

DESCRIPTOR TERM: <b>Grants/Subgrants</b>	CODE: <b>3900</b>
ADOPTION DATE: <b>November 18, 1994</b>	REVISION:

**STATE BOARD POLICY**

The Mississippi Department of Education Grants/Subgrants Policy set forth herein applies to the awarding of all grants and subgrants by the Mississippi Department of Education. Violation of this policy shall carry such penalties as may be applicable under state and federal laws. The awarding office shall be responsible for compliance with the rules and regulations governing the awarding of such grants and subgrants. The awarding of grant funds shall be governed by all applicable rules and regulations promulgated by the grantor, state and federal regulations, and policies approved by the Mississippi Board of Education.

Formula grants are awarded to eligible grantees on a non-competitive basis based upon a pre-determined formula. Competitive grants are awarded to eligible grantees on the basis of a competitive review process. Discretionary grants are awarded to eligible grantees based upon the requirements of the grantor.

Prior to the awarding of any grant, the Mississippi Board of Education shall approve the methodology to be utilized in awarding the grant. In addition, any competitive or discretionary grant award resulting in one or more entities receiving an amount of \$50,000 or greater shall require Board approval.

DESCRIPTOR TERM: <b>Grants/Subgrants/Contract Approval (SDE)</b>	CODE: <b>3900</b>
ADOPTION DATE: <b>November 18, 1994</b>	REVISION: <b>May 15, 1998</b>

## STATE BOARD POLICY

### ~~MDE CONTRACT PROCUREMENT POLICY~~

The Mississippi Department of Education (MDE) ~~Grants/Subgrants Contract Procurement Policy~~ set forth herein applies to the **awarding of all grants and subgrants** ~~procurement, management and control of all personal and professional services with any funds by the Mississippi Department of Education. These regulations shall apply to every expenditure of public funds irrespective of their source. Violation of this policy these regulations shall carry such penalties as may be applicable under state **and federal** laws. In the event of a conflict, the guidelines of the grant, gift, or self-generated funds shall prevail. The awarding office shall be responsible for **compliance with the rules and regulations** being aware of all applicable regulations and rules governing the **awarding of such grants and subgrants**, procurement of services, as well as ensuring that these procedures are followed in the procurement process. **The awarding of grant funds shall be governed by all applicable rules and regulations promulgated by the grantor, state and federal regulations, and policies approved by the Mississippi Board of Education.**~~

**Formula grants are awarded to eligible grantees on a non-competitive basis based upon a pre-determined formula. Competitive grants are awarded to eligible grantees on the basis of a competitive review process. Discretionary grants are awarded to eligible grantees based upon the requirements of the grantor.**

**Prior to the awarding of any grant, the Mississippi Board of Education shall approve the methodology to be utilized in awarding the grant. In addition, any competitive or discretionary grant award resulting in one or more entities receiving an amount of \$50,000 or greater shall require Board approval.**

Contracting for services shall be governed by the Personal Service Contract Procurement Regulations promulgated by the Personal Service Contract Review Board (PSCRB), as well as the policy and procedures approved by the Mississippi Board of Education. Contracts must be procured by obtaining adequate and reasonable competition, with the exception of sole source and emergency procurements (defined below). Generally, the total amount of the contract shall be used

to determine the appropriate method for procurement of services.

Contracting for services shall be accomplished by using one of the methods of source selection indicated below:

- ~~Competitive Sealed Bids~~
- ~~Competitive Sealed Proposals~~
- ~~Small Purchase~~
- ~~Sole Source Procurement~~
- ~~Emergency Procurement~~

In accordance with ~~MDE and PSCRB rules and regulations~~, the following methods of source selection shall be utilized in ~~procuring contractual services~~:

- ~~0 – \$50,000~~

~~MDE rules and regulations using one of the following procurement methods:~~

- ~~Competitive sealed bidding~~
- ~~Competitive sealed proposals~~
- ~~Small purchases~~
- ~~Pool of service providers~~
- ~~Three written quotations~~
- ~~Sole source procurement~~
- ~~Emergency procurement~~

- ~~\$50,000 – \$100,000~~

~~PSCRB rules and regulations using one of the following procurement methods:~~

- ~~Competitive sealed bidding~~
- ~~Competitive sealed proposals~~
- ~~Small purchases~~
- ~~Pool of service providers~~
- ~~Three written quotations~~
- ~~Sole source procurement~~
- ~~Emergency procurement~~

- ~~Excess of \$100,000~~

~~PSCRB rules and regulations using one of the following procurement methods:~~

- Competitive sealed bidding
- Competitive sealed proposals
- Sole source procurement
- Emergency procurement

Contracts in excess of \$20,000 in personnel services must be approved by the Mississippi Board of Education prior to the department awarding the contract. The awarding office must present any such contract to the Mississippi Board of Education at the Board meeting prior to the beginning date of the contract.

Contracts in excess of \$100,000 must be submitted for approval to the PSCRB at least 10 working days prior to the first Monday of each month. The PSCRB meets on the first Monday of each month. Therefore, the awarding office must present any contract in excess of \$100,000 to the MDE Contract Analyst for review 12 working days prior to the first Monday of each month. The effective date of the contract shall be the date of PSCRB approval (first Monday of each month) or thereafter. The Mississippi Board of Education shall approve any contract requiring PSCRB approval.

It is the responsibility of the awarding office to meet the time frames necessary to secure Mississippi Board of Education and PSCRB approval. Generally, contracts requiring PSCRB approval must receive Mississippi Board of Education approval prior to consideration by the PSCRB.

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### **CONTRACTS EXEMPT FROM APPROVAL BY THE PSCRB**

The following contracts are exempt from approval by the PSCRB:

- Personal service contracts not exceeding \$100,000;
- Non state service agencies' contracts (except those that are between state service and non state service agencies);
- Contracts between agencies under the purview of the State Personnel Board;
- Computer or information technology related services governed by the Mississippi Department of Information Technology Services; and
- Personal service contracts entered into by the Mississippi Department of Transportation.

The following service types are also exempt from approval by the PSCRB:

- Attorney
- Accountant
- Auditor
- Physician
- Dentist

- Architect
- Engineer
- Veterinarian
- Utility rate expert

Contracts between MDE and state/non-state service agencies may be procured on a negotiated basis, using the following methods of procurement:

- Sole source (within state/local entities)
- Competitive (service provided by multiple entities)
- Emergency

The Mississippi Department of Information Technology Services rules and regulations shall govern contracts procured for computer or information technology related services.

**While the above contracts are exempt from the PSCRB approval, the awarding office is responsible for ensuring that these contracts comply with MDE's internal review and approval procedures.**

## **METHODS OF SOURCE SELECTION**

The following regulations govern the methods of source selection to be used in procuring contractual services:

### **Competitive Sealed Bidding**

When a determination is made that competitive sealed bids procurement is best suited for a particular service, an Invitation for Bids shall be issued in accordance with PSCRB regulations. The Invitation for Bids shall include a purchase description and all contractual terms and conditions applicable to the procurement as outlined below:

- Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the state, rejection of bids, and any other special information;
- Purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;
- Contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and,
- Instructions to bidders on the designation of trade secrets or other proprietary data to be

confidential. Material so designated shall be accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

The Invitation for Bids form, Section 17.1, shall be utilized by the awarding office to initiate a competitive sealed bid procurement. ~~The Invitation for Bids must be reviewed by the Contract Analyst prior to distribution to potential service providers or vendors.~~ The bid shall be assigned a Bid File Number by the awarding office, which shall consist of the word BID, fiscal year, organizational code with an office identifier (if necessary), and sequential number of bid. For example, the first bid number in Educational Technology would be BID98-4701-001.

The following regulations shall govern the competitive sealed bids procurement:

- ~~Public notice of Invitation for Bids shall be publicized in a newspaper published in the county or municipality in which the agency is located when the anticipated expenditure is more than \$100,000. Advertisement of bids shall be published once each week for two consecutive weeks with the second notice being published on or after the 7<sup>th</sup> calendar day after the first notice was published. The date set for the bid opening for services shall not be less than seven (7) working days after the last notice appears in the newspaper, i.e., no sooner than the 8<sup>th</sup> working day.~~

The following is a suggested guide for the legal advertisement:

The *(name of the entity)* will accept sealed bids until *(time of bid opening)*, *(day of the week)*, *(month)*, *(date)*, *(year)* for the purpose of purchasing the following:

*(name of service you wish to procure)*,  
*(bid file number)*

Detailed specifications may be obtained by contacting *(name of contact person)* at *(telephone number)* or at *(physical mailing address)*.

~~Pre bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in the PSCRB regulations; and the Invitation for Bids, if a pre bid conference was required therein, or the notice of pre bid conference shall so provide. A summary of the conference shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If a transcript is made, it shall be a public record.~~

~~Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late. No late bid, late modification, or late withdrawal will be considered unless receipt would have been timely but for the action or inaction of State personnel directly~~

~~servicing the procurement activity.~~

~~-Bids shall be opened publicly in the presence of one or more witnesses. Bids shall be available for inspection at any time subsequent to the awarding of the contract affected by those bids, except to the extent the bidder designates trade secrets or other proprietary data to be confidential.~~

~~-Bids shall be unconditionally accepted without alteration or correction, except as authorized in the PSCRB regulations.~~

~~-Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes shall be permitted in accordance with the PSCRB regulations.~~

~~-Bids shall be evaluated based on the requirements set forth in the Invitations for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in evaluation that is not set forth in the Invitation for Bids.~~

~~-An in-house and/or external Selection Committee shall be appointed by the awarding office any time an Invitation for Bids is utilized in procuring services. The Selection Committee shall include the following representatives:~~

~~-MDE Contract Analyst;~~

~~-MDE staff person(s) with expertise or knowledge of the service to be provided;~~

~~-Qualified representative(s) outside awarding office to serve as objective reviewers; and,~~

~~-Two qualified individuals (in-house or external).~~

~~An existing advisory committee may serve in the place of an in-house Selection Committee. In the event an advisory committee is utilized, the Contract Analyst shall serve as an ex-officio member of the committee. The Selection Committee will review the Invitation for Bids and the bids received in response to the Invitation for Bids and make recommendations for funding award.~~

~~-The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bids meets the requirements and criteria set forth in the Invitation for Bids. Negotiations with any bidder are not permitted.~~

~~Written notice of award shall be sent to the successful bidder. Notice of award shall be made available to the public.~~

~~-When it is considered impractical to initially prepare a purchase description to support an award~~

~~based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers. Another Invitation for Bids would follow, which would be limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.~~

### **Competitive Sealed Proposals**

~~A contract may be entered into by competitive sealed proposals when the use of competitive sealed bidding is determined to be either not practicable or not advantageous to the State. The appropriate Superintendent Management Team member, or designee, shall make the determination after consultation with the Contract Analyst.~~

~~Proposals shall be solicited through a Request for Proposals. **The Request for Proposals must be reviewed by the Contract Analyst prior to distribution to potential service providers or vendors.** The prototype Request for Proposals is located in Section 17.2. The Request for Proposals shall include the description and contract terms indicated under Competitive Sealed Bidding, as well as include:~~

- ~~-A statement that discussions may be conducted with offerors who submit proposals determined to be reasonable susceptible of being selected for award, but that proposals may be accepted without such discussions; and,~~
- ~~-A statement of when and how price should be submitted.~~

~~The Request for Proposals shall also contain the following information:~~

- ~~-Type of service required;~~
- ~~-A description of the work involved;~~
- ~~-An estimate of when and for how long the services will be required;~~
- ~~-Budget information (narrative and summary);~~
- ~~-The type of contract to be used;~~
- ~~-A date by which proposals for the performance of the services shall be submitted and the format and procedures for delivery of proposal;~~
- ~~-A statement that the proposals shall be in writing;~~
- ~~-A statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data as confidential in accordance with MS Code 25-61-9 and 79-23-1;~~
- ~~-A statement of the minimum information that the proposal shall contain:~~
  - ~~-The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;~~
  - ~~-The age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;~~
  - ~~-The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;~~
  - ~~-A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals; and,~~

- A plan giving as much detail as is practical explaining how the services will be performed.
- The factors to be used in the evaluation and selection process and their relative importance. The selection process and rating scale may include the following:
  - Experience in performing type of work outlined in the description of services;
  - Qualifications in performing type of work outlined in description of services;
  - The extent of offeror's capabilities to perform required specialized services;
  - Compliance with public policy expressed in OMB Circulars (contracting with small and minority firms);
  - Price; and,
  - Other (depending on the type of work being undertaken).

The following regulations shall govern the competitive sealed proposal procurement:

- Public notice of Request for Proposals shall be publicized in a newspaper published in the county or municipality in which the agency is located when the anticipated expenditure is more than \$100,000. Advertisement of Request for Proposals shall be published once each week for two consecutive weeks with the second notice being published on or after the 7<sup>th</sup> calendar day after the first notice was published. The date set for the proposal opening for services shall not be less than seven (7) working days after the last notice appears in the newspaper, i.e., no sooner than the 8<sup>th</sup> working day.

The following is a suggested guide for the legal advertisement:

The *(name of the entity)* will accept proposals until *(time of proposal opening), (day of the week), (month), (date), (year)* for the purpose of purchasing the following:

*(name of service you wish to procure)*

Detailed specifications may be obtained by contacting *(name of contact person)* at *(telephone number)* or at *(physical mailing address)*.

- Pre bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received a Request for Proposals. The conference should be held long enough after the Request for Proposals has been issued to allow offerors to become familiar with it but sufficiently before proposal opening to allow consideration of the conference results in preparing their proposals. Nothing stated at the pre-bid conference shall change the Request for Proposals unless a change is made by written amendment as provided in the PSCRB regulations; and the Request for Proposals, if a pre-bid conference was required therein, or the notice of pre-bid conference shall so provide. A summary of the conference shall be supplied to all those prospective offerors known to have received a Request for Proposals. If a transcript is made, it shall be a public record.

- Any proposal received after the time and date set for receipt of proposals is late. Any withdrawal or modification of a proposal received after the established due date at the place designated for receipt of proposals is late. No late proposal, late modification, or late withdrawal will be considered unless receipt would have been timely but for the action or inaction of State personnel

~~directly serving the procurement activity.~~

~~Proposals shall not be opened publicly but shall be opened in the presence of two or more MDE officials. A Register of Proposals shall be prepared which shall include the name of each offeror, the number of modifications received, if any, and a description of services offered. The Register of Proposals shall be open to public inspection only after award of the contract.~~

~~An in-house and/or external Selection Committee shall be appointed by the awarding office any time a Request for Proposal is utilized in procuring services.~~

The Selection Committee shall include the following representatives:

- ~~MDE Contract Analyst;~~
- ~~MDE staff person(s) with expertise or knowledge of the service to be provided;~~
- ~~Qualified representative(s) outside awarding office to serve as objective reviewers; and,~~
- ~~Two qualified individuals (in-house or external).~~

~~An existing advisory committee may serve in the place of an in-house Selection Committee. In the event an advisory committee is utilized, the Contract Analyst shall serve as an ex-officio member of the committee. The Selection Committee will review the Request for Proposals and the proposals received in response to the Request for Proposals and make recommendations for funding award.~~

~~As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.~~

~~Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposals. Written notice of award shall be sent to the successful offeror. Notice of award shall be made available to the public.~~

### **Small Purchases**

~~The following regulations shall govern the procurement of services in the amount of \$100,000 or less. The procurement shall not be artificially divided nor underestimated to constitute a Small Purchases procurement.~~

#### Contracts — \$50,000 or Less

~~Contracts in the amount of \$50,000 or less may be procured by soliciting three written quotations or by utilizing a pool of service providers.~~

~~The quotations shall be recorded and placed in the procurement file. Award shall be made to the~~

source offering the lowest acceptable quotation. Written quotes must be either signed, on letterhead, or otherwise identifiable to be valid. Written quotes shall, at a minimum, contain the following information:

- A statement of price;
- Terms of the agreement;
- Description of services offered to the agency; and,
- Name, address and telephone number of the offeror.

The establishment and use of the pool of service providers' concept must ensure competition. Pools of service providers must be established under an open process for interested vendors to become a member of the pool. The awarding office shall make every effort to solicit nominations from entities such as organizations, local school districts, etc. for the development of the pools. In addition, the following procedures shall apply to the establishment and use of the pool of service providers:

- Specify the name of the pool;
- Establish method for entry into pool (must be open and competitive);
- Establish selection criteria within each pool, which may include geographical location, evaluation of trainer, alphabetical selection, customer needs, demographics, availability, etc.;
- Forward pool listing and selection criteria to the Contract Analyst by July 1 of each year; and,
- Establish fee schedule by using method of cost comparison to ensure a competitive fee. Surveys of similar positions and documentation to support the rate of compensation shall be included in the contract file. The awarding office should be prepared to provide this information for contract approval.

#### Contracts — \$50,000 to \$100,000

Contracts in the amount greater than \$50,000 and not exceeding \$100,000 may be procured by soliciting written quotations from no less than three sources or by utilizing a pool of service providers.

The quotations shall be recorded and placed in the procurement file. Award shall be made to the source offering the lowest acceptable quotation. Written quotes must be either signed, on letterhead, or otherwise identifiable to be valid. Written quotes shall, at a minimum, contain the following information:

- A statement of price;
- Terms of the agreement;
- Description of services offered to the agency; and,
- Name, address and telephone number of the offeror.

The establishment and use of the pool of service providers' concept must ensure competition. Pools of service providers must be established under an open process for interested vendors to become a member of the pool. The awarding office shall make every effort to solicit nominations from entities such as organizations, local school districts, etc. for the development of the pools. In

addition, the following procedures shall apply to the establishment and use of the pool of service providers:

- Specify the name of the pool;
- Establish method for entry into pool (must be open and competitive);
- Establish selection criteria within each pool, which may include geographical location, evaluation of trainer, alphabetical selection, customer needs, demographics, availability, etc.;
- Forward pool listing and selection criteria to the Contract Analyst by July 1 of each year; and,
- Establish fee schedule by using method of cost comparison to ensure a competitive fee. Surveys of similar positions and documentation to support the rate of compensation shall be included in the contract file. The awarding office should be prepared to provide this information for contract approval.

### **Sole-Source Procurement**

A contract may be awarded without competition when the determination is made that there is only one source for the required service. The appropriate Superintendent Management Team member, or designee, shall make this determination after consultation with the Contract Analyst. Sole-source procurement is not permissible unless a required service is available from only a single supplier.

The following regulations shall govern the sole-source procurement:

- The awarding office shall provide the necessary written documentation to support the sole-source procurement in order for the State Superintendent, or designee, to approve the determination. The documentation shall include an explanation as to why no other will be suitable or acceptable to meet the need. The awarding office shall provide this documentation to the Contract Analyst for review and approval by the State Superintendent, or designee.
- Negotiations, as appropriate, shall be conducted as to price, delivery and terms.

### **Emergency Procurement**

A contract may be awarded based upon an emergency procurement under emergency conditions as defined below, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. The appropriate Superintendent Management Team member, or designee, shall make this determination after consultation with the Contract Analyst.

The following regulations shall govern the emergency procurement:

- The awarding office shall provide a written determination of the basis for the emergency and for the selection of the particular contractor to the Contract Analyst for review and approval by the State Superintendent, or designee.
- The term "emergency" shall mean any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection, or caused by any inherent defect due to defective

construction, or when the immediate preservation of order to public health is necessary by reason of unforeseen emergency, or when the restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas or in the transportation of treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the agency, its employees or its citizens.

~~Emergency procurement shall be limited to those services necessary to meet the emergency.~~

~~The State Superintendent, or designee, must approve emergency procurements prior to the procurement and only in the event of an emergency condition and the need can not be met through normal procurement methods. The awarding office shall provide the appropriate documentation to support the emergency procurement.~~

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## **GENERAL PROVISIONS FOR PERSONAL SERVICE CONTRACTING**

The following general provisions shall apply to the procurement of personal and professional services:

~~A contractual agreement is required for all personal and professional services. Payment for any personal and professional service shall not be processed without a contractual agreement.~~

~~All contracts for services shall include a list of contract specifications or deliverables. These may be incorporated from the scope of work included in the Solicitations for~~

~~Bids or Proposals. This list should be used as evaluation criteria when monitoring contract performance in accordance with the Contract Administration section below. The description of services to be performed should be results, not procedure oriented, and should at a minimum include:~~

- ~~What service is to be performed;~~
- ~~When the service is to be performed;~~
- ~~How frequently the service is to be performed;~~
- ~~Where the service is to be performed;~~
- ~~How much it will cost;~~
- ~~Why the service is necessary; and,~~
- ~~What qualifications does the contractor possess.~~

~~Mandatory clauses have been established to be included in all contracts. In addition, certain clauses are required to be included in the Solicitations for Bids or Proposals. Alternative clauses are available for use in contracts and Solicitations for Bids or Proposals. These clauses are provided in Section 17.2.~~

- ~~–An Invitation for Bids, a Request for Proposals, or any other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the State. The reasons shall be made part of the contract file.~~
- ~~–The awarding office shall make a written determination of non-responsibility of a bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.~~
- ~~–Information furnished by a bidder or offeror shall not be disclosed outside of the office of the PSCRB or MDE if so requested by the bidder or offeror, except as provided in the MS Code Section 25-61-9.~~
- ~~–Prospective suppliers may be prequalified for particular types of services. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.~~
- ~~–A contractor shall, when requested by the awarding office, submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date.~~
- ~~–Any type of contract, which will promote the best interests of the State, may be used. A cost reimbursement contract may be used only when a written determination is made by the awarding office that such contract is to be less costly to the state than any other type or that it is impracticable to obtain the services required except under such a contract.~~
- ~~–Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are 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 therefor.~~
- ~~–An incremental award is an award of portions of a definite quantity requirement of more than one contractor. An incremental award may be used only when awards to more than one bidder or offeror for different amounts of the same time are necessary to obtain the total quantity or the required delivery.~~
- ~~–A multiple award is an award of an indefinite quantity contract for service to more than one bidder or offeror when the state is obligated to order all of its actual requirements for the specified supplies or services from those contractors. A multiple award may be made when award to two or more bidders or offerors for similar services is necessary for adequate delivery.~~
- ~~–The MDE may, at reasonable times, inspect the place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the~~

department.

~~The MDE may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.~~

~~Legal and contractual remedies, to include debarment and suspensions, shall be conducted in accordance with state law and PSCRB regulations, as applicable.~~

~~The MDE shall be entitled to audit the books and records of a contract or any subcontractor under any negotiated contract or subcontract to the extent that such books and records related to the performance of such contract or subcontract.~~

~~The determinations required by these regulations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.~~

~~When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General.~~

~~MDE shall maintain continuous audit covering the activities of the agency affecting its revenues and expenditures for personal and professional services contracts; and 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.~~

~~MDE may contract with state agency/institution of higher learning employees who have been classified under FLSA as non-eligible (exempt) employees by their primary employer. These individuals will be required to produce proof of their FLSA classification from their primary employer prior to contract execution. **It will be the responsibility of the awarding office to obtain the classification from the potential contractor and to maintain in the contract file.** If there is a need to contract with an individual who has been classified for FLSA purposes as an eligible (non-exempt) state agency/IHL employee, the awarding office will be required to obtain approval from the State Superintendent on a case-by-case basis prior to contract execution.~~

~~Preparation time for trainers is discouraged; however, the allowance of such will be considered on an individual basis and must be approved by the State Superintendent. Prep time shall be specifically identified in the contract and the awarding office is responsible for ensuring its proper use.~~

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### **CONTRACT PACKAGE**

Once a contractor has been selected, using one of above methods of source selection, a contract must be prepared. This package must contain the sections described below:

## Section I MDE Contract Signature Sheet

A contract signature sheet must be completed for each contract. A blank copy of this form is provided in Section 17.3. The awarding office must assign the contract number, using the following sequence: FY—Fund No.—Org. Code—Sequential No.—in Org. Code. (For example, 98-2201-2021-001)

## Section II Introduction

Contracting parties should be identified along with the contract term and reason for entering into an agreement. IRS classification of contractual personnel must be determined by completing the IRS Checklist (Section 17.4). If the contractor is determined to be a contract worker, the following statement is to be added to this section: **"Based upon the Internal Revenue Service Code, the contractor has been classified as a contract worker and will be subject to withholding as required by the IRS Code."** If the contractor is determined to be an independent contractor, the following statement is to be added to this section: **"Based upon the Internal Revenue Service Code, the contractor has been classified as an independent contractor and will not be subject to withholding as required by the IRS Code."** The Introduction shall also include a statement as to the qualifications of the contractor to perform the services to be rendered, unless the qualifications are included in the contractor's response to the Invitation for Bids or Request for Proposals (if applicable).

## Section III Statement of Work

This section sets forth the objectives to be reached by the contractor and the planned deliverables in accordance with the terms and provisions of the contract. The description of services shall include the items listed under the second bullet of General Provisions for Personal Service Contracting.

## Section IV Program Reporting, Compensation and Financial Reports

This section sets forth the compensation payable by the MDE in accordance with the terms set forth in the agreement and describes financial reporting required of the contractor. Program reporting requirements shall be explained in this section.

The method of payment and closeout procedures, as described below, should also be indicated in this section of the contract package.

## Section VI MDE Standard Terms and Conditions

All mandatory terms and conditions shall be included in contracts. In addition, optional contract clauses are available for use at your discretion. A copy of these terms and conditions are provided in Section 17.2.

## Section VII Budget Narrative

Costs for each category must be fully justified, including calculations if appropriate. If the contract spans multiple fiscal years, the Budget Narrative should be prepared for each fiscal year. If staff positions are funded under this agreement, qualifications and pay determination must be attached. The contract shall not provide for the purchase of equipment by the MDE on behalf of the contractor, either directly or indirectly. **Hourly rate must be specified in all contract worker contracts. The following statement shall be included in the Budget Narrative for contract workers:**

The MDE will pay \_\_\_\_\_ an amount not to exceed \$ \_\_\_\_\_ using the following breakdown:

Personnel Services: An amount not to exceed \$ \_\_\_\_\_  
(\$ \_\_\_\_\_ per hour x \_\_\_\_\_ hours = \$ \_\_\_\_\_ per day x \_\_\_\_\_ days)

Travel: \_\_\_\_\_ Actual amount not to exceed \$ \_\_\_\_\_  
(includes meals, mileage, overnight accommodations)

In addition to the above costs, an amount not to exceed \$ \_\_\_\_\_ (7.65% of the personnel services costs) has been added to the total costs of the contract to cover the MDE's matching contribution for Social Security and Medicare (FICA).

#### Section VIII Budget Summary

The appropriate sections of the MDE Budget Summary (Section 17.3) shall be completed. If the contract is for a contract worker, the total of the personnel services and FICA shall be placed in the salaries, wages, fees and/or fringe benefits line item on the Budget Summary Sheet. If the contract spans multiple fiscal years, the Budget Summary should be prepared for each fiscal year.

#### Section IX MDE Contract Travel Policy

If travel is an allowable cost in the contract, the contract shall include the travel policy for contractors. If out-of-state travel is not allowed, a statement to that effect should be included in the contract or a statement indicating prior approval will be necessary. The travel policy for contractors for in-state and out-of-state travel is located in Section 17.5.

**Reimbursement of taxable meals is not an allowable cost for contractors.**

Contractors requesting travel reimbursement must complete the Consultant/Conference Travel Voucher (Section 17.5) and must be submitted in the contractor's or contractor's employee's name, signed with the legal name and must show the contractor's Federal Identification number, if applicable.

Procedures for consultant travel reimbursement (those consultants who are reimbursed travel only) are described in Section 17.5.

Short contract forms are available in the Contract Analyst's office and may be utilized for both contract worker and independent contractor contracts. Generally, the length of the scope of work narrative will dictate the appropriate contract form.

The MDE Contract Signature Sheet will serve as page one (1) of the long contract form and each page of the contract must have the page number indicated along with the contract number. The review sheet, contract justification, IRS checklist, selection process form, purchase requisition, and withholding forms are not to be numbered as part of the contract.

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### **REVIEW AND APPROVAL BY THE OFFICE OF EDUCATIONAL ACCOUNTABILITY AND STATE SUPERINTENDENT OF EDUCATION**

After the appropriate procurement method has been utilized and the contract package has been finalized, the awarding office is to forward the following documents to the Contract Analyst for review and approval by the State Superintendent, or designee:

-Purchase requisition to encumber funds for the total amount of the contract. Indicate first and second half encumbrances on the purchase requisition, as well as the contract number and IRS classification (independent contractor or contract worker). The Contract Analyst will secure budget verification before processing the contract for approval. **Please ensure appropriate funds are available in the budget before forwarding the contract for review and approval.**

-Contract/Modification Review Sheet (Section 17.6);

-Contract Justification Sheet (Section 17.6). If more than one contractor is involved in the same activity, one Contract Justification Sheet can be used. A list of contractors with the name, address, amount of contract and period of contract is to be attached to the Contract Justification Sheet.

-Selection Process Form (Section 17.6);

-Contract document. Remember to attach supporting documents that govern the contract, such as RFP, proposal, and any revisions to proposal, etc.

-IRS checklist (Section 17.4);

-PERS form(s) (Section 17.6). If the contractor is not a PERS retiree, the MDE Certification form is the only form required. If the contractor is a PERS retiree, the MDE Certification and PERS Certification forms are required; and,

-Appropriate tax forms (Section 17.6). Remember that original tax forms are required to encumber funds for contracts. You may use a copy of the tax forms to obtain a vendor number in the SAAS

file, but you **must** obtain the original tax form(s). If the contractor has been classified as an independent contractor, obtain the W-9 form. If the contractor has been classified as a contract worker, you will need the W-4 form, state withholding form, and a copy of the contractor's social security card. If the contractor does not have his/her social security card, the contractor will need to request a copy from the Social Security Administration and provide proof to MDE.

Contracts must be submitted to the Contract Analyst at least 12 working days prior to the beginning date of the contract. You will also need to consider the time frames necessary to secure Mississippi Board of Education and PSCRB approval, if necessary.

**Please remember to maintain a copy of all the paperwork submitted to the Contract Analyst. You will not receive any paperwork back.**

The Contract Analyst will review the agreement before the State Superintendent, or designee, approves the contract. The review will be made to determine if the contract is complete, in compliance with MDE and PSCRB policies, and if regulatory approval authority is required.

The Contract Analyst will send the contract to the necessary regulatory agencies. Specifically, the review will consist of, but not be limited to, the following items:

- Appropriate method of source selection (procurement);
- Adequate description of services;
- Inclusion of all required sections, terms and conditions;
- Reasonable and sufficient justification of budget;
- Availability of funds and budget authority;
- Reasonable indirect cost rate (if applicable) and if the indirect cost plan is on file;
- Regulatory approvals; and,
- MDE approvals.

The awarding office must submit all contract renewals and contract modifications to the Contract Analyst for review and approval by the State Superintendent, or designee. The contracting procedures outlined above must be followed for all renewals, modifications, or other contractual alterations.

After the State Superintendent, or designee, has approved the contract, the awarding office shall obtain three original signatures on the contract. Once you have received the contractor's original signature, the awarding office shall obtain the appropriate MDE signatures. **Under no circumstances should a contractor begin work prior to the contract beginning date. Additionally, contracts must be signed before the contractor performs work under the contract.** All three signed contracts, in its entirety, shall be submitted to the Contract Analyst for signature. One original contract, along with the supporting documents, will be forwarded to the Accounting Office for processing. The remaining two contracts will be returned to the awarding office. It is the responsibility of the awarding office to mail one copy of the contract to the contractor and maintain the other copy in the office files.

Contracts for less than \$100,000 must be signed by the Bureau Director of the awarding office, the

appropriate Superintendent's Management Team member and the Contract Analyst. Contracts for \$100,000 or more require the signatures of the appropriate Superintendent Management Team member, the Deputy State Superintendent, and the Contract Analyst.

The checklist for contract procedures, located at Section 17.7, will serve as a helpful tool in the contract procurement and development process.

## PAYMENTS

Each contract should identify the following terms and conditions relating to payments for services:

- Payment schedule and invoicing;
- Terms;
- Retainage (if applicable);
- Final payment; and,
- Penalties (if applicable).

The contract shall indicate the schedule on which the independent contractor is to invoice the MDE (monthly, quarterly, upon completion of work, etc.) and what form the invoice should take (line item or lump sum). Also, the type documentation necessary for approval of the invoice (invoices from third parties, time sheets, etc. or perhaps the level of completion of the project) shall be made part of the contract. At no time should the contractor simply invoice the MDE without a basis for the payment to be remitted. Invoices shall include detailed description of services rendered during the period for which the independent contractor is requesting payment. Generally, independent contractors receive payment upon completion of the work specified in the contract.

The contract should provide for terms of payment by MDE (30 days, 45 days, etc.). A penalty clause for late receipt of deliverables could be included and the terms for the final payment may stipulate the MDE must approve the finished product.

Furthermore, the contract should indicate if any retainage is applicable. If so, a percentage or firm dollar amount should be indicated. Each invoice should indicate the gross amount of the invoice, then a line item with retainage that would be deducted to arrive at the amount to be paid. The retainage would be held until the MDE has possession of the finished product and the contractor submits an invoice for the final amount.

In lieu of, or in addition to retainage, the contract could place certain criteria on the final payment. These criteria could deal with prompt delivery of the product, the adequacy of the product, etc. An invoice should accompany the delivery of the finished product. This invoice must be marked "Final" by the contractor.

Contract worker payments will be made on a monthly basis. Invoices must be received by the 8<sup>th</sup> working day of the month following the period of service. Invoices shall include detailed description of services rendered during each day for which the contractor is requesting payment.

Finally, the contract may need to include penalty clauses for breach and/or anticipatory break of contract. A definition of each of these terms and criteria for determining each should be included in the contract. Either could occur through actions of the contractor or inaction of the contractor, based on completion points.

A copy of all payment records will be maintained in the Accounting Office's contract file.

### **CONTRACT MODIFICATION**

Any necessary changes to the original agreement must be accomplished through a formal modification. (The Modification Signature Sheet is located in Section 17.3.) Modification requests to adjust existing encumbrances in the first and second half allotment periods will require approval from the Budget Office prior to the Accounting Office's initiation of the modification. Modification requests to reduce the total contract obligation of existing encumbrances will be allowed if one of the following conditions occur:

- The request is accompanied by a signed contract modification which indicates a decrease in the amount of the original contract, or
- Certification of final payment has been received and a balance remains on the encumbrance. Funds are automatically deobligated when final payment is certified and processed.

The modification and appropriate forms must be submitted to the Contract Analyst 12 working days prior to the effective date. If the modification will require Mississippi Board of Education and PSCRB approval, the awarding office will be responsible for meeting the time deadlines necessary to secure the appropriate approval(s).

### **CORRESPONDENCE**

A copy of any correspondence relative to the contract must be retained in the awarding office's contract file. A copy of any correspondence relative to contract changes or payments should be forwarded to the Office of Educational Accountability. The contract number should be indicated on all correspondence.

### **CONTRACT CLOSEOUT PROCESS**

The closeout process is to be an accounting by the contractor to the MDE. The awarding office shall utilize the closeout process to ensure that the MDE has received the goods and services identified in the contract prior to the payment of the final invoice.

If the contract has been a line item budget, the closeout would encompass verification that the budget has not been exceeded by line item and/or in total. The closeout would also include verification that the required documentation is on file for all payments and that reimbursement has not or will not be made to the contractor for costs that are unallowable.

After the closeout has been accomplished, an approved invoice marked final will be transmitted to

the Accounting Office for payment. A statement indicating that the closeout has been completed shall be attached to the invoice. Instructions to the Accounting Office to deobligate any remaining balance on the contract shall accompany the invoice. The final invoice shall be transmitted to the Accounting Office as quickly as possible. However, it must be submitted within 30 days after the end of the contract.

### **CONTRACT ADMINISTRATION**

All contracts shall be monitored at least monthly to confirm acceptable performance, timely fulfillment of deliverables and compliance with terms of the agreement. The monitoring shall include, but not limited to, the following:

- Review and approval of contract deliverables;
- Compliance with contractual terms;
- Coordination of the flow of information between the parties;
- Response to requests of the contractor;
- Monitoring of disbursements against the contract budget;
- Monitoring of actual progress against work schedules;
- Coordination of furnishing the necessary materials;
- Recommendation of no cost modifications; and,
- Recommendation of modifications involving increased costs.

The awarding office shall be responsible for maintaining accurate records to document the monitoring described above. The awarding office shall utilize the monitoring form at Section 17.6.

### **ETHICS IN PUBLIC CONTRACTING FOR PERSONAL AND PROFESSIONAL SERVICES**

Public employment is a public trust. It is the policy of the State of Mississippi to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the State. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the State procurement organization. To achieve this, MDE employees shall observe the ethical standards prescribed herein:

-Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.

-Any effort to influence any public employee, or contractor with the State, to

breach the standards of ethical conduct is also a breach of ethical standards.

-It shall be a breach of ethical standards for any employee to participate directly or indirectly in

procurements when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or,
- Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

**MDE discourages any contracts with a relative of an employee. However, in situations where there is no potential of a conflict of interest and the need is justified for such a contract, approval by the State Superintendent, or designee, is required. The awarding office is responsible for determining whether such a relationship exists with an employee.**

~~It shall be a breach of this regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal therefor.~~

~~It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, unless such an arrangement is fully disclosed in writing. Every person, before being awarded a State contract, shall represent, in writing, that such person has not retained anyone in violation of the above contingent fee section. Failure to do so constitutes a breach of ethical standards.~~

~~Except as may be permitted by regulations or rulings of the Ethics Commission, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Additionally, MS Code Section 25-4-105(3)(a) states that "no public servant shall be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment; or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent."~~

~~It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the State, in connection with any contract in which the employee participated personally and substantially while an employee, where the state is a part or has a direct and substantial interest.~~

~~It shall be a breach of ethical standard for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or agent for anyone other than the State, in connection with any contract in matters which were within the former employee's official responsibility, where the State is a party or has a direct or substantial interest.~~

~~It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as a agent for anyone other than the State, in connection with any contract in which the employee either participates personally and substantially, or which is the subject of the employee's official responsibility, where the State is a party or has a direct and substantial interest.~~

~~MDE employees shall comply with MS Code Section 25-4-105, which states, "No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated."~~

~~It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.~~

~~Any questions concerning contract procurement should be directed to the Contract Analyst.~~

#### NOTES:

~~Contracts for hotel or motel meeting rooms and/or meals provided by one of these establishments may be entered into utilizing these establishments' function sheet or short contract which is available in the office of the Contract Analyst. The function sheet shall be signed by the appropriate member of the Superintendent's Management Team, or designee; however, the Contract Analyst must review and approve all contracts or function sheets.~~

~~In addition, the Contract Analyst handles contracts for building or floor space. All questions and requests concerning building/floor space shall be directed to the Contract Analyst.~~