



ANALYSIS OF PERSONAL OR PROFESSIONAL SERVICES CONTRACTS

RFP# AAS-APS-2018-002

Adult Protective Services

As identified in Executive Order 1362, each agency awarding, renewing, or amending any professional or personal services contract reported online pursuant to the Mississippi Accountability and Transparency Act of 2008 must also submit by online report an analysis describing the reasons for awarding, renewing, or amending the contract. Furthermore, House Bill 1109, Section 12(2), effective January 1, 2016, requires additional information for notice of award and is included as part of this analysis.

PLEASE SELECT APPROPRIATE ACTION:

Awarding Renewing Amending

MDHS selected to award RFP No. AAS-APS-2018-001 to ten (10) Mississippi based Planning & Development Districts (PDD) as identified in the hereby attached and incorporated Exhibit A.

ANALYSIS DESCRIBING AWARD, RENEWAL OR AMENDMENT OF CONTRACT:

MDHS issued RFP No. AAS-APS-2018-002 on August 28, 2018. MDHS received ten (10) responses from the following: All ten (10) of Mississippi based Planning and Development Districts (PDD). Each PDD proposed to provide services for a region of Mississippi to include specific counties. When considered collectively, the PDD's could provide services statewide. The PDD's were all deemed responsive and responsible and awarded points during the evaluation; therefore, MDHS awarded ten (10) separate contracts to the PDD's to provide statewide coverage of services. The duration of each contract is for three (3) years.

DocuSigned by:
Bryan C. Wardlaw
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Chief Procurement Officer/Staff Attorney

10/26/2018
Date

Signed contracts are on file and available for public inspection in the office of the Chief Procurement Officer. Please contact the Mississippi Department of Human Services at (601) 359-4500 for more information.

EXHIBIT A

Vendor Name:	Central Mississippi PDD
Vendor Contact:	Michael Monk, Chief Executive Officer
Address:	1170 Lakeland Drive, Jackson, MS 39216
Phone Number:	601-981-1511

Vendor Name:	East Central PDD
Vendor Contact:	Bill Richardson, Executive Director
Address:	P. O. Box 499, Newton, MS 39345
Phone Number:	601-683-2007

Vendor Name:	Golden Triangle PDD
Vendor Contact:	Rupert L. "Rudy" Johnson, Executive Director
Address:	P. O. Box 828, Starkville, MS 39760
Phone Number:	662-324-7860

Vendor Name:	North Central PDD
Vendor Contact:	Stephen Russell, Executive Director
Address:	28 Industrial Park Blvd, Winona, MS 38967
Phone Number:	662-283-2675

Vendor Name:	North Delta PDD
Vendor Contact:	James W. Curcio, Executive Director
Address:	P. O. Box 1488, Batesville, MS 38606
Phone Number:	662-561-4100

Vendor Name:	Northeast Mississippi PDD
Vendor Contact:	Sharon Gardner, Executive Director
Address:	P. O. Box 600, Booneville, MS 38829
Phone Number:	662-728-6248

Vendor Name:	South Delta PDD
Vendor Contact:	Thomas L. Goodwin, Executive Director
Address:	P. O. Box 1776, Greenville, MS 38702
Phone Number:	662-378-3831

Vendor Name:	Southern Mississippi PDD
Vendor Contact:	Leonard Bentz, Executive Director
Address:	10441 Corporate Dr., Ste. 1 Gulfport, MS 39503
Phone Number:	228-868-2311

Vendor Name:	Southwest Mississippi PDD
Vendor Contact:	Wirt L. Peterson, Executive Director
Address:	100 South Wall Street, Natchez, MS 39120
Phone Number:	601-446-6044

Vendor Name:	Three Rivers PDD
Vendor Contact:	Vernon R. Kelley, III, Executive Director
Address:	P. O. Box 690, Pontotoc, MS 38863
Phone Number:	662-489-2415



AWARD REPORT OF PERSONAL OR PROFESSIONAL SERVICES CONTRACTS

RFP# AAS-APS-2018-002

Adult Protective Services

MDHS received ten (10) responses to the above referenced Request For Proposals (RFP) issued on August 28, 2018. Ranking of the responses is provided below in order of evaluation:

Respondent	Score
Southern MS PDD	97.67
Three Rivers PDD	97.00
South Delta PDD	95.67
Central MS PDD	96.67
Southwest MS PDD	96.00
North Central PDD	98.00
North Delta PDD	98.33
Golden Triangle PDD	98.00
East Central PDD	99.00
Northeast MS PDD	98.67

Each PDD was awarded the full amount of points (35) for Cost since each PDD's response included cost of service for a region of the State that only included specific counties.

MDHS recommends to award a contract to each Planning & Development District (PDD) for a total cost of \$4,604,058.00. Each contract will be for a term of three (3) years to begin of the first day of the month following the Public Procurement Review Board's approval.

Each PDD proposed to provide services for a region of Mississippi to include specific counties. When considered collectively, the PDD's can provide statewide coverage of services.

Included as Attachment 1 to this Award Report is a copy of the contract template to be used for each PDD contract that includes the terms, conditions, and scope of services for each agreement.

Evaluation Committee Members for RFP# AAS-APS-2018-002:

- 1) Jacob Black – MDHS Deputy Executive Director of Programs
- 2) Mark Williamson – MDHS Interim Director Aging & Adult Services
- 3) Anita Ballard – MDHS State Regional Director Aging & Adult Services

**STATE OF MISSISSIPPI
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES
CONTRACT FOR PERSONAL OR PROFESSIONAL SERVICES**

1. **Parties.** This Contract is made and entered into by and between the Mississippi Department of Human Services, hereinafter referred to as "MDHS," and [vendor name], hereinafter referred to as "Contractor."

2. **Purpose.** MDHS hereby engages the Contractor and the Contractor hereby agrees to render certain professional services described in Paragraph 3, "Scope of Services."

3. **Scope of Services.** The Contractor shall perform and render the following services:

3.1) Adult Protective Services (APS) is defined as the investigating of vulnerable persons according to the Mississippi Vulnerable Persons Act under the following: to determine if maltreatment has occurred, provide protective services in accordance with an Individual Services Plan and provide immediate essential services to alleviate an immediate danger as mutually agreed upon between the Contractor and MDHS for the State of Mississippi.

3.2) Upon receiving a report of a vulnerable person in need or potentially in need of protective services, an investigation shall be initiated within the following time frames and a preliminary report made to the Office of the Attorney General. The Director of the APS Call Center will determine if the case is Priority I or Priority II. Vulnerable person is in immediate danger (Priority I cases) 48 hours. Vulnerable person is not in immediate danger (Priority II cases) 72 hours.

3.3) The APS Call Center provides the initial screen and only sends cases that require an investigation to the Contractor. Once the Director of the Call Center makes the determination to investigate or not, the cases requiring investigations shall be completed within 30 days of initiation. The timeline for investigation completion may be extended for up to 30 additional days upon MDHS approval.

3.4) Upon investigation and determination that the caretaker of the vulnerable person is interfering with the provision of protective services, APS may petition the court for an order enjoining the caretaker from interference.

3.5) Mississippi and federal statutes provide for the confidentiality of the identity of individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information. APS personnel shall not release data that would be harmful or detrimental to the vulnerable person or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

3.6) MDHS maintains in-house legal counsel with expertise in the subject matter of Adult Protective Services. The contractor shall report to MDHS State Office, Aging and Adult Services, Adult Protective Services staff for any/all interpretation of policies, laws or procedures when necessary. All legal matters must be directed to MDHS State Office for resolution.

3.7) Caseworkers for APS and its subcontractors shall meet the following requirements: college graduate BA or higher from Accredited Institution, two years of experience in investigations or knowledge in the investigative field.

3.8) MDHS, Division of Aging and Adult Services maintains the Call Center for Adult Protective Services and shall continue as defined in this scope. Technical Assistance shall be provided to the Contractor by MDHS.

3.9) Detailed scope and specific requirements of the work required shall be provided by MDHS. Such scope and requirements shall include, but are not limited to, description of work activities, definition of particular deliverables, time frames, and budget parameters.

Contractor shall:

- a) Provide Adult Protective Services to MDHS.
- b) Assign a Contract Account Representative to work directly with the MDHS Representative.
- c) Abide by all laws and policies pertaining to MDHS's operation of Adult Protective Services.
- d) Provide secure and confidential services to Vulnerable Persons needing Adult Protective Services.
- e) Upon receipt of the report, the Caseworker shall review the report noting particulars about the alleged vulnerable person, the situation, the caretaker and any hazards that may be involved in the case. The Caseworker shall go to the field and begin the investigation. The investigation is deemed to be formally initiated when the Caseworker makes first contact with one of the involved adults (i.e., victim, caretaker, or other party indicated the report).
- f) The Caseworker shall take notes on the interviews, and shall complete appropriate parts of the Vulnerable Adult Checklist, Functional Assessment, Mental Status Questionnaire and Mini Mental Status Examination as the interviews are taking place. All reports are built into Harmony/Mediware. Third parties (i.e., physicians, care facility operators, financial institutions) from whom information is needed to complete the investigation shall be presented with the Consent to Disclose Information form. The Consent to Disclose Information form shall be signed by the alleged victim or caretaker before being presented to the third party.
- g) The Caseworker may take photographs of the alleged victim and the home with the permission of the alleged victim and other persons present in the home.
- h) The Caseworker shall update the case notes in HARMONY/Mediware software system, or a replacement thereof as decided by MDHS. Updating the case notes and recording initial contact with the alleged victim shall be followed up by a report to the Office of the Attorney General (AG). This action fulfills the Attorney General notification requirements of the Vulnerable Persons Act. The report to the AG shall be made using the APS Report/Investigation Checklist for VAU.

- i) Investigations shall be initiated within 48 hours (for a Priority I report) or 72 hours (for a Priority II report) and shall be completed within 30 calendar days after initiation. In the event an investigation cannot be completed within 30 calendar days, contractor may petition MDHS for an extension of the 30 calendar day requirement. Contractor shall provide justification for said extension which will be evaluated for a good cause determination concerning the requested extension.
- j) Investigations shall be initiated upon receipt, except on weekends. All reporter calls are received into the Call Center. The call center is staffed 24 hours per day, 7 days per week. Calls received on the weekend or after work hours shall be processed the next business day.
- k) Investigations are normally conducted in a home environment; however, investigations shall be conducted in a facility if the incident occurred in a private home setting. Adult protective services shall be provided in [insert counties covered].
- l) The Adult Protective Services (APS) program is to protect vulnerable persons whose safety and protection may be adversely affected by abuse, neglect, self-neglect or exploitation. Once a case is substantiated, resources are leveraged from all available sources to meet the need of the individual. i.e. MAC Center, AAAs, Community Based Organizations, etc.
- m) The Contractor shall provide and use the Harmony/Mediware software system, or a replacement thereof as decided by MDHS, for data management of Adult Protective Services at their own expense. The Contractor is responsible for their Harmony/Mediware license. The Contractor is responsible for their license to use.

Contractor shall also:

- n) Administer and maintain all employment and payroll records, payroll processing and payment of payroll checks and taxes, including deductions required by State, Federal and local laws such as social security and withholding taxes for their business and employees.
- o) Make all unemployment compensations contributions as required by Federal and State law(s) and process claims as required for their business and employees.
- p) Conduct fingerprint background check and drug screening prior to employment of all APS staff to determine suitability for employment.

MDHS must retain all administrative authority over APS. As such, MDHS is responsible for establishing all policies.

MDHS must maintain the system of record (Harmony or a replacement thereof).

MDHS must interpret all regulations and policies.

4. Period of Performance. The period of performance of services under this Contract shall begin on January 1, 2019, and end on December 31, 2021. The contract may be renewed at the discretion of the agency upon written notice to Contractor at least sixty (60) days prior to each contract anniversary date for a period of two (2) 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 two (2).

5. Consideration and Method of Payment.

a. As consideration of all services and performances under this Contract, Contractor shall be paid a fee not to exceed [insert amount of contract Dollars and Zero Cents (\$00.00)]. It is expressly understood and agreed that in no event will the total compensation paid hereunder exceed the specified amount of [insert amount of contract Dollars and Zero Cents (\$00.00)].

b. The Contractor will bill MDHS for its services. Following the satisfactory completion of its services, as determined by MDHS, the State requires the Contractor to submit invoices electronically throughout the term of the agreement. Invoices shall be submitted to MDHS using the processes and procedures identified by the State. The appropriate documentation shall be submitted on the last working day of the month, with the final invoice to be submitted within five (5) working days after the contract ending date.

6. 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.

7. 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.

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

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

10. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make

payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

11. 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:

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

In the event of such 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.

12. 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.

13. 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 \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$ 1,000,000.00. All general liability, professional liability and fidelity bond insurance will provide coverage to MDHS as an additional insured. MDHS 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. Contractor will furnish MDHS a certificate of insurance providing the aforesaid coverage, prior to the commencement of performance under this Agreement. Should the Contractor be unable to obtain coverage for the entire duration of the contract prior to the commencement of the contract, the Contractor should obtain additional coverage prior to any lapses in coverage and provide the certificate of insurance to the State no later than seven (7) days prior to the date on which the coverage ends. Any additional insurance that is obtained should run immediately after the previous coverage ends so as to prevent any lapse in coverage. Any additional insurance obtained by the Contractor should meet the terms of the contract.

14. 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.

15. 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 written, including but not limited to, written agreement on a fixed price adjustment before commencement of the additional performance;
- (b) by unit prices specified in the contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

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

MDHS may, at any time by written order, make changes in the specifications within the general scope of this Agreement. If any such change causes an increase in the amount due under this Contract or in the time required for performance under this Agreement and if MDHS decides that the change justifies an adjustment to the Contract, an equitable adjustment in the Contract may be made by written modification of this Agreement.

No charge for any extra work or material will be allowed unless the same has been provided for by written amendment to this Contract signed by both parties.

16. 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 701 E, Jackson, MS 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.

17. 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 proposal.

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

19. Stop Work Order.

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

- i. cancel the stop work order; or,
- ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

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

- i. 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,
- ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement

Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

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

20. Termination for Convenience.

a. *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.

b. *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.

21. Termination for Default.

a. *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.

b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

c. *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.

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

e. *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.

f. *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.

22. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.*

32. 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.

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

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

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

For the Agency:	For Contractor:
John Davis, Executive Director	[Name, Title]
Mississippi Department of Human Services	[Agency]
Post Office Box 352	[Address]
Jackson, Mississippi 39205	[City, State, Zip]

44. 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.

45. 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.

46. 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.

47. Priority. The contract consists of this agreement with exhibits, the procurement Request for Proposals No. AAS-APS-2010-002 (hereinafter referred to as RFP), and the response dated [insert date], by [Agency] (hereinafter referred to as Proposal). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference

to the Proposal. Omission of any term or obligation from this agreement or RFP or Proposal shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

48. 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.

49. 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-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-year period, whichever is later.

50. 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.

51. 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 (3) 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

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59. Disputes. Any dispute concerning a question of fact under this Contract which is not disposed of by agreement shall be decided by the Director of the Division of Aging and Adult Services. This decision shall be reduced to writing and a copy thereof mailed or furnished to the Independent Contractor and shall be final and conclusive, unless within thirty (30) days from the date of the decision, Independent Contractor mails or furnishes to the Executive Director of MDHS a written request for review. Pending final decision of the Executive Director of MDHS or designee of a dispute hereunder, the Independent Contractor shall proceed in accordance with the decision of the Director of the Division of Aging and Adult Services. In a review before the Executive Director or designee, the Independent Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position on the question and decision under review. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction in Hinds County, State of Mississippi, to have been fraudulent, capricious, so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

For the faithful performance of the terms of this Contract, the parties hereto have caused this Contract to be executed by their undersigned authorized representatives.

**Mississippi Department of Human
Services**

[Agency Name]

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: _____

Date: _____

Date: _____