

INVITATION FOR BIDS



Drug Testing Program

**The Mississippi Department of Education
Office of Human Resources**

**Central High School Building
359 North West Street
Jackson, MS 39205**

**Contact: Darla Hewitt
Submission Due Date: **May 10, 2022****

By submitting a BID, the Offeror certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.



INVITATION FOR BID

RFx Bid Number: N/A	Bid Title: Drug Testing Program
Dates of Advertisements: Friday, April 22, 2022	Office of Procurement: Attn: Monique Corley
Bid Due Date and Time: Tuesday, May 10, 2022 at 2:00 p.m.	Deadline for Questions: Thursday, April 28, 2022
Bid Review and Evaluations: Friday, May 13, 2022	Dates to Post Answers: Tuesday, May 3, 2022
Date Delivery Required: N/A	Delivery location F.O.B. (Destination): N/A
Term of Contract: July 1, 2022 – June 30, 2027	Contract Approval: July 1, 2022

You are invited to participate in this Invitation for Bid (IFB). Please submit your bid response, all required forms and the vendor acceptance in conformance with the instructions specified herein. By submitting a bid response, the bidder agrees and promises to provide and deliver to the State all products and services contained in this IFB for which a contract is awarded by the State. The bidder shall fully perform the contract in accordance with all specifications, terms and conditions, and requirements contained in the IFB.

By submitting a BID, the Offeror certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

Written acceptance of the bidder's bid response by the State, by issuance of a purchase order or contract, constitutes a binding contract made with the bidder by and between the Mississippi State Department of Education through the Procurement Director named above, and the bidder named below:

Bidder Company Name:			
Street Address:			
P.O. Box:	City	State:	Zip Code:
Toll Free Telephone:		Telephone:	Fax:
Federal I.D. or Social Security No.:		E-Mail:	
Type or Print Name of Person Signing:		Title:	
Authorized Signature:		Date:	

**The Mississippi Department of Education
Terms and Conditions
Drug and Alcohol Testing Program**

1. PREPARATION OF BID

The Invitation for Bid and/or Quotes (IFB/RFQ) may be submitted in RFXS or shipped to the Mississippi Department of Education (MDE). ***In person delivery of bids will not be accepted or considered for an award.***

Shipped to:
(USPS, UPS, Fed Ex)

ATTN: Monique Corley
Office of Procurement
The Mississippi Department of Education
Drug Testing Program
359 North West Street
Jackson, MS 39201
(DO NOT OPEN)

All bid prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.

A signed proposal packet shall be electronically submitted via [RFXS <RFXS@mdek12.org>](mailto:RFXS@mdek12.org) no later than **Tuesday, May 10, 2022, by 2:00 PM Central Standard Time (CST)**. Applicants shall allow at least 72 hours in advance of the due date to consider unforeseen technical issues. **The complete bid packet including all attachments shall be submitted in a searchable Microsoft Office® format, preferably in Word® or Portable Document Format (PDF) only.** Bids received after the time designated in the solicitation shall be considered late and shall not be considered for an award. **The subject line shall specify the name of the solicitation and the name of the entity or individual submitting the response.**

1. Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
2. Price each item separately.
3. Price options shall not be included or considered unless specified.
4. Available specifications shall be sufficient to make the terms binding.
5. Information must be furnished according to bid.
6. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding the bidder.
7. Time Performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications.

2. SUBMISSION OF BID

All bids shall be signed and sealed. An agent authorized to enter into an agreement must sign bid. The bidder's name and address must be listed on the outside of the envelope, along with the date of the bid opening, and the RFX number. Bids, bid modifications, or corrections received after **2:00 p.m., CST on Tuesday, April 26, 2022**, will not be accepted.

- a. When submitting a bid electronically, the authorized signature may be typed or be an electronic signature.
- b. When submitting the response to the IFB electronically, all questions must be answered within the IFB and a response must be submitted for all proposed items in bid.

3. RESTRICTIONS ON COMMUNICATIONS WITH THE OFFICE OF PROCUREMENT

From the issue date of this solicitation until a Contractor is selected and the Contract is signed, Offerors and/or their representatives are prohibited to communicate with any **Office of Procurement** staff regarding this procurement.

4. ACCEPTANCE OF BIDS/RESERVED RIGHTS

The Mississippi Department of Education (MDE) reserves the right to determine the lowest and/or best bid, reject any and/or all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The MDE reserves the right to modify or cancel in whole or in part its IFB.

5. ERROR IN BID

Any errors found in bid must submit a bid modification to the MDE prior to the due date specified in the IFB. Erroneous bids, where the mistake is apparent, the MDE may correct or delete the error during the bid.

6. WITHDRAWAL OF BID

Bids may be withdrawn with written notice from bidder who signed the original document prior to the time and date of the bid opening. Any withdrawn or modified offer shall remain unopened in the MDE Procurement File. In accordance with §25-61-1, only opened bids shall be available for inspection by participants.

7. AWARD

It is the intent of the MDE to award a contract to the lowest responsive bidder meeting specifications **July 1, 2022, through June 30, 2027**. Renewal of contract for each year will be contingent upon the prior year's performance and availability of funds. Award shall be based on the following factors: (A) adherence to all conditions and requirements of the bid specifications; (B) qualifications of the bidders, including past performance, financial responsibility, general reputation, experience, and service capabilities; (C) delivery or completion date; (D) workmanship, finish, and overall quality; and (E) any bid that does not meet the requirements set out in the specifications shall not be considered for the award.

8. ACKNOWLEDGMENT OF ADMENDMENTS

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the application. The acknowledgement must be received by the MDE by the time and at the place specified for receipt of bids.

9. FIRM BID PRICE

The price bid for each item is the service costs, and all other overhead charges of every kind and nature. Unless otherwise specified, prices shall remain firm for the bid during the duration of the contract period. .

10. ORDER OF COMMUNICATIONS

Any and all corrections and changes, clarifications, etc., communicated between the MDE and the vendor shall be in writing. Vendor(s) shall assume all risks if acting otherwise. Questions and/or correspondence relating to this bid must be emailed to the attention of the Office of Human Resources at dhewitt@mdek12.org by **Friday, April 15, 2022**, at 5:00 p.m. (CST). Responses will be posted to the MDE website at www.mdek12.org under the Public Notices section and will be available to the general public by **Wednesday, April 20, 2022**. A copy of any corrections, changes, or clarification to the bid shall be submitted to Monique Corley, Office of Procurement, The Mississippi Department of Education, 359 North West Street, Jackson, MS 39201.

11. RIGHT TO PROTEST

A. Interested Party means an actual or prospective bidder that may be aggrieved by the solicitation or award of a contract, or by the protest.

B. Protester means any actual or prospective bidder who is aggrieved in connections with the solicitation or the award of a contract who files a protest.

C. Special Assistant Attorney General shall mean the individual assigned by the Attorney General to provide legal assistance to the State agency.

11.1 Procedures for Filing Protests

Protesters should seek resolution of their complaints initially with the office that issued the solicitation.

Any actual or prospective bidder who is aggrieved in connection with the solicitation or award of a contract may protest to the Agency Head and provide a copy the Department of Finance and Administration Director of the Office of Personal Service Contract Review. The protest shall be submitted in writing within seven (7) calendar days of the award or within seven (7) calendar days of the solicitation posting if the protest is based on the solicitation.

A protest is considered filed when received by the Agency head. Protests filed after the seven (7) day period shall not be considered.

To file a protest directly to the PPRB, the aggrieved party shall file a protest with the Office of Personal Service Contract Review within seven (7) calendar days after the aggrieved party knew or should have known of the facts and circumstances upon which the protest is based, but in no event later than seven (7) days of the solicitation posting or award.

11.2 Content of Protest

The written protest letter shall contain:

- The name and address of the protester.
- An appropriate identification of the procurement, the procurement number and if a contract has been awarded.
- An explanation of the specific basis for the protest.
- The protesting bidder must provide facts and evidence to support the protest.
- Provide statement of reason for the protest, supporting exhibits, evidence, or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated.
- Place protest letter in an envelope clearly marked "Protest"
- A protest is considered filed when received by the MDE, or designee. Protests filed after the seven (7) calendar days shall not be considered.

**Address: Mississippi Department of Education
c/o Superintendent of Education
Bid Title
Protest Letter
359 North West Street
Jackson, MS 39201**

11.3 Protest Decision

The MDE in collaboration with the Special Assistant Attorney General shall promptly issue a decision in writing. The decision shall:

- (a) state the reason for the action taken; and
- (b) inform the protestant of its right to administrative review.

12. STANDARD TERMS AND CONDITIONS

Certain terms and conditions are required for contracting. Therefore, the offeror shall assure agreement and compliance with the following standard terms and conditions.

1. ACCESS TO RECORDS

Contractor agrees that the MDE, or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Such records shall be kept by Contractor for a period

of three (3) years after final payment under this agreement, unless the MDE authorizes their earlier disposition. Contractor agrees to refund to the MDE any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

2. ANTI-ASSIGNMENT/SUBCONTRACTING

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

3. APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

4. APPROVAL CLAUSE

It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

5. ATTORNEY'S FEES AND EXPENSES

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

6. AUTHORITY TO CONTRACT

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

7. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the MDE to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDE, the MDE shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDE of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

8. BACKGROUND CHECKS

Contractor and/or its employees represents neither has ever been convicted or pled guilty or entered a plea of nolo contendere to a felony in any court of the state of Mississippi, another state, or in federal court in which public funds were

unlawfully taken, obtained or misappropriated in the abuse or misuse of any office or employment or money coming into its hands by virtue of any office or employment. Contractor and/or its employees agrees to an initial criminal background check to be performed as well as subsequent criminal background checks that may be necessary and all charges associated with these criminal background checks will be the responsibility of Contractor, if applicable. Any disqualifying information received from the criminal background check will render this agreement null and void.

9. BOARD APPROVAL

It is understood that if this contract requires approval by the Mississippi State Board of Education, and this contract is not approved by the Mississippi State Board of Education, it is void and no payment shall be made hereunder.

10. CHANGES IN SCOPE OF WORK

The MDE may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDE and Contractor.

If Contractor believes that any work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the MDE in writing of this belief. If the MDE believes that the work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changes and at the cost stated for the work within the contract.

11. COMPLIANCE WITH LAWS

Contractor understands that the MDE is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

12. CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that MDE is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDE pursuant to this agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the MDE shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. The MDE shall not be liable to the Contractor for disclosure of information required by court order or required by law.

13. CONTRACTOR PERSONNEL

Contractor agrees that, at all times, the employees of contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

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

14. COPYRIGHTS

Contractor agrees the MDE shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Further, Contractor hereby grants to the MDE a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements

of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of Contractor's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in Contractor's opinion be likely to become, the subject of any infringement claim or suit, Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.

15. DEBARMENT AND SUSPENSION

Contractor certifies to the best of its knowledge and belief, that it:

(1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

(2) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

(3) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

(5) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

16. DISCLOSURE OF CONFIDENTIAL INFORMATION

In the event that either party to this agreement receives notice that a third-party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Miss. Code Ann. §§ 25-61-1 *et seq.*

17. E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Ann. § 31-7-301 *et seq.*

18. E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Ann. §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (2) the loss of any license, permit, certification, or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- (3) both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

19. EXCEPTIONS TO CONFIDENTIAL INFORMATION

Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

- (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) is independently developed by the recipient without any reliance on confidential information;
- (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (6) is disclosed with the disclosing party's prior written consent.

20. FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of cause beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the MDE immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDE determines it to be in its best interest to terminate this agreement

21. INDEMNIFICATION

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion upon approval of the Office of the Mississippi Attorney General, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

22. INDEPENDENT CONTRACTOR

Contractor shall perform all services as an independent contractor and shall at no time act as an agent for the State. No act performed, or representation made, whether oral or written, by Contractor with respect to third parties shall be binding on the MDE.

23. INDEPENDENT PRICE DETERMINATION

Contractor certifies that the price submitted was independently arrived at without collusion.

24. INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL

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

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

25. LEGAL AND TECHNICAL SUPPORT

Contractor shall utilize its knowledge and understanding of applicable legal standards and comply with recognized professional standards and generally accepted measurement principles applicable to assessments and uses of the type described in this contract, including but not limited to standards relating to validity and reliability. Contractor shall consult with the MDE concerning its implementation of the requirements of this section. In the event of a challenge in which the validity or reliability of the use of an assessment developed under this contract is an issue (other than a challenge based on infringement of copyright or other proprietary rights of a third party), Contractor shall cooperate with the MDE and/or the State of Mississippi in the defense of the assessment and shall provide reasonable technical and legal support with regard to Contractor's activities under this contract without additional charges to the MDE or the State.

26. MODIFICATION OR RENEGOTIATION

This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

27. NO LIMITATION OF LIABILITY

Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

28. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specification stated in this contract.

29. PAYMODE

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

30. PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the Additional performance;

- (b) by unit prices specified in the contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

(2) **Submission of Cost or Pricing Data.** Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-401 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

31. PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

32. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

33. REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

34. RIGHT TO AUDIT

Contractor shall maintain such financial records and other records as may be prescribed by the MDE or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the MDE, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

35. RIGHT TO INSPECT FACILITY

The MDE may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the MDE.

36. SEVERABILITY

If any part of this agreement is declared invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such even, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provision in compliance with applicable law.

37. STOP WORK ORDER

- (1) **Order to Stop Work:** The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- a. cancel the stop work order; or,
 - b. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- (2) **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
- a. The stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
 - b. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) **Adjustments of Price:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

38. TERMINATION FOR CONVENIENCE

- (1) **Termination.** The Chief Procurement Officer may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. Chief Procurement Officer shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The Chief Procurement Officer may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

39. TERMINATION FOR DEFAULT

- (1) **Default.** If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Chief Procurement Officer may notify Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Chief Procurement Officer or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Chief Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Chief Procurement Officer. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the MDE has an interest.
- (3) **Compensation.** Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Chief Procurement Officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the MDE for the excess costs incurred in procuring similar goods and services.
- (4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its

terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Chief Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Chief Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). "Termination for Convenience." (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- (5) **Erroneous Termination for Default.** If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the MDE, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

40. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the MDE upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

41. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

42. TRANSPARENCY

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Ann. §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

43. UNSATISFACTORY WORK

If, at any time during the contract term, the service performed, or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event

Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

The Mississippi Department of Education

1. SCOPE OF WORK

The MDE, Office of Human Resources, is accepting bids for services to provide the administration of MDE's Drug Testing Program for **random, pre-employment, post-accident, and breath alcohol** in accordance with the Omnibus Transportation Employee Testing Act.

The MDE must provide drug testing services to CDL drivers at assigned residential schools, along with two program offices, and also contracts with bus driver instructors during the months of June, July, and August to train school district personnel throughout the state. It is estimated that the total number of CDL drivers and bus driver instructors in the agency is estimated at **120**.

Please review the location for residential schools, program offices, and bus driver instructors below. The Offeror must establish collection sites in each specified location to ensure convenient access for all MDE staff requiring a drug test.

MDE Office of Safe and Orderly Schools	Jackson, MS
MDE Office of Vocational Education	Jackson, MS
MS School for the Blind	Jackson, MS
MS School for the Deaf	Jackson, MS
MS School for the Arts	Brookhaven, MS
MS School for Mathematics and Science	Columbus, MS
Bus Driver Instructors	Statewide

2. BIDDER REQUIREMENTS

Failure to meet the minimum requirements shall result in bid being disqualified.

1. Bidder shall provide convenient collection sites for all MDE employees requiring a drug test.
2. Bidder shall provide certification to perform drug testing services in accordance with the Omnibus Transportation Employee Testing Act.
3. Bidder shall provide proof of Certificate of Liability Insurance coverage or bonding.
4. Bidders responding to this IFB shall be established vendors regularly engaged in similar business with at least five (5) years of experience in the applicable service aligned with the scope of work.
5. Bidder shall submit a minimum of three (3) references, in the continental U.S., for whom the bidder provided services and/or goods of similar services within the past two (2) years. When checking such references, any negative response may result in disqualification of the bid. (See Vendor Reference Form)
6. References shall include business name, address, telephone number, email, and name of individual customer who is familiar with bidder's capabilities.
7. Bidders must, upon request of the State, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. This may also include the bidder's financial statement. The MDE and DFA - Office of Personal Service Contract Review reserve the right to make the final determination as to the bidder's ability.

3. ASSIGNMENT

The awarded vendor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the MDE.

TENTATIVE TIMELINE

Start Date <ul style="list-style-type: none">First date of advertisement	Friday, April 22, 2022
Deadline for Questions	Thursday, April 28, 2022
Answers posted to website	Tuesday, May 3, 2022
Due date and time	Tuesday, May 10, 2022
Bid evaluations	Friday, May 13, 2022
Contract Intent to Award	June 1, 2022
Contract Begin	July 1, 2022

BID COST DATA

Because of the scope of this project, we believe it should be possible for different Offerors to arrive at vastly differing estimates. Cost scoring will be based on fixed flat rate and hourly rate. The vendor providing the lowest cost to the State will receive points established below for each category and any price above the lowest cost will be scored using a budget formula approved by the state. All other Offerors score will be based upon a budget formula approved by the State. The highest scoring proposal meeting specifications will receive the award.

Cost categories and maximum point values are as follows. Cost Category Possible Points

Fixed Flat Rate 10 points

Fixed Hourly Rate 10 points

Maximum Possible Points 110

BID RESPONSE FORM

Vendor addendums made to the above specifications may deem bid as non-responsive.

All pricing for supplies/services shall be an all-inclusive fixed flat rate for each specification provided below. No additional hidden fees are allowed. It is expected that each price bid provided will be bid for the life of the contract. The MDE will allow for any modifications of price if industry fair market rate dictates inflation. The MDE has the right to negotiate or terminate this contract at any time.

DRUG TESTING SERVICES/UNIT SUPPLIES	PRICE \$	MDE USE ONLY
		SCORE (10 possible points each)
Comprehensive drug program management implementation, consultation and random sample scheduling (Annual Fee)		
Immunoassay screen with automatic GC/MS Confirmation, and Medical Review Officer (Per Specimen)		
Blind quality assurance sample		
Supervisory/employee training sessions for implementation of drug and alcohol policies and procedures (Per Hour)		
Expert witness testimony (Per Hour/Per Day)		
Compilation of alcohol test results in any Report which is required by the Omnibus Transportation Employee Testing Act		
Urine specimen collection (Per Sample)		
Urine specimen transportation		
Urine specimen collection kits and forms		
DOT Breath Alcohol Testing (Per Test)		
GENERAL SERVICE/UNIT SUPPLIES		
Test of split specimen (Per Drug)		
Total Score/110 possible points.		

VENDOR REFERENCES FORM

Bidder (company name): _____

Contact Person: _____ Phone: _____

Number of years your company has been in business: _____

NOTE:

Provide a minimum of three (3) references.

REFERENCES:

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____ Phone: _____

Contract Description: _____ Fax: _____

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____ Phone: _____

Contract Description: _____ Fax: _____

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____ Phone: _____

Contract Description: _____ Fax: _____

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____ Phone: _____

Contract Description: _____ Fax: _____

VENDOR RESPONSE CHECK LIST AND ACCEPTANCE

The following checklist is provided to assist bidders in ensuring all submissions requirements are met. Vendors shall also sign to accept acknowledgment of amendments and acceptance of conditions to include with their bid submission.

Submit: Ship/Mail one (1) original signed copy of the bid response packet:

OR

Submit: Upload one (1) original signed copy of the packet electronically:

Documents Required:

_____ Signed Vendor Response Check List	Attached
_____ Vendor References Form	Attached
_____ Bid Response Form (Pricing Sheet)	Attached
_____ Copy of W-9	Attached
_____ State of Mississippi Registered Business	Attached
_____ Acknowledgement of Amendment (MDE webpage)	Attached

The Question and Answer amendment, if issued, will be posted on the MDE [website](#) under "Public Notice" Request for Applications, Qualifications, and Proposals section. It is the sole responsibility of all interested vendors to monitor the MDE website for updates regarding any amendments to this solicitation.

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

- 1. That he/she has thoroughly read and understands the IFB thereto;**
- 2. That the company meet all requirements and acknowledges all certifications contained in the IFB thereto;**
- 3. That the company agrees to all provisions of the IFB thereto including, but not limited to, the Required and Optional Clauses to be included in any contract resulting from this IFB;**
- 4. That the company will provide the services required at the prices quoted above;**
- 5. That, to the best of your knowledge and belief, the cost on pricing or pricing data submitted is accurate, complete, and current as of the submission date;**
- 6. That the company can and will meet all required laws, regulations, and/or procedures related to confidentiality conducting the State's business and represents that its workers are licensed, certified and possess the requisite credentials to perform services;**
- 7. That all equipment, materials, etc. contained in the bid meets all local, state and federal requirements. Further, that if the company is the successful bidder and requirements is subsequently found to be deficient pursuant to any local, state, or federal requirements, all costs necessary to bring the equipment, materials, etc. into compliance with aforementioned requirements shall borne solely by the vendor.**
- 8. REPRESENTATION REGARDING GRATUITIES**
The Offeror, or Contractor represents that it has not violated, is not violating, and promises that it shall not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

9. ACKNOWLEDGEMENT OF AMENDMENTS

I acknowledge all amendments, if any, to this solicitation. Responses to questions shall be treated as amendments to the solicitation and shall require acknowledgment.

10. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's qualification that such Contractor **has () or has not ()** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

11. FEDERAL DEBARMENT CERTIFICATION:

I hereby certify that Contractor is not on the list for federal debarment on www.sam.gov – System for Award Management.

12. STATE OF MISSISSIPPI DEBARMENT CERTIFICATION:

I hereby certify that Contractor is not on the list for debarment on www.sos.ms.gov for doing business with the State of Mississippi or with any Mississippi State Agency.

13. PARTNERSHIP DEBARMENT CERTIFICATION:

I hereby certify that all entities who are in partnership through this contract or grant with the Mississippi Department of Education (MDE) (subcontractors, subrecipients, et al.) are not on the federal debarment list on www.sam.gov – System for Award Management or the State of Mississippi debarment list. Proof of documentation of partnership verification with SAM shall be kept on file and the debarment status shall be checked prior to submission of every contract/subgrant and modification to MDE.

14. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

15. PROPRIETARY INFORMATION

The enclosed proposal or qualification **does () or does not ()** contain trade secrets or other proprietary data which the Offeror wishes to remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code.

If the enclosed proposal does include pages that the Offeror wishes to designate as proprietary, please list page numbers below.

Bidder's Name

Date

Note: Failure to check the applicable word or words and sign the form may result in being rejected as nonresponsive.