluded or debarred from future contract awards by any political subdivision or agency of any state, federal, local, or county government. [Bidder, Offeror, Applicant] further certifies that it is not an agent of any such person or entity.

[Bidder, Offeror, Applicant] certifies that it has not, in the five-year period preceding its offer, been convicted of or had a civil judgment rendered against it for commission of a fraud or criminal offense in connection with obtaining, attempting to obtain, or performance of a public contract; violation of antitrust laws; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. [Bidder, Offeror, Applicant] certifies that it is not presently indicted or otherwise criminally or civilly charged with the commission of any of the acts listed herein.

[Bidder, Offeror, Applicant] certifies that, within the past five years, it has not had a contract with a governmental entity terminated due to the [bidder, offeror, applicant]'s failure to perform, default, or any other action or inaction by the [bidder, offeror, applicant].

EXPENSES INCURRED IN THE PROCUREMENT PROCESS

All parties participating in the procurement process with regard to this solicitation shall bear their own costs of participation, pursuant to Section 1.4.4 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

X

FAILURE TO DELIVER

In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the [Agency], after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the [Agency] may have.

APPENDIX E:
Contract and Solicitation Clauses

REQUIRED
IC CW S

FAILURE TO ENFORCE DOES NOT CONSTITUTE WAIVER

Failure by the [Agency] at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the [Agency] to enforce any provision at any time in accordance with its terms.

FORCE MAJEURE

Each party shall be temporarily excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the Agency in writing at its earliest reasonable opportunity of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. All parties shall make reasonable efforts to minimize the impact of the force majeure event on contract performance. The [Agency] may exercise any rights it has under the contract which are available when neither party is in default.

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INDEMNIFICATION *(for contracts with non-state Agencies or entities)*

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the [Agency] its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement.

In the [Agency]'s sole discretion, upon approval of the Office of the Mississippi Attorney General and the [Agency], Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the [Agency]. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the [Agency] shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the [Agency], which shall not be unreasonably withheld.

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INDEPENDENT CONTRACTOR STATUS

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the [Agency]. Nothing contained herein shall be deemed or construed by the [Agency], Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the [Agency] and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the [Agency] or Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the [Agency] and Contractor.

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the [Agency]. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the [Agency], and the [Agency] shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees.

The [Agency] shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the [Agency] shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the [Agency] for its employees.

INFORMATION DESIGNATED BY AGENCY AS CONFIDENTIAL

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor, or its subcontractor(s) shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor(s) without the express written approval of the [Agency] may result in the immediate termination of this agreement.

INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. The services to be provided, the unit prices and overall price to be paid, and the term of the contract shall not be deemed a trade secret or confidential commercial or financial information.

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INFRINGEMENT INDEMNIFICATION

Contractor warrants that the materials and deliverables provided to the [Agency] under this agreement, and their use by the [Agency], will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the [Agency] the right to continue using such items without additional cost to the Agency. Should Contractor fail to obtain for the [Agency] the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense.

In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the [Agency] to discontinue using such items, in which case Contractor will refund to the [Agency] the fees previously paid by the [Agency] for the items the customer may no longer use, and shall compensate the [Agency] for the lost value of the infringing part to the phase in which it was used, up to and including the contract price for said phase. Said refund shall be paid within 10 business days of notice to the [Agency] to discontinue said use.

Scope of Indemnification: Provided that the [Agency] promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, indemnify, and hold harmless the [Agency] against any such claims, including but not limited to any expenses, costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

In the [Agency]'s sole discretion, upon approval of the Office of the Mississippi Attorney General and the [Agency], Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the [Agency]. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the [Agency] shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the [Agency], which shall not be unreasonably withheld.

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INSURANCE

[Before using this clause, the Agency should determine what insurance is needed from the vendor based on the scope of work, risk to the Agency, and other liabilities, and then amend this clause to reflect the desired coverage.] Contractor represents that it will maintain workers' compensation insurance in compliance with Mississippi law which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance with minimum limits of [\$Amount] per occurrence, and fidelity bond insurance with minimum limits of [\$Amount]. All general liability, professional liability, and fidelity bond insurance will provide coverage to the [Agency] as an additional insured. The [Agency] reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers shall be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

LIQUIDATED DAMAGES

[Describe the event(s) which would trigger the liquidated damages clause and the method by which liquidated damages will be calculated. Any liquidated damages terms shall have been specifically agreed upon by the parties at the time of contracting and included in the contract.]

MINOR INFORMALITIES AND IRREGULARITIES

The [Agency] has the right to waive minor defects or variations of a [bid, proposal, qualification, application] from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance of the services being procured and if doing so does not create an unfair advantage for any [bidder, offeror, applicant]. If insufficient information is submitted by a [bidder, offeror, applicant] for the [Agency] to properly evaluate the offer, the [Agency] has the right to require such additional information as it may deem necessary after the submission deadline, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured and such a request does not create an unfair advantage for any [bidder, offeror, applicant]. (*Information requested may include, for example, a copy of business or professional licenses, or a work schedule.*)

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MODIFICATION OR RENEGOTIATION REQUIRED BY CHANGE IN LAW

The parties agree to renegotiate the agreement in good faith if federal and/or state revisions to any applicable laws or regulations make changes in this agreement necessary. This agreement may be modified only by written agreement signed by the parties hereto and approval by the Public Procurement Review Board, if required.

NO LIMITATION OF LIABILITY

Nothing in this agreement shall be interpreted as excluding or limiting any liability of the Contractor for harm arising out of the Contractor's or its subcontractors' performance under this agreement.

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NON-CONFORMING TERMS AND CONDITIONS

A [bid, proposal, qualification, application] which includes terms and conditions which do not conform to the terms and conditions in the [IFB, RFP, RFQ, RFA] is subject to rejection as non-responsive. The [Agency] reserves the right to permit the offeror to withdraw nonconforming terms and conditions prior to a determination of non-responsiveness.

NON-SOLICITATION OF EMPLOYEES

Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least one year after this agreement terminates unless mutually agreed to in writing by the [Agency] and Contractor. Any such employment or solicitation for employment shall be in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121.

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NOTICES

All notices required or permitted to be given under this agreement shall be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. 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.

| | | | |
|-----------------|-----------------------|---------------|-----------------------|
| For Contractor: | [Name & Title] | For [Agency]: | [Name & Title] |
| | [Contact Information] | | [Contact Information] |

[OFFEROR’S, CONTRACTOR’S] REPRESENTATION REGARDING CONTINGENT FEES

By [responding to the solicitation, executing the contract] the [offeror, contractor] represents that it has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. If the [offeror, contractor] cannot make such a representation, a full and complete explanation shall be submitted in writing [with the offeror’s response, to the Agency prior to contract execution].

X X

ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract shall be made in writing by the [Agency], agreed to by Contractor, and approved by the Public Procurement Review Board, if required.

OWNERSHIP OF DOCUMENTS AND WORK PAPERS

[Agency] shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor’s internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to [Agency] upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files and shall obtain written permission from [Agency] to use such workpapers, subject to any copyright protections.

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| PAYMODE | | | |
| Payments by [Agency] using the state’s accounting system shall be made and remittance information provided electronically as directed by the state and deposited into the bank account of Contractor’s choice. The [Agency] may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the Agency is exempt from the payment of Mississippi taxes. All payments shall be in United States currency. | X | | X |
| PRE-[BID, SUBMISSION] CONFERENCE <i>(mandatory attendance)</i> | | | |
| A pre-[bid, submission] conference will be held at [time] on [date] at [location]. Any party interested in responding to the solicitation is required to attend. The purpose of the pre-[bid, submission] conference is to allow potential [bidders, offerors] an opportunity to present questions to staff and obtain clarification of the requirements of the solicitation document. Because the [Agency] considers the conference to be critical to understanding the solicitation requirements, attendance is mandatory in order to qualify as a [bidder, offeror]. | | | |
| PRE-[BID, SUBMISSION] CONFERENCE <i>(optional attendance)</i> | | | |
| An optional pre-[bid, submission] conference will be held at [time] on [date] at [location]. Any party interested in responding to the solicitation is urged to attend. The purpose of the pre-[bid, submission] conference is to allow potential offerors an opportunity to present questions to staff and obtain clarification of the requirements of the solicitation document. | | | |
| PRICE ADJUSTMENT | | | |
| [Any adjustments in price during the life of a contract is limited to the price adjustment methodology stated in the solicitation, or if the contract was not formally solicited, is limited to the methodology included in the contract at the time the contract was originally executed. Describe the method in which any price adjustment will be calculated, the triggering event which makes the price adjustment clause applicable, any limits on the price adjustment available, and any other requirements applicable for the price adjustment clause to be enacted. Any available price adjustment shall have been specifically agreed upon by the parties at the time of contracting and included in the contract. <i>For examples, see Exhibit 1 to Chapter 14.</i>] | | | |

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PRICE CERTIFICATION

Any [bidder, offeror] submitting a response to this [IFB, RFP, RFQ] agrees and certifies that it will honor its pricing and all terms and conditions herein for the duration of the contract term described in this solicitation. By submitting a response hereto, [bidder, offeror] agrees to accept a contract pursuant to the requirements of Section 14.15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* if so requested by the procuring Agency.

PRIORITY

The contract consists of this agreement, the [IFB, RFP, RFQ] [RFx No. 1234567890], attached hereto as Attachment A, and the Contractor's [bid, proposal, qualification] submitted in response, attached hereto as Attachment B. Any ambiguities, conflicts, or questions of interpretation of this contract shall be resolved first by reference to this agreement and, if still unresolved, by reference to Attachment A and, if still unresolved, by reference to Attachment B. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract. [The Agency has discretion as to which documents to attach to the contract and what priority those documents should be assigned.]

PROCUREMENT REGULATIONS

This [solicitation, contract] shall be governed by the applicable provisions of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available on the Mississippi Department of Finance and Administration's website (www.dfa.ms.gov). Any [bidder, offeror] responding to a solicitation for personal and professional services and any contractor doing business with a state Agency is deemed to be on notice of all requirements therein.

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PROFESSIONAL CERTIFICATIONS AND LICENSES

[Before using this clause, the Agency should determine whether professional certificates and licenses are needed from the vendor to determine whether the vendor’s qualifications are acceptable to the Agency. The clause should be amended to reflect the desired certificates and licenses.] Contractor shall provide official copies of all valid licenses and certificates required for performance of the work. The official copies shall be delivered to the [Agency] no later than ten business days after Contractor receives the Notice of Intent to Award from the [Agency]. Current official copies of licenses and certificates shall be provided to the [Agency] within five business days of request at any time during the contract term. Licenses and certificates required for this contract include the following: a business license valid in [state]; a professional license or certificate in the field of [specialty area]; [any additional certificates or licensing].

PROPERTY RIGHTS *(for the contract)*

Property rights do not inure to Contractor until such time as services have been provided under a legally executed contract. Contractor has no legitimate claim of entitlement to the provision of work hereunder and acknowledges that the [Agency] may terminate this contract at any time for its own convenience.

X X

PROPERTY RIGHTS *(for the solicitation document)*

Property rights do not inure to any [Bidder, Offeror] until such time as services have been provided under a legally executed contract. No party responding to this [IFB, RFP, RFQ] has a legitimate claim of entitlement to be awarded a contract or to the provision of work thereunder. The [Agency] is under no obligation to award a contract and may terminate a legally executed contract at any time.

X

QUALITY CONTROL

Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing supervision and conducting frequent inspections of Contractor’s staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the [Agency].

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RECORD RETENTION AND ACCESS TO RECORDS

Contractor shall maintain such financial records and other records as may be prescribed by the [Agency] or by applicable federal and state laws, rules, and regulations. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the [Agency] or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are relevant to this agreement. All records related to this agreement shall be retained by Contractor for three years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three year period, the records shall be retained for one year after all issues arising out of the action are finally resolved or until the end of the three year period, whichever is later. [On a case-by-case basis, Agencies should consider how any data privacy and/or record retention laws and regulations directly relevant to the Agency may impact the requirements of this clause.]

RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the [Agency], the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the [Agency]. The rights of the [Agency] are in addition and without prejudice to any other right the [Agency] may have to claim the amount of any loss or damage suffered by the [Agency] on account of the acts or omissions of Contractor.

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RELEASE OF [BID, PROPOSAL, QUALIFICATION] AS PUBLIC RECORD

[Bidders, Offerors] shall acknowledge which of the following statements is applicable regarding release of its [bid, proposal, qualification] as a public record. A [bidder, offeror] may be deemed non-responsive if the [bidder, offeror] does not acknowledge either statement, acknowledges both statements, or fails to comply with the requirements of the statement acknowledged. Choose one:

_____ Along with a complete copy of its [bid, proposal, qualification], [bidder, offeror] has submitted a second copy of the [bid, proposal, qualification] in which all information [bidder, offeror] deems to be confidential commercial and financial information and/or trade secrets is redacted in black. [Bidder, Offeror] acknowledges that it may be subject to exclusion pursuant to Chapter 15 of the PPRB OPSCR Rules and Regulations if the [Agency] or the Public Procurement Review Board determine redactions were made in bad faith in order to prohibit public access to portions of the [bid, proposal, qualification] which are not subject to Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. [Bidder, Offeror] acknowledges and agrees that [Agency] may release the redacted copy of the [bid, proposal, qualification] at any time as a public record without further notice to [bidder, offeror]. A [bidder, offeror] who selects this option but fails to submit a redacted copy of its [bid, proposal, qualification] may be deemed non-responsive.

_____ [Bidder, Offeror] hereby certifies that the complete unredacted copy of its [bid, proposal, qualification] may be released as a public record by the [Agency] at any time without notice to [bidder, offeror]. The [proposal, qualification] contains no information [bidder, offeror] deems to be confidential commercial and financial information and/or trade secrets in accordance with Mississippi Code Annotated §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. [Bidder, Offeror] *explicitly waives any right to receive notice of a request to inspect, examine, copy, or reproduce its bid as provided in Mississippi Code Annotated § 25-61-9(1)(a)*. A [bidder, offeror] who selects this option but submits a redacted copy of its [bid, proposal, qualification] may be deemed non-responsive.

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RENEWAL OF CONTRACT

The contract may be renewed at the discretion of the [Agency] for a period of [number] successive one-year periods under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

REPRESENTATION REGARDING GRATUITIES

[Offeror, Contractor] represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of [Agency] a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. [Offeror, Contractor] further represents that no employee or former employee of [Agency] has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by [offeror, contractor]. [Offeror, Contractor] further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.

X X X

REQUIRED PUBLIC RECORDS AND TRANSPARENCY

Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on www.transparency.ms.gov and shall be available for at the Agency for examination, inspection, or reproduction by the public. The [bidder, offeror, applicant, contractor] acknowledges and agrees that the [Agency] and this contract are subject to the *Mississippi Public Records Act of 1983* codified at Mississippi Code Annotated §§ 25-61-1, *et seq.* and its exceptions, Mississippi Code Annotated § 79-23-1, and the *Mississippi Accountability and Transparency Act of 2008*, codified at Mississippi Code Annotated §§ 27-104-151, *et seq.*

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REQUIREMENTS CONTRACT

During the period of the contract, Contractor shall provide all services described in the contract. Contractor understands and agrees that this is a requirements contract and that the [Agency] shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the [Agency] for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the [Agency] is under no obligation to Contractor to utilize any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the [Agency] may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

RIGHT TO AUDIT

Contractor shall maintain such financial records and other records as may be prescribed by the [Agency] or by applicable federal and state laws and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the [Agency], whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the [Agency], the Mississippi State Auditor's Office, and/or other entity of the state.

RIGHT TO INSPECT FACILITY

The [Agency] may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the [Agency].

SEVERABILITY

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

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STATE PROPERTY

Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the state for any loss or damage, normal wear and tear excepted.

STOP WORK ORDER

The [Agency] may, by written order to Contractor at any time, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a period of time specified by the [Agency]. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize any further cost to the [Agency]. Upon expiration of the stop work order, Contractor shall resume providing the services which were subject to the stop work order, unless the [Agency] has terminated that part of the agreement or terminated the agreement in its entirety. The [Agency] is not liable for payment for services which were not rendered due to the stop work order.

X X X

SURETY REQUIRED

A performance bond in the amount of 100 percent of the total contract price shall be required of the successful offeror to ensure satisfactory completion of the work. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi. In no event shall the requirement for the performance bond be waived.

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TERMINATION

Termination for Convenience. The [Agency] may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The [Agency] shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default. If the [Agency] gives the Contractor a notice that the personal or professional services are being provided in a manner that is deficient, the Contractor shall have 30 days to cure the deficiency. If the Contractor fails to cure the deficiency, the [Agency] may terminate the contract for default and the Contractor will be liable for the additional cost to the [Agency] to procure the personal and professional services from another source. Termination under this paragraph could result in Contractor being excluded from future contract awards pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*. Any termination wrongly labelled termination for default shall be deemed a termination for convenience.

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THIRD PARTY ACTION NOTIFICATION

Contractor shall give the 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.

VARIATION IN QUANTITY *(for definite quantity contracts)*

The quantity of services specified in this contract may be increased to the extent agreeable by both parties. However, the unit prices shall remain unchanged, other than as allowed by a price adjustment which would have otherwise been applicable.
