

# **INVITATION FOR BIDS**

IFB Number: 3160002594

To Provide: Turn-Key services of Long-Term Care Survey Teams to conduct CMS Recertification/Revisit/Complaint Surveys at Long Term Care Facilities identified by MSDH

Issue Date: November 1, 2018

## **CLOSING LOCATION**

Mississippi State Department of Health  
570 East Woodrow Wilson  
Jackson, Mississippi 39216

## **BID COORDINATOR**

Anita Evans, MSDH Contract Analyst

Telephone: (601) 576-8127

E-Mail: [anita.evans@msdh.ms.gov](mailto:anita.evans@msdh.ms.gov)

## **CLOSING DATE AND TIME**

Bids must be received by December 5, 2018, 5:00 PM CST

## **SECTION 1. PROCUREMENT OVERVIEW**

### **1.1 Bid Acceptance Period**

The original and two copies of the bid form, three copies total, shall be signed and submitted in a sealed envelope or package to MSDH at 570 East Woodrow Wilson, Jackson, Mississippi 39216 no later than the time and date specified for receipt of bids. 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 number of the invitation for bid. The time and date of receipt shall be indicated on the envelope or package by MSDH. 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 shall 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. The MSDH 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, the MSDH 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.

#### **1.1.1 Timeline**

- Invitation for Bids (IFB) Issue Date: November 1, 2018
- Deadline for Vendor Questions to MSDH: November 20, 2018, 5:00 PM CST
- Anticipated Posting of Answers to Questions: November 28, 2018, 5:00 PM CST
- Application Submission Deadline: December 5, 2018, 5:00 PM CST
- Opening of Sealed Bids: December 6, 2018, 9:00 AM CST
- Selection Completed: Prior to December 12, 2018

#### **1.1.2 Late Submissions**

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will 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 (5<sup>th</sup>) calendar day before the date specified for receipt of bids. It must be determined by the MSDH that the late receipt was due solely to mishandling by the MSDH 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.

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

**1.2 Expenses Incurred in Preparing Bid**

The MSDH 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.

**1.3 Bid Form**

All pricing must 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.

**1.3.1 Bidder Certification**

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

**1.4 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 or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

**1.5 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.

**1.6 Additional Information**

Questions about the contract portions of the procurement document must be submitted in writing to Anita Evans, MSDH Contract Analyst at 570 Woodrow Wilson, Jackson, Mississippi 39215 or [anita.evans@msdh.ms.gov](mailto:anita.evans@msdh.ms.gov). Questions concerning the technical portions of the procurement document should be directed to Marilynn Winborne at Post Office Box 1700, Jackson, Mississippi 39215-1700 or [marilynn.winborne@msdh.ms.gov](mailto:marilynn.winborne@msdh.ms.gov). Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

**1.7 Type of Contract**

Compensation for services will be in the form of a fixed-price requirements contract agreement.

**1.8 Written Bids**

All bids shall be in writing.

## **SECTION 2. SERVICES AND COMPENSATION**

### **2.1 Purpose**

The Mississippi State Department of Health (MSDH) is seeking to establish two or more contracts for turn-key services of Long-Term Care Survey Teams to conduct CMS Recertification/Revisit/Complaint Surveys at Long Term Care Facilities identified by MSDH throughout the state of Mississippi. It is understood that any contract resulting from IFB 3160002594 requires approval by the Personal Service Contract Review Board. If any contract resulting from IFB 3160002594 is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

### **2.2 Scope of Services**

It is the intent of the Mississippi State Department of Health (MSDH) to establish a statewide contract to provide turn-key services of Long-term Care (LTC) Survey Teams to conduct Centers for Medicare and Medicaid Services (CMS) Recertification/Revisit/Complaint Surveys at LTC facilities identified by MSDH, between January 1, 2019 and September 30, 2019, in accordance with the requirements stated herein. MSDH estimates that there will be a need to contract for no fewer than 10 and up to 45 surveys; however, contractor must be available to provide additional survey support services as requested at prices provided in the Bidding Schedule of this solicitation.

#### **2.2.1 SPECIFICATIONS**

##### **2.2.1.1 Survey Teams:**

- a) Survey teams will be made up of 2 to 5 experienced surveyors per survey as designated by MSDH, depending on facility size and job function, or can be individual surveyors contracted to supplement a MSDH team.
- b) Individuals surveyors or team survey members shall be available in the event Immediate Jeopardy is identified or an extended survey is required.
- c) MSDH will set the schedule and assign the facility.
- d) Contractor shall provide all materials and equipment needed by the surveys to perform the work.
- e) Contractor shall provide current background checks on surveyors.

##### **2.2.1.2 Surveyor Qualifications:**

- a) Each contracted surveyor must have successfully completed the Surveyor Minimum Qualifications Test (SMQT) and be registered/assigned a federal surveyor ID number with experience surveying Long Term Care facilities.
- b) Surveyors must have sufficient experience to identify deficient practice and conduct thorough investigations. Surveys include, recertification, complaint, extended and revisit surveys.
- c) Surveyors must be well versed in the federal regulations and requirements for Skilled Nursing Facilities (SNF)/Nursing Facilities (NF) and have knowledge of the new CMS Long Term Care Survey process and must apply this consistent survey methodology throughout the state.
- d) The contractor, and surveyors, must have access to and operational knowledge of the Automated Survey Processing Environment (ASPEN) and

specifically ASPEN Survey Explorer-Quality (ASE-Q) portion of the ASPEN database.

- e) Surveyors must be equipped with their own laptop, printer and supplies.
- f) Surveyor professional disciplines may range from registered nurses, dietitians, social workers, pharmacists and generalists.

**2.2.1.3 Travel Requirements:**

- a) Contracted surveyors will need to travel and stay overnight at least 3-4 nights each week to any part of the state of Mississippi, or as many nights as needed to complete the specific survey based on the outcome of the survey.
- b) The contractor must provide arrangement for transportation, hotel arrangements, car rental and all other travel arrangements to ensure timely completion of surveys designated by MSDH.
- c) All travel related costs, including transportation, lodging, and meals, shall be included in the bid price and not invoiced separately.

**2.2.1.4 Survey Documentation:**

- a) All survey results must be documented and the contractor must produce survey results and related cited deficiencies on the Form CMS-2567, Statement of Deficiencies and Plan of Connection, using CMS Principles of Documentation format within CMS mandated timeframes for completing survey reports.
- b) All reports must have undergone a Quality Assurance (QA) process by the contractor and the contractor must interface with CMS and MSDH when required.

**2.2.1.5 Survey Types:**

- a) The majority of the surveys will be recertification surveys; however, survey teams may be required to perform follow-up surveys or complaint surveys, at MSDH's request. Recertification surveys may also include complaint surveys, if the facility being surveyed has an open complaint on file.

**2.2.1.6 Number of Surveys:**

- a) MSDH estimates that there will be a need for no fewer than 10 and up to 45 recertification surveys contracted pursuant to this bid.
- b) In order to be responsive to this bid, bidder must commit to be able to provide a minimum of two survey teams per week during the term of this contract.
- c) The actual scheduling of the surveys is not finalized at the time of this solicitation.
- d) Bidder must be able to provide additional teams or survey support services upon request.

**2.2.1.7 Pricing:**

*Pricing shall be all inclusive of all associated costs to perform the surveys and/or revisits.*

- a) Recertification Survey (on average 3-4 person team)
- b) Complaint Survey (1 person support)

- c) Revisits (1 person support)
- d) Support Services/Individual Surveyor (per person/per day cost)

## **2.3 Term**

The term of the contract shall be for a period of nine months. Upon written agreement of both parties at least fifteen (15) days prior to each contract anniversary date, the contract may be renewed by the MSDH for a period of two (2) successive one-year period(s) under the same prices, terms, and conditions as in the original contract subject to approval by the PSCRB. The total number of renewal years permitted shall not exceed two (2).

### **2.3.1 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.

#### **2.3.1.1 Requirements**

- a) Each contractor will be expected to provide a minimum of 11 surveys in the initial nine-month contract period. The total estimated number of surveys needed by MSDH is 45; the estimated maximum number of survey opportunities available to each contractor ranges from 14 to 21 depending on the number of contracts awarded. The number of services needed in future terms will be determined on an as needed basis. As such, there will be no minimum requirement in any renewal terms.
- b) A unit price shall be given for each service, and that unit price shall be the same throughout the contract.
- c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
- d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
- e) A multi-term contract may be awarded. Contracts shall be awarded to a minimum of two, and up to a total of four, vendors depending on price and capability.

## **SECTION 3. INSURANCE**

### **3.1 Insurance**

The successful vendor shall maintain workers' compensation insurance as required by the State of Mississippi which shall inure to the benefit of all the Contractor's personnel provided hereunder. The Mississippi State Department of Health reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance

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

## **SECTION 4. EVALUATION AND AWARD**

### **4.1 Bid Evaluation**

Bids will be evaluated based on the requirements set forth in IFB 3160002594, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

#### **4.1.1 Responsive Bidder**

Bidder must submit bid which conforms in all material respects to this Invitation for Bids, IFB 3160002594, as determined by MSDH.

#### **4.1.2 Minimum Qualifications to be Deemed Responsive**

Bidder must complete and submit the following:

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

**4.1.3** These minimum qualifications are in addition to a minimum score of 25 on the Reference Score Sheet (**Attachment E**) from reference interviews by the MSDH with two bidder/contractor references (for a total minimum score of 50 out of 70 points), as well as all other requirements of this Invitation for Bids. (See **Attachments C and E**.)

#### **4.1.4 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. The MSDH reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the MSDH of non-responsiveness based on the submission of nonconforming terms and conditions.

#### **4.1.5 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.

#### **4.1.6 Bid Submission Format**

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

- Bid Cover Sheet (**Attachment A**)

- Bid Form (**Attachment B**)
- References (**Attachment C**)
- Certifications and Assurances (**Attachment D**)
- Insurance (*Attach a copy of applicable insurance certificate.*)

#### **4.1.7 Responsible Bidder**

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

#### **4.1.8 Minimum Qualifications to be Deemed Responsible**

Contractor must meet the Qualifications set forth above in Section 2.2.1 Specifications.

#### **4.1.9 References**

Each bidder must furnish a listing of **at least** three (3) trade references along with the contact person, address, and phone number for each. These references must be familiar with the bidder's abilities in the areas involved with this solicitation. The MSDH will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. The bidder may submit as many references as desired. The MSDH will begin contacting references at the top of the list and will continue down the list until two (2) contacts have been reached.

References must be listed on **Attachment C**.

### **4.2 Bid Opening**

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

### **4.3 Award**

The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids within five (5) days.

#### **4.3.1 Notification**

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

#### **4.3.2 Contract Management**

If the Contractor fails to adhere to the Survey services schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, the Contracting Agency will 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, the Contracting Agency may terminate the contract without further obligation to the Contractor. (Contracting Agency may elect to use the form included as **Attachment H**, Survey Services Contract Discrepancy Report.)

## **SECTION 5. ADDITIONAL SPECIFICATIONS**

### **5.1 Post-Award Vendor Debriefing**

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

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

### **5.2 Protest of Award**

Any actual or prospective bidder or contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the Bid Coordinator, Anita Evans, Contract Analyst. The protest shall be submitted on or before 5:00 PM CST, December 19, 2018, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Bid Coordinator, Anita Evans, MSDH Contract Analyst, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 5:00 PM CST, December 19, 2018 will not be considered.

### **5.3 Required Contract Terms and Conditions**

Any contract entered into between a Contracting Agency and a vendor/bidder shall include the required clauses found in **Attachment F** and those required by the *Mississippi Department of Finance and Administration Office of Personal Service Contract Review's Rules and Regulations* as updated.

#### **5.4 Optional Contract Terms and Conditions**

Any contract entered into between a Contracting Agency and a vendor/bidder may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment G** and those within the *Mississippi Department of Finance and Administration Office of Personal Service Contract Review's Rules and Regulations* as updated.

#### **5.5 Mississippi Contract/Procurement Opportunity Search Portal**

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

#### **5.6 Attachments**

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

### **SECTION 6. ADDITIONAL TERMS**

#### **6.1 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 in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the Mississippi State Department of Health by the time and at the place specified for receipt of bids.

#### **6.2 Applicable Law**

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

#### **6.3 Availability of Funds**

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

#### **6.4 Certification of Independent Price Determination**

The bidder shall certify 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.

#### **6.5 Compliance with Laws**

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

#### **6.6 E-Payment**

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

#### **6.7 E-Verification**

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

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

In the event of such 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.

## **6.8 Paymode**

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

## **6.9 Procurement Regulations**

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

## **6.10 Representation Regarding Contingent Fees**

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

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

## **6.13 Stop Work Order**

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

work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
  - (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) Termination of Stopped Work: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) Adjustments of Price: Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

#### **6.14 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.

#### **6.15 Transparency**

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

## Attachment A

### Bid Cover Sheet

The Mississippi State Department of Health (MSDH) is seeking to establish a contract for turn-key services of Long-Term Care Survey Teams to conduct CMS Recertification/Revisit/Complaint Surveys at Long Term Care Facilities identified by MSDH throughout the state of Mississippi.

Bids are to be submitted as listed below, on or before December 5, 2018, 5:00 PM CST.

#### PLEASE MARK YOUR ENVELOPE:

**IFB 3160002594**

**Opening Date: December 6, 2018, 9:00 AM CST**

**Mississippi State Department of Health**

**Attention: Anita Evans, MSDH Contract Analyst**

**570 East Woodrow Wilson**

**Jackson, Mississippi 39216**

**SEALD BID – DO NOT OPEN**

**Name of Company:** \_\_\_\_\_

**Quoted By:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

**Company Representative:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

<b>FEI/FIN # (if company, corporation, or partnership):</b>	
<b>SS# (if individual):</b>	

**In addition to providing the above contact information, please answer the following questions regarding your company.** *(If additional space is needed, please attach supplemental pages as necessary to completely answer all questions.)*

What year was your company started? \_\_\_\_\_

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? \_\_\_\_\_

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. \_\_\_\_\_

\_\_\_\_\_

If your company is not physically located in the region, how will you supply survey services to agencies in the region? \_\_\_\_\_

\_\_\_\_\_

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids. \_\_\_\_\_

\_\_\_\_\_

For how many customers has your company provided survey services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. \_\_\_\_\_

\_\_\_\_\_

What is the largest customer your company has provided survey services for in the past two (2) years? Please include the annual amount of the billing. \_\_\_\_\_

\_\_\_\_\_

Describe any specific services which your company offers along with any specialized experience, certification, and/or education of your current staff. \_\_\_\_\_

\_\_\_\_\_

List all the equipment that your company has available or that is intended to be used to perform the services required in this Invitation for Bids. \_\_\_\_\_

<b>OWNED EQUIPMENT</b>					
<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>ID#</b>	<b>Capacity</b>	<b>Description</b>

<b>RENTED/LEASED EQUIPMENT</b>					
<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>ID#</b>	<b>Capacity</b>	<b>Description</b>



**Attachment B**

**Bid Form for Survey Services**

<b>Company</b>	<b>Company Representative</b>	<b>Telephone</b>

The pricing quoted must be inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any)
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

<b>SURVEY TYPE</b>	<b>DAILY RATE</b>			
	<b>2-Person Team</b>	<b>3-Person Team</b>	<b>4-Person Team</b>	<b>5-Person Team</b>
<b>Recertification Survey</b>				
<b>Number of surveys Company is capable of providing on a monthly basis:</b>				

<b>SERVICE/SURVEY TYPE</b>	<b>DAILY RATE (PER PERSON)</b>
<b>Complaint Survey</b>	
<b>Revisits</b>	
<b>Support Services (i.e. Team Augmentation)</b>	

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

1. That he/she has thoroughly read and understands this Invitation for Bids, IFB 3160002594,

and the attachments herein;

2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, IFB 3160002594, and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids, IFB 3160002594, and the attachments herein;
4. That the company will perform, without delay, the services required at the prices quoted in this **Attachment B**; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.
7. That should an amendment to this IFB be issued, it will be posted on the MSDH website (<http://www.msdh.ms.gov>) as well as on the Mississippi Department of Finance and Administration Contract/Procurement Opportunity Search Portal in a manner that all proposers will be able to view. Company shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid package, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment should be received by MSDH by the time and at the place specified for receipt of bids. It is the company's sole responsibility to monitor the websites for amendments to the IFB.

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

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

## Attachment C. References

### **Reference 1**

**Name of Company:** \_\_\_\_\_

**Dates of Service:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

### **Reference 2**

**Name of Company:** \_\_\_\_\_

**Dates of Service:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

### **Reference 3**

**Name of Company:** \_\_\_\_\_

**Dates of Service:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

The bidder may submit as many references as desired by submitting as many additional copies of this Attachment C, References, as needed. The Mississippi State Department of Health will begin contacting references at the top of the list and will continue down the list until two contacts have been reached. See Section of this Invitation for Bids.

## Attachment D

### Certifications and Assurances

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

#### 1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it [ **HAS** or **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.

#### 2. REPRESENTATION REGARDING GRATUITIES

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

#### 3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation [ **HAVE** or **HAVE NOT** ] 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.

#### 4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's bid or proposal that such Contractor [ **HAS** or **HAS NOT** ] retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

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

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

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

**ATTACHMENT E**  
**Reference Score Sheet**

**TO BE COMPLETED BY MSDH ONLY**

Bidder Name: \_\_\_\_\_

Reference Name: \_\_\_\_\_

Person Contacted, Title/Position: \_\_\_\_\_

Date/Time Contacted: \_\_\_\_\_

Service From/To Dates: \_\_\_\_\_

Able to provide survey services when you called?	Yes	No
Satisfied with the survey services provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling survey services?	Yes	No
Were the survey services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is five points; each “no” is zero points. Bidder must have a minimum score of “25” from two references (total of “50” points) to be considered responsible and for its bid to be considered.

Score: \_\_\_\_\_

Do you have any business, professional or personal interest in the bidder’s organization? If yes, please explain.	Yes	No
---	-----	----

Called by: \_\_\_\_\_

Notes: \_\_\_\_\_

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## **ATTACHMENT F**

### **Required Clauses for Service Contracts Resulting from this Invitation for Bids**

1. **APPLICABLE LAW.** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. **APPROVAL CLAUSE.** It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
3. **AVAILABILITY OF FUNDS.** It is expressly understood and agreed that the obligation of the Mississippi State Department of Health (MSDH) to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MSDH, MSDH shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to MSDH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
4. **COMPLIANCE WITH LAWS.** Contractor understands that the Mississippi State Department of Health (MSDH) is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
5. **E-PAYMENT.** Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.
6. **E-VERIFICATION.** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996

that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

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

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

7. PAYMODE. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
8. PROCUREMENT REGULATIONS. The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.
9. REPRESENTATION REGARDING CONTINGENT FEES. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
10. REPRESENTATION REGARDING GRATUITIES. The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

## 11. STOP WORK ORDER

- (1) *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:
  - (a) cancel the stop work order; or,
  - (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- (2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
  - (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
  - (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) *Adjustments of Price:* If permissible, any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

## 12. 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 will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

### 13. TERMINATION FOR DEFAULT

- (1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the 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 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from

other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- (5) *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
14. TERMINATION UPON BANKRUPTCY. This contract may be terminated in whole or in part by the Mississippi State Department of Health upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
15. 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.
16. TRANSPARENCY. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

## **ATTACHMENT G**

### **Optional Clauses for Use in Service Contracts Resulting from this Invitation for Bids**

The various clauses below are available for use in service contracts. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., *[time]*, *[date]*). Clarifications of clauses are in parentheses within or at the end of the clause. These are discretionary and the agency is neither required to use them nor prohibited from using others which are not included below.

#### **ALTERNATIVE BIDS**

Bidders offering service delivery methods other than those permitted by the scope of work may submit a separate envelope clearly marked “Alternative Bid”. Alternative bids will be deemed non-responsive and will not be considered for award. All such responses will; however, be examined prior to award. Such examination may result in cancellation of all bids received to permit rewriting the scope of work to include the alternative method, or the alternative method may be considered for future requirements of the *[agency]*.

#### **ANTI-ASSIGNMENT/SUBCONTRACTING**

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

#### **ANTITRUST**

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

#### **APPROVAL**

It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

#### **ATTORNEY’S FEES AND EXPENSES**

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

Contractor.

### **AUTHORITY TO CONTRACT**

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

### **CHANGE IN SCOPE OF WORK**

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

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

### **CLAIMS BASED ON A CHIEF PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS**

(1) **Notice of Claim.** If any action or omission on the part of a Chief Procurement Officer or designee of such officer requiring performance changes within the scope of the contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (a) Contractor shall have given written notice to the Chief Procurement Officer or designee of such officer:
  - i. prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
  - ii. within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
  - iii. within such further time as may be allowed by the Chief Procurement Officer in writing.

This notice shall state that Contractor regards the act or omission as a reason which may

entitle Contractor to additional compensation, damages, or an extension of time. The Chief Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Chief Procurement Officer or designee of such officer;

(b) The notice required by subparagraph (a) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,

(c) Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) **Limitation of Clause.** Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) **Adjustment of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

#### **INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL**

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

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

#### **CONFIDENTIALITY**

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

#### **CONTRACTOR PERSONNEL**

The [agency] shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the [agency] reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the [agency] in a timely manner and at no additional cost to the [agency]. The day-

to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

### **COPYRIGHTS**

Contractor agrees that [agency] shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Further, Contractor hereby grants to [agency] a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

### **DEBARMENT AND SUSPENSION**

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

- (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- (2) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- (3) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
- (5) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

### **DISCLOSURE OF CONFIDENTIAL INFORMATION**

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

### **EXCEPTIONS TO CONFIDENTIAL INFORMATION**

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

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

#### **ERRORS IN EXTENSION**

If the unit price and the extension price are at variance, the unit price shall prevail.

#### **FAILURE TO DELIVER**

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

#### **FAILURE TO ENFORCE**

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

#### **FINAL PAYMENT**

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

#### **FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such

acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

### **HIPAA COMPLIANCE**

Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

### **INDEMNIFICATION**

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

### **INDEMNIFICATION (for contracts between two state agencies or entities)**

Contractor’s tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

### **INDEPENDENT CONTRACTOR STATUS**

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the [agency], and the [agency] shall be at no time legally responsible for any negligence or other



wrongdoing by Contractor, its servants, agents, or employees. The [agency] shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the [agency] shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

### **INFRINGEMENT INDEMNIFICATION**

Contractor warrants that the materials and deliverables provided to the customer under this agreement, and their use by the customer, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the customer to discontinue using such items, in which case Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use, and shall compensate the customer for the lost value of the infringing part to the phase in which it was used, up to and including the contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use.

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, at its own expense, the State against, and pay all costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

### **INSURANCE**

Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$\_\_\_\_\_per occurrence and fidelity bond insurance with minimum limits of \$\_\_\_\_\_. All general liability, professional liability and fidelity bond insurance will provide coverage to the [agency] as an additional insured. The [agency] reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

### **INTEGRATED AGREEMENT/MERGER**

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

## **LIQUIDATED DAMAGES**

*With Termination for Default Clause:* The following clause is authorized for use in service contracts when it is difficult to determine with reasonable accuracy the amount of damage to the State due to delays caused by late Contractor performance or nonperformance and the contract contains the Termination for Default clause set forth in Section 4-101.05.

### **Liquidated Damages**

When Contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the Termination for Default clause of this contract and fails to cure in the time specified, Contractor shall be liable for damages for delay in the amount of \$\_\_\_\_\_per calendar day from date set for cure until either the State reasonably obtains similar services if Contractor is terminated for default, or until Contractor provides the services if Contractor is not terminated for default. To the extent that Contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default clause of this contract, liquidated damages shall not be due the State. Contractor remains liable for damages caused other than by delay.

*In Other Situations:* If the contract will not have a Termination for Default clause or the liquidated damages are to be assessed for reasons other than delay, the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

## **MODIFICATION OR RENEGOTIATION**

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

## **NO LIMITATION OF LIABILITY**

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

## **NOTICES**

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

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

For the agency:           *name, title, agency, address*

## **NON-SOLICITATION OF EMPLOYEES**

Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

## **ORAL STATEMENTS**

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

## **OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

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

## **PATENTS AND ROYALTIES**

Contractor covenants to save, defend, keep harmless, and indemnify the [agency] and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost--including court costs and attorney's fees, charges, liability, and exposure, however caused--for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the [agency]. If Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work.

## **PRICE ADJUSTMENT**

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

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

(2) *Submission of Cost or Pricing Data.* Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

## **PRIORITY**

The contract consists of this agreement, the request for proposals [number] (hereinafter "RFP" and attached as Schedule [                   ]), and the response proposal by [Contractor] dated [date] (hereinafter "Proposal" and attached as Schedule [   ]). Any ambiguities, conflicts or questions of

interpretation of this contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Schedules [ ] or [ ] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

## **QUALITY CONTROL**

Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the [agency].

## **RECORD RETENTION AND ACCESS TO RECORDS**

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

## **RECOVERY OF MONEY**

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

## **RENEWAL OF CONTRACT**

*(Use this clause when the Contractor **cannot** decline a renewal.)*

The contract may be renewed at the discretion of the agency upon written notice to Contractor at least [number] days prior to each contract anniversary date for a period of [number] successive one-year periods under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

*(Use this clause when the Contractor **has** the right to decline the renewal.)*

Upon written agreement of both parties at least [number] days prior to each contract anniversary date, the contract may be renewed by the [agency] for a period of [number] successive one-year period(s) under the same prices, terms, and conditions as in the original contract. The total number

of renewal years permitted shall not exceed [number].

## **REQUIREMENTS CONTRACT**

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

## **RIGHT TO AUDIT**

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

## **RIGHT TO INSPECT FACILITY**

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

## **SEVERABILITY**

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

## **STATE PROPERTY**

Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

## **THIRD PARTY ACTION NOTIFICATION**

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

## **UNSATISFACTORY WORK**

If, at any time during the contract term, the service performed or work done by Contractor is considered by the [agency] to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the

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

## **VARIATIONS IN ESTIMATED QUANTITIES**

*Definite Quantity Contracts:* The following clause is authorized for use in definite quantity service contracts:

### **VARIATION IN QUANTITY**

Upon the agreement of the parties, the quantity of services specified in this contract may be increased by a maximum of ten percent provided:

- (1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and,
- (2) the Chief Procurement Officer makes a written determination that such an increase will either be more economical than awarding another contract, or that it would not be practical to award another contract.

*Indefinite Quantity Contracts:* No clause is provided here because, in indefinite quantity contracts, the flexibility as to the State's obligation to order and Contractor's obligation to deliver should be designed to meet using agency needs while making the contract as attractive as possible to potential Contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the State of Mississippi; however, in each case, the contract should State:

- (1) the minimum quantity, if any, the State is obligated to order and Contractor to provide;
- (2) whether there is a quantity the State expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;
- (3) any maximum quantity the State may order and Contractor must provide; and,
- (4) whether the State is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in Section 3-503 (Multiple Source Contracting), that the State will order its actual requirements from Contractors under the multiple award subject to any minimum or maximum quantity stated.

## **WAIVER**

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

require waiver of future or other defaults.

## ATTACHMENT H

### Survey Services Contract Discrepancy Report

Survey located at: \_\_\_\_\_

Date and Time of Service: \_\_\_\_\_

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

**Discrepancy or Problem:** (Describe in detail; attach supporting document; include reference to specification requirement; and attach continuation sheet if necessary).

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Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Contractor Response as to Cause, Corrective Action, and/or Actions to Prevent Recurrence:** (Cite applicable existing or new Quality Control Program or Procedures; and attach continuation sheet if necessary).

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Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Contracting Agency Evaluation and Action:** (Partial or full acceptance, rejection, payment deduction, cure notice, show cause, termination, other; attach continuation sheet if necessary).

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Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_