

# Request for Proposal #2017-02 Transfer Pricing Analysis

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## 2.0 Characteristics of Work

### Explanation:

IRC (1986) Section 482 and related regulations are initially applied, in the instant case, by the State of Mississippi Department of Revenue (“MDOR”) during the course of an audit in examining the taxpayer’s income or deductions arising out of intercompany transactions. If the MDOR makes an adjustment, the taxpayer has the “burden of proof,” and must demonstrate that the MDOR’s adjustment is capricious, arbitrary, or unreasonable.

Accordingly, in the course of services each and every transfer pricing study or transfer pricing analysis will be in full compliance with the provisions of IRC (1986) section 482 and the regulations promulgated thereunder. Notwithstanding, as some taxpayers may not wish to provide all pertinent facts at an early audit stage or, even through administrative appeals and may present additional facts in a more formal setting, such submissions will need to be considered. Taxpayers typically respond with one of two approaches: (1) The taxpayer may argue that the transfer prices used by the taxpayer adequately comply with the regulations and that the MDOR’s adjustment must therefore be rejected or (2) the taxpayer may offer an adjustment that is somewhere between the original position taken on its return and the MDOR’s proposed adjustment.

### Questions:

Does the MDOR understand that strict adherence to the provisions of IRC section 482 and its regulations requires complete facts and the documentation and transfer pricing reports will be consistent with those provisions to the extent possible and necessary based upon the facts and circumstances of each taxpayer?

**Response: MDOR understands that strict adherence to the provisions of IRC section 482 and its regulations requires complete facts and the documentation and transfer pricing reports will be consistent with those provisions to the extent possible, and necessary, based upon the facts and circumstances of each taxpayer.**

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## 3.0 General Terms of Contract

### Explanation:

This section does not address the ability of the proposer to collect fees that are collected after the August 15 contingency fee collection date when the MDOR exercises its option to renew the contract.

### Questions:

If the MDOR exercises its option for a contract extension, does that contract extension also extend the August 15 contingency fee collection date with respect to services provided in the initial contract?

Response: If MDOR chooses to exercise its option to extend the contract for an additional year, revenue to be included in the computation of the contingency fee due for the extended year will only include revenue received by August 15 the following year. For example, if MDOR chooses to extend the contract to include the period of July 1, 2018 to June 30, 2019, only revenue received by August 15, 2019 will be included in the computation of the contingency fee due to the winning vendor. If the contract is not extended, no further payments will be made under the contracted contingency arrangement after August 15, 2018. This would not preclude the parties from entering into a separate contract for other work which was not performed between July 1, 2017 to June 30, 2018.

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## 6.1 Qualification of Proposer

### Explanation:

The proposal makes the following statement: “The proposer may be required before the award of any contract to show to the complete satisfaction of MDOR that it has the necessary facilities, ability and financial resources to provide the service specified therein in a satisfactory manner.” If awarded the contract, the services would be provided by proposer as the contractor and all services would be provided by three particular individuals. These parties work together remotely on most occasions, are individuals, and serve EAG in various capacities. Reviewing their financial resources and facilities is not consistent with a contingency fee arrangement for consulting services where the service providers are focused on a narrow topic with particular expertise and the risk of performance falls entirely on the service provider.

### Questions:

Since the proposer has no central office facility, no warehouse, and no reviewable financial statements, how would the MDOR propose to review these items, when would such review occur, and what standards would be applied in that review given the fact that MDOR is not at risk at any time in the proposed contingent contractual agreement?

Response: Rule 3-401.05 of the Mississippi Personal Services Contract Review Board Rules and Regulations requires that the Department’s Procurement Officer be satisfied that a prospective

contractor is sufficiently responsible to perform the services requested. Rule 3-401.02 requires that the Department's Procurement Officer make a written determination of such responsibility, to be maintained in the Department's procurement files. If the Department's Procurement Officer believes she must review facilities, ability and financial resources to responsibly provide services, such review shall be made pursuant to Rules 3-601 and 3-602 of the Mississippi Personal Services Contract Review Board Rules and Regulations. Additionally, each proposal will be evaluated utilizing the criteria listed in Section 7.9 of the RFP based on the information provided by the proposer.

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## 6.2 References

### Explanation:

This section requests the provision of at least four references, but does not define a reference.

### Questions:

Does the MDOR interpret reference to mean a particular state or each person at a state?

**Response:** MDOR interprets a reference to mean a particular state or entity that has utilized the same or similar services. We do not consider each person at a state or entity as a separate reference for this purpose.

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## 6.3 Business Longevity

### Explanation:

This section requires that the proposer be in business a minimum of five years.

### Questions:

Does the MDOR interpret "in business" to be the specific services requested in this proposal or any similar business requiring similar skills?

**Response:** MDOR will consider any similar business requiring similar skills.

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## 7.2 Proposer Rules of Procurement

### Explanation:

In this section and numerous sections of the Technical Proposal, the MDOR lists different ways that the contract can be terminated by the MDOR. This contract demands that the proposer provide

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its services without compensation until such time as cash is collected from taxpayers identified in the course of services and that cash must be collected by the date set by statute.

#### Questions:

Does the proposer have any guarantee that its services will be compensated upon termination of the contract under section 7.2 or any of the other numerous termination provisions in the RFP? If so, will that compensation consider the risk inherent in the contract, the value of the services, the time incurred in performance of the contract, or the expertise of the proposer?

Response: Section 7.2 of the RFP (listed on page 8) does not include information relating to termination of any future contract. It relates to the time period for which a proposal will be binding. However, in response to the substance of your question, to the extent clauses outlining the termination method within the RFP do not state otherwise, the winning vendor will receive compensation for work performed up to the date of effective termination. In this case, the computation for contingency fee will be calculated using revenue received up to 46 days after the effective date of termination. Such compensation will not be based on any other factors unless accepted by MDOR as a result of a Deviation or Exception pursuant to Section 7.18.

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## 7.9 Evaluation

#### Explanation:

This section defines the factors used for selecting the proposer and includes within the factors, the personnel's equipment and facilities. In the explanation of section 6.1, the proposer describes the activities and personnel involved in the proposed services.

#### Questions:

What equipment and facilities will be reviewed, if any, and how will that review be conducted?

Response: See Response to question relating to Section 6.1 stated hereinabove as to the method of review if determined to be required. As to the equipment and facilities, each proposer should include any and all equipment or facilities it believes it will use in providing services under the RFP.

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## 9.1 MDOR Responsibilities

#### Explanation:

This section states that Federal Tax information is not provided. The proposer will need the federal tax returns and supporting documentation as part of its proposed services. The proposer expects

that this information will be retrieved from taxpayers as part of an information and document request.

#### Questions:

Will the MDOR assist the proposer in retrieving this information as part of an information and document request after taxpayers are identified and selected for examination?

**Response:** Federal Tax Information (FTI) includes return information received by MDOR *directly from the Internal Revenue Service (IRS)*. The return information provided through an information document request is received from the taxpayer and is not considered FTI. MDOR will request this information from the taxpayer and provide to the proposer once contract is agreed upon and confidentiality agreements have been executed.

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## 9.2(1) Contractor Responsibilities

#### Explanation:

This subsection requires a ranking of companies by highest recommended IRC (1986) Section 482 tax adjustment. The proposer may be aware of other factors that would more likely produce immediate results and assessments for the MDOR.

#### Questions:

Will the MDOR accept the interpretation of the proposer that this language includes the likelihood of immediate assessment and numerous other factors in determining the audit leads?

**Response:** MDOR requests the audit leads to be initially ranked based on the IRC § 482 tax adjustments as stated in the requirement but will also consider the recommendations of the proposer based on other factors.

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## 9.2(4) Contractor Responsibilities

#### Explanation:

This subsection requires that all reports be submitted in a manner that satisfies IRC (1986) Section 482. For further explanation see section 2.0 above.

#### Questions:

Does the MDOR understand that strict adherence to the provisions of IRC (1986) Section 482 and its regulations requires complete facts and the documentation and reports will be consistent with

those provisions to the extent possible and necessary based upon the facts and circumstances of each taxpayer?

**Response: MDOR understands that strict adherence to the provisions of IRC (1986) Section 482 and its regulations requires complete facts and the documentation and reports will be consistent with those provisions, to the extent possible, and necessary, based upon the facts and circumstances of each taxpayer.**

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## 9.2(6) Contractor Responsibilities

### Explanation:

This is a contingency fee arrangement only. Proposer anticipates on-the-job training only in the course of the audit of taxpayers.

### Questions:

Would “on-the-job” training of MDOR employees fulfill the requirements of this subsection?

**Response: On-the-job training of MDOR dedicated staff assigned to work with the winning vendor in the course of an audit will qualify as responsive to the RFP. However, training provided in a classroom type atmosphere to MDOR staff may result in a higher evaluation score using the criteria listed in Section 7.9 of the RFP.**

# Appendix A – Terms and Conditions

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## Availability of Funds

### Explanation:

Proposer believes that the funds have already been approved for these services.

### Questions:

Is the proposer correct in it’s understanding that the funds have already been approved and this provision is not necessary or appropriate?

Response: Appendix D of the Mississippi Personal Services Contract Review Board Rules and Regulations requires that this clause be included in every RFP issued under its jurisdiction. Appendix C of the Rules and Regulations requires that this clause also be included in every contract approved under its jurisdiction. Senate Bill 2973 passed in the 2017 Regular Session, did appropriate up to \$1,000,000 for contingent fee contracts for services rendered to the Department of Revenue for the analysis of taxes, interest or penalty or the reduction of refunds claimed. Ten percent (10%) of any funds, up to \$1,000,000.00, derived from work under such a contingent fee contract that would otherwise be paid into the General Fund is to be deposited into a special fund for the purposes of defraying the expenses of the contingent fee contract(s).

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## Stop Work Order & Termination for Convenience

### Explanation:

The MDOR lists different ways that the contract can be terminated by the MDOR. This contract demands that the proposer provide its services without compensation until such time as cash is collected from taxpayers identified in the course of services and that cash must be collected by the date set by statute.

### Questions:

Does the proposer have any guarantee that its services will be compensated upon termination of the contract under section 7.2 or any of the other numerous termination provisions in the RFP? If so, will that compensation consider the risk inherent in the contract, the value of the services, the time incurred in performance of the contract, or the expertise of the proposer? If so, how?

Response: Please see Response to Question relating to Section 7.2 stated herein above.

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## Indemnification

### Explanation:

This clause demands the proposer indemnify the State for claims of any kind and is inappropriate for consulting services of this kind.

### Questions:

Given the nature of the services provided, is this clause necessary for the contract?

Response: The MDOR believes this clause to be necessary. Any proposer may seek an exception to this clause as part of its proposal pursuant to Section 7.18 of the RFP. It would then be at MDOR's discretion as to whether it wished to accept this exception. However, please be aware

that exceptions may result in a reduced score under the evaluation criteria listed within Section 7.9 of the RFP.

## Attachment A - Proposal Package

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### Proposal Form

#### Explanation:

Each of the options has terms that lack definition in the request for proposal.

#### Questions:

- How does the MDOR define the amount collected for purposes of computing the contingency fee?

**Response:** MDOR defines the amount collected as the total payment of tax, penalty and interest received associated with the IRC § 482 adjustments.

- Does it include all cash collected from an identified taxpayer (tax, penalty and interest)?

**Response:** Yes.

- What constitutes a report?

**Response:** A report should contain all of information necessary to support the tax adjustment based on the IRC § 482. It can be an accumulation of numerous documents related to the adjustment but should also include an expert's summary of the proposed adjustment that may be used in administrative hearings or court.

- Is a report the accumulation of numerous documents used to assist with the assessment of tax, penalty and interest related to a particular taxpayer (one report associated with each taxpayer)?

**Response:** Yes.

- What is the definition of "exceptions and deviations" to terms and conditions (just those confidential items listed in 7.16 or all "exceptions and deviations")?

**Response:** The reference should be to Section 7.18, "Exceptions and Deviations". The reference to "7.16" is hereby stricken and replaced with "7.18".



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## Technical Proposal – Business and Directory Information

### Explanation:

The business and directory information demands information that the proposer cannot produce.

### Questions:

- The proposer operates a consulting firm rather than an accounting firm; does the name of the consulting firm satisfy this requirement of the proposal?

**Response: Yes.**

- The proposer does not have a State Contractor number as it has never done business in the State and has never needed such a number in another state, how would the proposer fulfill this requirement?

**Response: The requirement that the contractor's number be listed is removed and stricken from the RFP.**

- The proposer does not have a D&B number, how would the proposer fulfill this requirement?

**Response: The requirement that the D&B number be listed is removed and stricken from the RFP.**

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## Technical Proposal – Financial Capacity Information

### Explanation:

The proposer is a small closely held consulting limited liability partnership that has never needed or prepared financial statements.

### Questions:

- How would the proposer fulfill this requirement?

**Response: The requirement is hereby changed from a requirement to an option to include in the proposal. However, please be aware that each proposal will be evaluated utilizing the criteria listed in Section 7.9 of the RFP based on the information provided by the proposer. Therefore, failure to provide these documents or some other documents with similar information could result in a lower evaluation score.**

## Overall Questions Related to the Request for Proposal

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## Termination Provision Addition

### Explanation:

The proposer incurs all of the risk in this contract and needs the potential to mitigate its risk should the MDOR not fulfill its duties or the likelihood of payment is decreased due to the pace of the examinations that will occur in the course of the proposed services.

### Questions:

Can the proposer add its own termination provision allowing it to terminate the contract when it is determined, solely at its own discretion, that the conditions for receipt of the contingency fee payment may not be met?

**Response:** Due to the nature of this service, MDOR will not accept any exception made to the termination language listed in the RFP, either through alteration of the existing language or addition of new clauses.

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## Resources

### Explanation:

In order to expedite these matters, the proposer expects that the MDOR will dedicate resources and give the identified taxpayers immediate consideration.

### Questions:

Can the proposer add its own provision requiring dedicated resources and immediate attention to identified taxpayers in the course of this contract?

**Response:** A proposer may list any exceptions or deviations it may have pursuant to Section 7.18 of the RFP. However, such exceptions or deviations may be taken into consideration when evaluating the proposal using the criteria listed in Section 7.9. MDOR does plan to assign at least one employee dedicated to this project.