



Mississippi Emergency Management Agency
#1 MEMA Drive
Pearl, MS 39208

Invitation for Bids To
Provide a Stand-by Contract
for Bottled Water

IFB NO. 02072018W

Contact Person: Edward Williams, Procurement Officer
Phone: 601-933-6390
Fax: 601-966-6630
ewilliams@mema.ms.gov

INVITATION: Written sealed Bids subject to the conditions herein stated and attached hereto, will be received at this office until 1:00 p.m. Central Standard Time, April 26, 2018, for providing the services as described below for the Mississippi Emergency Management Agency. Bids received shall be opened in the presence of two or more agency procurement officials and not publically.

DESCRIPTION: The Mississippi Emergency Management Agency, hereinafter referred to as "MEMA," is hereby requesting written Bids to provide an Emergency Standby Contract for Bottled Water. This procurement is open to those companies who satisfy the minimum qualifications stated herein and are available to work in the State of Mississippi.

MEMA will receive Bids from firms having specific experience and qualifications in the areas identified in the solicitation. For consideration, Bids for the project must contain evidence of experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by MEMA may be included elsewhere in the solicitation. Unless otherwise stated, all offerors shall provide profiles and resumes of staff to be assigned to the project, references, illustrative examples of similar work performed and any other information that clearly demonstrates the offeror's expertise in the area of the solicitation.

NOTE: Any conversation with any employee of MEMA is not authorized, nor is MEMA responsible for information provided by an employee, except as detailed below.

The original and three (3) copies of the Bid and all attachments (four (4) copies total) along with one electronic copy of the Bid, saved as a .pdf file and stored on a CD or USB flash drive, shall be signed and submitted in a sealed envelope or package. **The envelope shall be clearly marked "Sealed Bid" and show the Bid number, Bid opening date and time in the lower left hand corner on the outside of the envelope.** Each page of the Bid and attachments shall be identified with the name of the offeror. Bids must be submitted in writing to the following address:

Inquiries regarding this Invitation for Bids must be directed to:

Edward Williams, Branch Director
Mississippi Emergency Management Agency
#1 MEMA Drive
Pearl, MS 39208
601-933-6390
ewilliams@mema.ms.gov *

Bids and attachments must be submitted to:

Edward Williams, Branch Director
Mississippi Emergency Management Agency
#1 MEMA Drive
Pearl, MS 39208
601-933-6390
ewilliams@mema.ms.gov

*If no response is received to an email inquiry after two (2) working days, please direct all

Dates of Publication for this Invitation For Bids:

Friday, March 30, 2018
Friday, April 22, 2018

GENERAL CONDITIONS

ALL BIDS SUBMITTED MUST BE IN COMPLAINT WITH THE GENERAL CONDITIONS SET FORTH HEREIN. ALL OFFERORS ARE OBLIGATED TO READ, UNDERSTAND AND AGREE TO THESE CONDITIONS WHEN SUBMITTING A BID FOR A BID TO BE CONSIDERED RESPONSIBLE.

- I. **ACKNOWLEDGMENT OF AMENDMENTS.** Amendments modifying plans and/or specifications may be issued if time permits. Should it become necessary to issue an amendment within the three-day period prior to the Bid opening, the Bid date will be reset giving offerors ample time to answer the amendment. When replying to a Bid request on which an amendment has been issued, the offeror shall execute the Acknowledgement of Amendments/Addendums page as well as the Offeror Execution Page which indicates that provisions of the amendment have been noted and that the Bid is being offered in compliance therewith. Failure to make this statement may result in the Bid being rejected as not being in accordance with the revised specifications or plans. The acknowledgment must be received by the MEMA by the time and at the place specified for receipt of bids.
- II. **ALTERNATIVE BIDS.** Alternative Bids unless specifically requested will not be considered. An alternate is considered to be a Bid that does not comply with the minimum provisions of the specification.
- III. **APPLICABLE LAW.** The contract shall be governed by and construed in accordance with the laws of the state of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The offeror shall comply with applicable federal, state and local laws and regulations.
- IV. **ANTI-ASSIGNMENT/SUBCONTRACTING.** The offeror shall not assign, subcontract, or otherwise transfer this agreement, in whole or 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.
- V. **AVAILABILITY OF FUNDS.** It is expressly understood and agreed that the obligation of the state 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 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 state, the state shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the state of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
- VI. **AWARD OF CONTRACT.** The award, if made, will be made by MEMA within 60 days after opening the Bid. The purchase must be approved by the Office of Purchasing and Travel prior to an award by MEMA. Orders placed by an offeror prior to the receipt of a purchase order and execution of a contract will be at the offeror's "OWN RISK" and MEMA will not be held liable for such action.
- VII. **BIDDING BY STATE EMPLOYEES.** Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State of Mississippi during the tenure of his office or

employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.

- VIII. BOUND BY BID.** Unless otherwise specified, all formal Bids shall be binding for a minimum of 60 days after opening. If a Bid is withdrawn after opening, Offeror may be removed from the list of eligible offerors for a period of 12 months.
- IX. CANCELLATION.** Any Contract or item award may be cancelled for cause by either party with the giving of 30 days written notice of intent to cancel. Cause for MEMA to cancel shall include, but is not limited to, cost exceeding current market prices for comparable purchase; request for increase in prices during the period of the Contract; or failure to perform to Contract conditions. The Contractor shall be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by MEMA does not relieve the Contractor of any liability arising out of a default or nonperformance. Cause for the Contractor to cancel shall include, but it not limited to, the item(s) being discontinued and unavailable from the manufacturer.
- X. COMPLIANCE WITH LAWS.** Contractor understands that the MEMA 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.
- XI. CONTINGENT FEES.** Contingent fees prohibited. Offeror 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 Bid.
- XII. COST OF BID.** MEMA accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of a Bid. Such expenses shall be borne exclusively by the offeror.
- XIII. DEBARMENT.** By submitting a Bid, the offeror certifies that it is not currently debarred from submitting Bids or bids for contracts issued by any political subdivision or agency of the state of Mississippi and that it is not an agency of a person or entity that is currently debarred from submitting Bids or bids for contracts issued by a political subdivision or agency of the state of Mississippi.
- XIV. DISPOSITION OF BIDS.** All submitted Bids become the property of the state of Mississippi.
- XV. 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. Miss. Code Ann. § 31-7-305 (1972, as amended).
- XVI. E-VERIFICATION.** The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (Supp. 2008), and will register and participate in the status verification system for all newly hired employees. 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 State 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 and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all

immigration laws of the State of Mississippi. The Contractor understands and agrees that any breach of these warranties may subject the Contractor to the following:

- A. Termination of this Agreement 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 or,
- B. The loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or,
- C. Both.

In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the state due to contract cancellation or loss of license or permit.

XVII.

EQUAL EMPLOYMENT OPPORTUNITY. This purchase will be subject to the provisions of Executive Order 11246 if it is not otherwise exempt. Except in contracts exempted in accordance with Section 204 of the Executive Order 11246, as Amended, all Government contracting agencies shall include in every Government contract hereafter entered into the following provision. During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applications for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will comply with all provision of Executive Order No. 11246 of Sept. 24, 1965, and the rules and regulations and relevant orders of the Secretary of Labor.
- E. The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or offeror. The contractor will take such action with

respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the even the contractor becomes involved in, or is threatened with, litigation with a subcontractor or offeror as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230].

- XVIII. GIFTS, REBATES, GRATUITIES.** Acceptance of gifts from contractors is prohibited. No officer or employee of the Office of Procurement and Contracts, no head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the state of Mississippi may be awarded, rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.
- XIX. INFORMATION ON BID RESULTS.** Bid files may be examined during normal working hours by Bid participants. Nonparticipants will be prohibited from obtaining any information relative to the Bid until the official award has been made. MEMA reserves the right to restrict the availability of the Bids during the evaluation process so as to improve the efficiency of the valuation and award process.
- XX. OFFERING BY STATE EMPLOYEES.** Offering by state employees is prohibited. It is unlawful for any state official or employee to propose on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the state of Mississippi during the tenure of his office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the state.
- XXI. PREPARATION OF BIDS**
- A. Failure to examine any drawings, specifications, and instructions will be at offeror's risk.
 - B. All 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 person signing Bid.
 - C. Brand Names: Any reference to brand names and numbers in the Request for Bid is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, unless otherwise specified, providing the Bid clearly describes the article offered and how it differs from the referenced brands. If equipment or supplies of another brand or of other construction than that specified herein is offered by offeror, such offeror shall set forth in his Bid a detailed statement indicating wherein each item offered deviates from these specifications. Unless the offeror specifies otherwise in his Bid, it is understood that the offeror is offering a referenced brand item as specified in the Invitation for Bids. MEMA reserves the right to determine whether a substitute offer is equivalent to and meets the standard of quality indicated by the brand name referenced, and MEMA may require an offeror offering a substitute to supply additional descriptive material and a sample. When merchandise received from a successful offeror is not considered an equal by the requester, it will be returned to the offeror, shipping charges collect.
 - D. Specification: It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the contractor.
 - E. Information and Descriptive Literature: Offerors must furnish all information requested in the spaces provided on the Bid form. Bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a offeror to condition the Bid, unsolicited Bid samples or descriptive literature which are submitted at the offeror's risk will not be examined or tested and will not be deemed to vary any of the provisions of the Invitation For Bids. Further, any sample submitted will be returned only at the offeror's expense. It should also be known that when samples are requested, it may be necessary that the sample be damaged or

destroyed in the process of evaluation, in which case neither the state nor the purchasing agency shall be responsible for reimbursement to the offeror.

- XXII. PROCUREMENT REGULATIONS.** The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
- XXIII. BID OPENINGS.** Bid openings will be conducted open to the public. However, they will serve only to open, read and tabulate the Bid price on each Bid. No discussion will be entered into with any offeror as to quality or provisions of the specifications and no award will be made either stated or implied at the Bid opening.
- XXIV. REJECTION OF BIDS.** MEMA reserves the right to reject any or all Bids.
- XXV. IFB DOES NOT CONSTITUTE ACCEPTANCE OF OFFER.** The release of the Request for Bid does not constitute an acceptance of any offer, nor does such release in any way obligate MEMA to execute a contract with any other party. MEMA reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with MEMA.
- XXVI. SPECIFICATION CLARIFICATION.** Inquiries pertaining to IFBs must include the IFB number and opening date. It shall be incumbent upon all offerors to understand the provisions of the specification and to obtain clarification from the MEMA Office of Procurement and Contracts prior to the time and date set for the Bid opening. Such clarification will be answered only in response to a written request. No clarification will be offered as a response to a telephone request.
- XXVII. SUBSTITUTIONS DURING CONTRACT.** During the term of a contract if adequate documentation is provided that supports the claim that the contract item(s) are not available, then items which meet the minimum specifications may be substituted if approved by the Office of Procurement and Contracts and are deemed to be in the best interest of MEMA.
- XXVIII. TAXES.** MEMA is exempt from Federal excise taxes and state and local sales or use taxes and offerors must quote prices which do not include such taxes. Exemption certificates will be furnished upon request. Contractors making improvements to, additions to or repair work on real property on behalf of MEMA are liable for any applicable sales or use tax on purchase of tangible personal property for use in connection with the contracts. Contractors are likewise liable for any applicable use tax on tangible personal property furnished to them by MEMA for use in connection with their contracts.
- XXIX. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION.** Material designated as trade secret, proprietary, or confidential which accompanies the Bid shall be clearly identified and readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid. Prices and makes and models or catalog numbers of the items, offered, deliveries, and terms of payment shall be publically available at the time of Bid opening regardless of any designation to the contrary. The procurement officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing in accordance with § 25-61-1 et seq. Miss. Code Ann. Of 1972. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the offerors in writing what portions of the Bids will be disclosed and that, unless the offeror procures a court order protecting the information, the Bids will be so disclosed.
- XXX. UNTIMELY BID SUBMISSIONS.** Timely submission of the Bid is the responsibility of the offeror. Bids will not be accepted or considered after the time specified in the Request for Bid Instructions and Special Conditions. Bids received after the submission deadline will be returned unopened, provided that a return address is visible.
- XXXI. WAIVER.** MEMA reserves the right to waive any general conditions or any minor technicalities on Bids and specifications when it is in the best interest of MEMA, but MEMA is in no way required to

waive said general conditions or minor technicalities. This waiver may be made so long as such waiver is not given so as to deliberately favor any single offeror and would have the same effect on all offerors.

**STAND-BY CONTRACT FOR BOTTLED WATER INVITATION FOR BIDS NO. 02072018W
SPECIFICATIONS FOR OFFERORS**

Provide Bottled Water on a stand-by basis for the Mississippi Emergency Management Agency for a period beginning on June 15, 2018 and which shall end no later than the Close of Business June 14, 2023 after which the contract would have to be rebid.

Offeror shall provide a written Bid that will ensure that MEMA is provided with Bottled Water as requested. Offeror shall also appoint a lead contact for this contract.

Detailed Minimum Specifications – Any contract awarded from this procurement will be a STAND-BY contract for Bottled Water that MEMA may activate as necessary. The focus of this contract is to insure that MEMA can supply Bottled Water as needed in the wake of a natural or man-made disaster. The detailed minimum specifications are as follows:

I. Bottled Water Specifications:

- A. **Packaging.** Bottled water will be at least 16.9 fluid ounces, but no larger than 20 fluid ounces in 24 (twenty four) count cases stacked 70 (seventy) to 84 (eight-four) cases per pallet. Pallets shall be designed for pick-up from all four sides. Each pallet is to be doubled wrapped. MEMA will order bottled water in multiples of standard industry truckloads, approximately 18,000 (eighteen thousand) liters per truck.
- B. **Product Best if Used Date.** Upon issuance of a purchase order the best if used dates will have no less than 24 (twenty four) months of shelf life.
- C. **Product Standards.** All water shall be produced, packaged, labeled, transported, stored and handled in accordance with Title 21, CFR, Parts 101, 110, 129 and 165 and all other applicable Federal, state, and local laws and regulations. Any deviation must be authorized in writing by MEMA.
- D. **Primary Container.** The water shall be packaged in single-service polyethylene terephthalate (PET) bottles with flat caps. Bottles may be any size from 16.9 ounces to 20 ounces (16.9-ounces preferred), at the Contractor's discretion. The Contractor shall make every effort to standardize to 16.9-ounce bottles as soon as possible without jeopardizing timely deliveries of quantities of bottled water ordered.
- E. **Documentation of Bottled Water Deliveries.** The Contractor shall assure that every water order is properly presented to MEMA and that MEMA acknowledgement of every delivery is obtained. The Contractor shall be responsible for assuring that every delivery has all required documentation.

Delivery shall be considered made when the Contractor has obtained acknowledgement of the date and time of the arrival at the delivery site by the on-site MEMA representative.

- F. **FDA Hold Notification.** If the Contractor or its subcontractors receive notification from the United States Food and Drug Administration that a shipment of bottled water has not been released for distribution, MEMA shall be notified immediately. MEMA will not be liable for any expenses or losses incurred by the Contractor due to such notifications. Before MEMA will accept such a shipment of bottled water, it will be the responsibility of the Contractor to provide and forward a copy of the release notification from the FDA to MEMA.
 - G. **Product Certification Documentation.** The Contractor shall obtain weekly bacteriological analysis of source water and product samples as well as the date of production and the date of expiration of the bottled water supplied under this contract. The Contractor shall maintain these records until completion and acceptance by MEMA of all bottled water deliveries. The Contracting/Ordering Officer may request the Contractor to provide copies of this data, at any time during the performance of the Purchase Order, from any or all of the subcontractors providing bottled water under this contract. When requested, the Contractor shall provide this data within six (6) hours of such request by facsimile, email, or other means, unless the Contracting/Ordering Officer authorizes a different time period.
- II. **Water Certification and Testing Results.** The Contractor must maintain an inspection system that ensures the quality of bottled water to be provided under this contract is suitable for consumption. This requirement shall be satisfied by the Contractor obtaining copies of applicable certificates, licenses, notifications, permits, appraisals, and inspection reports; annual chemical, physical and radiological analysis of source water; and results of any other testing of source water and bottled water from each bottled water producer from which bottled water is to be purchased under this contract. The Contractor shall maintain these records throughout the term of this contract. When requested, the Contractor shall provide this data within twelve (12) hours of such request by facsimile, email, or other means, unless MEMA authorizes a different time period.
- III. **Universal Specifications**
- A. **Returns Policy/Remaining Balances.** For water ordered, but not used and still in unbroken pallets, and contractor sealed containers, the contractor will accept returned inventory and reimburse, or accept a short-paid invoice at the billed rate. MEMA will pay return shipping charges, and a restocking fee not to exceed 5% of the billed rate.
 - B. **Product Standards.** As applicable, the water shall be produced, packaged, labeled, and transported in accordance with Title 21, Code of Federal Regulations, Parts 101, 110, 129 and 165, and water must meet or exceed all other federal, state and

local laws and regulations.

C. Packaging of Shipping Pallets.

Bottled water shall be packed in cases. Bottled water shall be shipped on pallets. Pallets will be fully covered on the top and all four sides with a minimum of a triple layer of shrink-wrap all the way down and employ four corner stabilizers per pallet. Pallets shall be designed for pickup from all four sides. Due to the many unknown circumstances which can arise during disaster response and recovery, it is possible that the water may be moved several times, may be double-stacked for storage, and may be stored outside, with no protection, in all types of weather as well as stored in warehouses. The Contractor shall ensure that the bottled water containers are packaged to withstand such handling as well as severe climatic conditions. MEMA shall not be responsible for return of pallets. Unclaimed pallets may be disposed of at MEMA's discretion.

D. Delivery Information Sheet that shall be utilized.

1	State of Mississippi Contract Number
2	Purchase Order Number
3	Contractor's Name
4	Itemized list of supplies and quantities
5	Name of shipment origination facility (i.e., bottling plant, warehouse, etc.)
6	Name of the transportation carrier
7	Total quantity of liters (water) per truck per delivery

MEMA reserves the right to utilize a separate contract for transportation of commodities that has been procured separately when MEMA deems necessary.

STAND-BY CONTRACT FOR BOTTLED

WATER INVITATION FOR BIDS NO. 02072018W**BID FORM**

This form is to be completed by all offerors and included in their submitted Bid.

OFFEROR:	
CONTACT PERSON:	
PHONE NUMBER:	
EMAIL ADDRESS:	

Listing of three contracts with services similar in scope, size, or discipline including at least two references for current contracts awarded in the last three years	
Project Name: Address: Scope:	
Name & Number of Reference:	
Project Name: Address: Scope:	
Name & Number of Reference:	
Project Name: Address: Scope:	
Name & Number of Reference:	

INTENT OF OFFER OR TO MAKE BID/CONTRACT AVAILABLE TO OTHER ENTITIES. Offer intends to make any awarded contract available to (please acknowledge the other entities in which Offeror intends to make a resulting contract available to):

- _____ Other States
- _____ Other State Agencies within the state of Mississippi
- _____ Local County or Municipal Governmental Entities within the state of Mississippi

By its initials above, Offeror acknowledges that the offer made in this Bid and the resulting contract is available to other entities as indicated as the same prices and terms as in this contract. By its initials, Offeror acknowledges that it has provided for any above indicated availability to other entities in its Bid.

STAND-BY CONTRACT FOR BOTTLED WATER
INVITATION FOR BIDS NO. 02072018W OFFEROR
EXECUTION PAGE

Certification of Independent Price Determination – The Offeror certifies that the prices submitted in response to the Request for Bids, have been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other Offeror or competitor relating to those prices, the intention to submit a Bid, or the methods or factors used to calculate the prices in the Bid.

Offeror acknowledges the following contact information as true and correct. If at any time during the term of this contract this information changes, offeror will immediately notify the MEMA Purchasing Officer.

Company: _____

Contact: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Offeror agrees to supply the products or services at the prices specified on the Bid form in accordance with the terms, conditions and specifications contained in the Request for Bid Specifications and General Conditions.

Offeror

I. OFFEROR'S WRITTEN BID SHALL CONTAIN THE FOLLOWING MINIMUM INFORMATION:

- A. Name of the offeror, location of the offeror's principal place of business, and the place of performance of the proposed contract;
- B. Age of offeror's business and the average number of employees over the past three (3) years;
- C. Resume listing abilities, qualifications and experience of all individuals who will be assigned to provide the required services;
- D. A listing of three (3) contracts under which services similar in scope, size, or discipline were performed or undertaken, including at least two (2) references for current contracts or those awarded during the past three (3) years. (On the Bid form, list three (3) projects to include the names and addresses of the projects, the scope of the project and the names and telephone numbers of the clients for reference purposes. All information on the Bid form must be completed. Incomplete or unsigned Bid forms will be rejected.);
- E. A plan giving as much detail as is practical explaining how the services will be performed; and,
- F. An estimate of price.

II. INSURANCE REQUIREMENTS: The successful offeror shall be required to procure and maintain workers' compensation insurance which shall inure to the benefit of all Offeror's personnel provided hereunder and errors and omissions/professional liability coverage with minimum limits of \$1,000,000.00 (One Million Dollars) per occurrence for the duration of the contract and offer proof of such coverage. All general liability or professional liability insurance will provide coverage to MEMA as an additional insured. Offeror shall also be required to show proof of liability for injury to include automobile coverage. MEMA reserves the right to request from carriers certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. Should the certificate expire during the term of the contract, it is the responsibility of the vendor to provide copies of the current insurance certificate to MEMA within five (5) working days.

III. COMPENSATION FOR SERVICES WILL BE IN THE FORM OF A FIRM FIXED PRICE AGREEMENT.

IV. REJECTION OF BIDS: Bids which do not conform to the requirements set forth in this IFB may be rejected by MEMA. Bids may be rejected for reasons which include, but are not limited to, the following:

- A. The Bid contains unauthorized amendments to the requirements of the IFB;
- B. The Bid is conditional;
- C. The Bid is incomplete or contain irregularities which make the Bid indefinite or ambiguous;
- D. The Bid is received late;

- E. The Bid is not signed by an authorized representative of the party;
- F. The Bid contains false or misleading statements or references; and,
- G. The Bid does not offer to provide all services required by the IFB.

- V. **INFORMALITIES AND IRREGULARITIES:** MEMA reserves the right, in its sole discretion, to waive minor irregularities in Bids. A minor irregularity is a variation of the IFB which does not affect the price of the Bid, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of MEMA. Waivers, when granted, shall in no way modify the IFB requirements or excuse the party from full compliance with the IFB specifications and other contract requirements, if the party is awarded the contract. This clause in no way requires MEMA to waive minor irregularities.
- VI. **DISPOSITION OF BIDS:** All submitted Bids become the property of MEMA and all laws regarding request for public records apply.
- VII. **COMPETITIVE NEGOTIATION:** The bidding method to be used is that of competitive negotiation from which MEMA is seeking the best combination of price, experience and quality of service. Discussions may be conducted with offerors who submit Bids determined to be reasonably susceptible of being selected for award. Likewise, MEMA also reserves the right to accept any Bid as submitted for contract award, without substantive negotiation of offered terms, services or prices. Therefore, all parties are advised to propose their most favorable terms initially.
- VIII. **IFB DOES NOT CONSTITUTE ACCEPTANCE OF OFFER:** The release of the Request for Bid does not constitute an acceptance of any offer, nor does such release in any way obligate MEMA to execute a contract with any other party. MEMA reserves the right to accept, reject or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with MEMA.
- IX. **EXCEPTIONS AND DEVIATIONS:** Offerors taking exception to any part or section of the solicitation shall clearly indicate such exceptions on the Bid, and shall be fully described in a way as to make said exceptions and deviations conspicuous to the reviewing panel. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written. Conditional or qualified offers, unless specifically allowed, shall be subject to rejection in whole or in part.
- X. **NONCONFORMING TERMS AND CONDITIONS:** A Bid that includes terms and conditions that do not conform to the terms and conditions in the Request for Bid is subject to rejection as non-responsive. MEMA reserves the right to permit the offeror to withdraw the nonconforming terms and conditions from its Bid prior to a determination by MEMA of non-responsiveness based on the submission of nonconforming terms and conditions.
- XI. **BID ACCEPTANCE PERIOD:** The original and three (3) copies of the Bid and all attachments (four (4) copies total) along with one electronic copy of the Bid, saved as a .pdf file and stored on a CD or USB flash drive, shall be signed and submitted in a sealed envelope or package to Edward Williams, Branch Director, #1 MEMA Drive,

Pearl, MS 39208 no later than 1.00 p.m. Central Standard Time, April 26 2018. To ensure that all submitted Bids are adequately sealed and unable to be reviewed prior to the Bid opening time, no electronic or facsimile copies of Bids will be accepted. Offerors shall also submit the Bid through the State of Mississippi online financial program the Mississippi Accountability System for Government Information and Collaboration, MAGIC. Should you have questions regarding how to register as a vendor or submit your Bid please contact Edward Williams at 601-933-6390 or ewilliams@mema.ms.gov. Timely submission of the Bid is the responsibility of the offeror. Offers received after the specified time shall be rejected and returned to the offeror unopened.

The envelope or package shall be clearly marked as "Sealed Bid" and show the Bid number, Bid opening date and time in the lower left hand corner on the outside of the envelope. The time and date of receipt shall be indicated on the envelope or package by the MEMA Purchasing Office. Each page of the Bid and attachments shall be identified with the name of the offeror.

- XII. EXPENSES INCURRED IN PREPARING OFFERS:** MEMA accepts no responsibility for any expense incurred by the offeror in preparation and presentation of an offer. Such expenses shall be borne exclusively by the offeror.
- XIII. PROPRIETARY INFORMATION:** The offeror should clearly mark any and all pages of the Bid considered to be proprietary information which may remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code. Further, said marked pages shall be arranged and organized into one grouping so as to be easily separable from the non-confidential portion of the Bid. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures. Requests to review the proprietary information will be handled in accordance with the MEMA Public Records Policy found at 31 Admin. Code, Pt. 201, R.3.1-3.7.
- XIV. ADDITIONAL INFORMATION:** Questions about the Invitation for Bids document must be submitted in writing to Edward Williams, Branch Director, MEMA at #1MEMA Drive, Pearl, MS 39208; email ewilliams@mema.ms.gov. Offerors are cautioned that any statements made by the contact person that materially change any portion of the Request for Bid shall not be relied upon unless subsequently ratified by a formal written amendment to the Request for Bid. Questions about the Invitation for Bids document will not be accepted after 12:00 p.m. Central Standard Time, Friday, April 6, 2018.
- XV. DEBARMENT:** By submitting a Bid, the offeror certifies that it is not currently debarred from submitting Bids or bids for contracts issued by any political subdivision or agency of the state of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by a political subdivision or agency of the state of Mississippi.
- XVI. RELEASE OF INFORMATION REGARDING PROCUREMENT RESULTS:** All documents relating to this procurement shall be released to the public as specified below in compliance with Rule 1-301.01 of the *Personal Service Contract Review Board Rules and*

Regulations and the Mississippi Public Records Act of 1983. Miss. Code Ann. § 25-61-1 et seq. (1972, as amended).

A. Businesses or Persons Who Submitted Bids for this IFB

Information pertaining to the results of any procurement may be reviewed subsequent to the time of the Bid opening. MEMA restricts the availability of the Bids prior to contract award so as to improve the efficiency of the evaluation and award process.

B. Businesses or Persons Not Participating in this Procurement

Businesses or persons not participating in the process will not be permitted access to any applicable file until after an award is made. After the award is made, all information and documents applicable to the awarded contract shall be made available to any business or person; provided, however, no information specified by a participant and approved by the procurement officer as proprietary information shall be available to any business or person without a written request.

C. Proprietary Information

When MEMA receives a request to release information properly designated as confidential or proprietary by an offeror, MEMA shall give the owner of this information a reasonable time to obtain a court order protecting the information as confidential. If MEMA receives a court order pursuant to Miss. Code Ann. § 25-61-9 within this time, it must then notify the requestor that the information is protected by court order and cannot be furnished.

D. Procurement Document Review Restrictions

MEMA hereby reserves its right to restrict procurement document review to the MEMA premises during normal working hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding state holidays. In any instance that MEMA does agree to copy or duplicate such a record it shall be at the requestors expense in accordance with the MEMA Public Record Request Policy found at 31 Admin. Code Pt. 201, R. 3.1-3.7.

XVII. REQUIRED CLAUSES FOR PROCUREMENT

A. Acknowledgment of Amendments

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the Bid, by identifying the amendment number and date in the space provided for this purpose on the Bid form, or by letter. The acknowledgment must be received by the MEMA by the time and at the place specified for receipt of Bids.

B. Certification of Independent Price Determination

The offeror 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 offeror or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

C. Prospective Contractor's Representation Regarding Contingent Fees *(To be placed in prospective Contractor's response bid or Bid.)*

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

D. 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. Miss. Code Ann. § 31-7-305 (1972, as amended).

E. 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. Miss. Code Ann. §§ 71-11- 1 *et seq.* (1972, as amended). 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:

- a) 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;
- b) 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,
- c) 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.

F. 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.

G. Representation Regarding Gratuities

The 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 Personal Service Contract Review Board Rules and Regulations*.

XVIII. REQUIRED FEDERAL PROCUREMENT CLAUSES AS THIS CONTRACT IS ELIGIBLE FOR REIMBURSEMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY

A. Access

MEMA, the subgrantees (counties and communities), FEMA, the Comptroller General of the United States, and any other duly authorized representatives to any of these bodies shall have access to any and all books, documents, papers, and records of the contractor which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and

transcriptions.

B. Byrd Anti-Lobbying Amendment

Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Contractor shall require all subcontractors to submit these same certifications. Contractor shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

C. Clean Air and Water Acts Compliance

At all times the Contractor shall be in compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

D. Debarment and Suspension

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by MEMA. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to MEMA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

E. Energy Efficiency

Contractor shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

F. Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>."

G. Retention of Records

Contractor shall retain all records associated with this contract for three (3) years after MEMA or the subgrantees (the counties and communities) make final payments and all other pending matters are closed.

H. DHS Seal, Logo, and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

I. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

J. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

K. Program Fraud and False or Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

XIX. STANDARD TERMS AND CONDITIONS WHICH WILL BE INCLUDED IN ANY CONTRACT AWARDED FROM THIS IFB

A. APPLICABLE LAW

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

B. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the MEMA 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 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 MEMA, MEMA 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 MEMA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

C. PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

D. CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that MEMA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §§ 25-61-1 *et seq.* (1972, as amended). If a public records request is made for any information provided to MEMA pursuant to the agreement, MEMA shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

E. STOP WORK ORDER

- 1) *Order to Stop Work.* The 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 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 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.

F. COMPLIANCE WITH LAWS

Contractor understands that the MEMA 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.

G. ANTI-ASSIGNMENT/SUBCONTRACTING

Contractor acknowledges that it was selected by the MEMA 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 MEMA, which the MEMA 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 MEMA 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 MEMA may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

H. ANTITRUST

By entering into a contract, Contractor conveys, sells, assigns, and transfers to the MEMA all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the MEMA under said contract.

I. APPROVAL

It is understood that the Contract is void and no payment shall be made in the event that the Personal Service Contract Review Board, or its successors, does not approve this contract.

J. 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.

K. 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.

L. CHANGE IN SCOPE OF WORK

The MEMA 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 MEMA and Contractor. If Contractor believes that any particular 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 MEMA in writing of this belief. If the MEMA believes that the particular work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope of service.

M. CONTRACTOR PERSONNEL

The MEMA 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 MEMA reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the MEMA in a timely manner and at no additional cost to the MEMA. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

N. FAILURE TO DELIVER

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

O. FAILURE TO ENFORCE

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

P. 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 causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, and 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 MEMA 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 MEMA determines it to be in its best interest to terminate the agreement.

Q. INDEMNIFICATION

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MEMA, 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, 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 State. 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 State's concurrence, which the State shall not unreasonably withhold.

R. INDEPENDENT CONTRACTOR STATUS

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the MEMA. Nothing contained herein shall be deemed or construed by the MEMA, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the MEMA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MEMA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the MEMA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MEMA; and the MEMA shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The MEMA shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the MEMA shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

S. 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.

T. NOTICES

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

Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For Contractor: *name, title, contractor, address*

For the Agency: Edward Williams, Branch Director
Mississippi Emergency Management Agency
#1 MEMA Drive
Pearl, MS 39208

U. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the MEMA and agreed to by Contractor.

V. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

The MEMA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to MEMA upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MEMA and subject to any copyright protections.

W. RECORD RETENTION AND ACCESS TO RECORDS

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the MEMA or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

X. RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to MEMA, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and MEMA. The rights of MEMA are in addition and without prejudice to any other right MEMA may have to claim the amount of any loss or damage suffered by MEMA on account of the acts or omissions of Contractor.

Y. RIGHT TO INSPECT FACILITY

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

Z. STATE PROPERTY

Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement.

Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

AA. TERMINATION FOR CONVENIENCE

(1) *Termination.* The Procurement Officer of the MEMA may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The 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 subcontracts and orders connected with the terminated work. The Procurement Officer may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the MEMA. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

BB. 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 Procurement Officer of the MEMA may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Procurement Officer, 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 Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the 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 Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the MEMA shall be at the contract price. The MEMA may withhold from amounts due Contractor such sums as the 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 State 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 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 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"). (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 State, 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.

CC. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by MEMA 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.

DD. THIRD PARTY ACTION NOTIFICATION

Contractor shall give MEMA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement

EE. TRANSPARENCY

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the 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.

FF. 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.

GG. UNSATISFACTORY WORK

If at any time during the contract term, the service performed or work done by Contractor is considered by MEMA 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 MEMA, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MEMA shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

HH. WAIVER

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the

XX. EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS:

A. Qualifications of Offerors: The offeror may be required before the award of any contract to show to the complete satisfaction of MEMA that it has the necessary facilities, ability and financial resources to provide the service specified therein in a satisfactory manner. The offeror will be required to give a past history and references. MEMA may make reasonable investigations deemed necessary and proper to determine the ability of the offeror to perform the work, and the offeror shall furnish to MEMA all information for this purpose that may be requested. MEMA reserves the right to reject any offer if the evidence submitted by, or investigation of, the offeror fails to satisfy MEMA that the offeror is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the offeror's qualifications shall include:

1. The ability, capacity, skill, financial, and other necessary resources to perform the work or provide the service required.
2. The ability of the offeror to perform the work or provide the service promptly or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience, and efficiency of the offeror.
4. The quality of performance of previous contracts or services.

Step III: MEMA may contact the top offerors via telephone to schedule an interview after the opening date of the Bid.

Step IV: MEMA's Executive Director or his designee will contact the offeror with the Bid that best meets MEMA's needs (based on factors evaluated in Step II) and attempt to negotiate an agreement that is deemed acceptable to both parties.

XXI. ALL BIDS SUBMITTED IN RESPONSE TO THIS REQUEST SHALL BE IN WRITING.

XXII. THE FOLLOWING RESPONSE FORMAT SHALL BE USED FOR ALL SUBMITTED BIDS:

- A.** Completed and signed Invitation for Bid Submission Form (included).
- B.** Management Summary: Provide a statement indicating the underlying philosophy of the offeror in providing the service.
- C.** Bid: Describe in detail how the service will be provided. Include a description of major tasks and subtasks. A timeline for execution shall be included in this section.

- D. Corporate experience and capacity: Describe the experience of the offeror in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.
- E. Personnel: Attach resumes' of all those who will be involved in the management of this project that include their experience in the area of service delivery. Indicate the level of involvement by principals of the offeror in the day-to-day operation of the contract.
- F. References: Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person. Explain the similarity of the projects to the MEMA project.
- G. Acceptance of conditions: Indicate any exceptions to the general terms and conditions of the Bid document and to insurance, bonding, and any other requirements listed.
- H. Additional data: Provide any additional information that will aid in evaluation of the response.
- I. Cost data: Estimate the annual cost of the service. Cost data submitted at this stage is not binding and is subject to negotiation if your Bid is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimate totals.
- J. Rate Table: A table providing for the applicable labor hourly rates used when determining the estimated price proposed for this contract.
- K. Job Descriptions: Job descriptions of labor categories that will be utilized in completion of this contract.

XXIII. POST-AWARD DEBRIEFING: A vendor, successful or unsuccessful, may request a post award vendor debriefing, in writing, by U.S. mail or electronic submission to be received by the MEMA within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify the MEMA and identify its attorney.

XXIV. BID REVIEW SCHEDULE: Unless otherwise indicated, the following Bid review schedule will be adhered to. Any protest or question concerning the evaluation or award must be received by the Mississippi Emergency Management Agency on or before the evaluation review deadline.

- * Deadline for Questions: April 19, 2018 by 12 Noon.
- * Bid Opening: April 26, 2018
- * Qualification Review Period: April 26-May 3
- * Distribution of Apparent Award: May 4, 2018

**ATTACHMENT A
VENDOR QUOTE SHEET**

Name of Company: _____ **Date:** _____
Point of Contact Name: _____
POC Phone Number: _____

Please complete all sections.

1.	Cost Per \$ _____ Pound	# Pounds per truck _____
	Total Cost Per Truck \$ _____ <i>(This should be the above referenced cost per liter multiplied by the above referenced liters per truck)</i>	
2.	Freight \$ _____ Flat Rate per/Day	or \$ _____ Per Mile
3.	Reefer Rental \$ _____ Flat Rate per/Day	
4.	Pallet Charge \$ _____ Per Pallet	

**** Please attach any additional pricing documentation provided by the vendor. (i.e. price list, flat rate details or company information). However, this information will only be used for informational purposes. Prices utilized in the contract, and the criteria proposal prices will be graded upon is contained in the table above.**