

**MISSISSIPPI DEPARTMENT OF AGRICULTURE &
COMMERCE**

**REQUEST FOR QUALIFICATIONS
RFx # 3140003282
Smart # 1401-23-RFQF-00003**

EFFICIENCY SERVICES PROGRAM

**RFQ SUBMITTAL DEADLINE:
JANUARY 12, 2023, 2:00 PM**

**RFQ SUBMITTAL LOCATION: AT
Mississippi Department of Agriculture & Commerce
Attention: Hewitt Pittman
121 North Jefferson Street
Jackson, MS 39201**

TABLE OF CONTENTS

1.0 Overview and Background

2.0 Proposal Submittal and Selection Process

- 2.1 Policies**
- 2.2 Submittal Instructions**
- 2.3 Submittal Format**
- 2.4 Submittal Schedule**
- 2.5 Selection Process**

3.0 Scope of Work

- 3.1 Basic ESCO Services**
- 3.2 Investment Grade Audit and Project Development Phase**
- 3.3 Energy Savings Performance Contract**
- 3.4 Financing**
- 3.5 Post Construction**
- 3.6 Data Collection and Reporting by ESCO**
- 3.7 Responsibilities of all Parties**

4.0 ESCO's Response to Requirements

- 4.1 Overview of Approach to Energy Savings Performance Contracting (ESPC)**

5.0 Project History

- 5.1 Market Sector Involvement**
- 5.2 Project List**
- 5.3 Project Data and References**

6.0 Qualifications

- 6.1 History and Focus**
- 6.2 Industry Accreditations**
- 6.3 General Scope of Services**

7.0 Financial Soundness and Stability

- 7.1 Financial Soundness and Stability**
- 7.2 Financial Reports**
- 7.3 Bonding**

8.0 Additional Services

- 8.1 Investment Grade Audit**
- 8.2 Measurement and Verification**
- 8.3 Commissioning**
- 8.4 Operations and Maintenance Plan**

8.5 Measurement and Verification Savings Report

8.6 Handling of Savings Shortfalls

9.0 ESCO's Management Approach for this Project

9.1 Project Management and Coordination

9.2 Personnel and Staffing

10.0 Cost and Pricing

10.1 Project Cost Breakdown

10.2 Profit Markup

10.3 Contingency

10.4 Investment Grade Audit Fee

10.5 Self-Performed Work Fees

10.6 Annual Costs and Fees

10.7 Equipment/Labor Cost Competition

10.8 Open Book Pricing

10.9 Best Value

10.10 Types of Services

11.0 Proposal Evaluation Criteria

Attachment:

Attachment A: Base Agreement ESCO Contract

REQUEST FOR QUALIFICATIONS OF PRE-QUALIFIED ESCOS FOR AS-NEEDED ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES

1.0 Overview and Background

The Mississippi Department of Agriculture & Commerce (hereinafter referred to as Department), seeks qualified Energy Services Companies (hereinafter referred to as ESCOs or Company) for proposals from Energy Services Companies (ESCOs) to provide a comprehensive review of the Department's utility needs to reduce energy and operational costs. The ESCO selected through this RFQ may also enter, into a subsequent contract with Department to provide Investment Grade Audit Services and a Comprehensive Energy Management Program with the Department that includes clean energy opportunities and sources.

At a minimum, the ESCO must have met the following qualifications:

- An ESCO who is pre-qualified on the Mississippi Development Authority; Energy & Natural Resources Division list of Mississippi Prequalified Energy Services Providers for as-needed Energy Savings Performance Contracting Services.
- Provide evidence of Mississippi Certificate of Responsibility from Mississippi Board of Contractors (See Section 6.1.4).
- Provide evidence that ESCO is registered with the Mississippi Secretary of State.
- Provide Certificate of Insurance as evidence that ESCO has coverages of general liability, workers compensation and automobile liability.
- All other requirements in the RFQ.

The primary intent of this selection process is two-fold:

- To ensure minimum qualifications of ESCOs to implement successful Energy Savings Performance Contracting Projects.
- To offer all qualified firms the opportunity of equal access to work generated by projects.

GENERAL RESULTS DESIRED

Department is seeking a standardized process with clear direction and accountability for all participants in development, implementation, and measurement and verification of Energy Savings Performance Contracting projects by defining roles and responsibilities; formalizing process steps; establishing maximum cost schedules; providing standard contract documents; and establishing measurement and verification guidelines.

The Department seeks a broad range of services and capital improvements in order to reduce the consumption and related costs of energy use across Department facilities and infrastructure. These services and capital improvements will be provided and financed through an energy services contract under which the Customer: a.) incurs no initial capital costs without using capital budgets,

paying for projects through resulting savings of energy costs; b.) achieves significant long-term savings; c.) achieves energy savings and operations and maintenance (O&M) savings which can include material, labor and avoided future equipment replacements; d.) obtains consistent levels of occupant comfort and building functionality. All proposed O&M savings must be clearly documented and will be rigorously reviewed by the Department.

ESCOs under contract with Department will be pre-qualified to provide as-needed Energy Savings Performance Contracting (EPC) services to Department. All sizes of firms are encouraged to submit proposals for consideration. Selected ESCOs will contract with Department via ESCO contract. It will contain rate schedules as proposed by the responding ESCO or as negotiated. **It will be annually renewable for four additional terms, subject to an annual performance review by Department.** Compensation for specific work will be detailed in the resulting contracts for specific projects.

The payback period for the energy services contract shall not exceed eight (8) years. The capital cost avoidance coupled with the energy savings achieved by the installed energy efficiency measures (EEMs) need to be sufficient to cover all project costs for the duration of the contract term including any desired annual maintenance and monitoring at a minimum, the capital cost avoidance as well as the energy and O&M savings should be structured to correspond to the annual financing costs associated with the project.

ESCOs must have the demonstrated technical and managerial capabilities to address a broad range of building energy systems and provide a comprehensive set of energy services. Energy systems include, but are not limited to, heating, ventilation and air conditioning systems, lighting, windows, insulation and energy management controls, life safety measures that provide long-term, operating-cost reductions, building operation programs that reduce operating costs, other energy-conservation-related improvements, including improvements or equipment related to renewable energy, and other natural resources conservation, including accuracy and measurement of water distribution and/or consumption, and other equipment, services and improvements providing energy efficiency.

Energy services include, but are not limited to, an investment grade technical energy audit and report; the design, acquisition, installation, modification maintenance, commissioning, monitoring and training in the operation of new and/or existing energy systems which will reduce energy consumption associated with the heating, ventilation and air conditioning system, the lighting system, building envelope, water usage, and other energy using devices, as well as for savings which would not reduce consumption per se, but are aimed at cost savings related to energy use, such as sewage, solid waste collection, fuel switching or demand reductions.

Any stipulated energy and/or non-energy cost savings that may be attributed to this project will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and verified by the ESCO and approved by the Customer. Additional services may include continuing O&M for all improvements and/or training of the Customer's staff on routine maintenance and operation of systems as well as training of occupants. Monitoring and verification (M&V) services include appropriate measurement and reporting of the performance and savings from improvements.

2.0 Proposal Submittal and Selection Process

2.1 Policies

- 2.1.1** All submittals shall become the property of the Department and will not be returned.
- 2.1.2** No specific work is associated with the **ESCO Contract (Attachment A)**.
- 2.1.3** The actual extent of services required under any contract as a result of solicitation is not known.
- 2.1.4** No individual firm is assured of obtaining any work as a result of selection by Department.
- 2.1.5** The roles, responsibilities and requirements of the ESCO are outlined in the ESCO Contract.

2.2 Submittal Instructions

- 2.2.1** All submittals shall become the property of the Department and will not be returned.
- 2.2.2** Late submittals shall not be evaluated.
- 2.2.3** Department reserves the right to reject any or all proposals on the basis of being unresponsive to these guidelines, or for failure to disclose requested information, or for any other reason.
- 2.2.4** Department shall not be liable for any costs incurred by respondents in the preparation of submittals and proposals nor in costs related to any element of the selection and contract negotiation process.
- 2.2.5 Communications Regarding This RFQ**
Questions and requests for clarification on this Request for Proposals must be submitted *in writing* following the instructions below. No verbal inquiries will be addressed. Communication with other Department officials, the Selection Committee, the state program, or others associated with this Request for Proposals is prohibited.
- 2.2.6** All questions or inquiries should be directed to the following:
Attn: Hewitt Pittman
Email: hewitt@mdac.ms.gov

2.3 Submittal Format

- 2.3.1** Present responses to the items in the **Request for Qualifications**. Follow the same sequence and state each number and question prior to your response.
- 2.3.2** Quantity: Submit five (5) copies.
- 2.3.3** Submittal Media: CD, DVD, thumb drive or printed materials.
- 2.3.4** PDF Files: Present the response in a single searchable PDF file. Exception as directed, present any requested examples (Investment Grade Audit, Measurement and Verification Plan, etc.) in separate, single and searchable PDF files. Security protection may be enabled. Ensure printing is enabled.
- 2.3.5** The Proposal may not contain Proposer's name, address or any other information that would identify the Proposer.
 - A. Identifying information that would require the identity of the proposer should be marked in a separate package from the proposal and should include:

2.3.6 Deliver proposals to:

- A. Addressee: Mississippi Department of Agriculture & Commerce
Address: 121 North Jefferson Street; Jackson, MS 39201
Attn: Hewitt Pittman
No later than: **January 12, 2023 2:00 P.M.**
- B. If proposal is submitted by United States, Mail please put the following on the envelope:
1. The Request for Qualification Number.
 2. ESCO's Certificate of Responsibility Number.
 3. Date and Time of the Request for Qualification Opening.
- C. Proposals can also be submitted by ESCO's, electronically through the State of Mississippi, eProcurement System, Mississippi's Accountability System for Government Information and Collaboration (MAGIC). To submit proposals, go to the following:
1. https://www.ms.gov/dfa/contract_bid_search/Home/Sell
 2. Click on (RFX) Procurement Opportunities and Public Notifications; then type in the RFX # and hit enter.
 3. If you have any problems, contact the DFA Office – Mississippi Management and Reporting System Help Desk (601) 359-1343. The Department will not be held responsible for the vendor's late submission or good faith attempts to use the electronic proposal submission.

2.4 Submittal Schedule

The following schedule has been established for this Request for Qualifications. Note that this schedule may be subject to change.

	TASK	DATE/TIME
1.	RFQ Issued	November 9, 2022
2.	Written inquiries	November 30, 2022
3.	Responses to Inquiries	December 12, 2022
4.	Proposal Submission	January 12, 2023 2:00 P.M.
5.	Review Period	January 13, 2023, to February 6, 2023
6.	Interviews (if required)	February 15, 2023
7.	Notice of Intent to Award	March 1, 2023
8.	Agreement or Contract with Pre-Qualified ESCOs	March 15, 2023

2.5 Selection Process

2.5.1 Qualification

A Selection Committee will review and score proposals and make recommendations to Department. The Committee may schedule oral interviews with one or more responding companies to gain clarification as needed.

2.5.2 ESCO Contract with Department

Successful companies will enter into a **ESCO Contract (Attachment A)** with Department. Department reserves the right to amend the contract upon annual renewal.

An ESCO Contract will be for a one-year period with four annual renewals subject to satisfactory annual performance reviews. Changes in ownership or other factors can be submitted at any time for consideration.

3.0 Scope of Work

3.1 Basic ESCO Services

3.2 Investment Grade Audit and Project Development Phase

After selection by Department the ESCO will provide an Investment Grade Audit to Department. ESCO will negotiate a contract with Department for Investment Grade Audit Services. The Investment Grade Audit will identify and rank potential cost-saving projects and measures, determine the cost and savings of each project and measure, and present a measurement and verification plan to validate future savings of each project and cost saving measure. ESCO will only propose savings on the projects that can be measured and verified. A project proposal will present a bundle of measures that can be financed through guaranteed savings over the proposed financing term, including a cash-flow table. No payback period shall exceed eight (8) years in duration and is subject to annual appropriations.

Detailed financial projections of project benefits are dependent upon the scope of technical retrofits finally selected and installed. It is premature to place a major emphasis on projected financial benefits prior to the completion of a detailed engineering study and negotiation of the project structure. During contract negotiations, the ESCO shall disclose cost markups which will be applied during the subsequent technical energy analysis and energy services contract. Open book pricing during the construction stage will be required, such that pricing information or bids on individual products and services will be available for review by the Department. Respondents are encouraged to carefully review the evaluation criteria in the RFQ under Financial Approach and to respond as fully as possible.

The technical energy audit report must include estimates of savings for each measure and must include an estimate of all costs including design, engineering, installation, maintenance, repairs, and debt service.

Note: ESCO must have funds available to pay for the audit in the event that performance contract is not later executed. These funds must be allocated/encumbered at the time of signing of the audit contract and will be unencumbered in full when the performance contract is executed.

3.3 Energy Savings Performance Contract

Through the Energy Savings Performance Contract, the ESCO proceeds to final design, construction, and commissioning of the improvement measures. Following satisfactory completion of the Investment Grade Audit, Department will negotiate and develop an **Energy Savings Performance Contract** with the ESCO. The contract will define the final agreed upon list of measures, equipment and labor costs and guaranteed cost savings. It will document equipment specifications and warranties. It establishes the schedule and responsibilities of the ESCO and the Department. It incorporates current state statutes and directives that directly relate to performance contracting:

The ESCO shall provide a written energy savings guarantee, clearly stated in units of energy to be saved. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the Department and will not be allocated to future annual savings guarantees or shortfalls in other years. Any operating and maintenance cost savings proposed by the selected ESCO will be reviewed and if agreed to, will be limited to those that can thoroughly documented and approved by the Department.

3.4 Financing

The ESCO shall be willing and able to assist the Department in providing or soliciting financing for proposed projects. ESCO's role in advising on financing will be in accordance with all applicable federal, state and local laws. Alternatively, Department may arrange financing independently. A separate financing agreement will be developed including ESCO payment schedules and lender financing terms and schedules.

3.5 Post-Construction

The Energy Savings Performance Contract will include a number of services the ESCO will provide until the end of the contract including the guarantee of savings, measurement and verification of savings, staff training, and possibly any contract maintenance services.

3.6 Data Collection and Reporting by ESCO – Using eProject Builder (ePB) or (ePB) Express

ESCO shall collect and report project data, on behalf of Department and with approval by Department, as identified in **Energy Savings Performance Contract, Data Collection and Reporting – Using eProject Builder or (ePB) Express** and as amended on the LBNL website (<http://eprojectbuilder.lbl.gov>) and at the specified times. eProject Builder ("ePB") and (ePB) Express is a web-based tool managed on behalf of the Department of Energy by The University of California/Lawrence Berkeley National Laboratory (LBNL). ePB and ePB Express enables ESCO and their contracting agencies or other entities to:

- (1) upload and track project-level information;
- (2) generate basic project reporting materials (e.g. task order schedules) that may be mandated by local, state, and/or federal agency requirements; and
- (3) benchmark proposed Energy Savings Performance Contract (ESPC) projects against historical project data.

Based on information provided by the ESCO, the parties agree that the data required to be delivered to LBNL under this clause has commercial value whose disclosure would cause competitive harm to the commercial value or use of the data. LBNL intends to withhold such data from disclosure under 10 C.F.R. 1004.3(e)(2). The use of this data is governed by the provisions of this contract. Unless compelled by a court of competent jurisdiction, there may be no release of this data to the public without the written consent of the Recipient and DOE. Aggregate data that does not identify project-specific metric information may be released as set forth in the contract. Other information required to be delivered under this contract, but not covered under this Commercially Valuable ESPC Project Data clause, shall be delivered in accordance with this contract.

3.7 ESCO shall collect and report project data, on behalf of Department and with approval by Department in Portfolio Manager through the Environmental Protection Agency (EPA)'s Energy Star program https://www.energystar.gov/buildings/benchmark/portfolio_manager_login. This data will be used to track energy consumption on an ongoing basis as well as benchmark the Department's performance against other similar projects in the database.

3.8 Responsibilities of all Parties

The **Base Agreement ESCO Contract (Attachment A)** outlines the responsibilities and services to be provided by the ESCO, and Department.

4.0 ESCO's Response to Requirements

4.1 Overview of Approach to Energy Savings Performance Contracting (ESPC)

Provide an overview, maximum of one (1) page, to present your company as it relates to the projects. The purpose of this overview is to provide a good introduction of your firm to the evaluation committee.

5.0 Project History

5.1 Market Sector Involvement

Briefly describe your company's expertise/experience in the market sector and types of facilities related to this RFQ. Provide the number of years that the business has been in operation.

5.2 Project List

List up to 4 Energy Savings Performance Contracting projects developed and implemented by your firm within the past five years that have completed construction.

If it is relevant to list projects performed outside of the firm, clearly identify the firm with overall responsibility for that project and the project's relevance to this solicitation.

Project Name	Market Sector	City & State	Project Size (Dollars)	Project Size (Square Feet)	Year Completed

5.3 Project Data and References

Using the table below, provide detailed information on up to three performance contracting projects your firm completed. Only include projects that have at least one year of documented performance data, are currently in repayment, are currently under contract with your firm, and that can be used as references. If desired provide additional project detail, such as a case study, in any format (maximum of an additional two pages for each project). We recognize that the actual performance data of some projects may be confidential information, protected by the customer and subject to confidentiality agreements in project contracts.

Project Data and References							
Project Name							
Facility Type and Use							
Project Size:							
-Number of Buildings							
-Total Square Footage							
Types of Measures							
Project Cost: Installed Project Costs							
Project Cost: Financed Amount							
Guaranteed Annual Savings (\$)							
Financing/Funding Source							
Project Schedule:							
-Construction Start and End Dates							
-Guarantee Period Start and End Dates							
Describe if project was completed on schedule or delayed							
Measurement and Verification Methods							
Project Personnel:							
List all ESCO personnel associated with this project (limit to those who may be assigned to a project) and their roles and responsibilities (only list those who may be assigned to a project).							
Contact Information:							
Current phone and email address of company representatives you worked with.							
Commodity	Units	Guaranteed Annual Savings	Achieved Savings Year 1	Achieved Savings Year 2	Achieved Savings Year 3	Achieved Savings Year 4	Achieved Savings Year 5
Electricity	kWh						
Electric Demand	kW						
Natural Gas	Therms						
Fuel Oil	Gal						

Steam							
Fuel Oil	Gal						
Water							
Other							
Material	\$						
Maintenance Contracts	\$						
Other	\$						
TOTAL							

6.0 Qualifications

If desired, provide a narrative to highlight any elements in this Qualifications section, including subsections (limit to one page).

6.1 History and Focus of Company

Limit your response to no more than one page for this section (History and Focus of Company, and subsections).

6.1.1 Firm Name & Federal Identification #.

6.1.2 Corporate Office Address.

6.1.3 Provide a copy of Mississippi Development Authority (MDA) -Energy & Natural Resources Division Approval letter.

6.1.4 Provide evidence of Mississippi Certificate of Responsibility from Mississippi Board of Contractors with an emphasis on but not exclusive of the following: (Building Construction; Construction Management; Electrical; Mechanical and Solar and Wind Construction).

6.1.5 Provide evidence that ESCO is registered with the Mississippi Secretary of State.

6.1.6 Provide Certificate of Insurance as evidence that ESCO has coverages of general liability, workers compensation and automobile liability.

6.1.7 Structure and Evolution of the Firm. List any other names for company's business. Provide any other information, only if deemed necessary.

6.1.8 Number of years the business has been in operation.

6.1.9 Years in the Energy Business.

State the number of years the company has been involved in the energy-efficiency related business.

6.1.10 Involvement in Performance Contracting.

6.1.10.1.1 State the number of years the company has offered Energy Savings Performance Contracting services.

6.1.10.1.2 State the number of project professionals (energy engineers, project managers, etc.) in your firm that are directly involved in the performance contracting and energy efficiency or renewable energy business.

6.1.11 Number of Performance Contracting Projects.

State the number of performance contracting projects completed by the company.

6.2 Industry Accreditations

List any industry accreditations, partnerships, memberships, and pre-qualifications and briefly describe the relevance of each. Note that accreditation is not a requirement and no firm will be penalized for the lack of industry accreditations, partnerships, memberships and pre-qualifications.

6.3 General Scope of Services

The purpose of this section is to ensure the firm has qualifications to provide the full scope of performance contracting services.

6.3.1 Energy systems in buildings:

Provide a brief discussion (five pages maximum) for this section (Energy Systems in Buildings) to illustrate the company's capability in each area.

6.3.1.1 Mechanical/Electrical Systems

This discussion could include: lighting: indoor and outdoor, heating, ventilation and indoor air quality issues, cooling, control and building automation, fuel switching, central plant, etc.

6.3.1.2 Renewables

This discussion could include: daylighting, solar-electric, solar thermal, geothermal, wind, biomass, distributed generation.

6.3.1.3 Water Measures

This discussion could include: plumbing fixtures, landscape irrigation, mechanical plant water-saving measures, etc.

6.3.1.4 Specialty Systems or Specific Building Types

This discussion could include kitchen or laundry; laboratories, clean rooms; event spaces, barns, data centers; retail spaces, offices, etc.

6.3.1.5 Energy Management Services

This discussion could include: energy management, occupant programs (behavior focus), utility bill auditing and bill payment, benchmarking, LEED for Existing Buildings, etc.

6.3.1.6 Envelope Measures

This discussion could include: walls, windows, roof, infiltration reduction, etc.

6.3.1.7 Operational Savings Measures

This discussion could include eliminated maintenance costs, training programs for staff or occupants, waste measures, etc.

6.3.1.8 Other

6.3.2 Project Development and Implementation

- 6.3.2.1 Energy auditing (potential measures, savings projections; cost estimates)
- 6.3.2.2 Baseline development (including future savings adjustment)
- 6.3.2.3 Project proposal (package of measures with cash flow)
- 6.3.2.4 System design engineering
- 6.3.2.5 Equipment and subcontractor procurement and bidding
- 6.3.2.6 Construction management

- 6.3.2.7 Commissioning of projects and retro-commissioning of existing buildings
- 6.3.2.8 Project management
- 6.3.2.9 Hazardous materials identification and abatement, recycling or disposal (including asbestos)

6.3.3 Core Performance Contracting Services

- 6.3.3.1 Performance guarantee for every year of the financing term
- 6.3.3.2 Insurance per contract requirements
- 6.3.3.3 Equipment warranties
- 6.3.3.4 Facilitation of financing (including a municipal, tax-exempt lease purchase), to the extent your firm is registered to do so.
- 6.3.3.5 Measurement and verification of savings
- 6.3.3.6 Training (facility staff, occupants)

6.3.4 Support Services:

- 6.3.4.1 Long-term maintenance services on energy systems
- 6.3.4.2 Application for an Energy Star Label and LEED certification.
- 6.3.4.3 Data reporting to Department and State Program (DOE/LBNL recommendations to be provided) and other reporting as required (emissions reductions, assistance to the Department with preparing annual reports, etc.)

7.0 Financial Soundness and Stability

7.1 Financial Soundness

Describe the financial soundness and expected stability of the company.

7.2 Financial Reports:

Provide financial reports for the last 3 years, including, at a minimum: Statement of Financial Position – (Balance Sheet); Statement of Operation – (Income Statement); Statement of Cash Flow, and Statement of Change in Equity; Include the name, address, and telephone number of the preparer.

7.3 Bonding

Include responses to the following:

- 7.3.1 Current bonding rating
- 7.3.2 Current bonding capacity
- 7.3.3 Amount or percentage of bonding capacity currently obligated
- 7.3.4 Current bonding rate
- 7.3.5 Confirmation that the company is bondable for 100% of a payment bond on a project
- 7.3.6 Confirmation that the company is bondable for 100% of a performance bond on a project
- 7.3.7 Letter from a licensed surety as evidence of ability to bond for payment and performance

8.0 Additional Services

8.1 Investment Grade Audit

- 8.1.1 Briefly summarize your overall approach to auditing.
- 8.1.2 Provide a brief overview of your sample Investment Grade Audit. Under separate cover provide a sample Investment Grade Audit report for an Energy Savings Performance Contracting project that your firm implemented in a public facility. Include detailed energy/water savings and economic calculations (excluding equipment cut sheets) and samples of tables and supporting calculations. This is intended to allow reviewers to conduct a reasonable analysis of your company's auditing methodology. Please be judicious regarding the volume of information submitted.

8.2 Measurement and Verification

- 8.2.1 Briefly summarize your overall approach to Measurement and Verification.
- 8.2.2 Include a brief overview of your sample M&V plan. As an appendix to your response, provide a sample Measurement and Verification Plan from a performance contracting project implemented by your company.

8.3 Commissioning

- 8.3.1 Briefly summarize your overall approach to commissioning.
- 8.3.2 Include a brief overview of your sample Commissioning Plan. As an appendix to your response, provide a sample Commissioning Plan from a performance contracting project implemented by your firm.

8.4 Operations & Maintenance Plan

- 8.4.1 Briefly summarize your approach to Operations and Maintenance.
- 8.4.2 Include a brief overview of your sample Operations and Maintenance Plan. As an appendix to your response, provide a sample Operations & Maintenance Plan from a performance contracting project implemented by your firm.

8.5 Measurement and Verification Savings Report

- 8.5.1 Briefly summarize your approach to the M&V report.
- 8.5.2 Include a brief overview of your sample Measurement and Verification Report. As an appendix to your response, provide a sample Measurement and Verification Savings Report prepared by your firm from a completed performance contracting project currently in repayment.

8.6 Handling of Savings Shortfalls

Address any savings shortfalls that occurred over the past 5 years (up to 4 examples) and describe how they were resolved.

9.0 ESCO's Management Approach for this Project

9.1 Project Management and Coordination

Limit this section (Project Management and Coordination, including subsections) to 5 pages.

9.1.1 Organizational Structure

Show the organization chart for implementing and managing the project with the core energy team assigned to this project. Show clear lines of communication and responsibility. Describe the transition and responsible parties involved from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc. Also include an organization chart showing the corporate structure with added corporate support for the project.

9.1.2 Local Staffing and Support

List the office location (city and state) for the core energy team for this project. Describe the extent of local staffing and support for each phase of a typical project. Describe the relevance or importance of local presence in regards to the project.

9.1.3 In-House vs. Subcontractors

Describe the types of services (both professional and construction services) that your company offers in-house and the services to be offered through subcontractors.

Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors. List any affiliated companies under your corporate control or connection that will be used in the project.

9.1.4 Construction Management.

Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible Department activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects and integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.

9.1.5 Department Involvement.

Describe how you engage the Department in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate Department's needs.

9.1.6 Long-Term Servicing.

Describe long-term servicing of equipment and systems. State the location of your nearest servicing office.

9.2 Personnel and Staffing

Use the following table to present background on personnel or subcontractors who will be assigned responsibility for a core project task. Also include any added expertise and capability of staff available through other branch offices, subcontracts, etc., that can provide back-up strengths.

Personnel Profile:		Name
Potential Role		
Base Location		

Current Employment Current job title Company (if subcontractor) Job responsibilities Number of years with ESCO	
Previous Employment Job Title Company name Job responsibilities Number of years with firm	
Academic/Professional Qualifications Degree/discipline: College/university Professional affiliations Technical Training Accreditations	
Overall Total years of relevant experience: Other relevant experience or accomplishments:	
Performance Contracting Experience (Past 5 Years) Project #____ Project Name: Project location: Type of facilities: Year implemented: Project Cost (installed cost): Role and responsibilities:	

10.0 Cost and Pricing

Responses to this section only will remain proprietary.

This response will establish the percentages and rates for audit costs, markups, and fees for your firm for this project. These values will be applied in any Investment Grade Audit and Project Development Contract or Energy Savings Performance Contract and can be negotiated downward.

10.1 Project Cost Breakdown

In the table below, provide your company's proposed Maximum Percentage of Total Project Price for this project, for each category listed. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are not acceptable.

Clearly describe how incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). Incidental and ancillary work includes but is not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
Pre-Construction Costs		
Design and other Engineering <i>Professional architectural and engineering services; Energy modeling</i>		
Pre-Construction Services <i>Construction management and project development services</i>		
Other Pre-Construction Costs <i>Site visits, Meetings, Legal review, Accounting services, etc.</i>		
Construction Costs		
Trade Subcontractors <i>Construction contractors subcontracted to ESCO; Lighting, construction, sheet metal, etc.</i>	N/A until Investment Grade Audit is completed	
Design/Build Subcontracts <i>Construction and design contractors</i>	N/A until Investment Grade Audit is completed	
Direct Purchase Equipment <i>Equipment directly purchased by ESCO</i>	N/A until Investment Grade Audit is completed	
Construction Management <i>Construction manager and site superintendent</i>		
Project Engineering <i>Design engineer inspections; Engineering analysis</i>		
General Conditions <i>Miscellaneous non-staffing costs; Equipment rentals, security fencing, etc.</i>		
Construction Completion <i>Commissioning, Training, Construction Measurement & Verification, Operation & Maintenance Manuals</i>		
Other Construction Costs <i>Site visits, Meetings, Permits, Insurance, Bonds, Warranty Labor</i>		

10.2 Profit Markup

In the table below provide the maximum percentage markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. Note that overhead is included in Construction Costs - General Conditions.

	Maximum % Markup
Profit Percent	

If a proposal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format above for each participating company.

10.3 Contingency

Describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to the Department or be applied to additional work scope through a change order approved by the Department.

10.4 Investment Grade Audit Fee

In the table below, provide the maximum fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis. Through this proposed maximum fee your firm acknowledges the responsibility to adhere to and complete the full scope of work of the projects and cost saving measures.

	Proposed Max cost per sf
Investment Grade Audit and Project Proposal	\$/sf

10.5 Self-Performed Work Fees

In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company.

The purpose of this is to enable confirmation through open book pricing.

Position Description	Hourly Rate
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx

10.6 Annual Costs and Fees - Measurement and Verification – Annual Fee

Describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

Warranty- Describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

Other - Describe any other fees and how they will be determined.

10.7 Equipment/Labor Cost Competition - Describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the Department.

10.8 Open Book Pricing - Describe your company's approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

10.9 Best Value - Briefly describe how your approach to performance contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

10.10 Types of Services - Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) your company can provide.

11.0 Proposal Evaluation Criteria.

The criteria listed below will be used in the evaluation of written submissions, interviews with previous ESCO clients, and the responses of ESCOs during oral interviews, as appropriate. These criteria will be applied and interpreted solely at the discretion of the Department. Written responses should include all necessary information that is pertinent to these evaluation criteria. Additional information required for the proper assessment of written submissions may be requested from the ESCO at the discretion of the Department. The criteria are not ranked in order of importance.

A. Minimum Requirements

ESCO will not be considered for Energy Services by Department if the following minimum qualifications are not met:

Check if Met

A pre-qualified ESCO by the MS-MDA Energy & Natural Resources Division	
A licensed general contractor in the state of Mississippi (See Section 6.1.4)	
ESCO Registration with the Mississippi Secretary of State	
Certificate of Insurance	
All other requirements in the RFQ	

B. Overview of Approach to Energy Savings Performance

Overview Narrative	
--------------------	--

C. Project History

(Scoring weight: 16%)

Rating 1-10

(worst-best)

1	Market Sector Narrative of Company's expertise/experience	
2	ESCO's experience with implementing energy related projects (list up to 4). Energy Savings Performance Contracting Projects within the past five (5) years.	
3	Completion of Table in 5.2.	
4	Completion of Table in 5.3.	

D. Qualifications

(Scoring weight: 16%)

Rating 1-10

(worst-best)

1	Qualifications Narrative	
2	History and Focus of Company	
2a	Firm Name & Federal Identification #	
2b	Corporate Office Address	

2c	Provide a copy of (MDA) -Energy & Natural Resources Division Approval letter.	
2d	Mississippi Certificate of Responsibility from Mississippi Board of Contractors.	
2e	ESCO is registered with the Mississippi Secretary of State.	
2f	Certificate of Insurance	
2g	Structure and Evolution of the Firm	
2h	Number of Years in Business.	
2i	Number of Years in the Energy Efficiency Business.	
2j	Involvement in Performance Contracting	
2j.1	Number of Years Business has offered Energy Savings Performance Contracting Services.	
2j.2	Number of Project Professionals (Energy Engineers, Project Managers; Etc.) that are directly in Performance Contracting, Energy Efficiency or Renewable Energy Business.	
2k	Number of Performance Contracting Projects Completed by the Business.	
3	List any Industry Accreditations	xxxxxx
4	Energy Systems Narrative.	
4a	Mechanical/Electrical Systems - Lighting (Indoor and Outdoor); Cooling /Heating; Control and Building Automation	
4b	Renewables – Solar- Electric; Geothermal; Wind; Biomass	
4c	Water Measures – Plumbing; Irrigation; Water – Saving Measures; Etc.	
4d	Specialty Systems or Building Types – Laboratories; Event Spaces; Barns; Data Centers; Retail Spaces; Museum	
4e	Energy Management Services	
4f	Building Envelope Measures	
4g	Operational Savings Measures	
4h	Other	
5	Project Development and Implementation	
5a	Energy Auditing (potential measures, savings projections; cost estimates)	
5b	Baseline Development (including future savings adjustment)	
5c	Project Proposal (package of measures with cash flow)	
5d	System Design Engineering	
5e	Equipment and Subcontractor Procurement and Bidding	
5f	Construction Management	
5g	Commissioning of Projects and Retro-Commissioning of Existing Buildings.	
5h	Project Management	
5i	Hazardous Materials Identification and Abatement, Recycling or Disposal (including asbestos)	
6	Core Performance Contracting Services	
6a	Performance Guarantee for Years of the Financing Term	
6b	Insurance per Contract Requirements	
6c	Equipment Warranties	

6d	Facilitation of Financing	
6e	Measurement and Verification of Savings	
6f	Training on the use of systems	
7	Support Services	
7a	Long-Term Maintenance Services on Energy Systems	
7b	Application for an Energy Star Label and LEED Certification	
7c	Data Reporting to Department and Other Entities	

E. Financial Soundness and Stability

(Scoring weight: 16%)

Rating 1-10

(worst-best)

1	Financial Soundness Narrative	
2	Financial Reports for the last Three (3) Years: Minimum of the Following Including Notes to the Financial Statements:	
2a	Statement of Financial Position – (Balance Sheet)	
2b	Statement of Operation – (Income Statement)	
2c	Statement of Cash Flows	
2d	Statement of Change in Equity	
2e	Name, Address, and Telephone # of the preparer	
3	Bonding	
3a	Current Bond Rating	
3b	Current Bonding Capacity	
3c	Amount of Bonding Capacity Currently Obligated	
3d	Current Bonding Rate	
3e	Confirmation that Company is Bondable for 100% of a Payment Bond.	
3f	Confirmation that the Company is Bondable for 100% of a Performance Bond.	
3g	Letter from a licensed Surety as evidence of ability to Bond for Payment and Performance Bonds.	

F. Additional Services

(Scoring weight: 16%)

Rating 1-10

(worst-best)

1	Investment Grade Audit	
1a	Overall Approach to Investment Grade Audit Narrative	
1b	Provide a sample Investment Grade Audit report for an Energy Savings Performance Contracting project that your firm implemented in a public facility	
2	Measurement and Verification	
2a	Measurement and Verification Narrative	
2b	Provide a sample Measurement and Verification Plan from a performance contracting project implemented by your company.	

3	Commissioning	
3a	Commissioning Narrative	
3b	Provide a sample Commissioning Plan from a performance contracting project implemented by your company.	
4	Operations & Maintenance Plan	
4a	Operations & Maintenance Plan Narrative	
4b	Provide a sample Operations and Maintenance Plan from a performance contracting project implemented by your company.	
5	Measurement and Verification Savings Report	
5a	Measurement and Verification Savings Report Narrative	
5b	Provide a sample Operations and Maintenance Plan from a performance contracting project implemented by your company.	
6	Handling of Savings Shortfalls	
6.1	Address any savings shortfalls that occurred over the past 5 years (up to 4 examples)	
6.2	How were they were resolved?	

G. ESCO Management Approach for this Project

(Scoring weight: 20%)

Rating 1-10

(worst-best)

1	Project Management and Coordination Narrative	
2	Overall Organization Structure of Business	
2a	Organizational Chart for Implementing and Managing the project with the Core Energy Team assigned to the project. Using criteria in 9.1.1.	
3	Local Staffing and Support	
3a	List the Office Location (City & State) for the Core energy Team of the Project.	
3b	Describe the extent of local staffing and support for each phase of a typical project.	
3c	Describe the relevance or importance of local presence in regards to the project.	
4	In-House vs. Subcontractors	
4a	Describe the types of services (both professional and construction services) that your company offers in-house.	
4b	Describe the types of services (both professional and construction services) that your company will use subcontractors.	
4c	Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors.	
4d	List any affiliated companies that are under your corporate structure that will be used in the project.	
5	Construction Management	
5a	Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use.	

5b	Describe your flexibility and/or any limitations regarding possible Department activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects and integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.	
6	Department Involvement	
6a	Describe how you engage the Department in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate Department's needs.	
7	Long-Term Servicing	
7a	Describe long-term servicing of equipment and systems. State the location of your nearest servicing office.	
8	Personnel and Staffing	
8a	Using table and criteria in 9.2 present background of personnel or subcontractors that will be used on the project.	

H. Cost and Pricing

(Scoring weight: 16%)

Rating 1-10
(worst-best)

1	Project Cost Breakdown	
1a	Using the table and criteria in Section 10.1 provide company's proposed Maximum Percentage of Total Project Price for this Project.	
2	Profit Markup	
2a	Using the table and criteria in Section 10.2 provide company's proposed Maximum Percentage of Markup.	
3	Contingency	
3a	Describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders.	
4	Investment Grade Audit Fee	
4a	Using the table and criteria in Section 10.4, provide the maximum fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis.	
5	Self - Performed Work Fees	
5a	Using the table and criteria in Section 10.5, provide the position descriptions and hourly rates for labor and services performed by the company.	
6	Annual Costs and Fees	
6a	Describe how the post-retrofit Measurement & Verification annual fee is determined.	
6b	Describe how the warranty cost is determined.	
6c	Describe any other fees and how they will be determined.	
7	Equipment/Labor Cost Competition	
7a	Describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the Department.	

8	Open Book Pricing	
8a	Describe your company's approach to open book pricing	
8b	The method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.	
9	Best Value	
9a	Briefly describe how your approach to performance contracting delivers best value for the investment.	
9b	Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate	
10	Types of Services	
10a	Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) your company can provide.	

The establishment, application, and interpretation of the above criteria shall be solely within the discretion of the Department. The Department reserves the right to reject any, and all submissions.

(Attachment A).

ESCO Contract

THIS AGREEMENT made this ____ day of _____ in the year ____ between the _____ (Department), hereinafter called Department, and _____ (ESCO), hereinafter called the ESCO.

WHEREAS (Department), used a solicitation process to select ESCOs to provide as-needed Energy Savings Performance Contracting Services;

NOW, THEREFORE, it is agreed that:

Purpose of Contract.

The purpose of this Contract is to provide the ESCO the ability to develop and implement Energy Savings Performance Contracting (ESPC) projects.

Term of Contract, Renewals, Performance Review, Disqualification.

This Base Agreement shall become effective on the date approval is given and shall terminate on _____.

Department shall have the option to renew this Base Agreement on or before _____ of each fiscal year for a maximum of four one-year terms by executing the option in writing. The option extension will be under the same terms and conditions as the original contract. No contracts will extend beyond _____.

Services for any project may extend beyond the life of the Base Agreement with all terms and conditions remaining in effect until the work is complete.

ESCO's performance will be reviewed annually by Department for compliance with guidelines, requirements, process, and documentation. Failure to comply with project guidelines may result in disqualification. Should ESCO be deemed non-compliant during any annual review or during a contract year, at the Department's sole discretion this Contract may be terminated without regard to any time remaining in the term.

Dismissal of ESCO should be based on a definition of substantial non-compliance, should allow for a reasonable (e.g., 30 day) notice and cure period, and should establish an appeals process that conforms to applicable state law.

Responsibilities of ESCO.

The responsibilities of the ESCO shall include, but are not necessarily limited to:

General

- a) Use the State of Mississippi procurement and contracting practices and documents for all projects. If feasible, the documents should be pre-approved by state or other legal authorities before requiring ESCO signatures.

- b) For each project apply the maximum cost and pricing elements that your firm proposed, as given in the proposal.
- c) Identify and secure on behalf of the Department all available energy, demand, water and operational savings and renewable energy utility incentives available to each project. In addition, the ESCO shall provide a utility incentive summary to the Department, documenting correspondence with the utility company indicating all incentives that were applied for and secured on behalf of the department.
- d) Perform an initial evaluation of project potential and rank the projects from largest cost savings to lowest for review by the Department.
- e) Discuss with the Department the benefits and risks of each ESCO project.

Investment Grade Audit and Project Development

- a) Develop an Investment Grade Audit and Project Development Contract with the Department.
- b) Comply with all requirements of the Investment Grade, including but not limited to conduct an Investment Grade Audit, prepare a detailed technical and financial proposal for the project, help arrange for provide or procure financing as feasible, and develop a monitoring and verification plan.
- c) Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support.
- d) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- e) Address issues, recommendations, and requests from Department in support of the Department's review and facilitation processes.

Energy Savings Performance Contract Project Implementation

- f) Develop the Energy Savings Performance Contract with the Department based upon results of the Investment Grade Audit
- g) Comply with all requirements of the Energy Savings Performance Contract, including but not limited to design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures and monitoring and verification services.
- h) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- i) Address issues, recommendations, and requests from Department in support of the Department's review and facilitation processes.
- j) Provide Department with an electronic copy of the final contract.
- k) Provide a post-implementation report to Department.

Performance Period:

- l) Comply with all requirements of the Energy Savings Performance Contract, including but not limited to measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair

- of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- m) Provide the Department with annual reports on project cost, status, savings achieved, and square footage impacted by the project.
 - n) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
 - o) Address issues, recommendations, and requests from Department in support of the Department's review and facilitation processes.

Data Collection and Reporting – Using eProject Builder (ePB)

ESCO shall collect and report project data, on behalf of Department and with approval by Department. **Using eProject Builder** and as amended on the LBNL website (<http://eprojectbuilder.lbl.gov>) and at the specified times.

eProject Builder ("ePB") is a web-based tool managed on behalf of the Department of Energy by The University of California/Lawrence Berkeley National Laboratory (LBNL). ePB enables ESCO and their contracting agencies or other entities to:

- (1) upload and track project-level information.
- (2) generate basic project reporting materials (e.g., task order schedules) that may be mandated by local, state, and/or federal agency requirements; and
- (3) benchmark proposed Energy Savings Performance Contract (ESPC) projects against historical project data.

Based on information provided by the ESCO, the parties agree that the data required to be delivered to LBNL under this clause has commercial value whose disclosure would cause competitive harm to the commercial value or use of the data. LBNL intends to withhold such data from disclosure under 10 C.F.R. 1004.3(e)(2). The use of this data is governed by the provisions of this contract. Unless compelled by a court of competent jurisdiction, there may be no release of this data to the public without the written consent of the Recipient and DOE. Aggregate data that does not identify project-specific metric information may be released as set forth in the contract. Other information required to be delivered under this contract, but not covered under this Commercially Valuable ESPC Project Data clause, shall be delivered in accordance with this contract.

Responsibilities of Department.

The responsibilities for Department include, but are not necessarily limited to:

From the Department:

- a) Select an ESCO from the current pre-qualified list, using a selection process.
- b) Assign members to the facility project team including operations, maintenance, financial and upper management personnel.
- c) Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed.

- d) Provide access and escort to buildings.
- e) Provide information as needed for the feasibility study, the Investment Grade Audit, and other project development activities.
- f) Work with ESCO to develop/refine project parameters.
- g) Select the projects with assistance in project development by ESCO.
- h) Review/approve ESCO proposals, designs, and reports.
- i) Ensure recommendations and concerns by ESCO during reviews are addressed.
- j) Execute approved contracts with the ESCO.
- k) Make payments for ESCO services per contract terms.
- l) Make arrangements for project financing.
- m) Provide project management.
- n) Provide information as needed for measurement and verification activities.

Scope of Services (Technical Requirements)

The Scope of Services must be included in any energy services contract the Department enters into, and must include the following items at a minimum:

- a. **Investment Grade Technical Energy Audit and Report.** The ESCO's proposed contract terms must include the performance and presentation of results from a detailed investment grade technical energy audit and report of acceptable quality to the Department. If the Department decides not to enter into a contract after the audit report has been accepted, the Department agrees to pay the cost of the audit as stated in the submitted response to this RFQ, provided that all contract terms and conditions of the audit have been met by the ESCO. Note: These conditions have been described previously and can be negotiated into the audit contract. Debt service for each measure is not likely to provide useful information unless there is something specific to MS law that requires it.
- b. **Standards of Comfort.** Specific standards of comfort, safety and functionality will not be degraded from the existing condition and/or shall meet minimum established industry standards. The ESCO will be responsible for maintaining the levels of comfort for each building. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.
- c. **Professional Engineer Involvement.** A registered professional engineer must, at a minimum, review and approve design work done under this contract.
- d. **Annual Interest Rate.** The annual rate of interest paid under any lease-purchase agreement entered into by the Department shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under §75-17-101 of the Mississippi Code.
- e. **Construction Management.** The ESCO will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed

improvements. No equipment or other improvements will be installed that would require the Department to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation.

- f. **Equipment Standardization.** All equipment installed that is comparable to similar equipment at other sites operated by the Department shall be of the same manufacturer for standardization of equipment agency wide, unless otherwise accepted by the Department.
- g. **Maintenance Manuals.** At least two (2) maintenance manuals for each site will be provided for all equipment replacements and/or upgrades at each location. Manuals are subject to approval of Department.
- h. **As-Built Drawings.** Where applicable, ESCO must provide mylar, reproducible "as built" and record drawings (or such electronic equivalents as may be agreed to with the Department) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completion of installation.
- i. **Maintenance Services.** Maintenance services shall be negotiated between the Department and ESCO and described in detail in the final contract.
- j. **Department Activities.** Department reserves the right to make energy improvements to the work sites and to monitor the performance of the installations independently of the ESCO.

2. **Contractual Provisions**

Key elements that must be provided for in any energy services contract that Department enters will, at a minimum, include the following:

- a. **Written Submissions.** The contents of the ESCO's submissions in response to this solicitation will become part of any final agreement between the Department and the contractor.
- b. **Meeting Project Schedule.** The ESCO must provide a final schedule of project milestones including equipment-servicing and preventive maintenance provisions that may become part of any final contract. ESCO is responsible for meeting schedule deadlines. In the event any milestone or service provision is not met as scheduled without prior approval from the Department, the Department reserves the right to consider it a default and withdraw from all contractual obligations without penalty.
- c. **Department Inspection.** The Department must have the right to inspect, test and approve the work conducted in the facilities during construction and operation. The Department shall have the reasonable right and access to the account books, records,

and other compilations of data that are related to and pertain to the performance of the provisions and requirements of this agreement. This is covered below by the open book pricing requirement. Records shall be kept on a generally recognized accounting basis, and calculations will be kept on file in legible form and retained for three years after close-out. The Customer retains the right to have its representative visit the site during the analysis and implementation phases of the project, and to attend relevant on-site or off-site meetings of the ESCO and/or its subcontractors.

- d. **Final Approval of Department.** The Department retains final approval over the scope of work and all end-use conditions.
- e. **Repayment of Project Financing.** The repayment obligation and term of the financing for this project must be arranged to coincide with the acceptance by the Department that the project is fully installed and functioning.
- f. **Property of Drawings, Reports and Materials.** All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of the Department and will be delivered to the Department as needed or upon completion of construction.
- g. **Compliance.** All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations such as building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices and in compliance with all Department regulations relative to the premises. The ESCO and its subcontractors will be responsible for obtaining any and all required governmental permits, consents and authorizations, and for payment of any and all state and city required taxes and fees which result from is contract. The contract must comply with the statutory provisions of §31-7-14 of the Mississippi Code.
- h. **Handling of Hazardous Materials.** All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable Department rules relative to the premises. In the event the ESCO encounters any such hazardous materials, the ESCO shall immediately notify the customer and stop work pending further direction from the Department. The State may, in its sole discretion, suspend work on the project pending removal of such materials or terminate this Agreement.
- i. **Methodology to Adjust for Changes.** The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties.

- j. **Hiring and Wage Requirements.** The ESCO will comply with all requirements for the payment of prevailing wages, and for minority and women-owned business enterprises.
- k. **Subcontractor Approval.** The Department retains the right to approve any ESCO selected subcontractor prior to its commencement of work on this project.
- l. **Bonding Requirements.** The ESCO will provide to the Department assurance of completion in the form of separate performance and labor and material payment bonds, each in the sum of 100 percent of all subcontracts.
- m. **ESCO Insurance.** Prior to the commencement of work, the ESCO must provide evidence of the required levels of insurance for both the construction and operations phases of the project.
- o. **Applicability of O&M savings.** Any O&M cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the Department.
- p. **Open Book Pricing.** Open book pricing will be required, such that the ESCO will fully disclose all costs.
- q. **Disclosure of Cost Markups.** The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be required to be applied to any measures included in any subsequent technical analysis or energy services contract.
- r. **Annual Reconciliation.** Annual savings will be reconciled and verified each year as specified in the final contract.
- s. **Contract Term.** No payback period shall exceed 8 years in duration and is subject to annual appropriations.
- t. **Contract Expiration and Renegotiation.** At the time of contract expiration, the Department will have the option either to renegotiate the contract or terminate it without penalty. However, the contract cannot extend over a five (5) year term.
- u. **Contract Renegotiation.** Department reserves the right to renegotiate the awarded contract if warranted, due to changes in the regulatory or utility climates or in the Department's use of energy.
- v. **Post-Contract Preventive Maintenance Schedule.** Upon completion of the contract, the ESCO shall provide to Customer a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following contract close-out.

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.

AVAILABILITY OF FUNDS

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

COMPLIANCE WITH LAWS

Contractor understands that the Department 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

STOP WORK ORDER

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

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

(2) **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An

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

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

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

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

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

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.

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 Personal Service Contract Review Board Rules and Regulations*.

ACKNOWLEDGMENT OF AMENDMENTS

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

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

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/has not (*use applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally

provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

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.

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.

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.

Contracts, except those for contract workers paid in SPAHRS or for Contractors exempted from this rule, must include the following language:

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

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 *Department* 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 *Department* under said contract.

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 *Department* 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 *Department* 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 *Department* in writing of this belief. If the *Department* 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.

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 *Department* shall result in the immediate termination of this agreement.

CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that *Department* 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 *Department* pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, *Department* shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The *Department* shall not be liable to the Contractor for disclosure of information required by court order or required by law.

CONTRACTOR PERSONNEL

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

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 *Department*, 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 *Department* may have.

FAILURE TO ENFORCE

Failure by the *Department* 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 *Department* 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 *Department* 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

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.

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 *Department*, and the *Department* shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The *Department* 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 *Department* 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 claims 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 *Department* as an additional insured. The *Department* 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.

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 the Department:

_____	(Name)
_____	(Title)
_____	(Address)

For the Contractor

_____	(Name)
_____	(Title)
_____	(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 *Department* and agreed to by Contractor.

OWNERSHIP OF DOCUMENTS AND WORK PAPERS

Department 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 *Department* 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 *Department* and subject to any copyright protections.

PATENTS AND ROYALTIES

Contractor covenants to save, defend, keep harmless, and indemnify the *Department* 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 *Department*. 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 Personal Service Contract Review Board Rules and Regulations*.

PRIORITY

The contract consists of this agreement, the request for proposal [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 *Department*.

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

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

CERTIFICATES AND LICENSES

Contractor shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to the *Department* no later than ten days after Contractor receives the notice of award from the *Department*. Current notarized copies of licenses and certificates shall be provided to the *Department* within twenty-four hours of demand at any time during the contract term. Licenses and certificates required for this contract include, by way of illustration and not limitation, the following:

- (1) A business license valid in *Department*.
- (2) A professional license or certificate in the field of *[specialty area]*.
- (3) *[Any additional licenses that may be required to be held by architects, health professionals, pesticide or herbicide application technicians, asbestos removal Contractors, etc.]*.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in original and three counterparts on

The _____ day of _____, 20____

By _____

Mississippi Department of Agriculture

THE ESCO

Signature

By _____
Name (print) Title

Address

City, State, Zip

SIGNATURES:

If the ESCO is doing business as a Corporation, the Agreement shall be signed by an officer i.e., President or Vice-President. The signature of the officer signing shall be attested to by the Secretary and properly sealed if corporate seal is available. If the ESCO is a sole proprietorship or a partnership, the Agreement shall so indicate and be properly signed.