

MEMPHIS MANAGEMENT GROUP, LLC

Project Title: RENASANT CONVENTION CENTER EXPANSION JOINT REPLACEMENT
LRK Drawings Ref. A205e_1 SK-01 through SK-04

Bid Due Date: Friday, October 13, 2023 5:00 P.M. Central Daylight Time

Expected Time Period for Contract: TBD

Bidder Eligibility: Submission of Bid Submittals is open to those vendors/contractors who satisfy the minimum qualifications stated herein.

BID Contents

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I. INTRODUCTION

The Memphis Management Group with offices in Memphis, Tennessee, hereafter referred to as “MMG”, is initiating this Request for Bid Submittal (Bid or bid) to solicit Bid Submittals from qualified companies, firms or individuals interested in providing services to assist MMG, and more specifically the Renasant Convention Center. The Renasant Convention Center is a convention and performing arts facility owned by the City of Memphis, Tennessee.

MMG is the management group which provides overall management services under contract to the Memphis Convention Center Commission (consisting of nine Commissioners who are appointed by the Mayor of the City of Memphis to generally oversee the convention center facility). MMG is seeking replacement to a defective expansion joint located on the second level on the Renasant Convention Center, downtown Memphis, TN. MMG intends to contract with the successful Bidder to provide the services set forth herein.

A. Background

N/A

B. Scope and Objectives

Scope: See attached Engineering diagrams.

II. FUNDING

Funding for the services set out in this Request for Bid Submittal shall be provided by MMG, through reimbursement from the Memphis Convention Center Commission.

Funding for inventories of materials, equipment and labor will be the responsibility of the Contractor. The contract generated by this bid will set out a commission schedule that will be paid to MMG from gross revenues of the Contractor.

III. INSTRUCTIONS TO BIDDERS

A. Definitions for the purposes of this Bid :

Bidder – Person, firm or company submitting a Bid Submittal in order to attain a contract with MMG.

Contractor – Person or company whose Bid Submittal has been accepted by the MMG to provide the services outlined in this Request for Bid Submittal document and who will be offered a formal written contract.

The Bidder is specifically notified that failure to comply with any part of the Request for Bid Submittal may result in rejection of the Bid Submittal as non-responsive.

B. Bid Submittal shall be prepared in three (3) parts as follows:

- 1. Technical Bid Submittal.** The technical Bid Submittal must contain all work requirements necessary to accomplish the tasks as defined in the bid. It will outline the proposed approach, methodology, work plan, and schedules necessary to accomplish the tasks and to produce the deliverables.
- 2. Management Bid Submittal.** The management Bid Submittal must contain information regarding the firm's staff qualifications, related experience, and references as requested in this bid.
- 3. Financial Bid Submittal.** The financial Bid Submittal must contain information regarding proposed rates for equipment and services, total dollar investment in equipment the Bidder plans to have on-site at the Renasant Convention Center facility, and acceptance of the proposed commission schedule outlined in the bid. Bidder may provide other incentives to MMG to consider their bid Submittal, but at minimum, acceptance of the proposed commission schedule is required. The financial Bid Submittal must contain information regarding the cost of the services outlined in the scope section of this bid.

A complete signed statement of the Bidder's last three fiscal years must be included for the evaluation committee's review. MMG may request additional information, data, or presentations in support of written Bid Submittals.

C. Submission of Bid Submittals

Two (2) signed copies of the Bid Submittal are required. The Bid Submittal, whether mailed or hand delivered, must arrive at the Administrative Offices of the Renasant Convention Center at the address shown below no later than 5:00 P.M. Central Standard Time on October 13, 2023.

The Bid Submittal shall be addressed in the following manner:

Memphis Management Group
C/O Renasant Convention Center, ATTN: Dean Dennis, GM
255 North Main
Memphis, Tennessee 38103
Bid – RENASANT CONVENTION CENTER EXPANSION JOINT REPLACEMENT

Bidders mailing Bid Submittals should allow normal mail delivery time to ensure timely receipt of their Bid Submittals by the Bid Coordinator.

Late Bid Submittals will not be accepted and will be automatically disqualified from consideration.

All Bid Submittals and any accompanying documentation become the property of MMG and will not be returned.

D. Contact

The Bid Coordinator is the sole point of contact for this Request for Bid Submittal process. All communications between the Bidders and MMG upon receipt of this Bid shall be with the Bid Coordinator as follows:

Name: Dean Dennis, GM
Address: 255 North Main
City/State/Zip: Memphis, Tennessee 38103
Phone No: (901) 576-1203

E. Pre-Bid Submittal Conference

A pre-Bid Submittal walk-through and discussion will be held September 29, 2023 at 9:00 A.M. CST.
Other walk-through's upon request.

F. Proposed Format

Written on 8 ½ " X 11" paper.

G. Bid Submittal Presentation

Bid Submittals must be signed and dated by the President or Chief Executive Officer of the corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

H. Bid Submittal Evaluation

Bid Submittals will be reviewed and evaluated by an evaluation committee consisting of representatives from MMG and/or other sources if considered appropriate by MMG.

Written submittals and oral presentations, if necessary, will be utilized in selecting the successful Bid Submittal. If there are more than five responses to this bid, MMG may elect to select three firms as finalists for further consideration and final determination of contract award.

I. MMG reserves the right at its sole discretion to reject Bid Submittals

The final selection, if any, will be that Bid Submittal which, in the opinion of MMG after review of all submissions by the evaluation committee, best meets the requirements set forth in the bid and is in the best interest of MMG.

J. The following weights will be assigned to the Bid Submittal for evaluation purposes:

Technical-	10 percent
Management-	25 percent
Financial-	65 percent

The Bid Submittals will be evaluated strictly in accordance with the requirements set forth in this bid.

K. Additional Evaluation Criteria

When evaluation of the Bid Submittals produces numerical ratings that are substantially equivalent, i.e. scores separated by 2% or less of the total available points, MMG reserves the right to award the contract to the Bidder whose Bid Submittal is deemed to be in MMG's best interest.

L. BID Revisions

In the event it becomes necessary to revise any part of the bid an addenda will be provided to all persons/firms who receive the bid. If any prospective Bidder has reason to doubt whether MMG is aware of the Bidder's interest, it is incumbent on the Bidder to notify the Bid Coordinator to be sure that addenda are received. Mail or call such notice to the Bid Coordinator identified in Paragraph D.

M. Non-Responsive Bid Submittals

Bid Submittals that do not address all areas requested by this bid may be deemed non-responsive and may not be considered for any possible contract awarded as a result of this bid. Bid Submittals providing less than 60 days for acceptance by MMG from the date set for opening of Bid Submittals will be considered non-responsive and will be rejected.

N. Bid Submittal is Complete and Final

MMG reserves the right to make an award without further discussion of the Bid Submittals submitted. Therefore, the Bid Submittal should be submitted initially on the most favorable terms that the Bidder can propose. The Bidder shall specifically stipulate that the Bid Submittal is predicated upon the acceptance of all the terms and conditions contained in the Request for Bid Submittal.

Bidder should be prepared to accept this bid or incorporation into a contract resulting from this bid (an example of which is attached hereto). Contract negotiation may provide for the incorporation of the Bidder's Bid Submittal. This bid does not obligate MMG to contract for services specified herein.

O. Period of Performance

The period of performance of any contract resulting from this bid is tentatively scheduled to begin on or about November 13, 2023, and the contract will be in force for 3 months therefrom. Amendments extending the period of performance, if any, shall be at the sole discretion of MMG. These time periods may vary dependent on needs of MMG and/or the winning Bidder as agreed to during the contract negotiations.

P. Bid Submittals Based on Bid Material

Bid Submittals shall be based on the material contained in the bid. The Bidder is instructed to disregard any previous draft material it may have received and/or any oral representations.

Q. Notification

Firms whose Bid Submittals have not been selected for further negotiation or award will be notified in writing at the address given in the Bid Submittal after the award is made.

R. MMG not Liable For Costs

MMG will not be liable for any costs incurred by the Bidder associated with the preparation of a Bid Submittal submitted in response to this Bid.

S. Bidder Minimum Qualifications

The Bidder must have 5 years of experience in successfully concluding projects of a similar nature as that described herein. The Bidder must have the capacity to meet the requirements set out in this Request for Bid Submittal.

Bidders who do not meet these minimum qualifications shall be deemed non-responsive and will not receive further consideration.

T. Anticipated Schedule of Activities

Issue Request for Bid:	September 21, 2023
Receive Bids	October 13, 2023
Announce Apparent Successful Bidder	October 16, 2023
Notify Unsuccessful Bidder(s):	October 16, 2023
Begin Contract Work on or around:	November 13, 2023

IV. TECHNICAL SPECIFICATIONS

Bid Submittal must contain a comprehensive work plan describing in sufficient detail the Bidder's planned approach to the work defined in the "Scope of Work" in this Bid.

The plan must be in sufficient detail to convey to members of the evaluation team, the Bidder's knowledge of the subjects and skills necessary to fulfill the requirements of this Bid.

A. Project Manager

Contractor shall provide at a minimum one project manager who will give priority to the development and implementation of this project. The project manager shall be highly qualified from the standpoint of technical abilities, experience, and managerial capabilities. The project manager will be available to meet with or discuss by phone all required issues with MMG representatives. The project manager or other trained personnel shall be capable of accomplishing all of the scope of work as described. Compensation for the project manager and any other personnel provided by the Contractor will be the sole responsibility of the Contractor.

B. Operational Requirements

The services to be provided and the work to be performed by the Contractor in accordance with the terms and conditions of this Bid shall include but not be limited to:

See attached engineering diagrams.

C. Creativity

Bidder may present any creative approaches that might be appropriate. The Bidder may also provide supporting documentation that would be pertinent to this Bid.

V. MANAGEMENT SPECIFICATION

Provide all information requested below in response to the management requirements of this Bid.

A. Identifying Information

1. Name, address, principal place of business, and telephone number of legal entity with whom contract is to be written.
2. Name, address, and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Bidder and year entity was established.
4. Federal employee ID number and Washington Uniform Business Identification (UBI) number issued by the Department of Revenue.
5. Name of the proposed Project Manager.
6. Location of the facility from which Bidder would operate.

B. Contract Management

1. Provide a description of the proposed project staffing/organization to be used during the course of the contract, including any subcontractors. Explain the Bidder's proposed methodology for conduct of the project.
2. Identify management and staff who will be assigned to the potential contract
3. An organizational chart of Bidder's firm is required indicating lines of authority for personnel involved in performance of this potential contract.

4. Each Bidder shall disclose who within the firm will have prime responsibility and have final authority for the work.

C. Experience of the Bidder

1. Indicate the experience, if any, the Bidder has had providing the type of services outlined in the Scope of Work
2. List contracts the Bidder may have had during the last five years that relate to the Bidder's ability to perform the services called for under this bid.
3. Indicate any other experience that indicates the qualifications of the Bidder for the performance of the potential contract.
4. Bidder must supply names, addresses and telephone numbers of three client references and briefly describe the type of service provided to those clients. The Bidder must grant permission to MMG to contact all references provided.
5. Indicate if the Bidder has had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance which was delivered to the Bidder due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and determined that the Bidder was in default.

NOTE: If the Bidder has had a contract terminated for default in this period, then the Bidder shall submit full details including the other party's name, address, and phone number. MMG will evaluate the facts and may, at its sole discretion, reject the Bid Submittal on the grounds of its past experience.

D. Subcontractor's Information Requirement

In the event the Bidder intends to subcontract any of the proposed work stated in its technical Bid Submittal, the Bidder shall submit the information required in paragraphs A, B, and C, of Section V for each proposed subcontractor.

E. Minority/ Women-Owned Business Participation

MMG encourages participation in all of its contracts by Minority, Women and Disadvantaged firms. Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis.

VI. FINANCIAL SPECIFICATIONS

A. Compensation and Payment:

Bidders are to submit to MMG a financial plan outlining the price for services to MMG as set out in the Scope of Work. The Bid Submittal must break out the separate cost(s) for each sub-section of the work. Responses should give specific dollar amounts for Bid evaluation purposes.

Funding for inventories of event related materials, staffing, materials, etc. and operations will be the responsibility of the Contractor.

The payment schedule is anticipated to match the completion of each sub-section of work described above.

VII. MISCELLANEOUS PROVISIONS

A. Authority to Bind MMG

The General Manager of MMG or his designee is the only individual who may legally commit MMG to the expenditures of funds for a contract resulting from this bid. No cost chargeable to the proposed contract may be incurred before receipt of either a fully executed contract or specific, written authorization from the General Manager.

B. Certification and Assurances

The Certification and Assurances form, Appendix "A", must be signed by the President or Chief Executive Officer of the corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship, and returned with the Bid Submittal.

C. Contract Provisions

The General Terms and Conditions, Appendix "B" shall be included in any contract awarded as a result of the bid and are not negotiable.

The Contractor shall be held liable for compliance with all applicable federal, state, and local statutes, laws, rules, and regulations, by responding to this bid and as a result of the contract awarded as a result of this bid.

All terms and statements contained in this bid shall be made an attachment to, and become a part of, the contract awarded as a result of this bid.

D. INSURANCE COVERAGE

The Contractor is to furnish MMG with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Agency within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract) and contain separation of insured's (cross liability) condition.

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The Memphis Management Group, Memphis Tourism, the Renasant Convention Center, the Cannon Center for the Performing Arts, the Memphis Convention Center Commission, and the City of Memphis, and their appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with the contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by MMG.
2. **Cancellation.** The Memphis Management Group shall, be provided written notice before cancellation or non-renewal of any insurance referred to herein. The insurer shall give MMG 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, MMG shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference MMG's contract number and the name of Memphis Management Group.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Tennessee and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the MMG Risk Manager, before the contract is accepted or work any begin.
5. **Excess Coverage.** By requiring insurance herein, MMG does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to MMG.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. MMG will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under an agreement issued as a result of this BID .

Liability Insurance

Each Bidder must supply with their response, proof of insurance from the Bidder's insurance carrier, outlining the extent of Bidder's liability coverage, including professional liability coverage.

E. Proprietary Information/Public Disclosure

Materials submitted in response to this competitive procurement shall become the property of MMG.

All Bid Submittals received shall remain confidential until a contract(s), if any; resulting from this bid is signed by MMG.

F. DEBRIEFING OF UNSUCCESSFUL BIDDERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Bidder. The request for a debriefing conference must be received by the Bid Coordinator within three (3) business days after the notification of an unsuccessful Bid Submittal is faxed/e-mailed to the Bidder. The debriefing will be held within three (3) business days of the request, if at all practicable.

Discussion will be limited to a critique of the requesting Bidder's submittal and how it compared with the successful Bidder. Comparisons between Bid Submittals or evaluations of the other Bid Submittals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

G. PROTEST PROCEDURE

Bidders protesting this procurement shall follow the procedures described below; protests that do not follow these procedures will not be considered. This procedure constitutes the sole administrative remedy available regarding this procurement and is available only to those Bidders who submitted a response to this solicitation document **and** who have participated in a debriefing conference.

Protests must be in writing and signed by the protesting party or an authorized agent. The Bidder is allowed three (3) business days to file a protest with the Bid Coordinator. Protests may be submitted by facsimile or e-mail. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the Bid Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or with WSCC policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's judgment on the quality of a Bid Submittal, or 2) MMG's assessment of its own needs or requirements.

Upon receipt of a protest, a protest review will be held by MMG. The MMG President or an employee delegated by the President who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Bidder under the bid, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the Big Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold MMG's action; or
- Find only technical or harmless errors in MMG's acquisition process and determine MMG to be in substantial compliance, and therefore reject the protest; or
- Find merit in the protest and provide MMG options which may include:
 - Correct the errors and re-evaluate all Bid Submittals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If MMG determines that the protest is without merit, MMG will enter into a contract with the apparently successful Bidder. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

EXHIBIT A

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the Bid Submittal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the Bid Submittal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single Bid Submittal.
3. The attached Bid Submittal is a firm offer for a period of 60 days following receipt, and it may be accepted by Memphis Management Group without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this Bid Submittal, I/we have not been assisted by any current or former employee of Memphis Management Group. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that Memphis Management Group will not reimburse me/us for any costs incurred in the preparation of this Bid Submittal. All Bid Submittals become the property of Memphis Management Group, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this Bid Submittal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Bidder or to any competitor.
7. I/we agree that submission of the attached Bid Submittal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid Submittal for the purpose of restricting competition.
9. I/we grant Memphis Management Group the right to contact references and others, who may have pertinent information regarding the Bidder's prior experience and ability to perform the services contemplated in this procurement.

Signature of Bidder

Title

Date

EXHIBIT B

GENERAL TERMS AND CONDITIONS

Definitions

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENT" shall mean the Memphis Management Group President, and/or the delegate authorized in writing to act on the President's behalf.
- B. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- C. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- D. "MMG" shall mean the Memphis Management Group, a Non-profit corporation of the State of Tennessee, any division, section, office, unit or other entity of MMG, or any of the officers or other officials lawfully representing MMG.

Access to Data

The CONTRACTOR shall provide access to data generated under this contract to MMG, at no additional cost. This includes access to all information that supports the findings, conclusions and recommendations of any CONTRACTOR'S reports, including computer models and methodology for those models.

Advance Payments Prohibited

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by MMG.

Amendments

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Americans with Disabilities Act of 1990, Public Law 101-336 (also referred to as the "ADA"), 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

Assignment

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of MMG.

Attorneys' Fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

Confidentiality/Safeguarding of Information

The CONTRACTOR shall not use or disclose any information concerning MMG, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of MMG, or as may be required by law.

Conflict of Interest

MMG may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the MMG that there is a conflict of interest on the part of the CONTRACTOR involving the CONTRACTOR in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, MMG shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of MMG provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the MMG makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

Copyright Provisions

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by MMG. MMG shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to MMG effective from the moment of creation of such materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to MMG a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to MMG.

The CONTRACTOR shall exert all reasonable effort to advise MMG, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

MMG shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. MMG shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

Covenant Against Contingent Fees

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

MMG shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

Disputes

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name and address; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within three (3) working days after the parties agree that they cannot resolve the dispute.
2. **The respondent shall send a written answer to the requester's statement to both the AGENT and the requester within five (5) working days.**
3. The AGENT shall review the written statements and reply in writing to both parties within ten (10) working days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

Governing Law

This contract shall be construed and interpreted in accordance with the laws of the State of Tennessee, and the venue of any action brought hereunder shall be in the Superior Court for Shelby County.

Indemnification

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless MMG, Memphis Tourism, the Renasant Convention Center, the Cannon Center for the Performing Arts, the Memphis Convention Center Commission, and the City of Memphis and all officials, agents, and employees thereof, from and against all claims for injuries or death arising out of or resulting from the performance of the contract.

“Claim,” as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney’s fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. CONTRACTOR’S obligations to indemnify defend, and hold harmless includes any claim by CONTRACTORS’ agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend and hold harmless MMG, Memphis Tourism, the Renasant Convention Center, the Cannon Center for the Performing Arts, the Memphis Convention Center Commission, and the City of Memphis, and any officials, agents and employees thereof, for any claim arising out of or incident to CONTRACTOR’S or any subcontractor’s performance or failure to perform the contract. CONTRACTOR’S obligation to indemnify, defend, and hold harmless the above parties shall not be eliminated or reduced by any actual or alleged concurrent negligence of the above parties.

Independent Capacity of the Contractor

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of MMG. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of MMG or of the Memphis Cook Convention Center Commission by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

Industrial Insurance Coverage

The CONTRACTOR shall comply with the provisions of Tennessee State law regarding Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, MMG may collect from the CONTRACTOR the full amount payable for such Industrial Insurance. MMG may deduct the amount owed by the CONTRACTOR for industrial Insurance fund from the amount payable to the CONTRACTOR by MMG under this contract, and transmit the deducted amount to the State. This provision does not waive any of the State’s right to collect from the CONTRACTOR.

Licensing, Accreditation and Registration

The CONTRACTOR shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

Limitation of Authority

Only the President of MMG or the MMG General Manager (AGENT) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract.

Noncompliance with Nondiscrimination Laws

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with MMG. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

Privacy

Personal information including, but not limited to, "Protected Health Information", collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the MMG or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless MMG for any damages related to the CONTRACTOR'S unauthorized use of personal information.

Publicity

The CONTRACTOR agrees to submit to MMG all advertising and publicity matters relating to this contract wherein MMG's name is mentioned or language used from which the connection of MMG's name may, in MMG's judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of MMG.

Records Maintenance

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by MMG, personnel duly authorized by MMG. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

Right of Inspection

The CONTRACTOR shall provide right of access to its facilities to MMG, or any of its officers, or to any other authorized agent or official of the Memphis Convention Center Commission , at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

Savings

In the event funding from the Memphis Convention Center Commission, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, MMG may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at MMG's discretion under those new funding limitations and conditions.

Severability

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

Site Security

While on Memphis Cook Convention Center premises, CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

Subcontracting

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of MMG. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the MMG for any breach in the performance of the CONTRACTOR'S duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of MMG or as provided by law.

Taxes

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

Termination for Cause

In the event MMG determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, MMG has the right to suspend or terminate this contract. Before suspending or terminating the contract, MMG shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

MMG reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by MMG to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of MMG provided in this contract are not exclusive and, are in addition to any other rights and remedies provided by law.

Termination for Convenience

Except as otherwise provided in this contract, MMG may, by ten (10) calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, MMG shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

Termination Procedures

Upon termination of this contract, MMG, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to MMG any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

MMG shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by MMG, and the amount agreed upon by the CONTRACTOR and MMG for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by MMG, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of MMG. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

MMG may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect MMG against potential loss or liability. The rights and remedies of MMGC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to MMG, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case MMG has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to MMG and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to MMG;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which MMG has or may acquire an interest.

Treatment of Assets

1. Title to all property furnished by MMG shall remain in MMG. Title to all property furnished by the Memphis Convention Center Commission shall remain the property of the Commission. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in MMG upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in MMG upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by MMG in whole or in part, whichever first occurs.
2. Any property of MMG furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by MMG, be used only for the performance of this contract.
3. The CONTRACTOR shall be responsible for any loss or damage to property of MMG or the Memphis Convention Center Commission, that results from the negligence of the CONTRACTOR or that results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
4. If any MMG property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify MMG and shall take all reasonable steps to protect the property from further damage.
5. The CONTRACTOR shall surrender to MMG all property of MMG and/or the Memphis Convention Center Commission prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

Waiver

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of MMG.

EXHIBIT C – Example of Contract

Exhibit D – Contractor’s Bid Submittal dated [REDACTED];