



INVITATION FOR BIDS

Pre-Admission Screening & Resident Review (PASRR)

IFB #20200515
RFX #3160003630

Issue Date:

Friday, May 15, 2020

Bid Coordinator:

April Burns

Telephone: 601-359-6532

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Closing Date & Time:

Bids shall be received by 5:00 pm, Friday, July 10, 2020

Closing Location:

Mississippi Division of Medicaid (DOM)
550 High Street, Suite 1000
Jackson, Mississippi 39201

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IFB #20200515
Office of the Governor – Division of Medicaid

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1. PROCUREMENT OVERVIEW

1.1 Purpose

The Mississippi Division of Medicaid (DOM) is seeking to establish a contract with a responsible Contractor to conduct the functions of the Preadmission Screening and Resident Reviews (PASRR) in collaboration with the Mississippi Department of Mental Health (DMH).

DOM is requesting competitive written bid responses from qualified, experienced, responsive and responsible entities prepared to carry out the requirements detailed in the Scope of Services of this Invitation for Bids (IFB).

All provisions and requirements of the Contractor outlined in the IFB are mandatory. The Bidder is disallowed from taking exceptions to these mandatory requirements. Any exceptions and/or deviations may be cause for rejection.

It is understood that any contract resulting from this IFB #20200515 requires approval by the Public Procurement Review Board (PPRB). If any contract resulting from IFB #20200515 is not approved by the PPRB, it is void and no payment shall be made.

1.2 Specifications

The determination for rehabilitative and specialized services will be conducted under delegated authority from DMH. DOM is seeking a qualified Contractor to provide administration of its PASRR program that meets all requirements of 42 CFR Part 483, Subpart C.

A Level I screening is required for all persons who apply to or reside in Medicaid certified nursing facilities regardless of the source of payment for the nursing facility service and regardless of the individual's known diagnoses. 42 CFR Part 483, Subpart C requires additional screening (Level II) of all individuals identified in the Level I screening as having mental illness (MI) or intellectual disability/developmental disability or related condition (ID/DD/RC) (or herein collectively as MI/ID/DD/RC) to determine the need for specialized or rehabilitative services and the appropriateness of nursing facility placement.

Data for State Fiscal Year (SFY) 2018 and 2019.

| SFY 2018 | SFY 2019 |
|---|---|
| 199 Medicaid Certified Nursing Facilities | 198 Medicaid Certified Nursing Facilities |
| 1,346 Level II Screens Completed | 1,253 level II screens Completed |
| 3,783 Clinical Reviews of Level I Screens Completed | 4,283 Clinical Reviews of Level I Screens Completed |
| 3,783 were Pre-Admissions | 4,283 were Pre-Admissions |
| 623 were Status Changes | 2,458 were Status Changes |

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A full description of the current administrative code Title 23: Medicaid Part 207 Pre-Admission Screening and Resident Review (PASRR) may be found at <http://www.medicaid.ms.gov/providers/administrative-code> .

Other program data can be found at <https://medicaid.ms.gov/programs> .

1.3 Bid Acceptance Period

The original and three (3) copies of the bid form, four (4) copies total, shall be signed and submitted in a sealed envelope or package to the 10th floor 550 High Street, Suite 1000, Jackson, Mississippi 39201 no later than 5:00 pm CST Friday, July 10 2020. Timely submission of the bid form is the responsibility of the Bidder. Bids received after the specified time shall be rejected and returned to the Bidder unopened. The envelope or package shall be marked with the bid opening date and time, and the IFB number. The time and date of receipt shall be indicated on the envelope or package by the DOM Office of Procurement. Each page of the bid form and all attachments shall be identified with the name of the Bidder. Failure to submit a bid on the bid form provided may be considered just cause for rejection of the bid. Modifications or additions to any portion of the procurement document may be cause for rejection of the bid. DOM reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, DOM may request the Bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.3.1 Bid Submission Requirements

Bids for the IFB shall be submitted in three-ring binders with section components of the IFB clearly tabbed as follows:

- Attachment A;
- Attachment B with Attachment for Section 4.4.2;
- Attachment C;
- Attachment D;
- Attestation from Section 3.1;
- Ownership & Financial Disclosures from Section 5.13;
- Amendment Acknowledgments;
- CD or USB bid copies; and,
- Redacted CD or USB bid copies.

The Bidder shall also submit one (1) copy of the bid on a CD or USB in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format.

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If the Bid contains confidential information, a redacted copy of the Bid shall be submitted. If a redacted copy is not submitted, DOM shall consider the entire Bid to be public record. Any redacted copies should be submitted on a CD or USB in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format. The CD or USB should be clearly labeled “REDACTED COPY”. The redacted copy should also identify which section or information has been redacted.

The redacted copy shall be considered public record and immediately released, without notification, pursuant to any request under the Mississippi Public Records Act, Miss. Code Ann. §§25-61-1 *et seq.* and Miss. Code Ann. §79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by DOM, including but not limited to, submission to the PPRB, posting to the Transparency Mississippi website, etc.

Bidders should also submit one (1) full copy of the bid in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format through Mississippi’s Accountability System for Governmental Information and Collaboration (MAGIC). Registering as a supplier with the State of Mississippi allows businesses to register for upcoming RFx # opportunity notifications by the products they supply, search the system for upcoming RFxs, respond to RFx # electronically, and receive purchase orders by email. In order to register, please go to the following website: <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/>.

Any bids received after 5:00 p.m. CST Friday, July 10, 2020, shall be rejected and returned unopened to the Bidder. Bids should be delivered to:

Office of Procurement
Division of Medicaid
Walter Sillers Building
550 High Street, Suite 1000
Jackson, Mississippi 39201

The outside cover of the package containing the Sealed Bids shall be labeled:

IFB #20200515
Sealed Bid
(Name of Bidder)

As the bids are received, the sealed bids shall be date-stamped and recorded by DOM. The Bidder is responsible for ensuring that the sealed bid is delivered by the required time and to the required location and assumes all risks of delivery. A facsimile bid shall not be accepted. Each bid should be signed by an official authorized to bind the Bidder to the bid provisions. Bids and modifications thereof received by DOM after the time set for receipt or at any location other than that set forth above shall be considered late and shall not be considered for award.

1.3.2 Public Opening

The Office of Procurement shall hold a public opening of sealed bids at 10:00 am Tuesday, July 14, 2020. The bids shall be opened in a designated conference room. Bidders are invited to come in person for the opening or call into a conference line. Participation information regarding the bid opening shall be released to all responding Bidders.

1.3.3 Timeline

| Date | Process |
|-----------------|--|
| May 15, 2020 | Release IFB |
| June 5, 2020 | Deadline for Written Questions |
| June 19, 2020 | Response to Questions Posted |
| July 10, 2020 | Bid Deadline |
| July 14, 2020 | 10:00 am Public Bid Opening |
| July 15, 2020 | Evaluation of Bid Qualification and Responsiveness |
| July 20, 2020 | Procurement Officer Recommendation to Executive Director |
| August 3, 2020 | Executive Review and Award (tentative) |
| October 7, 2020 | PPRB Meeting |
| October 8, 2020 | Contract Start (Implementation begins)* |
| January 1, 2021 | Operational Phase Begins |

*Should DOM determine that an Implementation Phase is not needed, the contract start date shall be January 1, 2021.

1.3.4 Late Submissions

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt shall not be considered unless it is the only bid 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 bids. It shall be determined by DOM that the late receipt was due solely to mishandling by DOM after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid 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. Bidders 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.

1.3.5 Expenses Incurred in Preparing Bid

DOM accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the Bidder.

1.4 Bid Form

All pricing shall be submitted on the bid form (Attachment B). Failure to complete and/or sign the bid form may result in the Bidder being determined nonresponsive.

1.4.1 Bidder Certification

The Bidder agrees that submission of a signed bid form is certification that the Bidder shall accept an award made to it as a result of the submission.

1.5 Registration with Mississippi Secretary of State

By submitting a bid, the Bidder certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State.

1.6 Debarment

By submitting a bid, the Bidder certifies that it is not currently debarred from submitting bids 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 bids for contracts issued by any political subdivision or agency of the State of Mississippi.

1.7 Procedure for Submitting Questions

Questions shall be submitted no later than 5:00 p.m. CST, Friday, June 5, 2020, using the Question and Answer template found at <https://medicaid.ms.gov/resources/procurement>. Written answers shall be available no later than 5:00 p.m. CST, Friday, June 19, 2020, via DOM's procurement Website, <https://medicaid.ms.gov/resources/procurement/> and the Mississippi Contract/Procurement Opportunity Search portal website, https://www.ms.gov/dfa/contract_bid_search/Bid?autoloadGrid=False. Questions and answers shall become part of the final contract as an attachment. Written answers provided for the questions are binding.

Questions should be sent to:

Office of Procurement
Division of Medicaid
Walter Sillers Building
550 High Street, Suite 1000
Jackson, Mississippi 39201
Email: Procurement@medicaid.ms.gov

1.8 Acknowledgement 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 on the amendment acknowledgement form provided by DOM. The acknowledgment shall be received by DOM by the time and at the place specified for receipt of bids. This includes receipt of the Question and Answer Document.

1.9 Type of Contract

Compensation for services shall be in the form of a firm fixed-rate agreement.

1.10 Written Bids

All bids shall be in writing.

1.11 Accuracy of Statistical Data

If applicable, all statistical information provided by DOM in relation to this IFB represents the best and most accurate information available to DOM from DOM records at the time of the IFB preparation. DOM, however, disclaims any responsibility for the inaccuracy of such data. Should any element of such data later be discovered to be inaccurate, such inaccuracy shall not constitute a basis for contract rejection by any Bidder. Neither shall such inaccuracy constitute a basis for renegotiation of any payment rate after contract award. Statistical information is available on DOM's website.

1.12 Electronic Availability

The materials listed below are on the Internet for informational purposes only. This electronic access is a supplement to the procurement process and is not an alternative to official requirements outlined in this IFB.

This IFB, any amendments thereto, and IFB Questions and Answers (following official written release) shall be posted on the Procurement page of the DOM website at:

<http://www.medicaid.ms.gov/resources/procurement/>.

Information concerning services covered by Mississippi Medicaid and a description of the DOM organization and functions can also be found on the Procurement page of the DOM website.

DOM's website is <http://www.medicaid.ms.gov> and contains Annual Reports, Provider Manuals, Bulletins and other information. The DOM Annual Report Summary provides information on beneficiary enrollment, program funding, and expenditures broken down by types of services covered in the Mississippi Medicaid program for the respective fiscal years.

State financial information is available at: <http://www.dfa.ms.gov>.

The State of Mississippi portal is: <http://www.mississippi.gov>.

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MAGIC system information can be found at:

<http://www.dfa.ms.gov/dfa-offices/mmrs/mmrs-applications/magic/>.

Information regarding Mississippi Department of Information Technology Services Enterprise Security Policy can be found at: <https://www.its.ms.gov/Services/Pages/ENTERPRISE-SECURITY-POLICY.aspx>.

Rules and Regulations of the Public Procurement Review Board, Office of Personal Services Contract Review Board can be found at: <http://www.dfa.ms.gov/media/6559/4-6-18-final-opscr-rules-sos-apa.pdf>

The Mississippi Code of 1972 covers all sections of and amendments to the Constitution of the United States and the Constitution of the State of Mississippi. Access to the Mississippi Code can be found at: <http://www.sos.ms.gov/Education-Publications/Pages/Mississippi-Code.aspx>.

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2. SCOPE OF SERVICES

The Scope of Services, Section 2 of this IFB, is written to describe the requirements for the Contractor.

DOM reserves the right to make appropriate adjustments in the Scope of Services by written agreement between DOM and the Contractor on an as needed basis.

The overall Scope of Services and Deliverables required under this IFB may vary from year to year as the Medicaid program changes due to federal and state requirements.

2.1 Clinical Review of Level I Screenings

1. The Contractor shall review all Level I Screenings to determine if there is an indication or suspicion of mental illness and/or intellectual disability/developmental disability and the appropriateness of nursing facility (NF) placement.
2. The Contractor shall determine if any approved reason applies which would negate the need for Level II PASRR screening as outlined in applicable federal and state regulations.
3. Clinical Reviews of Level I Screenings shall be conducted by qualified clinical staff who must meet all requirements set forth by federal law, CMS, and state law for scope of practice.

2.2 Advanced Group Categorical Determinations

The Contractor shall determine if conditions are present for an Advance Group Categorical Determination. Some MI, ID/DD or RC individuals are unlikely to need or benefit from specialized services. These individuals may be recommended for nursing facility admission without being referred for Level II screening provided they meet criteria as outlined in federal and state regulations following a clinical review of the Level I screen by the Contractor.

If the screening clinician, who meets criteria as defined by DOM, believes that the individual would benefit from specialized services despite the presence of any of the above conditions, the screening clinician should refer the individuals for a Level II Screening.

Findings for Advanced Group Categorical Determinations must be documented in a brief written evaluative report by the screening clinician.

2.3 Level II Screening

The Contractor shall conduct initial face-to-face Level II Screenings within two (2) business days of receiving the request for all individuals referred by the Level I and not determined to be exempt through the clinical review process. The level II Screening will confirm or deny the appropriateness for nursing facility placement. The Level II will identify the need for and recommend special services. The Level II Screening shall be completed prior to nursing facility admission, except in extremely rare situations, as outlined in federal and state regulations. Level II Screenings shall be conducted by a complement of

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qualified staff, which must include registered nurses licensed in the State of Mississippi and/or qualified mental health/intellectual disabilities professionals (QMHP/QIDP). Clinical staff must meet all requirements set forth by federal law, CMS, and state law for scope of practice.

The Contractor shall forward to the Appropriateness Review Committee (ARC) at the DMH, Level II findings and recommendations for individuals with mental illness and/or mental retardation for determining the need for specialized or rehabilitative services.

The Contractor shall conduct Level II Screenings when there is a significant change in the physical, mental, or emotional condition of a nursing facility resident that indicates the presence of, or change in, mental illness and/or intellectual disability/developmental disability that requires evaluation of placement and/or service. The purpose of the evaluation is to assess whether or not the resident is still appropriate for nursing facility care and if changes in condition require adjustments to specialized services.

The Contractor shall assess each individual's needs for mental health rehabilitative services and/or specialized services for mental illness and/or intellectual disability/developmental disability. When additional services are needed, the Contractor shall recommend the specific services needed in the Level II Screening Summary. If it is determined that mental health rehabilitative services are required, the nursing facility is responsible for ensuring specific services are provided. Contractor is responsible for performing quality reviews and follow-ups to ensure that the appropriate services are being provided.

The Clinical Review of Level I screenings and the completion of Level II Screenings shall involve the individual being evaluated, the individual's legal and/or designated representative; and the individual's family (if they are available and the individual's legal and/or designated representative agrees to family participation).

Interdisciplinary coordination shall occur and be documented by the Contractor when more than one (1) evaluator performs any portion of the Level II Screening.

The gathering of information necessary for determining whether it is appropriate for the individual with MI and/or ID/DD or RC to be placed in a nursing facility or in another appropriate setting should occur throughout all applicable portions of the Level II screening. The Contractor shall consider all information and make recommendations based upon a comprehensive analysis of all data concerning the individual. The Contractor shall use data obtained prior to initiation of Level II process, if it is considered valid and accurate and reflects the current functional status of the individual. The Contractor shall be responsible for ensuring that existing data is current and accurate by gathering additional information needed to assess proper placement and treatment. Information shall only be obtained or released by the Contractor with properly executed consent.

Providers requesting preadmission review complete an assessment in DOM's system. This information is then accessible to be reviewed by the Contractor. Contractor shall develop and maintain a secure two-way (inbound and outbound) web service portal that will accept triggered Level I referrals via secure data transfer from the Medicaid Long-Term Services and Support (LTSS) system once operational.

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The Contractor shall either design and develop a Web-based system or customize its existing Web-based product, and implement it solely within the framework of a Web browser and based on guidance and input by DOM. The Contractor shall operate and maintain all components for the Web-based system, including hosting servers and services.

The Contractor's Web-based system shall include the ability for both Contractor and DOM users to access the Web-based system via a secured logon, using a logon mechanism to provide users appropriate access to data. DOM currently supports Federated Identity via Azure Active Directory across the Enterprise to allow secure end-to-end authentication for all agency digital workloads. Both internal and external access for DOM and 3rd party contractor must adhere to the Federated Identity standards to facilitate secure single sign-on (SSO) and Multi-Factor Authentication (MFA). Additionally, DOM supports Federated Identity standards to ensure a reliable end-user experience through eliminating common trouble areas and administrative overhead such as the need for managing separate sign-in credentials per workload, simplified end-user account provisioning, and password management. Any solution being proposed should adhere to DOM's standards for SSO and MFA rather than issuing separate credentials for DOM user access.

The Contractor shall establish a protocol to assign user secure logons and passwords, in accordance with DOM's SSO and MFA standards, upon receipt of necessary documentation, to verify that the user is authorized to view the information provided by the requested access.

In addition to these technical requirements, Contractor's secure web portal system must have the following capabilities:

- Chronicles all key workflow dates and times;
- Allows for the request of a significant change submission by providers in an electronic format;
- Routes cases through workflow stages;
- Calculates intervals between workflow stages by individuals and in aggregate;
- Monitors and evaluates processes and permits continual process improvement;
- Logs all received and completed dates for vendor Level I and DMH Level II activity;
- Records all Level I and Level II outcome decisions;
- Securely transfers all Level I and Level II outcome decisions to the Medicaid LTSS system once operational;
- Validate nursing facilities' locations
- Tracks DMH Level II specialized service recommendations;
- Provides upload capability from providers of specialized service follow-up, capturing all outcomes of the follow-up review as evidence that specialized services are being provided;

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- Allows state officers to pull routine reports on-demand, to monitor all aspects of the PASRR project including but not limited to volumes and turnarounds; and,
- Allows reporting as needed by DOM for oversight and planning.

Contractor will be responsible for accessing the triggered Level I referrals from OmniTrack and performing the services outlined in this IFB until the LTSS system is operational and the interface is complete. OmniTrack is a system owned, maintained and managed by DOM's current Fiscal Agent, Conduent. Upon award, Contractor will be responsible for working with DOM's Fiscal Agent to establish user IDs/passwords to the OmniTrack system for appropriate staff to access and process Level I referrals.

2.4 Monitoring and Follow-Up Activities

The Contractor shall engage in other review activities to insure the recommended specialized services are being provided. These activities may include claims review, interviews with facility staff and family members, and review of resident records maintained by the nursing facility.

2.5 Due process and Right to an Appeal

The Contractor shall be responsible for notifying the individual, his or her legal representative and/or designated representative in writing of all recommendations made concerning the individual, including if the individual is suspected of having mental illness and/or intellectual disability/developmental disability or related condition as the result of Level II Screening.

The clinical review of the Level I, Level II Screening, and all notices shall be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated. Level II Evaluation findings shall be interpreted and explained to the individual and legal and/or designated representative.

All documentation concerning the PASRR will be maintained by the Contractor in accordance with applicable federal and state law. All PASRR recommendations shall be recorded in the individual's record at the nursing facility to which they are admitted and maintained in accordance with applicable federal and state law.

If a recipient or his/her legal and/or designated representative does not agree with the PASRR recommendation made by the Contractor, the individual has a right to request reconsideration. The Contractor shall conduct reconsiderations in accordance with federal regulations. All reconsideration reviews shall examine all relevant evidence in the record regarding services requested, and any new documentation obtained. The Contractor shall make a recommendation to DMH upholding, modifying, or reversing its original recommendation taking into consideration any additional and/or new information that may be presented during the reconsideration process. If the DMH determination results in an adverse action to recipient, with which recipient disagrees, he/she may appeal to DOM pursuant to 42 CFR

483.204. Should a recipient appeal to DOM, testimony may be required by Contractor's clinician who is familiar with and able to testify to the specifics of the Contractor's determination at the appeal hearing.

2.6 Contractor Responsibilities

The Contractor shall complete the Level II process including the Referral, Evaluation, and Submission of Findings within seven (7) business days of receipt of Level I or a significant change form.

The Contractor shall submit all required reviews and reports to DOM as specified in this IFB.

Contractor shall submit ad hoc reports to DOM within three (3) business days following a request.

2.7 Location of Work

Because it is necessary for the Contractor during the implementation phase to work very closely with the DOM team, office space, equipment and network connectivity for onsite Contractor staff members will be provided by DOM in Jackson, Mississippi. With the prior permission of DOM, certain implementation work, with the exception of testing and training, can be performed at the Contractor's site, if it can be demonstrated that the offsite work provides a savings to DOM, and the work done offsite does not interfere with or slow the progress of the project, or reduce the quality of the work product(s).

Office accommodations include, but are not limited to, sufficient work space, meeting room space, and printer access and resources, as well as limited access to the DOM network. If it is determined additional resources are necessary to complete their assigned work, these resources must be approved by the DOM before they can be used.

DOM will provide customary and reasonable office resources and other office supplies that are used in the everyday operations. The Contractor is required to provide computers (desktops, laptops, iPads, etc.) for their staff.

DOM will provide one telephone set and access to DOM's phone system. This agreement does not include long distance service. If long distance services is needed, the Contractor shall use their own cellular devices or make other arrangements.

The Contractor shall be required to establish secure connectivity and file transfers between the Contractor and DOM. Prior to connecting any computer equipment to the State's network or being granted access to any protected health information (PHI) or personally identifiable information (PII), the selected Contractor shall obtain written approval from DOM's Chief Systems Information Officer and complete a fully executed Contract, including a business associate agreement (BAA), and a data use agreement (DUA). Approval may be given once connectivity requirements have been presented and the selected Contractor demonstrates compliance with the State's policies and requirements, including compliance with the State's Enterprise Security policy.

2.8 Project Staffing

- 1) The Contractor must have sufficient physical, technological, and financial resources to perform work that meets the requirements of this Contract. The Contractor shall provide sufficient clinical, administrative and organizational staff to implement the provisions and requirements of the Contract and for fulfillment of the Contractual obligations.
 - 2) The Contractor shall maintain key personnel to perform the required tasks within performance standards as listed below. At a minimum, the Contractor must employ the following key personnel by sixty (60) days prior to operation start date:
 - a) Project Manager wholly dedicated to this Contract;
 - b) Assistant Project Manager;
 - c) Medical Director;
 - d) Education Manager;
 - e) Information Systems Manager; and
 - f) Quality Coordinator.
- a) The Contractor shall employ a full-time wholly dedicated Project Manager who shall have day-to-day authority to manage the PASRR program and is responsible for overseeing the implementation of the Contract requirements. The Project Manager must possess knowledge of Medicaid programs with relevant experience navigating similar complex projects with minimum experience of seven (7) years managing and/or working with Medicaid, government health plans, or PASRR programs is required. The Project Manager shall be available to DOM during regular business hours of DOM operation. The Contractor shall not hire a new Project Manager without prior approval from DOM.
 - b) The Contractor shall employ an Assistant Project Manager to assist in overseeing all functions related to the PASRR program, with minimum experience of five (5) years managing and/or working with Medicaid, government health plans, or PASRR programs is required. The Contractor shall not hire a new Assistant Project Manager without prior approval from DOM.
 - c) The Contractor shall employ a full-time physician with a traditional medical license, to serve as the Medical Director, responsible for all clinical oversight of the PASRR program. An administrative medical license is not sufficient for the Medical Director position. The Medical Director shall be available for consultation on referrals, Complaints, Grievances, and Appeals and participate in the development and implementation of corrective action plans. The full-time physician shall not be an active Medicaid provider.
 - d) The Contractor shall employ a full-time Education Manager, with a minimum experience of three (3) years managing and/or working with Medicaid, government health plans, or PASRR programs is required.
 - e) The Contractor shall employ an Information Systems Manager, with a minimum experience of five (5) years overseeing information technology and systems operations, including submission of accurate and timely data is required.
 - f) The Contractor shall employ a Quality Coordinator to ensure continued compliance with PASRR federal requirements and ongoing quality of reviews within the Mississippi PASRR program, with minimum experience of three (3) years managing and/or working with Medicaid, government health plans or PASRR programs is required.

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- g) Other key staff persons as assigned by the Contractor must meet all requirements set forth by federal law, the Centers for Medicare and Medicaid Services (CMS), and state law for scope of practice. All duties must be clearly defined and responsibilities must be directly related to program operations.

The Contractor shall notify DOM in writing of any key staff resignations, dismissals, or personnel changes within two (2) business days of the occurrence. Should any key position become vacant, the Contractor must notify DOM immediately and provide information on the plan for hiring a replacement within ten (10) business days. DOM shall have the right to participate in the selection process and approve or disapprove the hiring of any key staff positions.

DOM reserves the right to approve or disapprove Contractor's key personnel or to require the removal or reassignment of any personnel found by DOM to be unwilling or unable to perform the terms of the Contract.

The Contractor must demonstrate the ability to secure and retain qualified professional, administrative, and clerical staff. Upon award, the Contractor shall submit a staffing plan to DOM for approval. The Contractor is solely responsible for ensuring that the staffing plan includes sufficient minimum level qualifications to ensure employment of qualified staff.

The Contractor shall ensure that all staff has the training, education, experience, and orientation to conduct activities under the Contract resulting from this IFB.

The Contractor shall provide DOM with its staff "turn-over" rates at the request of DOM. In the event DOM determines the Contractor's staff or staffing levels are not sufficient to properly complete the services specified in the IFB and the resulting Contract, it shall advise the Contractor in writing. The Contractor shall have thirty (30) calendar days to remedy the identified staffing deficiencies.

The Contractor shall maintain a sufficient percentage of clinical review staff. DOM reserves the right to approve or disapprove the number of clinical review staff. In the event DOM identifies deficiencies in service or timeliness standards, DOM has the authority to request additional staffing at no cost to DOM to perform the functions detailed in this IFB.

The Contractor shall make its staff available to meet with DOM staff on a schedule, as agreed to by DOM and the Contractor, to review reports and all other obligations under the resulting Contract as requested by DOM. The Contractor shall meet in person with DOM staff, as required by DOM, to discuss the status of the resulting Contract, Contractor performance, benefits to DOM, necessary revisions, reviews, reports, and planning. The Contractor shall submit to DOM meeting minutes within three (3) business days following the meeting with DOM staff.

Key personnel positions cannot be vacant for more than ninety (90) calendar days. DOM may impose liquidated damages if any key management personnel positions remain vacant for greater than ninety (90) calendar days. DOM shall approve any filled vacant positions prior to the assignment being effective. If

the position is filled without DOM approval, DOM may impose liquidated damages in accordance with Section 5.2 of this IFB.

2.9 System Requirements

The Contractor shall have the capacity (hardware, software, and personnel) sufficient to fully manage and report on the project described in this IFB over the life of the Contract.

The Contractor shall fully comply with all HIPAA requirements and shall maintain compliance with federal HIPAA requirements throughout the term of the contract. The Contractor shall have protocols and internal procedures for ensuring system security and the confidentiality of recipient identifiable data. Contractor shall execute and be in compliance with DOM's BAA and DUA.

The Contractor will provide tools necessary for clinical review of Level I assessments and the completion of Level II assessments, as specified by DOM for Mississippi's PASRR effort. The Mississippi PASRR Contractor must interface with the DOM's Fiscal Agent, DOM and DMH to manage OmniTrack Work Queues that will allow caseworkers to access the Contractor's case-specific review results according to agreed-upon protocols for assigning cases to caseworkers.

The Mississippi PASRR shall meet, at a minimum, the National Institute of Standards and Technology (NIST) guidelines and security standards.

The Contractor shall have the capacity to provide both electronic submission of requests to nursing home facilities, and electronic receipt of responses from nursing home facilities and DOM, according to industry standards and as previously outlined in Section 2.3 of this IFB.

The Contractor shall establish and maintain a Disaster Recovery and Business Continuity Plan (DR/BC) in accordance with industry standards. Forty-five (45) calendar days prior to the operational start date of the Contract, the Contractor shall submit a copy of the results of its most recent test of the DR/BC plan, the associated remediation/mitigation plans and the recurrent DR/BC test schedule.

A standard data extract file is available from DOM's Fiscal Agent. DOM shall provide the Contractor with a layout containing the standard data extract files and formats, and user agreements upon contract award.

The Contractor must maintain a scheduled system availability uptime level of 98%, 24 hours a day, 7 days a week, 365/366 days a year. Schedule uptime shall mean the time the user interface, database and connectivity are available for transactions and does exclude scheduled downtime for routine maintenance. All scheduled maintenance must be prior approved by DOM.

The Contractor shall plan for and provide training of DOM/DMH (state agency) staff and any approved providers. The Contractor's Training Plan should include at a minimum password reset support/mechanism, report of system error or failure and any other system issues, access and submission process for requests for Level IIs, and access to reporting module.

Prior to implementation, the Bidder shall conduct sufficient testing of the system to ensure that it performs adequately to meet the users' needs and provide a complete outcome report to the state. Additionally, the system must allow for sufficient time for the state to complete separate User Acceptance Testing of the system to ensure that it meets the state's requirements.

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The Contractor shall provide a provider Help Desk with a dedicated line for provider calls. This Help Desk shall operate at a minimum from 8:00 am to 6:00 pm CST. Any call received outside of normal Help Desk hours should be returned within one (1) business day.

2.10 Reporting Requirements

The Contractor shall provide status reports and administrative reports on a monthly, quarterly and annual basis. All annual reports shall be concurrent with the State Fiscal Year which runs from July 1 to June 30. Annual reports shall be due September 1st of each year. Monthly and quarterly status reports shall be due five (5) business days after the end of the reporting period. Status reports shall be in a format approved by DOM and must include at a minimum the following information:

- Number of clinical review of Level I screening requests received;
- Number of clinical review of Level I screenings completed;
- Number of Significant Change requests received;
- Number of clinical review of Significant Change requests completed;
- Total MI Level II reviews completed;
- Total ID/DD Level II reviews completed;
- Combined total Level II reviews completed;
- Number of categorical exemptions;
- Number of Level II reviews completed within federal timelines;
- Number of Level II reviews terminated within federal timelines;
- Number of individuals identified who could best be served in the community;
- Number of individuals referred for rehabilitative or specialized services;
- Detailed report of types of rehabilitative or specialized services recommended;
- Number of reviews completed to ensure delivery of recommended rehabilitative or specialized services;
- Number of Level II reviews completed outside federal timelines;
- Date of oldest referral (resulting from both Level I screens and significant change requests) in queue pending completion of Level II review;
- Number of Level II assessments completed for individuals already admitted to the nursing facility; and,

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- Total web portal availability/uptime as well as any scheduled maintenance.

The Contractor shall provide monthly Administrative Project Summaries to include operational priorities, outstanding issues, staffing volume, review volume, and Contractor calendar of events. The Contractor shall provide quarterly reports of all instances of non-receipt of recommended services.

2.11 Contract Phases

2.11.1 Implementation Phase

The Implementation Phase encompasses those activities required to ensure a smooth transition from the existing process to the successful Bidder. This shall entail development of a series of DOM approved plans, documents, papers, letters or other materials, and performance of activities in preparation of beginning the contract operations in the next phase. DOM shall approve all materials prior to operation by the Contractor, and on an annual basis thereafter. It is anticipated that the implementation phase shall begin October 8, 2020.

The Contractor shall create comprehensive plans, with DOM approval, prior to undertaking all facets of the development and implementation of the contract. The initial work plan shall be submitted to DOM fourteen (14) calendar days post award, with updates submitted weekly. The work plan shall be logical in sequence of events including appropriate review time by DOM and sufficient detail for review. The plans shall include a narrative that provides an overview of the approach that shall result in an orderly transition of responsibilities. It shall encompass all activities necessary to assume the responsibilities as the Medicaid PASRR Contractor in addition to back-up disaster recovery plan.

The Contractor shall be responsible for the preparation and execution of a final implementation plan. This plan shall be based upon the requirements of this IFB and coordinated with DOM to ensure readiness to complete required tasks by specified dates. The Contractor shall develop an implementation plan to be approved by DOM that outlines in detail all steps necessary to begin program operations.

During the Implementation Phase, a written report of program progress shall be submitted to DOM every week. The progress report shall specify accomplishments during the report period in a task-by-task format, including personnel hours expended, whether the planning tasks are being performed on schedule, and any administrative problems encountered.

2.11.2 Operational Phase

During the operational phase, the Contractor shall perform the responsibilities described in this IFB. The Contractor shall be required to adhere to the performance requirements of the contract and those found in state and federal law, as well as the requirements of any revisions in federal and state law or regulations which may be enacted or implemented during the period of performance of this contract that are directly applicable to the performance requirements of this contract.

2.11.3 Turnover Phase

During this phase the Contractor shall prepare DOM or other applicable parties to take over the operations of those initiatives implemented under this contract. The Contractor shall put procedures in place and provide training so that DOM sustains the ability to continue each initiative even after the project is completed and after expiration of the contract. The Contractor shall provide detailed written documentation of all new procedures implemented and any system changes made during the Operations Phase. Failure to properly prepare the state and provide written documentation shall be cause for continued withholding of payment(s).

Upon receipt of notification of DOM's intent to transfer the contract functions, the Contractor shall provide a Turnover Plan to DOM within the time frame specified by DOM. The Contractor shall take no action(s) that shall hinder the orderly transition of duties and responsibilities from the Contractor to another separate Contractor upon termination of this contract. Time lines for turnover activities shall be specified by DOM. The Turnover Plan shall include, but is not limited to, the following:

1. Proposed approach to turnover;
2. Tasks and subtasks for turnover;
3. Schedule for turnover;
4. Detailed chart depicting the Contractor's total operation; and,
5. Transfer of Medicaid documents and case files to DOM or its designated agent.

Deliverables shall be produced in an organized manner according to reasonable and customary business standards. Deliverables shall be turned over to DOM in a form and condition that is satisfactory to DOM and in the time frames specified by DOM. Deliverables shall include, but are not limited to, the following:

1. Turnover Plan;
2. Detailed organizational chart;
3. All Medicaid documents and case files; and,
4. Turnover Results Report.

2.12 Contractor Payment

The total amount payable by DOM to the Contractor under this contract shall be limited to the following:

2.12.1 Implementation Pricing

The Bidder shall provide a single firm fixed-price for the services requested for the implementation phase of the contract.

The Contractor shall be paid an implementation price of no more than the actual implementation costs up to the amount specified in the Contractor's Bid response. The incumbent Contractor is not eligible for receipt of this payment, except for actual expenses incurred to acquire the infrastructure to support an increase in required staffing as specified in this IFB and approved by DOM. Payment of the implementation cost shall be made by DOM when DOM determines that all implementation activities have been completed and the Contractor is ready to move into the operational phase of the contract. The total bid price for implementation shall be entered in the appropriate block of Attachment B.

2.12.2 Operation Pricing

The Bidder shall provide a single firm fixed-price for the services requested for the operational phase of the contract.

During the operational phase of the contract, the Contractor shall be paid monthly in accordance with the Contractor's bid response which shall be firm and fixed for the period of the contract.

The Contractor shall be paid in an amount not to exceed the total fixed price. The contract award shall be based on the submitted price per year and the total amount payable under the resulting contract shall not exceed the submitted price per year.

2.12.3 Turnover Pricing

No specific or lump-sum payment shall be made by DOM for Turnover Phase services. Payment for such services shall be encompassed in the Operational Phase. The final monthly payment of the contract term may be withheld until turnover activities are completed to DOM's satisfaction.

2.12.4 Travel

All travel performed in conjunction with performing the responsibilities of this contract shall not include any profit for the Contractor. Travel costs should not be bid separately but should be included in the implementation and operations costs as necessary.

2.12.5 Invoices Format

Contractor affirms invoices shall be submitted to DOM in line item format as determined by DOM.

2.12.6 Erroneous Issuance of Compensation

In the event compensation to the Contractor of any kind is issued in error, the Contractor shall reimburse DOM the full amount of erroneous payment within thirty (30) calendar days of written notice of such error. Interest shall accrue at the statutory rate upon any amounts determined to be due and not repaid within thirty (30) calendar days following the notice. If payment is not made within thirty (30) calendar days following notice, DOM may deduct the amount from the Contractor's monthly administrative invoice.

2.12.7 Release

Upon final payment of the amounts due under this contract, the Contractor shall release DOM and its officers and employees from all liabilities and obligations whatsoever under or arising from this contract.

Payment to the Contractor by DOM shall not constitute final release of the Contractor. Should audit or inspection of the Contractor's records subsequently reveal outstanding Contractor liabilities or obligations, the Contractor shall remain liable to DOM for such liabilities and obligations. Any overpayments by DOM shall be subject to any appropriate recoupment to which DOM is lawfully entitled. Any payment under this contract shall not foreclose the right of DOM or any other state or federal oversight entity to recover excessive or illegal payments as well as interest, attorney fees, and costs incurred in such recovery.

3. AUTHORITY

This IFB is issued under the authority of Title XIX of the Social Security Act as amended, implementing regulations issued under the authority thereof, and under the provisions of the Mississippi Code of 1972, as amended. All prospective Contractors are charged with presumptive knowledge of all requirements of the cited authorities in this IFB. The submission of a valid executed bid by any prospective Contractor shall constitute admission of such knowledge on the part of each prospective Contractor. Any bid submitted by any prospective Contractor which fails to meet any published requirement of the cited authorities may, at the option of DOM, be rejected without further consideration.

Medicaid is a program of medical assistance for the needy administered by the states using state appropriated funds and federal matching funds within the provisions of Title XIX of the Social Security Act, as amended.

In addition, Section 1902(a)(30)(A) of the Social Security Act (42 USC §1396a(a)(30)(A)), as amended, requires that State Medicaid Agencies provide methods and procedures to safeguard against unnecessary utilization of care and services and to assure “efficiency, economy, and quality of care.”

Any IT solution proposed in response to this IFB shall be in compliance with the State of Mississippi’s Enterprise Security Policy and the HIPAA Privacy and Security Rules. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State of Mississippi reserves the right to introduce new policy during the term of the contract resulting from this IFB and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement with the Department of Information Technology Services

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(ITS) prior to accessing the policy. The Bidder or Contractor may request individual sections of the Enterprise Security Policy or request the entire document by contacting the procurement officer. The HIPAA Privacy & Security Rules can be found at 45 CFR Parts 160 and 164.

Upon award, Contractor shall include a copy of their current Security Plan/Strategy. Due to the amount of Personal Protected Health Information handled by DOM, security is of the utmost importance. Contractor's Security Plan should specifically describe how the Contractor will ensure the security of DOM data, how they will keep abreast of current security threats, and assure ongoing security precautions are kept current. The Contractor shall provide a plan for how ongoing compliance with the State of Mississippi's Enterprise Security Policy and the HIPAA Privacy and Security Rules will be maintained.

3.1 Organizations Eligible to Submit Bids

To be eligible to submit a bid, a Bidder shall provide documentation for each requirement as specified below:

1. The Bidder has not been sanctioned by a state or federal government within the last ten (10) years;
2. The Bidder shall have experience in contractual services providing the type of services described in this IFB; and,
3. The Bidder shall be able to provide each required component and deliverable as detailed in the Scope of Services.

4. PROCUREMENT PROCESS

4.1 Approach

This IFB is designed to provide the Bidder with the information necessary to prepare a competitive Bid. The IFB process is designed to give DOM a quality service at the lowest price from a responsive and responsible Bidder. DOM reserves the right to interpret the language of this IFB or its requirements in a manner that is in the best interest of the State.

DOM shall ensure the fair and equitable treatment of all persons and Bidders in regards to the procurement process. The procurement process provides for the evaluation of the IFB and selection of the lowest and most responsive and responsible Bidder in accordance with federal and state laws and regulations. Specifically, the procurement process is guided by appropriate provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

Submission of a sealed bid in response to this IFB constitutes acceptance of the following:

1. The conditions governing the procurement process;

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2. The minimum qualifications in Section 4.4.2 of this IFB;
3. The price submission methodology in Attachment B;
4. Certification that the Bidders submitted bid is firm and binding for one hundred and eighty (180) calendar days; and,
5. Acknowledgment of the detailed descriptions of the Mississippi Medicaid Program and the PASRR requirements.

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of DOM. Failure to comply with this provision may result in the Bidder being disqualified.

4.2 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.

4.2.1 Requirements

1. The Contractor shall be expected to provide PASRR services for three (3) years with two (2) optional one (1) year renewals;
2. A unit rate shall be given for each service, and that unit rate shall be the same throughout the contract;
3. A multi-term contract shall 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;
4. The Procurement Officer shall notify the Contractor on the timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period; and,
5. A multi-term contract may be awarded. The contract shall be awarded to the lowest and most responsive and responsible Bidder.

4.3 Rules of Procurement

To facilitate the DOM procurement, various rules have been established and are described in the following sections.

4.3.1 Restrictions on Communications with DOM staff

From the issue date of this IFB until a Contractor is selected and the contract is signed, Bidders and/or their representatives are not allowed to communicate with any DOM staff regarding this procurement except the IFB Issuing Officer.

For violation of this provision, DOM shall reserve the right to reject any bid.

4.3.2 Amendments to this IFB

DOM reserves the right to amend the IFB at any time. All amendments shall be posted to the DOM website at www.medicaid.ms.gov/resources/procurement and the Mississippi Contract/Procurement Opportunity Search Portal website, https://www.ms.gov/dfa/contract_bid_search/Bid?autoloadGrid=False.

4.3.3 Certification of Independent Price Determination

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

4.3.4 Acceptance of Bids

After receipt of the bids, DOM reserves the right to award the contract based on the terms, conditions, and premises of the IFB and the bid of the selected Contractor without negotiation.

All bids properly submitted shall be accepted by DOM. After review DOM may request necessary amendments from all Bidders, reject any or all bids received, or cancel this IFB, according to the best interest of DOM and the State of Mississippi.

DOM also reserves the right to waive minor irregularities in bids providing such action is in the best interest of DOM and the State of Mississippi. A minor irregularity is defined as a variation of the IFB which does not affect the price of the bid, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of DOM.

Where DOM may waive minor irregularities as determined by DOM, such waiver shall in no way modify the IFB requirements or excuse the Bidder from full compliance with the IFB specifications and other contract requirements if the Bidder is awarded the contract.

DOM reserves the right to exclude any and all non-responsive bids from any consideration for contract award. DOM shall award a firm fixed price contract to the Bidder whose offer is responsive to the solicitation and is most advantageous to DOM and the State of Mississippi in price, quality, and other factors considered.

4.3.5 Rejection of Bids

A bid may be rejected for failure to conform to the rules or the requirements contained in this IFB. Bids shall be responsive to all requirements of the IFB in order to be considered for contract award. DOM reserves the right at any time to cancel the IFB, or after the bids are received to reject any of the submitted bids determined to be non-responsive. Reasons for rejecting a bid include, but are not limited to, the following:

1. The bid contains unauthorized amendments to the requirements of the IFB;
2. The bid is conditional;
3. The bid is incomplete or contains irregularities that make the bid indefinite or ambiguous;
4. The bid is not signed by an authorized representative of the party;
5. The bid contains false or misleading statements or references;
6. The Bidder is determined to be non-responsible as specified in Section 4.3.9 below;
7. The bid ultimately fails to meet the announced requirements of the State in some material aspect;
8. The bid price is clearly unreasonable based on DOM's assessment of the Contractor's anticipated level of effort necessary to perform the work;
9. The bid is not responsive, i.e., does not conform in all material respects to the IFB;
10. The supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the IFB;
11. The Bidder does not comply with the Bid Submission Requirements as set forth in this IFB; and,
12. The Bidder currently owes the State money.

4.3.6 Alternate Bids

Each Bidder, its subsidiaries, affiliates, or related entities shall be limited to one (1) Bid which is responsive to the requirements of this IFB. Failure to submit a responsive bid shall result in the rejection of the Bidder's bid. Submission of more than one (1) bid by a Bidder may, at the discretion of DOM, result in the summary rejection of all bids submitted. A Bidder's bids shall not include variable or multiple pricing options.

4.3.7 Bid Amendments and Withdrawal

Prior to the bid due date, a submitted bid may be withdrawn by submitting a written request for its withdrawal to DOM, signed by the Bidder.

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A Bidder may submit an amended bid before the due date for receipt of bids. Such amended bids shall be a complete replacement for a previously submitted bid and shall be clearly identified as such. DOM shall not merge, collate, or assemble bid materials.

Unless requested by DOM, no other amendments, revisions, or alterations to bids shall be accepted after the bid due date.

Any submitted bid shall remain a valid bid for one hundred eighty (180) calendar days from the bid due date.

4.3.8 Disposition of Bid

The bid submitted by the successful Bidder shall be incorporated into and become part of the resulting contract. All bids received by DOM shall upon receipt become and remain the property of DOM. DOM shall have the right to use all concepts contained in any bid and this right shall not affect the solicitation or rejection of the bid.

4.3.9 Responsible Contractor

DOM shall contract only with a responsible Contractor who possesses the ability to perform successfully under the terms and conditions of the proposed procurement and implementation. In letting the contract, consideration shall be given to such matters as Contractor's integrity, performance history, financial and technical resources, and accessibility to other necessary resources.

4.3.10 State Approval

It is understood that this contract requires approval by the PPRB. If this contract is not approved, it is void and no payment shall be made hereunder. Every effort shall be made by DOM to facilitate rapid approval and a start date consistent with the proposed schedule.

4.3.11 Notice of Intent to Award

Award shall be made in writing to the responsible Bidder whose bid is determined to be the most advantageous to the State taking into consideration price and evaluation factors set forth in the IFB. The notice of intended contract award shall be sent by e-mail with reply confirmation to the winning bidder. Unsuccessful Bidders shall be notified in the same manner after the award has been accepted or declined. The notice will also be posted on DOM's website and the Mississippi Contract/Procurement Opportunity Search Portal.

Consistent with existing state law, no Bidder shall infer or be construed to have any rights or interest to a contract with DOM until final approval is received from all necessary entities and until both the Bidder and DOM have executed a valid contract.

4.4 Bid Evaluation

Bids shall be evaluated based on the requirements set forth in this IFB. This IFB sets forth the evaluation criteria to be used. No criteria shall be used in an evaluation that is not set forth in this IFB. Only Bidders who are found responsive and responsible shall have their bids considered.

4.4.1 Responsible Bidder

The Bidder shall submit a bid which conforms in all material respects to this IFB, as determined by DOM. Bid responses that do not meet the minimum qualifications shall be rejected.

4.4.2 Minimum Qualifications to be Deemed Responsible

Bidders shall be deemed responsible if all of the following minimum qualifications are met. Please provide detailed justification of each of the following as an attachment to Attachment B.

1. The Bidder shall have a minimum of five (5) years' experience performing PASRR activities under 42 CFR Part 483, Subpart C
2. The Bidder shall have experience providing PASRR services as described in this IFB for at least three (3) governmental agencies within the past five (5) years.
3. The Bidder shall be licensed to do business in the State of Mississippi or provide a commitment that it shall become licensed in Mississippi within 30 calendar days of being selected as the Apparent Successful Bidder.
4. The Bidder shall be able to provide each required component and deliverable as detailed in the Scope of Services.

4.4.3 Responsive Bidder

In order to be responsive, the Bidder shall submit a bid which conforms in all material respects to this IFB, as determined by DOM.

4.4.4 Nonconforming Terms and Conditions

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

4.4.5 Conditioning Bid upon Other Awards

Any bid 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.

4.4.6 Bid Submission Format

The bid package shall be sealed and shall contain the following:

- Bid Cover Sheet (**Attachment A**)
- Bid Form (**Attachment B**)
- Certifications and Assurances (**Attachments C and D**)

4.5 Bid Opening

Bid opening shall be open to the public; however, this shall include opening, reading aloud, and listing the bid price on each bid only. No discussions shall be entered into with any Bidder as to the quality or provisions of the specifications and no award shall be made, either stated or implied at the bid opening.

4.6 Award

The contract shall be awarded by written notice to the lowest responsible and responsive Bidder whose bid meets the requirements and criteria set forth in this IFB.

4.6.1 Notification

All participating Bidders shall be notified of DOM's intent to award a contract. In addition, DOM shall identify the successful Bidder. Notice of award is also made available to the public 48 hours prior to official award.

4.6.2 Contract Management

If the Contractor fails to adhere to the PASRR services schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, DOM shall inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, DOM may terminate the contract without further obligation to the Contractor.

4.7 Protest of Solicitations or Awards

1. **Interested Party** means an actual or prospective Bidder or Bidder that may be aggrieved by the solicitation or award of a contract, or by the protest.
2. **Protestor** means any actual or prospective Bidder or Bidder who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.
3. **Special Assistant Attorney General** shall mean the individual assigned by the Attorney General to provide legal assistance to the Department of Finance and Administration.

4.7.1 Procedure for Filing Protests

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

Any actual or prospective Bidder or Bidders who are aggrieved in connection with the solicitation or award of a contract may protest to DOM's Chief Procurement Officer and copy the Department of Finance and Administration Director of the OPSCR. The protest shall be submitted in writing within seven (7) calendar days of the award or within seven (7) calendar days of the solicitation posting if the protest is based on the solicitation.

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

The Chief Procurement Officer shall submit a copy of the protest to the OPSCR within three (3) business days of receipt of a written protest. The OPSCR shall forward a copy of the protest to the Special Assistant Attorney General.

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

4.7.2 Content of Protest

To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:

1. The name and address of the protestor;
2. Appropriate identification of the procurement and if a contract has been awarded, its number;
3. A statement of reasons for the protest; and,
4. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

4.7.3 Protest Decision

If the protest is not resolved by mutual agreement, the Agency Head shall promptly issue a decision in writing. The decision shall: (a) state the reasons for the action taken; and (b) inform the protestor of the right to administrative review. A copy of the decision shall be mailed or otherwise furnished in writing immediately to the protestor and any other interested party.

A decision on a protest shall be made by the Agency Head or PPRB as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, cancellation or revision of the solicitation in accordance with Section 5-204

(REMEDIES PRIOR TO AN AWARD) or cancellation of the contract in accordance with Section 5-205 (REMEDIES AFTER AN AWARD) of the PPRB OPSCR Rules and Regulations.

A decision shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision appeals administratively to the PPRB.

The Agency Head shall refuse to decide any protest when a matter involved is the subject of a proceeding before the PPRB or has been decided on the merits by the Board. If an action concerning the protest has commenced in court, the Agency Head or PPRB shall not act on the protest. This section shall not apply where the Board or a court requests, expects, or otherwise expresses interest in the decision of the Agency Head or PPRB.

On any direct protest, the PPRB shall decide whether the solicitation or award was in accordance with the Constitution, statutes, rules and regulations, and the terms and conditions of the solicitation. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive. A determination of an issue of fact by the PPRB shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

4.7.4 Stay of Solicitation or Award

In the event of a timely protest, the agency shall not proceed further with the solicitation or with the award of the contract until the PPRB approves the determination that continuation of the solicitation or award of the contract without delay is necessary to protect substantial interests of the State.

4.7.5 Right to Appeal

Any person adversely affected by the protest decision of an Agency Head may appeal administratively to the PPRB.

For an appeal under this section, the aggrieved person shall file an appeal within seven (7) calendar days of receipt of a Protest Decision.

4.7.6 Protest Bond

Protests shall be accompanied by a bond for two hundred and fifty thousand dollars and zero cents (\$250,000.00) or the price of the contract whichever is lower. The protest bond shall be maintained through final resolution, whether at the agency level, through the PPRB, or through a court of competent jurisdiction.

DOM shall return a protest bond if (1) the protesting Bidder withdraws its protest or (2) the bond is ordered to be returned by a court of competent jurisdiction. In the event DOM finds that a Bidder's protest has no merit, DOM shall at its own discretion retain all or a percentage of the submitted bond.

4.8 Post-Award Vendor Debriefing

Agencies are encouraged to exchange information with vendors in an effort to build and strengthen business relationships and improve the procurement process between vendors and the State. To further this effort, agencies shall establish vendor debriefing procedure(s) and inform vendors at the time of procurement of the right to request a debriefing and the deadline to file a request. At a minimum, debriefing should occur before expiration of the protest period, within three (3) business days after the vendor request and prior to submission of the contract packet to the PPRB. Agencies shall submit with the contract approval request, documentation signed by their agency head or his or her designee, reporting the number of vendor debriefings requested and conducted. This information may be included as part of the protest correspondence required in Section 7-113 (Protest of Solicitations or Awards).

4.8.1 Debriefing Request

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

4.8.2 When Debriefing Should Be Conducted

Unless good cause exists for delay, the debriefing should occur within three (3) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the agency. The Chief Procurement Officer or designee should chair the meeting, and where practicable, include other staff with direct knowledge of the procurement.

4.8.3 Information to Be Provided

At a minimum, the debriefing information shall include the following:

1. The agency's evaluation of significant weaknesses or deficiencies in the vendor's bid, or qualifications, if applicable;
2. The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
3. The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;
4. A summary of the rationale for award; and,
5. Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

4.8.4 Information Not To Be Provided

The debriefing shall not include point-by-point comparisons of the debriefed vendor's bid, bid, or qualification with those of other offering vendors. Any written request by a vendor for nondisclosure of trade secrets and other proprietary data is subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 and §§ 75-26-1 through 75-26-19.

4.8.5 Summary

An official summary of the debriefing shall be included in the contract file.

4.8.6 Pre-Award Vendor Debriefing

Nothing in these regulations requires or prohibits pre-award vendor debriefing.

4.9 Required Contract Terms and Conditions

Any contract entered into between DOM and a vendor/Bidder shall include the required clauses found in Section 5 of this IFB and those required by the PPRB's Rules and Regulations as updated.

4.10 Mississippi Contract/Procurement Opportunity Search Portal

This IFB, and the questions and answers concerning this IFB, are posted on the Contract/Procurement Opportunity Search Portal and DOM's procurement website.

4.11 Attachments

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

5. TERMS AND CONDITIONS

5.1 General

The contract between the State of Mississippi and the Contractor shall consist of 1) the contract and any amendments thereto; 2) this IFB and any amendments thereto; 3) the Contractor's bid submitted in response to the IFB by reference and as an integral part of this contract; 4) written questions and answers. In the event of a conflict in language among the four documents referenced above, the provisions and requirements set forth and/or referenced in the contract and its amendments shall govern. The IFB in its entirety is a part of the Contract. In the event of a dispute or conflict among any of the components of the contract, the contract shall govern. After the Contract, the order of priority is: Bidder Questions and Answers; Att. B the Bid Sheet; the IFB. All the documents shall be read and construed as far as possible to be one harmonious whole; however, in the event of a conflict or dispute, the above list is the list of priority.

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The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <https://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/pscrb-rules-regulations/>.

No modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification or change is mutually agreed upon in writing by the Contractor and DOM. The agreed upon modification or change shall be incorporated as a written contract amendment and processed through DOM for approval prior to the effective date of such modification or change. In some instances, the contract amendment shall be approved by CMS before the change becomes effective.

The only representatives authorized to modify this contract on behalf of DOM and the Contractor are shown below:

Contractor: Person(s) designated by the Contractor

DOM: Executive Director

5.2 Performance Standards, Actual Damages, Liquidated Damages, and Retainage

DOM may require corrective action in the event that any deliverable, report or the like should indicate that the Contractor is not in compliance with any provision of this Contract. DOM may also require the modification of any policies or procedures of the Contractor relating to the fulfillment of its obligations pursuant to this contract. DOM may issue a deficiency notice and may require a CAP be filed within fifteen (15) calendar days following the date of the notice. A CAP shall be subject to approval by DOM, which may accept it as submitted, accept it with specified modifications, or reject it. DOM may extend or reduce the time frame for corrective action depending on the nature of the deficiency, and shall be entitled to exercise any other right or remedy available to it, whether or not it issues a deficiency notice or provides Contractor with the opportunity to take corrective action.

DOM reserves the right to assess actual or liquidated damages, upon the Contractor's failure to provide timely services required pursuant to this contract. DOM may assess liquidated damages against the Contractor pursuant to this section, and deduct the amount of the damages from the Contractor's next contingency payment. Any damages applied prior to recovery of money under this contract shall be applied against the first contingency payment. DOM, at its sole discretion, may establish an installment deduction plan for the amount of any damages. The determination of the amount of damages shall be at the sole discretion of DOM, within the ranges set forth below. Self-reporting by the Contractor shall be taken into consideration in determining the amount of damages to be assessed. Unless specified otherwise, DOM shall give written notice to the Contractor of the failure that might result in the assessment of damages and the proposed amount of the damages. The Contractor shall have fifteen (15) calendar days from the date of the notice in which to dispute DOM's determination. Unless a different amount is specifically set forth in Section 2 of this IFB or below, DOM may, at its sole discretion, assess

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damages between one dollar and zero cents (\$1.00) and five thousand dollars and zero cents (\$5,000.00) for each failure that occurs or remains uncorrected.

Assessment of any actual or liquidated damages does not waive any other remedies available to DOM pursuant to this Contract or state or federal law. If liquidated damages are known to be insufficient then DOM has the right to pursue actual damages.

1. Failure by the Contractor to meet the operational start date of January 1, 2021. (\$1,000.00 per calendar day from January 1, 2021, until the Contractor becomes fully operational.)
2. Failure by Contractor to comply with reporting requirements set forth in this IFB. (\$500.00 per instance, per day)
3. Failure by the Contractor to submit by the due date any material required by the Contract. DOM shall give written notice to the Contractor, via fax, e-mail, overnight mail or through regular mail of the late material. The Contractor shall have ten (10) calendar days following receipt of the notice in which to cure the failure by submitting the complete and accurate material. If the material has not been submitted within the ten (10) calendar day period, DOM, without further notice, may assess damages. (\$500 per instance, per business day)
4. Failure by the Contractor to maintain necessary staff. (\$1,000.00 per instance, per day)
5. Failure by the Contractor to timely fill key personnel positions as outlined in Section 2.8 of this IFB. (\$1,000.00 per instance, per day)
6. Failure by the Contractor to maintain required documentation. (\$500.00 per instance, per day)
7. Failure by the Contractor to develop or maintain all required electronic and data systems. (\$1,000.00 per instance, per day)
8. Failure by the Contractor to complete required assessments within specified timeframes (\$1,000.00 per instance, per business day)
9. Failure to timely submit a DOM approved CAP, DOM may assess liquidated damages in the amount of two hundred and fifty dollars and zero cents (\$250.00) per business day until the CAP is submitted.
10. Failure to complete items included in the CAP as described above, the Contractor shall pay liquidated damages in the amount of five hundred dollars and zero cents (\$500.00) per calendar day for each day the corrective action is not completed in accordance with the timeline established in the CAP.
11. Failure of the Contractor to comply with the close out and turnover requirements of this IFB may result in the assessment of damages of up to ten thousand dollars and zero cents (\$10,000.00), which, if imposed shall be deducted from the final payment to be made to Contractor.

12. Any other failure of Contractor that DOM determines constitutes a substantial non-compliance with any material term of the Contract and/or IFB not specifically enumerated herein.

If the Contractor's failure to perform satisfactorily exposes DOM to the likelihood of contracting with another person or entity to perform services required of the Contractor under this Contract, upon notice setting forth the services and retainage, DOM may withhold from the Contractor payments in an amount commensurate with the costs anticipated to be incurred. If costs are incurred, DOM shall account to the Contractor and return any excess to the Contractor. If the retainage is not sufficient, the Contractor shall immediately reimburse DOM the difference or DOM may offset from any payments due the Contractor. The Contractor shall cooperate fully with the retained Contractor and provide any assistance it needs to implement the terms of its agreement for services for retainage.

5.3 Term of Contract

DOM shall award a contract based on bids. The contract period begins October 8, 2020 and shall terminate September 30, 2023. DOM may have, under the same terms and conditions as the existing contract, an option for two (2) one-year extension periods, provided DOM obtains approval from the PPRB to allow an extension period.

5.3.1 Stop Work Order

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

- a. Cancel the stop work order; or,
- b. Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

2. Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- a. The stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,

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- b. Contractor asserts a claim for such an adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

3. Termination of Stopped Work: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

5.3.2 Termination of Contract

The contract resulting from this IFB may be terminated by DOM as follows:

1. For default by the Contractor;
2. For convenience;
3. For the Contractor's bankruptcy, insolvency, receivership, liquidation; and,
4. For non-availability of funds.

At DOM's option, termination for any reason listed herein may also be considered termination for convenience.

5.3.2.1 Termination for Default by the Contractor

(1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as shall 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) calendar 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 DOM's Chief 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 fifteen (15) calendar 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," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

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

(6) *Additional Rights and Remedies.* The rights and remedies of DOM provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5.3.2.2 Termination for Convenience

(1) *Termination.* The Agency 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 Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor shall 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 Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or

subcontracts to the State. Contractor shall still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

5.3.2.3 Termination Upon Bankruptcy

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

5.3.2.4 Availability of Funds

It is expressly understood and agreed that the obligation of DOM 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 the funds were provided or if funds are not otherwise available to DOM, DOM 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 DOM of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

5.3.3 Procedure on Termination

5.3.3.1 Contractor Responsibilities

Upon delivery by certified mail, return receipt requested, or in person to the Contractor a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work in progress under the contract until the effective date of termination;
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- Deliver to DOM within the time frame as specified by DOM in the Notice of Termination, copies of all data and documentation in the appropriate media and make available all records required to assure continued delivery of services to beneficiaries and

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providers at no cost to DOM;

- Complete the performance of the work not terminated by the Notice of Termination;
- Take such action as may be necessary, or as DOM may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which DOM has or may acquire an interest;
- Fully train DOM staff or other individuals at the direction of DOM in the operation and maintenance of the process;
- Promptly transfer all information necessary for the reimbursement of any outstanding claims;
- Return to DOM and/or destroy/sanitize all DOM data covered by the Business Associate Agreement and/or the Data Use Agreement in accordance with the terms of the Business Associate Agreement and/or the Data Use Agreement; and,
- Complete each portion of the Turnover Phase after receipt of the Notice of Termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any allowable delay in determining or adjusting the amount of any item of reimbursable price under this clause.

The Contractor has an absolute duty to cooperate and help with the orderly transition of the duties to DOM or its designated Contractor following termination of the contract for any reason.

5.3.3.2 DOM Responsibilities

Except for Termination for Contractor Default, DOM shall make payment to the Contractor on termination and at contract price for completed deliverables delivered to and accepted by DOM. The Contractor shall be reimbursed for partially completed deliverables, accepted by DOM, at a price commensurate with actual cost of performance.

In the event of the failure of the Contractor and DOM to agree in whole or in part as to the amounts to be paid to the Contractor in connection with any termination described in this IFB, DOM shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

The Contractor shall have the right of appeal, as stated under Disputes (Paragraph 5.9.5) from any such determination made by DOM.

5.3.4 Assignment of the Contract

The Contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or of any right, title, or interest therein without the prior written consent of DOM. Any such purported

assignment or transfer shall be void. If approved, any assignee shall be subject to all terms and conditions of this contract and other supplemental contractual documents. No approval by DOM of any assignment may be deemed to obligate DOM beyond the provisions of this contract. This provision includes reassignment of the contract due to change in ownership of the Contractor. DOM shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this contract to another governmental agency in the State of Mississippi upon giving prior written notice to the Contractor.

5.3.5 Excusable Delays/Force Majeure

The Contractor and DOM shall be excused from performance under this contract for any period that they are prevented from performing any services under this contract as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their reasonable control. When such a cause arises, the Contractor shall notify DOM 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 DOM determines it to be in its best interest to terminate the Contract.

5.3.6 Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict 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.

5.4 Notices

Whenever, under this IFB, one party is required to give notice to the other, except for purposes of Notice of Termination under Section 5.3.2 of this IFB, such notice shall be deemed given upon delivery, if delivered by hand, or upon the date of receipt or refusal, if sent by registered or certified mail, return receipt requested or by other carriers that require signature upon receipt. Notice may be delivered by facsimile transmission, with original to follow by certified mail, return receipt requested, or by other carriers that require signature upon receipt, and shall be deemed given upon transmission and facsimile confirmation that it has been received. Notices shall be addressed as follows:

In case of notice to the Contractor:

Project Manager
Street Address
City, State Zip Code

In case of notice to DOM:

Executive Director
Division of Medicaid
550 High St., Suite 1000
Jackson, Mississippi 39201

Copy to Contract Administrator, DOM

5.5 Cost or Pricing Data

If DOM determines that any price, including profit or fee, negotiated in connection with this IFB was increased because the Contractor furnished incomplete or inaccurate cost or pricing data not current as certified in the Contractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly and this IFB shall be modified in writing and acknowledged by the Contractor to reflect such reduction.

5.6 Subcontracting

The Contractor is solely responsible for fulfillment of the contract terms with DOM. DOM will make contract payments only to the Contractor.

The Contractor shall not subcontract any portion of the services to be performed under this contract without the prior written approval of DOM. The Contractor shall notify DOM not less than thirty (30) calendar days in advance of its desire to subcontract and include a copy of the proposed subcontract with the proposed subcontractor.

Approval of any subcontract shall neither obligate DOM nor the State of Mississippi as a party to that subcontract nor create any right, claim, or interest for the subcontractor against the State of Mississippi or DOM, their agents, their employees, their representatives, or successors.

Any subcontract shall be in writing and shall contain provisions such that it is consistent with the Contractor's obligations pursuant to this Contract, the Business Associate Agreement, and the Data Use Agreement.

The Contractor shall be solely responsible for the performance of any subcontractor under such subcontract approved by DOM.

The Contractor shall give DOM immediate written notice by certified mail, facsimile, or any other carrier that requires signature upon receipt of any action or suit filed and prompt notice of any claim made against the Contractor or subcontractor which in the opinion of the Contractor may result in litigation related in any way to the contract with DOM.

5.7 Proprietary Rights

5.7.1 Ownership of Documents

Where activities supported by this contract produce original writing, sound recordings, pictorial reproductions, drawings, or other graphic representation and works of any similar nature, DOM shall have the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others do so. If the material is qualified for copyright, the Contractor may copyright such material, with approval of DOM, but DOM shall reserve a royalty-free, non-exclusive, and

irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

5.7.2 Ownership of Information and Data

DOM, DHHS, CMS, the State of Mississippi, and/or their agents shall have unlimited rights to use, disclose, or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under any contract resulting from this IFB.

The Contractor agrees to grant on its own behalf and on behalf of its agents, employees, representatives, assignees, and subcontractors to DOM, DHHS, CMS and the State of Mississippi and to their officers, agents, and employees acting in their official capacities a royalty-free, non-exclusive, and irrevocable license throughout the world to publish, reproduce, translate, deliver, and dispose of all such information now covered by copyright of the proposed Contractor.

Excluded from the foregoing provisions in this Section of this IFB, however, are any pre-existing, proprietary tools owned, developed, or otherwise obtained by Contractor independent of this Contract. Contractor is and shall remain the owner of all rights, title and interest in and to the Proprietary Tools, including all copyright, patent, trademark, trade secret and all other proprietary rights thereto arising under federal and state law, and no license or other right to the Proprietary Tools is granted or otherwise implied. Any right that DOM may have with respect to the Proprietary Tools shall arise only pursuant to a separate written agreement between the parties.

5.7.3 Public Information

Bidders shall provide an electronic, single document version of bids redacting those provisions of the bid which contain trade secrets or other proprietary data. However, Bidders should be aware that their un-redacted bids are considered public record and are subject to release by DOM pursuant to and in accordance with Miss. Code Ann. § 25-61-1, *et seq.* (1972, as amended) absent a court-issued protective order or agreement by the requesting party to receive a redacted version.

5.7.4 Right of Inspection

DOM, the Mississippi Department of Audit, DHHS, CMS, OIG, the General Accounting Office (GAO), or any other auditing agency prior-approved by DOM, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this contract are being performed, to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor shall provide access to all facilities and assistance for DOM and Mississippi Audit Department representatives. All inspections and evaluations shall be performed in such a manner as to not delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of contract. All audits performed by persons other than DOM staff shall be coordinated through DOM and its staff.

5.7.5 Licenses, Patents and Royalties

DOM does not tolerate the possession or use of unlicensed copies of proprietary software. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software.

The Contractor, without exception, shall indemnify, save, and hold harmless DOM and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or non-patented invention, process, or article manufactured by the Contractor. DOM shall provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for DOM the right to continue use of, replace or modify the article to render it non-infringing. If none of the alternatives are reasonably available, the Contractor agrees to take back the article and refund the total amount DOM has paid the Contractor under this contract for use of the article.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the proposed prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

5.7.6 Records Retention Requirements

The Contractor shall maintain detailed records evidencing all expenses incurred pursuant to the Contract, the provision of services under the Contract, and complaints, for the purpose of audit and evaluation by DOM and other federal or state personnel. All records, including training records, pertaining to the contract shall be readily retrievable within three (3) business days for review at the request of DOM and its authorized representatives. All records shall be maintained and available for review by authorized federal and state personnel during the entire term of the Contract and for a period of ten (10) years thereafter, unless an audit is in progress or there is pending litigation. The right to audit shall exist for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.

5.8 Representation Regarding Contingent Fees

The Bidder 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 Bidder's bid or bid.

5.9 Interpretations/Changes/Disputes

Refer to Section 5.1 of this IFB for the order of priority in the event of a dispute or conflict between the components of the contract.

DOM reserves the right to clarify any contractual relationship in writing and such clarification shall govern in case of conflict with the requirements of the IFB. Any ambiguity in the IFB shall be construed in favor of DOM.

5.9.1 Conformance with Federal and State Regulations

The Contractor shall be required to conform to all federal and state laws, regulations, and policies as they exist or as amended.

In the event that the Contractor requests that the Executive Director of DOM or his/her designee issue policy determinations or operating guidelines required for proper performance of the contract, DOM shall do so in a timely manner. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

The Contractor expressly agrees to all of the provisions and requirements as set forth in the State Plan for Medical Assistance approved by the State of Mississippi and by the Secretary of the United States DHHS, pursuant to Title XIX of the Social Security Act, and understands those provisions and requirements are also incumbent on the Contractor.

5.9.2 Waiver

No assent, expressed or implied, by the parties hereto to the breach of the provisions or conditions of this contract shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of this Contract.

Moreover, no delay or omission by either party to this contract 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 contract 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 contract shall void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party shall imply, be construed as or require waiver of future or other defaults.

5.9.3 Severability

If any part, term or provision of the contract (including items incorporated by reference) is held by the courts or other judicial body to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the contract did not contain that particular part, term or provision held to be invalid.

5.9.4 Change Orders and/or Amendments

The Executive Director of DOM or designated representative may, at any time, by written order delivered to the Contractor at least thirty (30) calendar days prior to the commencement date of such change, make administrative changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under the contract an adjustment commensurate with the costs of performance under this contract shall be made in the contract price or

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delivery schedule or both. Any claim by the Contractor for equitable adjustment under this clause shall be asserted in writing to DOM within thirty (30) calendar days from the date of receipt by the Contractor of the notification of change. Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes Clause of this Contract. Nothing in this clause, however, shall in any manner excuse the Contractor from proceeding diligently with the contract as changed.

If the parties are unable to reach an agreement within thirty (30) calendar days of DOM receipt of the Contractor's cost estimate, the Executive Director of DOM shall make a determination of the revised price, and the Contractor shall proceed with the work according to a schedule approved by DOM subject to the Contractor's right to appeal the Executive Director's determination of the price pursuant to the Disputes clause.

The rate of payment for changes or amendments completed per contract year shall be at the rates specified by the Contractor's bid.

At any time during the term of this contract, DOM may increase the quantity of goods or services purchased under this contract by sending the Contractor a written amendment or modification to that effect which references this contract and is signed by the Executive Director of DOM. The purchase price shall be the lower of the unit cost identified in the Contractor's bid or the Contractor's then-current, published price. The foregoing shall not apply to services provided to DOM at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

5.9.5 Disputes

Any dispute concerning the contract which is not disposed of by agreement shall be decided by the Executive Director of DOM who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Executive Director shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the contract.

5.9.6 Cost of Litigation

In the event that DOM deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which DOM prevails. Neither the State of Mississippi nor DOM shall bear any of the Contractor's cost of litigation for any legal actions initiated by the Contractor against DOM regarding the provisions of the contract. Legal action shall include administrative proceedings.

5.9.7 Attorney Fees

The Contractor agrees to pay reasonable attorney fees incurred by the State and DOM in enforcing this contract or otherwise reasonably related thereto.

5.10 Indemnification

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors from any and all claims and losses accruing or resulting to any and all the Contractor employees, agents, subcontractors, laborers, and any other person, association, partnership, entity, or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this contract, and from any and all claims and losses accruing or resulting to any such person, association, partnership, entity, or corporation who may be injured, damaged, or suffer any loss by the Contractor in the performance of the contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damage, costs or expenses which DOM may sustain, incur or be required to pay: 1.) by reason of any person suffering personal injury, death or property loss or damage of any kind either while participating with or receiving services from the Contractor under this contract, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the Contractor or any officer, agent, or employee thereof; or 2.) by reason of the Contractor or its employee, agent, or person within its scope of authority of this contract causing injury to, or damage to the person or property of a person including but not limited to DOM or the Contractor, their employees or agents, during any time when the Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damages, fines, civil or criminal monetary penalties, costs or expenses which DOM or the State may incur, sustain or be required to pay by reason of the Contractor, its employees, agents or assigns: 1.) failing to honor copyright, patent or licensing rights to software, programs or technology of any kind in providing services to DOM, or 2.) breaching in any manner the confidentiality required pursuant to federal and state law and regulations.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of the contract because of any breach of the contract by the Contractor, its agents or employees, including but not limited to any occurrence of omission or commission or negligence of the Contractor, its agents or employees.

If in the reasonable judgment of DOM a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by DOM or by another resource without unduly interfering with the continued performance of the Contractor, DOM may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor shall reimburse DOM for the entire cost of those services. DOM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with DOM or those procured resources in allowing access to

facilities, equipment, data or any other Contractor resources to which access is required to correct the default. The Contractor shall remain liable for ensuring that all operational performance standards remain satisfied.

5.10.1 No Limitation of Liability

Nothing in this contract shall be interpreted as excluding or limiting any liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor, or for damages incurred in the negligent performance of duties by the Contractor, or for the delivery by the Contractor of products that are defective, or for breach of contract or any other duty by the Contractor. Nothing in the contract shall be interpreted as waiving the liability of the Contractor for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense related to the Contractor's conduct or performance under this contract.

5.10.2 Third Party Action Notification

Contractor shall give DOM immediate notice in writing of any action or suit filed, and immediate notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.

5.11 Status of the Contractor

5.11.1 Independent Contractor

It is expressly agreed that the Contractor is an Independent Contractor performing professional services for DOM and is not an officer or employee of the State of Mississippi or DOM. It is further expressly agreed that the contract shall not be construed as a partnership or joint venture between the Contractor and DOM.

The Contractor shall be solely responsible for all applicable taxes, insurance, licensing and other costs of doing business. Should the Contractor default on these or other responsibilities jeopardizing the Contractor's ability to perform services effectively, DOM, in its sole discretion, may terminate this contract.

The Contractor shall not purport to bind DOM, its officers or employees nor the State of Mississippi to any obligation not expressly authorized herein unless DOM has expressly given the Contractor the authority to do so in writing.

The Contractor shall give DOM immediate notice in writing of any action or suit filed, or of any claim made by any party which might reasonably be expected to result in litigation related in any manner to this contract or which may impact the Contractor's ability to perform.

No other agreements of any kind may be made by the Contractor with any other party for furnishing any information or data accumulated by the Contractor under this contract or used in the operation of this program without the written approval of DOM. Specifically, DOM reserves the right to review any data released from reports, histories, or data files created pursuant to this Contract.

In no way shall the Contractor represent itself directly or by inference as a representative of the State of Mississippi or DOM except within the confines of its role as an Independent Contractor for DOM. DOM's approval shall be received in all instances in which the Contractor distributes publications, presents seminars or workshops, or performs any other outreach.

The Contractor shall not use DOM's name or refer to the contract and the services provided therein directly or indirectly in any advertisement, news release, professional trade or business presentation without prior written approval from DOM.

5.11.2 Employment of DOM Employees

The Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract, any professional or technical personnel who are or have been at any time during the period of the contract in the employ of DOM, without the written consent of DOM. Further, the Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of the contract, any former employee of DOM who has not been separated from DOM for at least one year, without the written consent of DOM.

The Contractor shall give priority consideration to hiring interested and qualified adversely affected state employees at such times as requested by DOM to the extent permitted by this contract or state law.

5.11.3 Conflict of Interest

The Contractor shall comply with the conflict of interest safeguards described in 42 CFR § 438.58 and with the prohibitions described in Section 1902(a)(4)(C) of the Social Security Act (42 U.S.C. §1396a(a)(4)(C)) applicable to Contract Officers, employees, or independent Contractors.

In accordance with 1902(a)(4)(C) and 1932(d)(3) of the Social Security Act (42 U.S.C. §1396a(a)(4)(C) and 42 U.S.C. §1396u-2(d)(3)), the Contractor shall comply with conflict of interest safeguards with respect to officers, Contract Officers, employees, and independent Contractors of DOM having responsibilities relating to this Contract. DOM shall comply with conflict of interest safeguards on the part of DOM officers, employees, and agents who have responsibilities relating to this Contract or the enrollment processes specified in 42 CFR § 438.54(b). Such safeguards shall be at least as effective as described in Section 27 of the Federal Procurement Policy Act (41 U.S.C. §2101 *et seq.*).

The Contractor shall have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor shall not employ any individual or entity having any such known interests, including subsidiaries or entities that could be misconstrued as having a joint relationship. No public official of the State of Mississippi and no official or employee of DOM, DHHS, CMS or any other state or federal agency which exercises any functions or responsibilities in the review or approval of this Contract or its performance shall voluntarily acquire any personal interest, direct or indirect, in this Contract or any Subcontract entered into by the Contractor. The Contractor hereby certifies that no officer, director, employee or agent of the Contractor, any Subcontractor or supplier and person with an ownership or control interest in the Contractor, any

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Subcontractor or supplier, is also employed by the State of Mississippi or any of its agencies, DOM's Agent, or by DHHS, CMS or any agents of DHHS or CMS or is a public official of the State of Mississippi.

The Contractor shall disclose all actual, apparent, or potential conflicts of interest, including employing immediate family members of Medicaid Providers, to DOM within five (5) calendar days of having knowledge of them.

The Contractor shall develop a mitigation plan as requested by DOM which shall be approved and accepted by DOM. Any changes to the approved mitigation plan shall be approved in advance by DOM. The Contractor shall maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.

The Contractor shall be fined five thousand dollars (\$5,000) per calendar day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose.

The Contractor shall be fined one hundred thousand dollars (\$100,000) for the first failure to comply with the mitigation plan developed by the Contractor and approved by DOM. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.

In addition, such violation shall be reported to the State Ethics Commission, Attorney General, and appropriate federal law enforcement officers for review. This Contract may be terminated by DOM if it is determined that a conflict of interest exists.

5.11.4 Personnel Practices

All employees of the Contractor involved in the Medicaid function shall be paid as any other employee of the Contractor who works in another area of their organization in a similar position. The Contractor shall develop any and all methods to encourage longevity in Contractor's staff assigned to this contract.

Employees of the Contractor shall receive all benefits afforded to other similarly situated employees of the Contractor.

The Contractor shall sign the Drug Free Workplace Certificate (Attachment D).

5.11.5 No Property Rights

No property rights inure to the Contractor except for compensation for work that has already been performed.

5.12 Compliance with Laws

Contractor understands that DOM 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

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local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor shall strictly adhere to this policy in its employment practices and provision of services, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and conditions of employment. 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.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, creed, religion, sex, age, national origin, physical handicap, disability, genetic information, political affiliation, ancestry, limited English proficiency, or any other consideration made unlawful by federal, state, or local laws, except where it relates to a bona fide occupational qualification or requirement.

The Contractor shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, CFR, Chapter 60. The Contractor shall comply with related state laws and regulations, if any.

The Contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Rehabilitation Act of 1973 (29 U.S.C §794), as amended, and related state laws and regulations, if any.

If DOM finds that the Contractor is not in compliance with any of these requirements at any time during the term of this contract, DOM reserves the right to terminate this contract or take such other steps as it deems appropriate, in its sole discretion, considering the interests and welfare of the State.

5.13 Ownership and Financial Information

5.13.1 Information to Be Disclosed

The Contractor shall disclose the following:

1. The name and address of any individual or corporation with an ownership or control interest in the disclosing entity, DOM's Fiscal Agent, or managed care entity. The address for corporate entities shall include as applicable primary business, every business location, and P.O. Box address;
2. Date of birth and Social Security Number (in the case of an individual);
3. Other tax identification number (in the case of a corporation) with an ownership or control

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interest in the disclosing entity (or DOM's Fiscal Agent or managed care entity) or in any subcontractor in which the disclosing entity (or DOM's Fiscal Agent or managed care entity) has a five percent (5%) or more interest;

4. Whether the individual or corporation with an ownership or control interest in the disclosing entity (or DOM's Fiscal Agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the individual or corporation with an ownership or control interest in any subcontractor in which the disclosing entity (or DOM's Fiscal Agent or managed care entity) has a five percent (5%) or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling;
5. The name of any other disclosing entity (or DOM's Fiscal Agent or managed care entity) in which an owner of the disclosing entity (or DOM's Fiscal Agent or managed care entity) has an ownership or control interest; and,
6. The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or DOM's Fiscal Agent or managed care entity).

5.13.2 When Information Shall Be Disclosed

Disclosures from the Contractor are due at any of the following times:

1. Upon the Contractor submitting a bid in accordance with the State's procurement process;
2. Annually, including upon the execution, renewal, and extension of the contract with the State; and,
3. Within thirty-five (35) calendar days after any change in ownership of the Contractor.

5.13.3 To Whom Information Shall Be Disclosed

All disclosures shall be provided to DOM, the State's designated Medicaid agency.

5.13.4 Federal Financial Participation

Federal Financial Participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information.

5.13.5 Information Related to Business Transactions

The Contractor shall fully disclose all information related to business transactions. The Contractor shall submit, within thirty-five (35) calendar days of the date on a request by the Secretary or DOM, full and complete information about:

1. The ownership of any subcontractor with whom the Contractor has had business transactions

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totaling more than twenty-five thousand dollars and zero cents (\$25,000.00) during the twelve (12)-month period ending on the date of the request; and,

2. Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the five (5)-year period ending on the date of the request.

5.13.6 Disclosure of Identity of Any Person Convicted of a Criminal Offense

The Contractor shall disclose to DOM the identity of any person who:

1. Has ownership or control interest in the Contractor, or is an agent or managing employee of the Contractor;
2. Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs; and,
3. Is affiliated with another Contractor which has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs.

5.13.7 DOM's Right of Refusal

DOM may refuse to enter into or renew an agreement with a Contractor if any person who has an ownership or control interest in the Contractor, or who is an agent or managing employee of the Contractor, or any affiliate of the Contractor, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid, or the Title XX Services Program. Further, DOM may refuse to enter into or may terminate a Contractor agreement if it determines that the Contractor did not fully and accurately make any of the above required disclosures.

5.13.8 Additional Requirements of DOM and Contractors

The State Medicaid agency and all Medicaid Contractors shall do the following:

1. Confirm the identity and determine the exclusion status of Contractors/subcontractors and any person with an ownership or control interest or who is an agent or managing employee of the Contractor/subcontractor through routine checks of federal databases; and,
2. Consult appropriate databases to confirm identity of the above-mentioned persons and entities by searching the List of Excluded Individuals/Entities (LEIE) and the System for Award Management (SAM) upon enrollment, re-enrollment, credentialing, or re-credentialing, and no less frequently than monthly thereafter, to ensure that the State does not pay federal funds to excluded persons or entities.

The Contractor shall notify DOM, Office of Program Integrity within two (2) business days of discovery of any Contractor or Subcontractor owners or managing employees, network provider, or driver identified as a result of federal database checks and the action taken by the Contractor. Failure to disclose the

required information accurately, timely, and in accordance with federal, state and Contract standards shall result in termination of this contract and/or liquidated damages.

5.14 Risk Management

The Contractor may insure any portion of the risk under the provision of the contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by DOM, or imposition of penalties by DOM.

On or before beginning performance under this Contract, the Contractor shall obtain from an insurance company, duly authorized to do business and doing business in Mississippi, insurance as follows:

5.14.1 Workers' Compensation

The Contractor shall take out and maintain, during the life of this contract, workers' compensation insurance for all employees employed under the contract in Mississippi. Such insurance shall fully comply with the Mississippi Workers' Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate insurance satisfactory for protection of his or her employees not otherwise protected.

5.14.2 Liability

The Contractor shall ensure that professional staff and other decision making staff shall be required to carry professional liability insurance in an amount commensurate with the professional responsibilities and liabilities under the terms of this IFB and other supplemental contractual documents.

The Contractor shall obtain, pay for and keep in force during the contract period general liability insurance against bodily injury or death in an amount commensurate with the responsibilities and liabilities under the terms of this IFB; and insurance against property damage and fire insurance including contents coverage for all records maintained pursuant to this contract in an amount commensurate with the responsibilities and liabilities under the terms of this IFB. On an annual basis, the Contractor shall furnish to DOM certificates evidencing such insurance is in effect on the first working day following contract signing.

5.15 Confidentiality of Information

5.15.1 Confidentiality of Beneficiary Information

All information as to personal facts and circumstances concerning Medicaid beneficiaries obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DOM and the written consent of the enrolled beneficiary, his attorney, or his responsible parent or guardian, except as may be required by DOM.

The use or disclosure of information concerning beneficiaries shall be limited to purposes directly connected with the administration of the contract. Access to DOM's data shall be limited to the minimum

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number of individuals within Contractor's organization necessary to achieve the purposes directly connected with administration of the contract.

All of the Contractor officers and employees performing any work for or on the contract shall be instructed in writing of this confidentiality requirement and required to sign such a document upon employment and annually thereafter.

The Contractor shall immediately notify DOM of any unauthorized possession, use, knowledge or attempt thereof, of DOM's data files or other confidential information. The Contractor shall immediately furnish DOM full details of the attempted unauthorized possession, use or knowledge, and assist in investigating or preventing the recurrence thereof.

This requirement of confidentiality survives the term of the contract between DOM and Contractor.

5.15.2 Release of Public Information

Bidders shall provide an electronic, single document version of bids redacting those provisions of the bid which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Miss. Code Ann. § 25-61-9 (1972, as amended) and other applicable state and federal laws, if any. Bidders should be aware that the un-redacted version of their bids is considered a public record and is subject to release by DOM pursuant to and in accordance with Miss. Code Ann. § 25-61-1, *et seq.* (1972, as amended).

The redacted copy shall be considered public record and immediately released, without notification, pursuant to any request under the Mississippi Public Records Act, Miss. Code Ann. §§25-61-1 *et seq.* and Miss. Code Ann. §79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by DOM, including but not limited to, submission to the PPRB, posting to Transparency Mississippi website, etc.

In the event that either party to the executed Contract 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 state law. This provision shall survive termination or completion of the executed Contract. The parties agree that this provision is subject to and superseded by Miss. Code Ann. § 25-61-1, *et seq.* (1972, as amended) regarding Public Access to Public Records.

5.15.3 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.

5.15.4 Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. § 25-61-1 *et seq.*, (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. § 27-104-151 *et seq.* (1972, as amended).

Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by the 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 shall be redacted by the Bidder.

5.16 The Contractor Compliance Issues

The Contractor agrees that all work performed as part of this contract shall comply fully with administrative and other requirements established by federal and state laws, regulations and guidelines, and assumes responsibility for full compliance with all such laws, regulations and guidelines, and agrees to fully reimburse DOM for any loss of funds, resources, overpayments, duplicate payments or incorrect payments resulting from noncompliance by the Contractor, its staff, or agents, as revealed in any audit. In addition the Contractor agrees that all work performed shall comply with all CMS guidelines necessary to maintain the enhanced funding provided by CMS for eligibility and enrollment systems development.

5.16.1 Federal, State, and Local Taxes

Unless otherwise provided herein, the contract price shall include all applicable federal, state, and local taxes.

The Contractor shall pay all taxes lawfully imposed upon it with respect to this contract or any product delivered in accordance herewith. DOM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

5.16.2 License Requirements

The Contractor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this contract.

5.16.3 Privacy/Security Compliance

The Contractor shall execute DOM’s Business Associate Agreement (BAA) and any required Data Use Agreement (DUA) before contract execution. The BAA and DUA can be found on the Procurement Website at <http://www.medicaid.ms.gov/resources/procurement/>. Moreover, all activities under this contract shall be performed in accordance with all applicable federal and/or state laws, rules and/or regulations including the Administrative Simplification provisions of HIPAA, as amended by the Genetic Information Nondiscrimination Act (GINA) of 2008 and the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A, and Title IV of Division B of

the American Recovery and Reinvestment Act (ARRA) of 2009, and their implementing regulations at 45 CFR Parts 160, 162, and 164, involving electronic data interchange, code sets, identifiers, and the security and privacy of protected health information (PHI), as may be applicable to the services under this Contract. Each party to this contract shall treat all data and information to which it has access under this contract as confidential information to the extent that confidential treatment of same is required under federal and state law and shall not disclose same to a third party without specific written consent of the other party. In the event that either party receives notice that a third party requested divulgence of the confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the confidential or otherwise protected information, the party shall promptly inform the other party and thereafter respond in conformity with such subpoena as required by applicable state and/or federal law, rules, and regulations. The provision herein shall survive the termination of the contract for any reason and shall continue in full force and effect and shall be binding upon both parties and their agents, employees, successors, assigns, subcontractors, or any party claiming an interest in the contract on behalf of, or under, the rights of the parties following termination.

5.16.4 Site Rules and Regulations

The Contractor shall use its best efforts to ensure that its employees and agents, while on DOM premises, shall comply with site rules and regulations.

5.16.5 Environmental Protection

The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Federal Executive Order 11738, and applicable United States Environmental Protection Agency (EPA) regulations which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. The Contractor shall report violations to the applicable grantor federal agency and the United States EPA Assistant Administrator for Enforcement.

5.16.6 Lobbying

The Contractor certifies, to the best of its knowledge and belief, that no federal appropriated funds have been paid or shall be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit "Disclosure Form to Report Lobbying," in accordance with its instructions.

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This certification is a material representation of fact upon which reliance is placed when entering into this contract. Submission of this certification is a prerequisite for making or entering into this contract imposed under 31 U.S.C. § 1352. Failure to file the required certification shall be subject to civil penalties for such failure.

The Contractor shall abide by lobbying laws of the State of Mississippi.

5.16.7 Bribes and Kickbacks Prohibited

The receipt or solicitation of bribes and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the Federal Government or of the State of Mississippi shall benefit financially or materially from this contract. No individual employed by the State of Mississippi shall be permitted any share or part of this contract or any benefit that might arise there from.

5.16.8 Small and Minority Businesses

DOM encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the contract anniversary and shall specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this contract.

5.16.9 Suspension and Debarment

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any other state's laws and regulations.

The Contractor shall notify DOM, Office of Program Integrity within two (2) business days if its suspension or debarment status changes. Failure to disclose the required information accurately, timely, and in accordance with federal, state and Contract standards shall result in termination of this contract and/or liquidated damages.

5.16.10 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) calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

5.16.11 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 the Contractor's choice. The State may, at its sole discretion, require the 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.

5.16.12 E-Verification

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

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

5.17 Representation Regarding Gratuities

The Bidder 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 *Public Procurement Review Board, Office of Personal Service Contract Review Rules and Regulations*.

5.18 Change of Ownership

A change of ownership of the Contractor includes, but is not limited to inter vivo gifts, purchases, transfers, lease arrangements, case and/or stock transactions or other comparable arrangements whenever the person or entity acquires a majority interest (50.1%) of the Contractor. The change of ownership shall be an arm's length transaction consummated in the open market between non-related parties in a normal buyer-seller relationship.

The Contractor shall comply with all laws of the State of Mississippi and the Mississippi Insurance Department requirements regarding change of ownership of the Contractor.

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Should the Contractor undergo a change of direct ownership, the Contractor shall notify DOM in writing prior to the effective date of the sale. The new owner shall complete a new Contract with DOM and Beneficiaries shall be notified. Any change of ownership does not relieve the previous owner of liability under the previous Contract.

If the Contractor's parent company is publicly traded, changes in beneficial ownership shall be reported to DOM in writing within sixty (60) calendar days of the end of each quarter.

5.19 Approval Clause

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

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Attachment A - Bid Cover Sheet

DOM is seeking to establish a contract for Pre-Admission Screening and Resident Review Services in the State of Mississippi.

Bids are to be submitted as listed below, on or before 5:00 pm CST Friday, July 10, 2020.

PLEASE MARK YOUR ENVELOPE:

IFB #20200103
Opening Date: July 14, 2020 at 10:00 am
Division of Medicaid
Attention: Office of Procurement
550 High St. 10th floor

SEALED BID – DO NOT OPEN

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip Code: _____

Company Representative: _____

Telephone: _____

E-Mail: _____

| | |
|---|--|
| FEI/FIN # (if company, corporation, or partnership): | |
| SS# (if individual): | |

Attachment B - Bid Form for Pre-Admission Screening and Resident Review (PASRR)

Compensation for services shall be in the form of a firm fixed-rate agreement.

| Bid and Budget Sheet* Pre-Admission Screening & Resident Review (PASRR) | | | | | |
|--|---|-------------------|-------------------|-------------------------------------|--|
| Name of Bidder: | | | | | |
| | Contract Term** Initial three (3) year period. | Renewal Year 1 | Renewal Year 2 | Total Cost (Firm Fixed Price) | |
| Implementation Cost | | | | | |
| Operational Cost | | | | | |
| Total Contract Cost | | | | | |

* Completion of this Bid Form satisfies the unit rate requirement in Section 4.2.1 of this IFB. The implementation costs, the contract term operational costs, the operational costs for renewal year one (1), and operational costs for renewal year two (2) are each unit rates. The unit rate does not have to remain the same for each phase of the contract. Additionally, the unit rate for the initial three (3) year period does not have to be the same rate as renewal year one (1) and renewal year two (2).

**Should DOM determine that an Implementation Phase is not needed, the contract start date shall be January 1, 2021 and the initial contract term shall be three full years.

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

That he/she has read and understood all terms and provisions of the IFB.

That he/she agrees and shall comply with all provisions of the IFB without reservation, deviation, exception and without expectation of negotiation.

The company is registered to do business and in “Good Standing” with the State of Mississippi and providing their corporate charter number to work in Mississippi, if applicable.

Company confirms it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this contract, and it shall not employ, in the performance of this contract, any person having such interest.

Certification that the Bidders submitted Bid shall be firm and binding for one hundred and eighty (180) calendar days.

REPRESENTATION REGARDING CONTINGENT FEES

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

REPRESENTATION REGARDING GRATUITIES

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

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

PROSPECTIVE CONTRACTOR’S REPRESENTATION REGARDING CONTINGENT FEES

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

NON-DEBARMENT

By submitting a bid, the Bidder certifies that it **is not** currently debarred from submitting bids 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 bids for contracts issued by any political subdivision or agency of the State of Mississippi or Federal Government.

Name/Title: _____

Signature/Date: _____

Note: Modifications or additions to any portion of this bid document may be cause for rejection of the bid.

Attachment C

DHHS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:

GRANTEES OTHER THAN INDIVIDUALS

Instructions for Certification

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

1) This certification is required by regulations implementing the Drug-Free Act of 1988, 2 CFR Part 382. The regulations, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the DHHS determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

2) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee shall keep the identity of the workplace(s) on file in its office and make the information available for federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

3) Workplace identifications shall include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

4) If the workplace identified to DOM changes during the performance of the grant, the grantee shall inform DOM of the change(s), if it previously identified the workplaces in question (see above).

5) Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. §812) and as further defined by regulation (21 CFR § 1308.11 through § 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes;

"Criminal drug statute" means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent Contractors not on the grantee's payroll; or employees of sub recipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b) Establishing an ongoing drug-free awareness program to inform employees about

1) The dangers of drug abuse in the workplace; 2) the grantee's policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

1) Abide by the terms of the statement; and 2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

e) Notifying DOM in writing, within ten (10) calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f) Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (d)(2),

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with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or 2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

h) Complying with all provisions 2 CFR Part 382.

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments if needed):

Place of Performance (street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

---->NOTE: Sections 76.630(c) and (d) (2) and 76.635(a)(1) and (b) provide that a federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For HHS, the central receipt point is Division of Grants Management and Oversight, Office of Management and Acquisition, HHS, Room 517-D, 200 Independence Ave, S.W., Washington, D.C. 20201

Signature

Date

Title

Organization

Attachment D

DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions
2 CFR Part 376,

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- b) Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them 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; 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;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
- d) Have not within a three-year period preceding this bid had one or more public transactions (federal, state or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid.

Signature

Date

Title

Organization