

INVITATION FOR BIDS

IFB Number: 3160005491

To Provide: Vegetation Monitoring Services

Issue Date: Monday, October 17, 2022

CLOSING LOCATION

Mississippi Department of Environmental Quality

515 East Amite Street

Jackson, MS 39201

Or Electronically in MAGIC

BID COORDINATOR

Melanie Green, Chief Procurement Officer

Telephone: (601) 961-5270

Fax: (601) 961-5715

E-mail: procurement@mdeq.ms.gov

CLOSING DATE AND TIME

Bids must be received by 3:00 p.m. CST

Thursday, November 17, 2022

SECTION 1

1.1 Bid Acceptance Period

The bid shall be limited to no more than a total of thirty (30) typed pages including contents pages, supporting appendices, and resumes. Paper size shall be 8 1/2" x 11". Text shall not be smaller than a font size of 12. Bidders shall submit the signed original bid in a sealed envelope or package to MDEQ on or before the date and time specified. Alternatively, electronic bids may be submitted to Mississippi's Accountability System for Government Information and Collaboration (MAGIC) RFx: 3160005491 by the date and time specified herein. The original must be signed by an authorized representative of the bidder.

MDEQ will receive bids offered from organizations having specific experience and qualifications in the area identified in this solicitation. For consideration, bids must contain evidence of the organization's experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by MDEQ is included herein. Unless otherwise stated, all bidders shall provide profiles and resumes of the staff to be assigned to the project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the bidder's expertise in the area of this solicitation.

The original Bid and all attachments shall be signed and submitted in a sealed envelope or package to:

Bid for Vegetative Monitoring Services
Mississippi Department of Environmental Quality
Attn: Melanie Green
515 East Amite Street
Jackson, Mississippi 39201

1.1.1. Timeline

- Invitation for Bid (IFB) Issue Date: October 17, 2022
- Optional Pre-bid Meeting: November 2, 2022 at 1:00 p.m. CDT via Webinar
- Questions to MDEQ Deadline: November 7, 2022
- Anticipated Posting of Response to Inquiries/Amendments: November 10, 2022
- Bid Package Submission Deadline: November 17, 2022 at 3:00 p.m. CST
- Bid Package Opening: November 17, 2022 at 3:15 p.m. CST via Webinar
- Anticipated Notice of Intent to Award: November 25, 2022
- Anticipated Post-Award Debriefing Request Date: November 30, 2022
- Post-Award Debriefing Held by Date: December 5, 2022

1.1.2. Late Submissions

Bids received after the specified time shall be rejected. The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office. **MDEQ will not be responsible for delayed or lost mail received after the deadline.**

1.2 Expenses Incurred in Preparing Bid

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

1.3 Bid Form

All pricing must be submitted on the Bid Form (**Attachment A**). Failure to complete and/or sign the bid form may result in the bidder being determined nonresponsive.

1.3.1 Bidder Certification

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

1.4 Debarment

By submitting a Bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

1.5 Additional Information

Questions about the contract portions or technical portions of the procurement document must be submitted in writing no later than the date and time specified for Questions to Melanie Green at procurement@mdeq.ms.gov. Bidders are cautioned that any statements made verbally by any person shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

1.6 Acknowledgement of Amendments

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid. The acknowledgement must be received by MDEQ by the time and at the place specified for receipt of bids.

1.7 Type of Contract

Compensation for services will be in the form of firm fixed rates provided in response to this IFB.

1.8 Written Bids

All bids shall be in writing.

1.9 Disposition of Bids

All submitted Bids become the property of the State of Mississippi.

1.10 Proprietary Information

The bidder should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Miss. Code Ann. §§ 25-61-9 and 79-23-1. The provisions of the Contract which contain the professional services provided, any unit prices contained within the Contract; the overall 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 in

accordance with Miss. Code Ann. § 25-9-120 and the Mississippi Public Records Act. Any pages not marked accordingly will be subject to review by the general public after award of the Contract. Material so designated shall accompany the proposal and shall be readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

1.11 IFB Does Not Constitute Acceptance of Offer

The release of this IFB does not constitute an acceptance of any offered Bid, nor does such release in any way obligate MDEQ to execute a contract with any bidder. MDEQ reserves the right to accept, reject, or negotiate any or all Offers on the basis of the evaluation criteria contained within this document. The final decision to execute a Contract with any party rests solely with MDEQ, including the decision to make no award of Contract.

SECTION 2

2.1 Purpose

MDEQ is soliciting bids, subject to the conditions stated herein and attached hereto, from organizations licensed to do business in the State of Mississippi to assist MDEQ with vegetative monitoring services, on an as needed basis, related to natural resource restoration projects implemented on the Mississippi Gulf Coast, which is necessitated by the 2010 *Deepwater Horizon (DWH)* Oil Spill. The funds provided for these services are made available pursuant to the *Mississippi Trustee Implementation Group Final Restoration Plan II and Environmental Assessment: Wetlands, Coastal, and Nearshore Habitats and Oysters* (“the Plan”), which was approved by the Mississippi Trustee Implementation Group (MS TIG) and provided through MDEQ to partially address the injuries caused by the spill pursuant to and in accordance with the Oil Pollution Act and the Consent Decree entered in the case entitled *In Re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, MDL-2179 in the Eastern Federal District Court of Louisiana.

The purpose of this project is to monitor vegetation structure and vegetation composition over time to meet the overall objective to increase and maintain native vegetation species composition and structure in restored habitats within the Wolf River Coastal Preserve and the Hancock County Marsh Coastal Preserve. Management activities tied to the monitoring include one or a combination of the following: chemical treatment, mechanical treatment, prescribed fire, and prescribed grazing,

Project Areas

Area 1

Area 1 is located within the Hancock County Marsh Coastal Preserve – Wachovia Tract Component in Hancock County, Mississippi. This is a 1,203-acre area located south of Interstate 10, east of the Pearl River and west of the Possum Walk Trail. Management activities will be taking place within the burn units of the Wachovia Tract (See Figure 1). The Wachovia Tract is in state ownership and consists of two major habitat types. The first is the pine flatwood uplands on the center and eastern two thirds of the Tract. This pine flatwood very gently slopes to marshes that are a mixture of freshwater and brackish habitats located to the west and southwest of the pine flatwoods. Marshes make up the remaining one third of the Tract. There are several tree islands embedded in this marsh area, with pines, hardwoods, and shrubs. The target acreage for management is broken into three burn units of 74 acres, 144 acres and 159 acres.

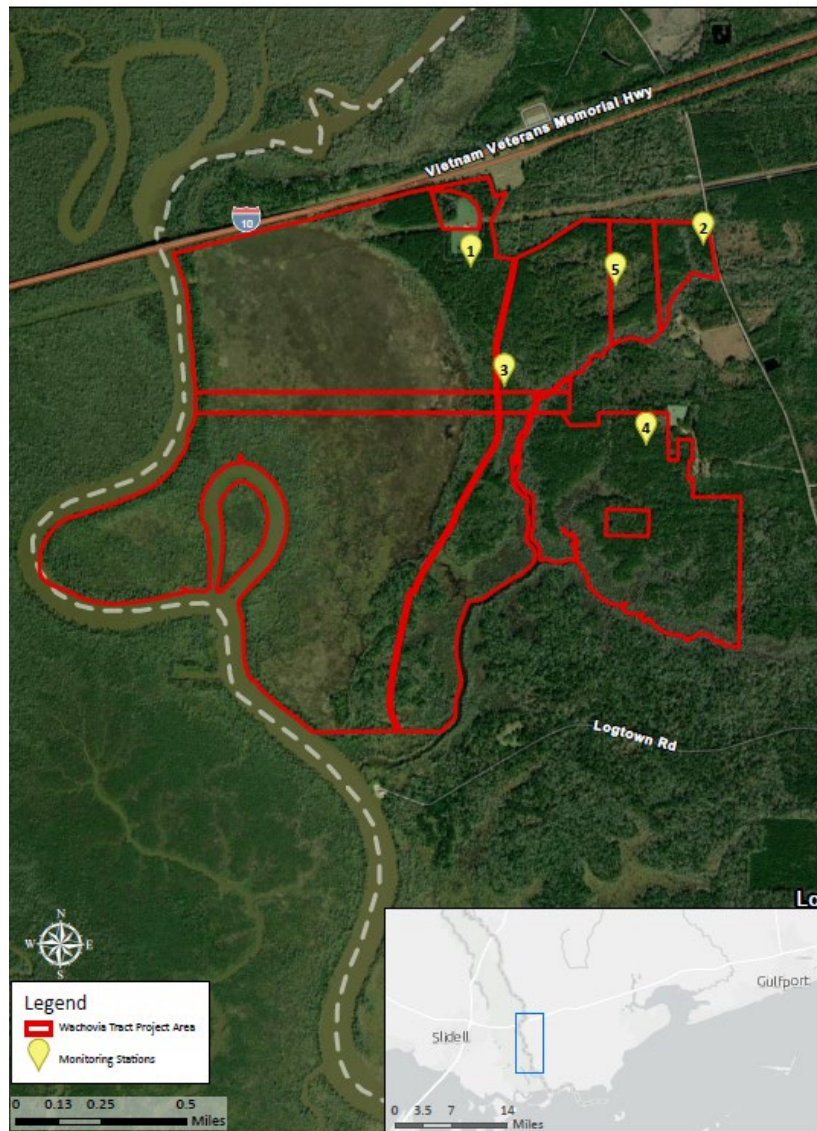


Figure 1 - Monitoring Stations at Hancock County Marsh Coastal Preserve - Wachovia Tract

Area 2

Area 2 is located within the Wolf River Coastal Preserve in Harrison County, Mississippi – DeLisle Tract and Bell’s Ferry Tract in Harrison County, Mississippi. This is a 2,500-acre area located near the confluence of the Wolf River with St. Louis Bay. Management activities will be taking place within the burn units of the DeLisle Tract and the Bell’s Ferry Tract (See Figures 2 and 3). The DeLisle Tract consists of three major habitat types. The first is the pine flatwood uplands on the northern third of the tract. This pine flatwood very gently slopes to marshes that are a mixture of freshwater habitats and saltwater habitats located to the southeast, south and southwest of the pine woods. The target acreage for management for the DeLisle Tract is 232 acres consisting of three burn units of 154 acres, 58 acres and 20 acres, which are restricted to the pine flatwood and hydric drain portions of the tract. The Bell’s Ferry Tract is a 115-acre tract that is predominately pine flatwoods broken into two burn units of 39 acres and 9 acres.

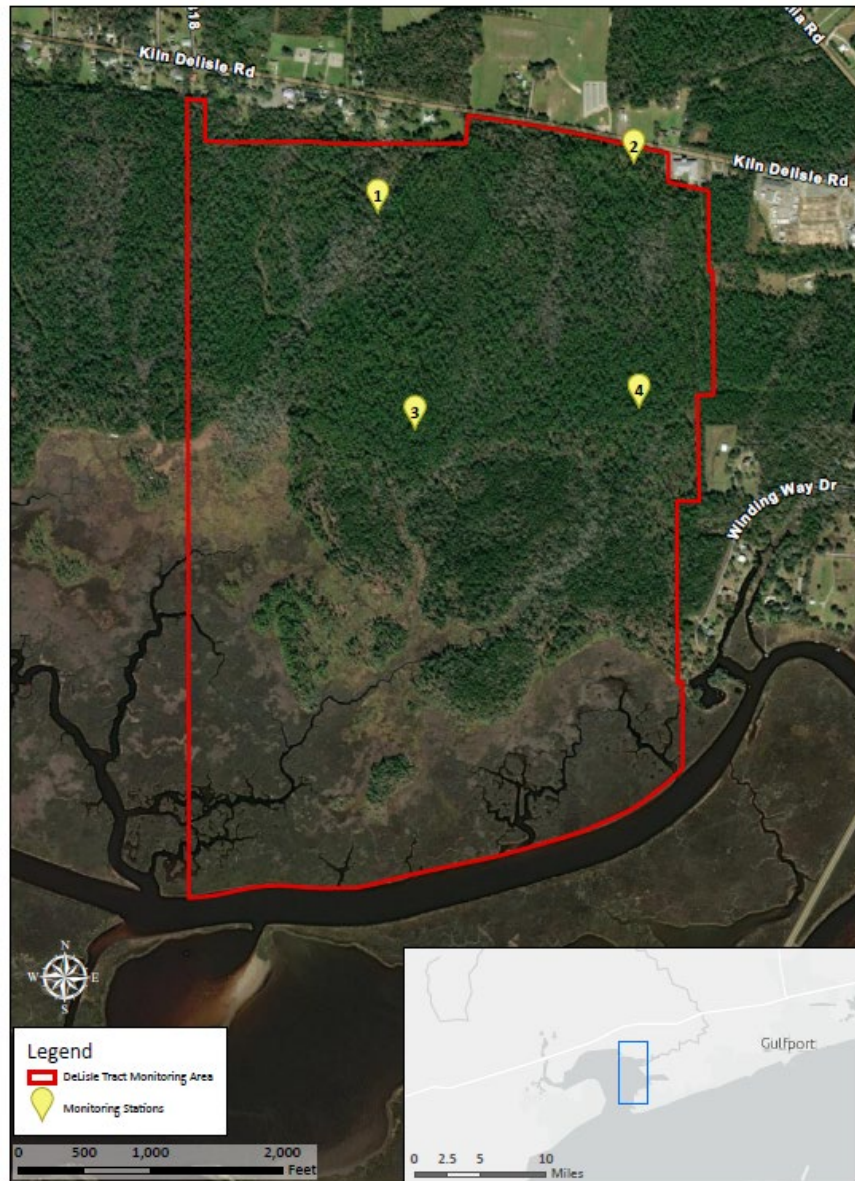


Figure 2 - Monitoring Stations at Wolf River Coastal Preserve - DeLisle Tract



Figure 3 - Monitoring Stations at Wolf River Coastal Preserve - Bell's Ferry Tract

2.2 Scope of Work

The scope of the engagement may include, but is not limited to, the survey of vegetative structure and composition in the project areas as follows: five fixed and five random plots will be assessed within Area 1; four fixed and four random plots will be assessed at the DeLisle Tract within Area 2; and two fixed and two random plots will be assessed at the Bell's Ferry Tract within Area 2, for a total of twenty-two (22) sampling plots. The contractor will coordinate with MDEQ and the Mississippi Department of Marine Resources (MDMR) to track data collection activities. Specific tasks include the following:

1) Assessment of Vegetation Structure

- *Vegetation Structure Assessments:* Assessments will consist of documenting site characteristics in 30-meter radial plots at multiple sites within a management tract to capture habitat diversity across the project area. Then, metric assessment scores will be derived to calculate a score for the canopy, ground layer, and invasive species,

and an overall score will be applied. The project will adopt the methodologies described in the *Rapid Assessment Metrics to Enhance Wildlife Habitat and Biodiversity within Southern Open Pine Ecosystems* (Nordman et al. 2016) and *Field Manual for Rapid Assessment Metrics for Wildlife and Biodiversity in Southern Open Pine Ecosystems* (White and Nordman, 2016) for the habitat “Wet Longleaf & Slash Pine Flatwoods & Savannas.”

- *Timing, Frequency, and Duration:* Monitoring will take place twice per year (growing season and non-growing season) for the first year after treatment and once per year for the next four years in the growing season. Sampling times may differ based on the timing of restoration actions. The data will be analyzed annually, and used to assess the need for corrective action, if any.

2) Assessment of Vegetation Composition

- *Vegetation Composition Assessments:* In conjunction with the methods outlined for vegetation structure, vegetation composition information will be collected to document all plant species present within a 1-meter plot. The 1-meter plot will be the centroid of the 30-meter radial plot used for vegetation structure surveys. These plots will be located at multiple sites within a managed tract to capture habitat diversity across the project area.
- *Timing, Frequency, and Duration:* Monitoring will take place twice per year (growing season and non-growing season) for the first year after treatment and once per year for the next four years in the growing season. Sampling times may differ based on the timing of restoration actions. The data will be analyzed annually, and used to assess the need for corrective action, if any.

3) Data Analysis and Reporting

- *Vegetation Structure Assessments:* Provide data spreadsheets with collected information per sampling plot and data summaries to reflect the following per sampling plot and averaged across sampling plots per Area:
 - Percent canopy cover of longleaf or slash pine,
 - Percent herbaceous cover, and
 - Percent cover of invasive/nonnative plant species in any stratum present.
- *Vegetation Composition Assessments:* Provide data spreadsheets with collected information per sampling plot and data summaries to reflect the following per sampling plot and averaged across sampling plots per Area:
 - Percent cover of native flora.

2.3 Qualifications

Offeror(s) should highlight expertise in coastal ecosystems and a minimum of 3-5 years of habitat monitoring experience.

2.4 Term

The term of the contract shall be for a period of two (2) years with an option to renew, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract subject to approval by the Public Procurement Review Board (PPRB). The

total contract term, including any renewals, shall not exceed a maximum total of five (5) years.

2.5 Minority and Women Businesses

MDEQ's policy is to promote participation of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in the contracts let by MDEQ. The intent of the following provision is to encourage contractors to involve such businesses in a meaningful role in the provision of services under this IFB.

A. Offeror's and Offeror's subcontractors will abide by the following steps to encourage participation by MBE and WBE:

1. Including MBE and WBE on solicitation lists;
2. Assuring that MBE and WBE are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBE and WBE;
4. Establishing delivery schedules, where the requirements of the work permits, which will encourage participation by MBE and WBE;
5. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce or Mississippi Development Authority's Minority Business Small Business Development Division (Mississippi Procurement Technical Assistance Program), as appropriate; OR satisfying the self-certification requirements of this section where appropriate, and
6. Including these steps in any subcontracts awarded under this Contract.

B. If applicable, Offeror shall supply MDEQ with proof of Offeror's and Offeror's subcontractor's minority status by providing the following prior to contract execution:

1. Certification by the Small Business Administration;
2. Certification by the Mississippi Development Authority's Minority Business Certification Program; or
3. Self-Certification through Notarized affidavit of the MBE/WBE documenting that said business is:
 - a. Wholly owned or majority controlled by a minority or woman; and
 - b. Has been doing business in Mississippi for a period of at least six months prior to the provision of work under this Contract.

SECTION 3

3.1 Bid Evaluation

This IFB sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set in this IFB. Only bidders who are found responsive and responsible will have their bids considered. The Contract will be awarded to the lowest responsible/responsive bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids.

3.1.1 Responsive Bidder

Bidder must submit bid which conforms in all material respect to this IFB, as determined by MDEQ. Bids will be reviewed to ensure compliance with the Mandatory Requirements of this IFB. Any offeror who does not supply this information and/or meet these requirements will be deemed non-responsive.

3.1.2 Nonconforming Terms and Conditions

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

3.1.3 Conditioning Bid Upon Other Awards

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

3.1.4 Mandatory Requirements

The bid package must be sealed and must contain all of the following to be deemed responsive:

- A. Company Information: Bidder must provide the information below in the following manner:

Bidder's company name:	
The place of performance of the proposed contract:	
All appropriate company contact information, including the following: Company's Physical Address for place of performance and Principal Place of Business (if different): Designated company contact: Contact's e-mail address: Contact's phone number:	

Bidder's Unique Entity Identifier (UEI) number:	
The age of Bidder's business:	
The average number of employees over the past three (3) years:	

- B. Project Plan Management: Provide a summary discussing the project management approach that the offeror's Project team will take to achieving the tasks described in the Scope of Work and course of action necessary for completion of the Scope of Work in accordance with the anticipated Period of Performance.
- C. Price: Provide rates for the services to be performed under this IFB. Please provide this information by filling out the Bid Form attached as Attachment A.
- D. Project Team, Resources and Résumés: Provide the following information:
1. Provide résumés of all persons who would be assigned to provide the required services, including, but not limited to, their respective backgrounds, experience, Project responsibilities, licenses, certifications, education, and skills.
 2. Provide information on the bidder's access to or ability to obtain the equipment, facilities and financial resources to perform the work.
 3. Provide the name of any company or individual anticipated to be used as a *subcontractor* on this Project, as well as that subcontractor's duties on the Project. If subcontractors have not yet been identified but bidder has certain duties that it anticipates subcontracting, bidder shall delineate that scope of work to be subcontracted. Also, bidder should be aware that all subcontractors must be approved by MDEQ.
- E. Experience with Projects of Similar Scope and References: Provide the following information:
1. A record of at least ten (10) projects of similar size and scope completed by the proposed Project Team within the past three (3) years;
 2. For each project identified, identify which member(s) of the proposed Project Team participated and what role they served; and
 3. Each referenced project shall include the following:
 - a. The name,
 - b. telephone number, and
 - c. email address of a responsible individual who may be contacted for a reference.
- F. Professional Licenses and Registrations:

1. Provide copies of the professional licenses/registrations for all entities that comprise the Project Team, as applicable.
2. Provide a list of individuals and their professional license, certification, or registration numbers for the persons identified in the Project Team, as applicable.

This information required in this Section will not be included in the Bid's thirty (30) page limit.

- G. Certificate of Good Standing: Provide proof from the Office of the Secretary of State of the State of Mississippi demonstrating that bidder is in good standing to do business in Mississippi, which will not be included in the Bid's thirty (30) page limit.
- H. MBE/WBE: Bidder must complete and attach the MBE/WBE Solicitation Form, which is attached hereto as Attachment B. Any documentation submitted under this Section is not included in the thirty (30) page limit of the Bid.
- I. Offeror's Affidavit: Bidder must execute, notarize, and attach the Offeror's Affidavit to its Bid, which will not be included in the Bid's thirty (30) page limit. A copy of the Offeror's Affidavit is attached hereto as Attachment C.
- J. Acknowledgement of Amendments: Bidder shall acknowledge receipt of any amendment to this IFB by signing and returning the amendment with its Bid. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of bids. Any documentation submitted under this Section is not included in the thirty (30) page limit of the Bid.

3.1.5 Responsible Bidder

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

3.1.6 Minimum Qualifications to be Deemed Responsible

Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective Contractor has:

- A. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements ;

Provide the information required in Section 3.1.4(D) of this IFB.

- B. A satisfactory record of performance;

Provide the information required in Section 3.1.4(E) of this IFB.

C. A satisfactory record of integrity;

Provide the information required in Section 3.1.4(E) of this IFB. MDEQ may contact project references as necessary to determine a satisfactory record of integrity.

D. Qualified legally to contract with the State; and

Provide certification that the offeror is not currently debarred from contracting with the State, by providing a completed Offeror's Affidavit as required by this IFB. Also provide a certificate of Good Standing as required by this IFB.

E. Supplied all necessary information in connection with the inquiry concerning responsibility.

The burden is on the prospective bidder to thoroughly demonstrate its responsibility in the above-listed categories. Any bidder to be deemed non-responsible will be rejected.

3.2 Pre-Bid Meeting

An optional pre-submittal conference will be held at the time specified in the IFB via the following online webinar/meeting:

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/440259797> [meet.goto.com]

You can also dial in using your phone.

United States: [+1 \(646\) 749-3122](tel:+16467493122)

Access Code: 440-259-797

The purpose of the pre-submittal conference is to allow potential offerors an opportunity to present questions to staff and obtain clarification of the procurement requirements. Minutes of the conference will be published.

3.3 Bid Opening

Bid opening will be opened publicly at the time specified in this IFB, via the following online webinar/meeting:

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/206523469> [meet.goto.com]

You can also dial in using your phone.

United States: [+1 \(571\) 317-3122](tel:+15713173122)

Access Code: 206-523-469

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

3.4 Award

Contracts will be awarded by written notice to the responsive/responsible bidders whose bid meets the requirements and criteria set forth in this IFB within ninety (90) days. Should there be any reason why the contract cannot be awarded within ninety (90) days after bid opening, the time may be extended by written mutual agreement between MDEQ and the successful bidder(s). Being listed as a qualified Contractor in no way guarantees to any such Contractor any specified amount of work under this IFB and any resulting contract.

3.4.1 Notification

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

SECTION 4

4.1 Post-Award Vendor Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission to Melanie Green at procurement@mdeq.ms.gov. The written request must be received by MDEQ within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing must occur within three (3) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify MDEQ in writing and identify its attorney by name, address, and telephone number. MDEQ will schedule and/or suspend and reschedule the meeting at a time when legal counsel can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post-Award Vendor Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

4.2 Required Contract Terms and Conditions

Offeror's Bid and any subsequently-awarded Contract are subject to the Standard Contract Terms and Conditions, a copy of which is attached hereto as Attachment D and fully incorporated herein by reference, and any additional terms and conditions included in the subsequently-awarded contract.

4.3 Mississippi Contract/Procurement Opportunity Search Portal

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

4.4 Attachments

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

Attachment A – Bid Form

Attachment B – MBE/WBE Solicitation Form

Attachment C - Offeror's Affidavit

Attachment D – Standard Contract Terms and Conditions

Attachment A

Vegetative Monitoring Services Bid Form

Schedule of Price

Note: Bid prices should be lump sum and shall include sales tax and all other applicable taxes and fees. Per item bid amounts may be averaged to determine the lowest bid for all services requested.

Wachovia Tract:

Price Per Sample at Each Burn Unit _____

DeLisle Tract:

Price Per Sample at Each Burn Unit _____

Bell's Ferry Tract:

Price Per Sample at Each Burn Unit _____

Name of Company: _____

Signature: _____

Company Representative: _____

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with Mississippi Department of Environmental Quality (hereinafter called "MDEQ") in the form included in the Invitation for Bids to perform all Work as specified or indicated in the Invitation for Bids for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Invitation for Bids.

Bidder accepts all of the terms and conditions of the Invitation for Bids. This Bid will remain subject to acceptance for ninety (90) days after the Bid deadline or for such longer period of time that Bidder may agree to in writing upon request of MDEQ.

Bidder has reviewed the requirements to bid this Project and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Scope of Work.

Bidder is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Scope of Work.

The Invitation for Bids is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Scope of Work for which this Bid is submitted.

ATTACHMENT B
MBE/WBE Solicitation Form

- 1. Provide the following information for all MBE/WBE firms that were solicited for participation in the offeror's response to this IFB:**

Entity Name	Address	Phone Number and/or e-mail address	Certifying Agency/Entity/Program	Has the listed MBE/WBE been selected for participation for these requested services? Please indicate by stating either Yes or No below.

- 2. Select one the following:**

- ☐ The bidder is a MBE/WBE firm and at least one or more MBE/WBE firms were solicited and selected for the proposed contract, as indicated above. Prior to contract execution, the bidder shall supply MDEQ with proof of bidder's and bidder's subcontractor's MBE/WBE status by providing the documentation required in this IFB.
- ☐ The bidder is a MBE/WBE firm and no other MBE/WBE firms were solicited for the proposed contract. Prior to contract execution, the bidder shall supply MDEQ with proof of bidder's MBE/WBE status by providing the documentation required in this IFB.
- ☐ The bidder is not a MBE/WBE firm. However, at least one or more MBE/WBE firms were solicited and selected, as indicated above, for the proposed contract. Prior to contract execution, the bidder shall supply MDEQ with proof of bidder's subcontractor's MBE/WBE status by providing the documentation required in this IFB.
- ☐ The bidder is not a MBE/WBE firm. However, at least one or more MBE/WBE firms were solicited (but not selected), as indicated above, for the proposed contract.
- ☐ The prime firm submitting for the proposed contract is not a MBE/WBE firm and no MBE/WBE firms were solicited for the proposed contract. If so, please explain.

ATTACHMENT C

OFFEROR'S AFFIDAVIT

NON-COLLUSION AND CONFLICT OF INTEREST AFFIDAVIT

State of _____

County of _____

I, _____, individually, and in my capacity as _____ of _____ (offeror), being first duly sworn on oath, depose and state the following on behalf of the company:

The Offeror represents as a part of such Offeror's Bid that such Offeror has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Contract.

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

Offeror has not either directly or indirectly entered into any agreement, participated in any collusion; or otherwise taken any action in restraint of free competitive bidding in connection with this Contract; nor have any of its corporate officers or principal owners.

Except as noted hereafter, it is further certified that said legal entity and its corporate officers, principal owners, managers, auditors, and others in a position of administering governmental funds:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental department or agency;
- b) Have not within a three-year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction;
- c) Have not within a three-year period preceding this Bid been convicted of or had a civil judgment rendered against them for 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;
- d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in b) and c) above; and
- e) Have not within a three-year period preceding this Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

The Offeror further certifies, to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions will be completed and submitted.

The Offeror hereby certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under any contract or task order resulting from this IFB that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the State's satisfaction, such conflict of interest (or apparent conflict of interest). The offeror further certifies that it has no conflict of interest with respect to MDEQ or the Project (as defined in the IFB).

All of the foregoing and attachments (when indicated) is true and correct.

Offeror's Name: _____ IFB Title: _____

Signature: _____ By (Print Name): _____

Title: _____

SWORN TO AND SUBSCRIBED before me, this the ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

ATTACHMENT D

STANDARD CONTRACT TERMS AND CONDITIONS

1. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. All Parties expressly understand and agree that the obligation of the Mississippi Department of Environmental Quality (“MDEQ”) to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of funds from state, federal, and/or other funding sources. 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to Contractor to terminate this Contract without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a State Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor’s bid or proposal.
4. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.
5. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>. For any sub-contracts under this Contract, the Contractor shall comply with applicable federal law, rules, and regulations and, in particular, 2 C.F.R. §§ 200.322, Procurement of Recovered Materials, and 200.326, Contract Provisions. The Contractor shall also ensure that every purchase order or contract includes any clauses required by 2 C.F.R. §200.326 Contract provisions, as identified in Appendix II to 2 C.F.R. Part 200.
6. 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.
7. Compliance with Laws. Contractor understands that MDEQ/the State 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 Contract 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 Contract 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.
8. Special Terms and Conditions for RESTORE Act. As funding for this Contract is derived in whole or in part from funds received by MDEQ under the RESTORE Act, Contractor acknowledges and agrees that for all work performed under this Contract, Contractor shall comply with and be bound by the following, the terms and conditions of which are expressly incorporated into this Contract:
 - A. All provisions and requirements of the RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, a copy of which is attached as Attachment E; and

- B. All provisions and requirements of the RESTORE Council Financial Assistance Standard Terms and Conditions, a copy of which is attached as Attachment F; and
- C. In addition to above-referenced terms and conditions, Contractor shall comply with the following laws and regulations under the RESTORE Act and other federal law for all services performed under this Contract:
 - i. The RESTORE Act, 33 U.S.C. § 1321(t);
 - ii. 31 C.F.R. Part 34;
 - iii. All applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, including Appendix II to Part 200; and
 - iv. All other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Contract.

9. Stop Work Order

A. *Order to Stop Work.* MDEQ may, by written order to Contractor at any time and without notice to any surety, require Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding ninety (90) 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, MDEQ shall either:

- (1) Cancel the stop work order; or,
- (2) Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Contract.

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

- (1) The stop work order results in an increase in the time required for, or in Contractor’s cost properly allocable to, the performance of any part of this Contract; and
- (2) Contractor asserts a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

D. *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.

10. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ 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. Miss. Code Ann. § 31-7-301 *et seq.*

11. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State. 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 of Mississippi 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 Contract may subject Contractor to the following:

A. Termination of this Contract for services and ineligibility for any state or public Contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

B. The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or

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

12. Transparency. This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. *See* Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* 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.

13. 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.

14. Anti-Assignment/Subcontracting. Contractor acknowledges that it was selected by MDEQ to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Unless subcontractors are otherwise identified and approved in accordance with the Invitation for Bids, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Contractor must notify MDEQ in writing and submit a Request to Subcontract in the form provided by MDEQ prior to assigning or subcontracting any portion of this Contract. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

15. Antitrust. By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDEQ 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 services purchased or acquired by MDEQ under this Contract.

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

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

18. Authority to Contract. Contractor warrants that (a) it is a validly organized business with valid authority to enter into this Contract; (b) it is qualified to do business and in good standing in the State of Mississippi; (c) entry into and performance under this Contract 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 Contract to the contrary, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

19. Change in Scope of Work. MDEQ may order changes in the services 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 MDEQ 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 MDEQ in writing of this belief. If MDEQ 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 services within the Contract.

20. Claims Based on a Procurement Officer's Actions or Omissions.

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

- (1) Contractor shall have given written notice to the chief procurement officer or designee of such officer:
 - (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
 - (ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
 - (iii) within such further time as may be allowed by the chief procurement officer in writing; and
- (2) The notice required by subparagraph (1) of this paragraph shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time; and the chief procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the chief procurement officer or designee of such officer;

- (3) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
- (4) Contractor maintains and, upon request, makes available to the chief procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

21. Confidential Information.

"Confidential Information" shall mean: (a) those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential; and, (b) all data and information which Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the State. Each party to this Contract agrees to the following:

- (1) to protect all confidential information provided by one party to the other;
- (2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under state and/or federal law; and,
- (3) except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission; and
- (4) to do so by using those methods and procedures normally used to protect the party's own confidential 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 MDEQ shall result in the immediate termination of this Contract.

22. Confidentiality.

A. *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 Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, any unit prices contained within the Contract, the overall 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.

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

C. *Disclosure of Confidential Information.* In the event that either party to this Contract receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information 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 Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

D. *Wrongful Disclosure of Confidential 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 MDEQ may result in the immediate termination of this Contract.

E. *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 is:

- (1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;
- (2) Generally known or easily ascertainable by nonparties to this Contract;
- (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) Independently developed by the recipient without any reliance on confidential information;
- (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
- (6) Disclosed with the Disclosing Party's prior written consent.

23. Contractor's Personnel. MDEQ 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 MDEQ reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to MDEQ in a timely manner and at no additional cost to MDEQ. Upon Contract Award, the Contractor shall provide the DUNS number of every subcontractor it will have to perform work under the Contract. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

24. Project Team/Personnel Changes. Personnel identified by Contractor in its Proposal as Project Team members are expected to perform the services prescribed under this Contract. Contractor is required to provide MDEQ with written notification of any Project Team personnel changes within forty-eight (48) hours of such change. Prior written approval by MDEQ must be obtained before any replacement personnel can perform services under this Contract.

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

26. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors and others in a position of administering governmental funds:

- A. Are 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;
- B. Have not, within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Contract under a public transaction;
- C. Have not, within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them 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;
- D. Are 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 subparagraphs B. and C. of this certification; and
- E. Has not, within a three-year period preceding this Contract, had one or more public transactions (federal, state, or local) terminated for cause or default.

27. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the Contract terms and conditions, MDEQ, 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 MDEQ may have.

28. Failure to Enforce. Failure by MDEQ, at any time, to enforce the provisions of this Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Contract or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

29. 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 MDEQ 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.

30. 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 the Force Majeure event affects its performance, and the anticipated duration of the inability to perform. In the event of delays in delivery or in meeting completion dates due to Force Majeure Events, MDEQ will extend such dates for a period not to exceed the duration of the delay caused by such events, unless the State determines that termination of the Contract is in the State's best interest.

31. Insurance Requirements. Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from

the Mississippi Department of Insurance, and shall require its subcontractors to maintain said coverage, related to the work of the contractor and in connection with the contract.

- A. Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Contractor shall supply MDEQ endorsements from its carriers evidencing waiver of subrogation in favor of MDEQ.
- B. Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- C. Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.
- D. Errors and Omissions/Professional Liability Coverage. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence or claim-based. If the Contractor has a claim-based policy for this liability coverage, the Contractor shall carry and maintain such policy for an additional six years after the expiration or termination date of this Contract.

For all of the insurance coverage required in (A)-(C) of this Paragraph, NFWF, MDEQ, MDEQ's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ and that any insurance covering MDEQ shall be excess coverage over Contractor's coverage. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

Upon execution of the Contract, Contractor shall promptly furnish MDEQ with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Agreement, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the provisions addressing the indemnity of MDEQ by Contractor.

32. HIPAA Compliance. If requested by MDEQ, Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this Contract.

33. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages (including punitive damages), losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, costs of discovery 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 Contract. In MDEQ'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 MDEQ; Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without MDEQ's concurrence, which MDEQ shall not unreasonably withhold.

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

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate, at its own expense, MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi, against and pay all costs, including discovery costs, damages (including punitive damages) and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this Contract.

35. 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 MDEQ, and MDEQ shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDEQ 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, MDEQ shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

36. No Limitation of Liability. Nothing in this Contract 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.

37. Ownership of Documents and Work Papers. MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with this Contract, except for Contractor's internal administrative and quality assurance files and internal documents. After giving thirty (30) days advance written notice to MDEQ, Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of the Contract and shall certify such delivery in writing to MDEQ. Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of this Contract. 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 MDEQ and subject to any copyright protections.

38. Conflict of Interest. Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the MDEQ, or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive

advantage. In this clause, the term “potential conflict” means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ’s satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ’s satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

39. Price Adjustment Clause. Any adjustments in Contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways: (1) by agreement on a fixed price adjustment before commencement of the additional performance; or, if applicable, (2) by unit prices specified in the contract; (3) 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 (4) by the price escalation clause. Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, as applicable.

40. 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. Except as provided below, all records related to this Contract shall be retained by Contractor for a minimum of ten (10) years after final payment is made under this Contract 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 ten (10) 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 ten (10) year period, whichever is later.

Contractor is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the “Right to Audit” provision only if all of the following conditions are satisfied:

A. Contractor has provided all of the documents described above and in the “Right to Audit” provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before Contractor provides the records and corresponding certification to MDEQ, in which case, Contractor shall retain the records until all issues arising out of the action are finally resolved; and

D. Contractor provides MDEQ a minimum of thirty (30) days’ written notice before providing the above-mentioned records and corresponding certification.

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

42. Right to Inspect. The State of Mississippi, acting by and through MDEQ or any other authorized subdivision of the State, may at reasonable times, inspect the place of business of a Contractor or any subcontractors which is related to the performance of this Contract.

43. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by MDEQ or by applicable federal and state laws, rules, and regulations. These records shall be made available during the term of the Contract and at a minimum, the subsequent ten-year period for examination, transcription, and audit by the Mississippi State Auditor’s Office, its designees, or other authorized bodies.

44. 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 Contract. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

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

46. Termination for Convenience.

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

B. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

47. Termination for Default.

A. *Default.* If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof or otherwise fails to timely satisfy the Contract provisions or commits any other substantial breach of this Contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

B. *Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

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

revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience." (As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.)

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

F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

48. Termination upon Bankruptcy. This Contract may be terminated in whole or in part by MDEQ upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

49. Third Party Action Notification. Contractor shall give MDEQ 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 Contract.

50. Unsatisfactory Work. If, at any time during the Contract term, the service performed or work done by Contractor is considered by MDEQ 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 MDEQ, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate Contract or with its own resources at the expense of Contractor.

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

52. Integrated Agreement/Merger. This Contract, 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 Contract 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 Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

53. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract.

54. Modification or Renegotiation. All modifications to the Contract must be made in writing by the MDEQ and agreed to by Contractor. The parties agree to renegotiate the Contract if federal and/or state revisions of any applicable laws or regulations, including the availability of funding, make changes in this Contract necessary, which determination of necessity solely rests with MDEQ.

55. Notices. All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the

notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

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

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

56. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.