**REQUEST FOR QUALIFICATIONS**

**TO PROVIDE**

**PROFESSIONAL NURSE STAFFING SERVICES**

**RFQ Number: 3150001933**

**Issue Date: Thursday, January 10, 2019**

**CLOSING LOCATION**

**Ellisville State School**

**State of Mississippi**

**Department of Mental Health**

**1101 Highway 11 South**

**Ellisville, MS 39437**

**Request for Qualifications Coordinator:**

**Peter A. Stewart III, J.D.**

**Contract Analyst/Chief Procurement Officer**

**CLOSING DATE AND TIME:**

**Qualifications must be received by**

**12:00 Noon**

**Tuesday, February 12, 2019**

1. **GENERAL**

The Ellisville State School (ESS) will contract for Professional Nurse Staffing Services (PNSS) as described in this Request for Qualifications (RFQ).

A single contract for nurse staffing services between ESS and one (1) PNSS offeror will be awarded by the evaluation team of the ESS based upon the criteria listed herein.

The contract will be for up to one (1) year with four (4) optional renewals.

The contract will be for the provision of Registered Nurses and Licensed Practical Nurses to be staffed at ESS for a period of one (1) year beginning on or after April 4, 2019, and run for one year with four (4) optional renewals.

Nursing services (both Registered Nurse and Licensed Practical Nurse) shall be for the A shift (6:00 a.m. until 2:30 p.m.), B shift (2:00 p.m. until 10:30 p.m.), and C shift (10:00 p.m. until 6:30 a.m.).

The contract rate of pay shall be Thirty-Nine Dollars ($39.00) per hour for Registered Nurses and Thirty-Three Dollars ($33.00) per hour for Licensed Practical Nurses. Estimated quantities shall range between 150 to 160 shifts per month over the period, more or less, but no quantities are guaranteed. Other times may be required for Community Programs.

The offeror which is awarded a contract shall be an independent contractor as defined by the Internal Revenue Service. A contract shall be awarded to only one (1) offeror.

ESS does not do long term blocked booked staffing; however, ESS requires the nurses that are sent by the winning offeror to go through a short orientation and also work at least two (2) shifts alongside an ESS nurse to be trained on ESS policies & procedures for the persons served with intellectual and developmental disabilities (IDD).

ESS is a CMMS (Centers for Medicare & Medicaid Services) Intermediate Care Facility (ICF) with three hundred (300) or more persons served at this time. ESS’s persons served are individuals with special needs that include but are not limited to: mental challenges, gastronomy and jejunostomy tube feedings, tracheostomy, medications and treatments.

2. **Qualifications Acceptance Period**

The original and three (3) copies of the statement of qualifications shall be signed and submitted in a sealed envelope or package to 1101 Highway 11 South, Ellisville, Mississippi 39437, to the attention of Peter A. Stewart III, J.D., Chief Procurement Officer (CPO), no later than 12:00 p.m., February 12, 2019, the time and date specified for receipt of statements of qualifications. Timely submission is the responsibility of the respondent. Statements of qualifications received after the specified time shall be rejected in writing, immediately, and maintained in the ESS’s procurement file. The envelope or package shall be marked with the Request for Qualifications opening date and time, and the number of the Request for Qualifications 3150001933. The time and date of receipt shall be indicated on the envelope or package by the ESS Human Resources Department. Each page of the minimum required information portion of the Offeror’s statement of qualifications and all other procurement documents and attachments shall be identified with the name of the Offeror. That portion of the Offeror’s procurement packet responding to the RFQ’s evaluation questions shall not contain the Offeror’s identification and shall be bound separately from the identifying information portion of the Offeror’s procurement packet. Modifications or additions to any portion of the procurement document may be cause for rejection of the statement of qualifications. The ESS reserves the right to decide, on a case-by-case basis, whether to reject a statement of qualifications with modifications or additions as non-responsive. As a precondition to statement of qualifications acceptance, ESS may request the respondent to withdraw or modify those portions of the statement of qualifications deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

**3. Timeline\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Process\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Wednesday, January 2, 2019 Notify Newspaper

Thursday, January 10, 2019 **1st Newspaper publication.**

MAGIC, ESS Website, and Mississippi Procurement Opportunity Search Portal Publication on same day.

Thursday, January 17, 2019 **2nd Newspaper publication.**

Thursday, January 31, 2019 **Questions Deadline.**

Tuesday, February 5, 2019 **Answers deadline.**

Tuesday, February 12, 2019 12:00 & 12:01 p.m. CST **Qualifications Submission Deadline and Opening Date.**

Wednesday, February 15, 2019 **Evaluation** Date

Tuesday, February 19, 2019 **Publication of Notice of Intent to Award Date**

Thursday, February 22, 2019  **Debriefing Request Deadline**.

Wednesday, February 26, 2019 **Protest Deadline**.

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Thursday, February 27, 2019 **Upload packet into OPSCR Portal & MAGIC.**

Wednesday, April 3, 2019 **PPRB Meeting**.

Thursday, April 4, 2019 **Contract Start Date**

**4. SUBMISSIONS**

Any individual, firm or corporation desiring to provide services for this RFQ should submit their submission, **in writing**, to ESS and three (3) copies no later than **12:00 noon**, (Central Standard Time) Tuesday, **February 12, 2019**. **Submissions shall be separated into two (2) parts, one containing the required background information on the Offeror and a second part answering the evaluation factors that does not contain identifying information. Submissions not properly separated may be rejected (and kept in the ESS procurement file) or returned for correction.**

**A. Late Submissions**

1. A statement of qualifications received at the place designated in the solicitation for receipt of statements of qualifications after the exact time specified for receipt will not be considered unless it is the only statement of qualifications received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of statements of qualifications. It must be determined by ESS that the late receipt was due solely to mishandling by ESS after receipt at the specified address.

2. The only acceptable evidence to establish the date of mailing of a late statement of qualifications is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Respondents should request postal clerks to place a hand cancellation postmark (often called a bull’s eye) on both the receipt and the envelope or wrapper.

3**.** The only acceptable evidence to establish the time of receipt at the office identified for opening of statements of qualifications is the time and date stamp of that office on the statement of qualifications wrapper or other documentary evidence of receipt used by that office.

**5.** **Expenses Incurred in Preparing Statement of Qualifications**

ESS accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of a statement of qualifications. Such expenses shall be borne exclusively by the respondent.

**6. Registration with Mississippi Secretary of State**

By submitting a statement of qualifications, the respondent 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.

**7. Debarment**

By submitting a statement of qualifications, the Offeror (or respondent) certifies that it is not currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government, and that it is not an agent of a person or entity that is currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi.

**8. Additional Information**

Questions about the contract portions of the procurement document must be submitted in writing to Peter A. Stewart III, J.D., Ellisville State School Contract Analyst and the Chief Procurement Officer for this Request for Qualifications, at 1101 Highway 11 South, Ellisville, Mississippi 39437; Facsimile Number 601-477-5710; Email Address: Peter.Stewart@ess.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Peter A. Stewart III, J.D at 1101 Highway 11 South, Ellisville, Mississippi 39437; Facsimile Number 601-477-5710; Email Address: Peter.Stewart@ess.ms.gov. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

**9. Type of Contract**

Compensation for services will be in the form of a firm fixed-price agreement for a set hourly rate of pay for Licensed Practical Nurses and Registered Nurses as provided in this Request for Qualifications.

**10. Written Statement of Qualifications**

All statements of qualifications shall be in writing.

**11.** **Compensation for Services**

The compensation for services will be $39.00/hr. for Registered Nurses and $33.00/hr. for Licensed Practical Nurses.

**12. Purpose**

ESS is seeking to establish a contract for nurse staffing services at ESS’s location in Ellisville, Mississippi for the purpose of providing nurses for its persons served, including those with intellectual and developmental disabilities. It is understood that any contract resulting from RFQ 3150001933 requires approval by the Personal Service Contract Review Board. If any contract resulting from RFQ 3150001933 is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

**13. Scope of Services**

a. The contract will be for the provision of Registered Nurses and Licensed Practical Nurses to be staffed at ESS for a period of one (1) year beginning on or after April 4, 2019, and run for up to one (1) year with four (4) optional renewals of one (1) year each, under the exact same terms, price and conditions as provided in the original contract.

b. Nursing services (both Registered Nurse and Licensed Practical Nurse) shall be for the A shift (6:00 a.m. until 2:30 p.m.), B shift (2:00 p.m. until 10:30 p.m.), and C shift (10:00 p.m. until 6:30 a.m.).

c. The contract rate of pay shall be Thirty-Nine Dollars ($39.00) per hour for Registered Nurses and Thirty-Three Dollars ($33.00) per hour for Licensed Practical Nurses.

d. Estimated quantities shall range between 150 to 160 shifts per month over the period, more or less, but no quantities are guaranteed. Other times may be required for Community Programs.

e. The Offeror which is awarded a contract shall be an independent contractor as defined by the Internal Revenue Service.

f. A contract shall be awarded to only one (1) offeror.

g. ESS does not do long term blocked booked staffing; however, ESS requires the nurses that are sent by the winning offeror to go through a short orientation and also work at least two (2) shifts alongside an ESS nurse to be trained on ESS procedures for the persons served with intellectual and developmental disabilities (IDD).

h. ESS is a CMMS (Centers for Medicaid & Medicare Services) certified intermediate care facility (ICF) with a total of approximately three hundred (300) or more persons served at this time. ESS’s persons served are individuals with special needs that include but are not limited to: mental challenges, gastronomy and jejunostomy tube feedings, tracheostomy, medications and treatments.

i. All rates are flat rates, no weekend, holiday or overtime rates will be paid.

j. ESS requires the nurses that are sent by the winning Offerors to go through a short orientation and also work at least two (2) shifts alongside an ESS nurse to be trained on ESS procedures for the persons served with intellectual and developmental disabilities (IDD).

k. The ESS requests that the Contractors provide current licensures or certifications, TB skin tests/ chest X-ray, background checks, and proof of fingerprinting and CPR certification for each nurse staffed at the ESS prior to the commencement of their first shift and prior to license/certification expiration dates. ESS will obtain drug screens the day of orientation.

l. ESS agrees not to employ, either directly or indirectly, any nurse provided by the contractor over the term of this Agreement and within one (1) year of termination of said Agreement. The Contractors agree not to send former employees that have left ESS during the previous twelve (12) months.

m. ESS requires 8-16 hours of orientation for the Registered or Licensed Practical Nurses and only nurses that have attended the ESS’s orientation will be allowed to staff ESS. The Contractors agree to pay the hourly rate to nurses in training for attending orientation.

n. ESS will provide name tags and vehicle decals for the Contractors’ nurses during orientation and for the nurses to wear while working at ESS. Name tags and vehicle decals shall remain the property of ESS. Replacement costs will be $25.00 each.

o. The term “licensed nurse”, for purposes of this RFQ, means a registered nurse or a licensed practical nurse currently licensed by the State of Mississippi. A nurse must operate consistent with the requirements of the applicable “Mississippi Nursing Practice Law, Mississippi Code Annotated Sections 73-15-1 et seq., 1972, as amended.

p. Nursing staff may sometimes periodically provide training to persons served and staff on how to care for health needs or conditions, personal hygiene, health maintenance and disease prevention.

q. Nursing staff must train and ensure direct support staff demonstrate competency in detecting signs and symptoms of illness, injury or change in a person’s health baseline, e.g., responsiveness, fatigue, irritability, constipation, diarrhea, dehydration, confusion unexplained weight loss, changes in endurance and changes in respiratory function.

r. This Request for Qualifications (RFQ) seeks nurses who have experience in the care of persons with intellectual and developmental disabilities. This, along with continuity of care, is a priority for this RFQ of which all Offerors should be made clearly aware.

s. Nurses shall be expected to respond in a timely manner to all medical concerns reported, conduct assessments as indicated, effect timely and appropriate interventions, communicate with clients’ physicians and other health care professionals as indicated, provide treatments as ordered, monitor client progress following illness or injury and provide training to clients and/or staff as indicated.

t. ESS’s persons served are individuals with special needs that include but are not limited to: the requirement of “active treatment” and the administration of “medical plans of care” as defined by CMMS. Treatment with psychotropic medications, polypharmacy, mental challenges and other special medications and treatments are required for some of ESS’s persons served.

u. As a specialized type of nursing home, Ellisville State School strives to provide continuity of care in a variety of endeavors, including providing quality of care over time via stable, continuous relationships between persons served and the healthcare professionals engaged.

**14. Term**

The term of the contract shall be for a period of one (1) year. Upon written agreement of both parties at least thirty (30) days prior to each contract anniversary date, the contract may be renewed by ESS for a period of up to no more than four (4) successive one-year period(s) under the same prices, terms, and conditions as in the original contract subject to approval by the Office of Personal Service Contract Review. The total number of renewal years permitted shall not exceed four (4).

**A. Multi-Term Contracts**

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year,provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

**Requirements**

1. A unit price of $39.00/hr. for Registered Nurses and $33.00/hr. for Licensed Practical Nurses shall be given for each service, and that unit price shall be the same throughout the contract.
2. A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State’s right or the contractor’s rights under any termination clause in the contract.
3. The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
4. A multi-term contract may be awarded if deemed necessary by ESS and made as an amendment to this RFQ within the time allowed for such an amendment.

**15. Insurance**

The Contractor shall maintain compliance with the following provisions at all times regarding insurance coverage:

A. The Contractor shall maintain at least the statutory minimum level of workers’ compensation insurance in compliance with Mississippi Code § 71-3-1, et seq., as amended 1972.

B. The Contractor shall have liability insurance in the following amounts: comprehensive general liability insurance with minimum limits of One Million Dollars ($1,000,000.00) per occurrence.

C. All workers’ compensation and comprehensive general liability will provide coverage to the Ellisville State School as an additional insured.

D. Ellisville State School reserves the right to request from carriers, certificates of insurance regarding the required coverage.

E. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

F. The Contractor shall be prepared to provide evidence of required insurance upon request by the Ellisville State School at any point during the contract period and should consult with legal counsel regarding its obligations.

**16. Written Statements of Qualifications Shall Contain the Following Minimum Information**

**PROPRIETARY INFORMATION: [Confidentiality:** The respondent may designate those portions of their submission of qualifications which contain trade secrets or other proprietary data to remain confidential in accordance with Mississippi Code Annotated §§ 25-61-9 and 79-23-1.]

**All Written Statements of Qualifications Shall Contain the Following Minimum Information (**Note: the following minimum information shall be compiled and provided separately from the information required for the three (3) member evaluation committee’s evaluation of the Offeror’s Qualifications because it shall contain identifying information of the Offeror. That part of the submission that shall be evaluated must not contain information that will identify the Offeror and shall be separately bound. If a potential offeror has questions regarding the proper separation of required minimum information, the Chief Procurement Officer may be contacted for instructions on how to properly submit the Qualifications at the address and/or phone number provided on the cover page to this Request for Qualifications**):**

A. The name of the respondent, the location of the respondent’s principal place of business and, if different, the place of performance of the proposed contract;

B. The age of the respondent’s business and average number of employees over a previous period of time, as specified in the Request for Qualifications;

C. The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services; and,

D**.** A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Qualifications.

**17. Letter of Interest:** Each submission **may**, at the discretion of the Offeror, be accompanied by an individual letter explaining why they desire to be awarded the contract, explaining the reason for their interest in providing nurse staffing services to ESS.

**18. Minimum Qualifications**

1. Proof of being a validly organized business with valid authority to enter into the contract.
2. Possess appropriate state and federal licenses and certifications in the field of nursing.
3. Respondents must possess the financial stability to carry out the contract requirements.
4. Sufficient nursing staff for all three (3) shifts, seven (7) days a week, including weekends and holidays, for the complete one (1) year term of the contract.

E. Nursing and management staff possessing a minimum of three (3) years of experience

operating a contract of this size and scope serving persons with intellectual and

developmental disabilities in an ICF or similar environment.

F. Statement attesting to the employment status of the Offeror’s current nursing staff (i.e., W-2 employee, contractual employee or independent contract staff). If a mixture, Offeror shall provide a percentage breakdown by classification of employee’s status.

G. Average tenure in number of years of Offeror’s existing nursing staff

**F. Statement of Qualifications:** Each submission must be accompanied by a statement of qualifications including the following information:

1. History of the firm/company.
2. Copy of applicable state licenses and certifications for nursing.
3. **Proof of at least three (3) years of experience with providing nursing services for intellectual and developmentally disabled persons in an ICF or similar environment. The determination of similarity rests solely with ESS. By submission of their proposal, the Offeror acknowledges this requirement.**
4. Resumes of key management personnel and their positions, including the director/supervisor of nursing, i.e., the person responsible for overseeing nursing operations for the firm.

**G. Responsive Respondent**

Offerors must submit statements of qualifications which conforms in all material respects to this Request for Qualifications, [RFQ No. 3150001933], as determined by ESS.

The original and three (3) copies of the statement of qualifications, four (4) copies total, shall be signed and submitted in a sealed envelope or package to the attention of Peter A. Stewart III, J.D., Chief Procurement Officer at the Clyde Woodruff Administration Building, Ellisville State School, 1101 Highway 11, Ellisville, Mississippi 39437, no later than 12:00 p.m. (CST), February 12, 2019.

Timely submission is the responsibility of the respondent. Statements of qualifications received after the specified time shall be rejected and maintained in the ESS’s procurement file.

The envelope or package shall be marked with the Request for Qualifications opening date and time, and the number of the Request for Qualifications (RFQ 3150001933).

The Chief Procurement Officer shall stamp the time and date of receipt on the envelope or package.

Except for the Qualifications Evaluation information packet (as explained in paragraph 2. of Qualifications Acceptance Period above), each page of the statement of qualifications and all attachments shall be identified with the name of the respondent.

Modifications or additions to any portion of the procurement document may be cause for rejection of the Offeror’s Statements of Qualifications.

ESS reserves the right to decide, on a case-by-case basis, whether to reject an Offeror’s Statements of Qualifications with modifications or additions as non-responsive.

As a precondition to the acceptance of an Offeror’s Statements of Qualifications, ESS may request the respondent to withdraw or modify those portions of the Statements of Qualifications deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

**H. Responsible Respondent**

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by ESS.

**19. Nonconforming Terms and Conditions**

A statement of qualifications that includes terms and conditions that do not conform to the terms and conditions in the Request for Qualifications is subject to rejection as non-responsive. ESS reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its Statements of Qualifications prior to a determination by ESS of non-responsiveness based on the submission of nonconforming terms and conditions.

**20. Conditioning Statements of Qualifications upon Other Awards**

Any statement of qualifications which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

**21. Evaluation Procedure**

The Qualifications shall be evaluated by a three (3) member Evaluation Committee. Two (2) of the members of the evaluation committee shall come from the private (business) sector with no affiliation with ESS and **may** be selected based on their years of experience in the field of care for persons with IDD and the field of skilled nursing. The third evaluation committee member **may** be a member of the ESS staff who has an understanding of the workings of ESS and its persons served.

**Evaluation Factors:** The relative importance of each evaluation factor is rated in terms of one of three (3) different levels (from lowest to highest): Important, Very Important and Critical**.**

**A.**  **Written Proposal Addressing Technical Factors.** Relative importance level**:** Important. The percentage points assigned by the Evaluation Committee: Twenty (20) percentage points.

(1) Does the Offeror demonstrate in its Qualifications submission a clear understanding of the scope of work needed?

(2) Are the Offeror’s qualifications complete and responsive to the RFQ’s requirements for nurses with experience caring for persons with intellectual and developmental disabilities (IDD)?

(3) Does the Offeror demonstrate in its Qualifications submission knowledge of nursing protocols and relational expertise with persons with intellectual and developmental disabilities (IDD)?

(4) Has the past performance of the Offeror's proposed staffing system been documented?

(5) Does the Offeror's proposal or qualification use new or different methods for providing ESS’s staffing requirements for nursing services?

**B.** **Written Proposal Addressing Technical Factors: Continuity of Care.**

Relative importance level: Critical.

The percentage points assigned by the Evaluation Committee: Twenty (20) percentage points.

(1) Does the Offeror prove in its Qualifications submission that they have adequate nursing staff to ensure continuous nursing care, without interruption due to unexpected (employee) illnesses and unexpected and/or unexcused absences?

(2) Does the Offeror show in its Qualifications submission that they have an adequate and appropriate number of nursing staff that have been continuously employed for three (3) or more years, continuously, with the Contractor’s firm/agency?

(3) Does the Offeror provide suitable evidence in its Qualifications submission proving that it has experience with similar state or private institutions serving persons with intellectual and developmental disabilities?

**C.** **Cost Factors**. **Relative importance level:** Very Important.

The percentage points assigned by the Evaluation Committee: Thirty-Five (35) percentage points. All participating offerors shall receive thirty-five (35) points for the cost or “price” factor per PPRB Rules and Regulations.

**D.** **Management Factors.** **Relative importance level:** Critical.

(Factors that will require the identity of the Contractor to be revealed must be submitted separately from other factors. Submissions under the evaluation portion that contain identifying information may be rejected by the Chief Procurement Officer as non-responsive and returned to the Offeror). The total percentage points assigned by the Evaluation Committee: Twenty (20) percentage points.

(1) Does the Offeror document industry or program experience?

(2) Is there a project management plan documented in its Qualifications submission?

(3) Does the Offeror have a record of poor business ethics?

(4) Does the Offeror have a track record of reliability for providing nursing services?

(5) Does the Offeror have a history of proper compliance with regulations and standards in providing nursing services?

**E. References and Recommendations**. **Relative importance level: Important.** The percentage assigned by the Evaluation Committee: Five (5) percentage points.

**[Note: The Offeror must list its references without disclosing the Offeror’s identity. Letters provided by the Offeror’s references must be signed by their respective representatives or executive officers and dated. References to the Offeror made by its references in such letters shall be redacted by the Chief Procurement Officer.]**

(1) How many references does the Offeror provide in its Qualifications submission?

(2) Are prior and current customers of the Offeror satisfied with their services?

(3) Do other similar agencies (public and/or private) recommend the Offeror and its services?

**22. Submission Format**

Qualifications submissions shall be typewritten and each copy shall be bound together on the left side of the submission documents.

**23. Award**

The contract will be awarded by written notice to the highest ranked Offeror whose statements of qualifications meet the requirements and criteria set forth in this Request for Qualifications.

**Notification**

All participating vendors will be notified of ESS’s intent to award a contract. In addition, ESS will identify the selected vendor. Notice of award shall also be made available to the public.

**24. Post-Award Vendor Debriefing**

An Offeror, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Chief Procurement Officer of ESS (Peter A. Stewart III, J.D.), within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Director of the ESS in writing and identify its attorney by name, address, and telephone number. The ESS will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the *Personal Service Contract Review Board’s Rules and Regulations*.

**25. Protest of Award**

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Qualifications may file a protest with the Chief Procurement Officer, Peter A. Stewart III, J.D., Ellisville State School Contract Analyst. The protest shall be submitted on or before 5:00 p.m. C.S.T., Tuesday, February 26, 2019, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Request for Qualifications Coordinator, Peter A. Stewart III, J.D., via either U.S. mail, postage prepaid, or personal delivery. Protests filed after Tuesday, February 26, 2019, will not be considered.

**26. Required Contract Terms and Conditions**

Any contract entered into between a Contracting Agency and an Offeror shall include the required clauses found in **Attachment B** and those required by the *Personal Service Contract Review Board’s Rules and Regulations* as updated.

**27. Optional Contract Terms and Conditions**

Any contract entered into between a Contracting Agency and an Offeror may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment C** and those within the *Personal Service Contract Review Board’s Rules and Regulations* as updated.

**28.** **Mississippi Contract/Procurement Opportunity Search Porta**l

This Request for Qualifications, and the questions and answers concerning this Request for Qualifications, are posted on the Contract/Procurement Opportunity Search Portal.

**29. Attachments**

The attachments to this Request for Qualifications are made a part of this Request for Qualifications as if copied herein in words and figures.

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

1. That he/she has thoroughly read and understands this Request for Qualifications, RFQ 3150001933, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Qualifications, RFQ 3150001933, and the attachments herein;
3. That the company agrees to all provisions of this Request for Qualifications, RFQ 3150001933, and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Qualifications.

**Printed Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature/Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT A**

**Certifications and Assurances**

I/We make the following certifications and assurances as a required element of the offer to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by circling the applicable word or words in each paragraph below:



REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has/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 statement of qualifications.



REPRESENTATION REGARDING GRATUITIES

Contractor represents that it **has/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.



CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

Contractor certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a statement of qualifications, or the methods or factors used to calculate price.



PROSPECTIVE CONTRACTOR’S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor’s statement of qualifications that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

**Name/Title:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature/Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Note:*** *Please be sure to* ***circle the applicable word or words*** *provided above. Failure to circle the applicable word or words and/or to sign the statement of qualifications form may result in the statement of qualifications being rejected as nonresponsive.* ***Modifications or additions to any portion of this statement of qualifications document may be cause for rejection of the statement of qualifications.***

**ATTACHMENT B**

**Required Clauses for Service Contracts Resulting from this RFQ**

1. 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.
2. Availability of Funds. It is expressly understood and agreed that the obligation of the ESS 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 ESS, the ESS 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 ESS of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws. Contractor understands that the ESS 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.
4. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The ESS 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 ESS within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.
5. 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 Annotated §§ 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:
6. 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; or
7. 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,
8. 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.

1. 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.
2. 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>.
3. 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 statement of qualifications.
4. Representation Regarding Gratuities. 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*.
5. Stop Work Order.
6. *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:

(1) Cancel the stop work order; or,

(2) Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

*b. 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:

(1) The stop work order results in an increase in the time required for, or in Contractor’s cost properly allocable to, the performance of any part of this contract; and,

(2) 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.

*c. 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.

1. Termination for Convenience.
2. *Termination*. The ESS Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The ESS Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
3. *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 ESS Head or designee 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.
4. Termination for Default.
5. *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 ESS Head or designee 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 ESS Head 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 ESS Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the ESS Head or designee. 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.
6. *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.
7. *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 ESS Head or designee 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.
8. *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 ESS Head or designee 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 ESS Head or designee 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”. (As used in this Paragraph of this clause, the term “subcontractor” means subcontractor at any tier).
9. *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.
10. *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.
11. Termination upon Bankruptcy. This contract may be terminated in whole or in part by ESS 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.
12. 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.
13. 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 Annotated §§ 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 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.

**ATTACHMENT C**

**Optional Clauses for Use in Service Contracts Resulting from this RFQ**

[ESS may choose to incorporate some or all of these clauses into their procurement or not include Attachment C. Inclusion of any of these clauses is at the discretion of the ESS.]

1. 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.
2. Approval.It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. 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.
4. 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.
5. 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 ESSshall result in the immediate termination of this agreement.

1. Confidentiality.Notwithstanding any provision to the contrary contained herein, it is recognized that ESS 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*. If a public records request is made for any information provided to ESS pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, ESS shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The ESSshall not be liable to the Contractor for disclosure of information required by court order or required by law.
2. Contractor Personnel.TheESS 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 ESS reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the ESS in a timely manner and at no additional cost to the ESS*.* The day-to-day supervision and control of Contractor’s employees and subcontractors is the sole responsibility of Contractor.
3. Debarment and Suspension.Contractor certifies to the best of its knowledge and belief, that it:
4. 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;
5. has not, within a three year period preceding this statement of qualifications, 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;
6. has not, within a three year period preceding this statement of qualifications, 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;
7. 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,
8. has not, within a three year period preceding this statement of qualifications, had one or more public transactions (federal, state, or local) terminated for cause or default.

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 Mississippi Code Annotated §§ 25-61-1 *et seq*.

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

11. Errors in Extension.If the unit price and the extension price are at variance, the unit price shall prevail.

12. Failure to Deliver.In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the ESS, 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 ESS may have.

13. Failure to Enforce.Failure by theESS 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 ESS to enforce any provision at any time in accordance with its terms.

14. Final Payment.Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the ESS a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State’s claims against Contractor under this contract.

15. 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, 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 State 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 State determines it to be in its best interest to terminate the agreement.

1. HIPAA Compliance.Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
2. Indemnification.To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the ESS, 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.
3. 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 State. Nothing contained herein shall be deemed or construed by the State, 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 State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State 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 Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agencyshall 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, theESS shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.
4. Integrated Agreement/Merger.This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.
5. (Contract Modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PSCRB pursuant to Section 7-111 (Modifications) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*. Modifications shall not grant extra compensation, fee, or allowance to any Contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased.)Modification or Renegotiation.This agreement may be modified 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.
6. 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.
7. 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 the Agency: Ellisville State School | For Contractor: |
| Peter A. Stewart III, J.D. Contract Analyst | [Name, Title] |
| Ellisville State School | [Contractor Name] |
| 1101 Highway 11 South | [Address] |
| Hattiesburg, MS 39437 | [City, State, Zip] |

1. Non-solicitation of Employees.Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
2. 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 theAgencyand agreed to by Contractor*.*
3. Ownership of Documents and Work Papers. Agency 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 Agency 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 Agency and subject to any copyright protections.

Priority.The contract consists of this agreement with exhibits, the procurement RFQ 3150001933 (hereinafter referred to as RFQ and attached as Schedule [ ]), and the statement of qualifications dated [date] by [CONTRACTOR NAME](hereinafter referred to as Statement of Qualifications and attached as Schedule [ ]). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the RFQ and, if still unresolved, by reference to the Statement of Qualifications. Omission of any term or obligation from this agreement or attached Schedules [ ] or [ ] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

1. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor’s staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
2. 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 State 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.
3. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency*.* The rights of the Agencyare in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.
4. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency 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 Agency, 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.
5. Right to Inspect Facility.The State 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 State.
6. Severability. If any part of this agreement is declared to be 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 event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
7. 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.
8. Third Party Action Notification.Contractor shall give the customer 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.
9. 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.
10. 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 other party will imply, be construed as or require waiver of future or other defaults.
11. Requirements Contract.During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

**CONTRACT FOR PROFESSIONAL SERVICES**

This agreement is entered into by and between Ellisville State School (Agency, herein), 1101 Highway 11 South, Ellisville, Mississippi 39437, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Contractor, herein).

The parties agree as follows:

Commencing on or about April 4, 2019, the Contractor will provide the following services:

The Contractor will provide nursing services on an as needed basis to fill nursing vacancies to provide care for the persons served by the Agency (ESS) as follows:

**1. Scope of Services**

a. The contract will be for the provision of Registered Nurses and Licensed Practical Nurses to be staffed at the ESS for a period of one (1) year beginning on or after April 4, 2019, and run for one (1) year with four (4) optional renewals.

b. Nursing services (both Registered Nurse and Licensed Practical Nurse) shall be for the A shift (6:00 a.m. until 2:30 p.m.), B shift (2:00 p.m. until 10:30 p.m.), and C shift (10:00 p.m. until 6:30 a.m.).

c. The contract rate of pay shall be Thirty-Nine Dollars ($39.00) per hour for Registered Nurses and Thirty-Three Dollars ($33.00) per hour for Licensed Practical Nurses.

d. Estimated quantities shall range between 150 to 160 shifts per month over the period, more or less, but no quantities are guaranteed. Other times may be required for Community Programs.

e. The offeror which is awarded a contract shall be an independent contractor as defined by the Internal Revenue Service.

f. A contract may be awarded to only one (1) offeror.

g. ESS does not do long term blocked booked staffing; however, ESS requires the nurses that are sent by the winning offeror to go through a short orientation and also work at least two (2) shifts alongside an ESS nurse to be trained on ESS procedures for the persons served with intellectual and developmental disabilities (IDD).

h. ESS is a CMMS certified intermediate care facility (ICF) with a total of approximately three hundred (300) or more persons served at this time. ESS’s persons served are individuals with special needs that include but are not limited to: mental challenges, gastronomy and jejunostomy tube feedings, tracheostomy, medications and treatments.

i. All rates are flat rates, no weekend, holiday or overtime rates will be paid.

j. The Offeror which is awarded a contract shall be an independent contractor as defined by the Internal Revenue Service. A contract will be awarded to only one (1) Offeror during the contract term.

k. ESS requires the nurses that are sent by the winning Offerors to go through a short orientation and also work at least two (2) shifts alongside an ESS nurse to be trained on ESS procedures for the persons served with intellectual and developmental disabilities (IDD).

l. The ESS requests that the Contractor provide current licensures or certifications, TB skin tests/ chest X-ray, background checks, and proof of fingerprinting and CPR certification for each nurse staffed at the ESS prior to the commencement of their first shift and prior to license/certification expiration dates. The ESS will obtain drug screens the day of orientation.

m. ESS agrees not to employ, either directly or indirectly, any nurse provided by the contractor over the term of this Agreement and within one (10 year of termination of said Agreement. The Contractors agree not to send former employees that have left ESS during the previous twelve (12) months.

n. ESS requires 8-16 hours of orientation for the Registered or Licensed Practical Nurses and only nurses that have attended the ESS’s orientation will be allowed to staff the ESS. The Contractors agree to pay the hourly rate to nurses in training for attending orientation.

o. ESS will provide name tags and vehicle decals for the Contractors’ nurses during orientation and for the nurses to wear while working at the ESS. Name tags and vehicle decals shall remain the property of the ESS. Replacement costs will be $25.00 each.

p. Nursing staff may sometimes periodically provide training to persons served and staff on how to care for health needs or conditions, personal hygiene, health maintenance and disease prevention.

q. Nursing staff must train and ensure direct support staff demonstrate competency in detecting signs and symptoms of illness, injury or change in a person’s health baseline, e.g., responsiveness, fatigue, irritability, constipation, diarrhea, dehydration, confusion unexplained weight loss, changes in endurance and changes in respiratory function.

r. This Request for Qualifications (RFQ) seeks nurses who have experience in the care of persons with intellectual and developmental disabilities. This, along with continuity of care, is a priority for this RFQ of which all Offerors should be made clearly aware.

s. Nurses shall be expected to respond in a timely manner to all medical concerns reported, conduct assessments as indicated, effect timely and appropriate interventions, communicate with clients’ physicians and other health care professionals as indicated, provide treatments as ordered, monitor client progress following illness or injury and provide training to clients and/or staff as indicated.

t. ESS’s persons served are individuals with special needs that include but are not limited to: the requirement of “active treatment” and the administration of “medical plans of care” as defined by CMMS. Treatment with psychotropic medications, polypharmacy, mental challenges and other special medications and treatments are required for some of ESS’s persons served.

u. As a specialized type of nursing home, Ellisville State School strives to provide continuity of care in a variety of endeavors, including providing quality of care over time via stable, continuous relationships between persons served and the healthcare professionals engaged.

2. **Standards.**

The Contractor agrees that the services performed or provided under the terms of this agreement will meet or exceed applicable accreditation standards in the field or area governing above state services. By entering into this contractual agreement, the Contractor certifies that it provides licensed and qualified nursing staff to render the services as stated in this agreement on behalf of the Agency.

**3.** **Invoices.**

All invoices are payable in accordance with the Mississippi Code of 1972, § 31-7-301, et seq., and with the normal payment practices of the Agency as outlined in the Agency’s Policies and Procedures Manual. Invoices for services rendered will be provided weekly and are due and payable forty-five (45) days from the date of receipt of an acceptable invoice. Invoices shall be sent to Ellisville State School, Accounts Payable.

**4.** **Invoice Submission**.

The Contractor shall submit invoices electronically throughout the term of the agreement. Invoices shall be submitted to the Agency using the processes and procedures identified by the State. Payments by the Agency using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The Contractor agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

**5**. **E-Payment**: The 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 an acceptable invoice. Mississippi Code Annotated 31-7-305.

**6. Contract Price Adjustments**: The prices quoted in the Request for Qualifications shall be firm for the initial period of this contract (first year), and are not subject to change.

**7.** **Insurance Coverage.**

The Contractor shall maintain compliance with the following provisions at all times regarding insurance coverage:

A. The Contractor shall maintain at least the statutory minimum level of workers’ compensation insurance in compliance with Mississippi Code § 71-3-1, et seq., as amended 1972.

B. The successful vendor shall have liability insurance in the following amounts: comprehensive general liability insurance with minimum limits of One Million Dollars ($1,000,000.00) per occurrence.

C. All workers’ compensation and comprehensive general liability will provide coverage to the Ellisville State School as an additional insured.

D. The Ellisville State School reserves the right to request from carriers, certificates of insurance regarding the required coverage.

E. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

F. The vendor shall be prepared to provide evidence of required insurance upon request by the Ellisville State School at any point during the contract period and should consult with legal counsel regarding its obligations.

**8.** **Applicable Law**: The contract will 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 Contractor shall comply with applicable federal, state and local laws and regulations.

**9.** **Controlling Law.**

The contract will 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. The Contractor shall comply with applicable federal, state and local laws and regulations.

**10.** **Agency Representative**.

The Agency’s authorized representative is empowered to accept or reject this service furnished by the Contractor in compliance with the provisions of this contract. The engagement shall begin on February 20, 2019, and end on February 19, 2020.

**11**. **Totality of Agreement**.

If any part of this Agreement is declared to be 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 an event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**12**. **Notice of Suit.**

The Contractor shall give the Agency 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.

**13.** **Failure to Enforce.**

Failure by the Agency at any time to enforce the provision 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 Agency to enforce any provision at any time in accordance with its terms.

**14.** **Termination for Funding**.

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 funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, 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 specified in the notice of termination.

**15.** **Hold Harmless**.

The Contractor agrees to hold the Agency harmless for any judgement arising from acts or omissions of the Contractor.

**16.** **Agreement of Parties**.

This agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreements between the parties.

**17**. **Independent Contractor Status.**

The 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 of the Agency. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the Agency. The Agency shall not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents or employees. That responsibility rests solely with the Contractor. The Agency shall not, in accordance with Internal Revenue Service guidelines, withhold from the Contractor’s payment Federal, State, Unemployment, Social Security, Medicare or any other payroll taxes. Further, the Contractor is solely responsible for the provision of and payment for Worker’s Compensation for himself/herself, its servants, agents or employees.

**18.** **Amendments to Agreement.**

This agreement may be altered, amended, or modified only by written document executed by the Agency and the Contractor. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract.

**19.** **Indemnification**.

To the fullest extent allowed by law, the 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 cost of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys’ fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In the Agency’s sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the Agency; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the Agency shall be entitled to participate in said defense. The contractor shall not settle any claim, suit, etc. without the Agency’s concurrence, which the Agency shall not unreasonably withhold.

**20. Equal Opportunity Employer.**

The Contractor understands that the Agency 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, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The 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.

**21.** **Accreditation Standards**

The Contractor agrees that the services performed or provided under the terms of this agreement will meet or exceed applicable accreditation standards in the field or area governing the above-stated services. By entering into this contractual agreement, the Contractor certifies that he is duly licensed and qualified to render the services as stated in this agreement on behalf of the Agency.

**22.** **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 contractor shall comply with applicable federal, state and local laws and regulations.

**23**. **Availability of Funds**

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

**24.** **Compliance with Laws**

Contractor understands that the Agency 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.

**25. 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 Annotated § 31-7-305.

**26. E-Verification**

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 Annotated 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 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. Contractor understands and agrees that any breach of these warranties maysubject Contractor to the following: (a) termination of this Agreement and ineligibility forany 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 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.

**27. Paymode**

The 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 the Contractor’s bid or proposal.

**28.** **Representation Regarding Gratuities**

The 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.

**29.** **Procurement Regulations**

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

**30.** **HIPPA Regulations**

The Contractor recognizes that the Agency has patient health information and other proprietary information which are valuable, special, and unique assets of the Agency. The Contractor will not divulge, disclose, or communicate in any manner any information to any third party without prior written consent. The Contractor will protect the information and treat it as strictly confidential. The Contractor will abide by the requirements of 42 CFR, Part 164.506, Standards for Privacy of Individually Identifiable Health Information. A violation of this paragraph shall be a material violation of this agreement. The Contractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the agreeing entities.

**31.** **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.

**32.** **Equal Opportunity Employer**

Contractor understands that the State of Mississippi 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.

**33.** **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 Annotated 25-61-1 et seq. and Mississippi Code Annotated 79-23-1. In addition, this contract is subject to the provision of the Mississippi Accountability and Transparence Act of 2008. Mississippi Code Annotated 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, this 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 the Contract as trade secrets, or other propriety information including confidential vendor information, or any other information which is required confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statues will be redacted.

**34. Termination for Default**: (1) *Default.* If the 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 Agency 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 Agency, 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 Agency may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency. Contract 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, Contract 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 State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency 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 nay 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 Contract has notified the Agency within 15 days after the cause of the delay and 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, Contract shall not be deemed to be in default, unless the services to be furnished by the subcontract were reasonable obtainable from other sources in sufficient time to permit Contract to meet the contract requirements. Upon request of Contractor, the Agency 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 Termination for Convenience.

(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 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 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 under this contract.

**35. Termination for Convenience**.

1. The Agency may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

2. 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. Contract shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contract shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency 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. (a) the stop work order results in an increase in the time required for, or in Contractor’s cost 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. 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. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

**36.** **Termination by Bankruptcy**.

This contract may be terminated in whole or in part by Ellisville State School 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.

**37. 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 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 a Contractor’s cost 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.

**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 Agency Head or designee 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 Agency Head 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 Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. 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 State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee 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 Agency Head or designee 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 Agency Head or designee 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”. (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.

**38. Termination by Bankruptcy and Assignment**.

This contract may be terminated in whole or in part by Ellisville State School 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, performed under this contract, but in no case shall said compensation exceed the total contract price.

**39. Nonconforming Terms and Conditions**

A qualification response that includes terms and conditions that do not conform to the terms and conditions in the qualification document is subject to rejection as non-responsive. The Ellisville State School reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its qualification response prior to a determination by the Ellisville State School of non-responsiveness based on the submission of nonconforming terms and conditions.

**40.** **Conditioning Qualifications upon Other Awards**

Any qualification which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

**41. Award**

Award shall be made to the responsible respondent whose qualification is determined in

Writing, within no less than thirty (30) days of the first publication of the legal advertisement for the Request for Qualifications, to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Qualifications. No other factors or criteria shall be used in the evaluation.

**42. Notification**

All participating vendors will be notified of the Ellisville State School intent to award a contract. In addition, the Ellisville State School will identify the selected vendor. Notice of award is also made available to the public.

**43.** **Acknowledgment of Amendments**

Bidders 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 Ellisville State School by the time and at the placespecified for receipt ofbids.

**44. Employing Disconnected Workers**

Contractor agrees not to employ, either directly or indirectly, any nurse provided by the Contractor over the term of this agreement and within one year of termination of said agreement. The Contractor agrees not to send former employees that have left Ellisville State School during the last 90 days.

**45. Requirements Contract.**

During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

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

1. That the Contractor has thoroughly read and understands this Contract;
2. That the Contractor meets all requirements and acknowledges all certifications contained in this Contract;
3. That the Contractor agrees to all provisions of this Contract;
4. That the Contractor has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Contract.
5. That Contractor agrees to be bound to this agreement by signing below.

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Rinsey McSwain Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director President/Representative

Ellisville State School Successful Offeror

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Any Street #5

Anywhere, MS 39000

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Peter A. Stewart III, J.D. Dana Watson

Contract Analyst Business Services Director

Ellisville State School Ellisville State School

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_