



# MISSISSIPPI STATE HOSPITAL

P.O. BOX 157-A, WHITFIELD, MS 39193

(601) 351-8000

WWW.MSH.STATE.MS.US

James G. Chastain, FACHE  
Director

## **Request for Competitive Sealed Bids: MSH (05.24.2017.446)**

REQUEST FOR SEALED BID: **(Sale of Scrap Metals)** RFX: 3160001522

### PROSPECTIVE BIDDERS:

#### 1. INTENT

- 1.1 In accordance with the rules and regulations of the Office of Purchasing in the Mississippi Department of Finance and Administration, Mississippi State Hospital (MSH) will receive bids for the sale of scrap metal as described in the following specifications.
- 1.2 Written sealed bids and samples must be received not later than **3:00 P.M., Wednesday, May 24, 2017**, at Mississippi State Hospital, Central Warehouse, Building 93, 3550 Hwy 468 West, P.O. Box 1, Whitfield, Mississippi 39193.
- 1.3 Opportunities for on-site visits at Mississippi State Hospital to discuss bid specifications and inspect work sites, products or equipment will be made by appointment only. Arrangements may be made by contacting H.L. Lockhart, Purchasing Chief, Mississippi State Hospital, Whitfield, MS 39193 at (601) 351-8056.
- 1.4 Mississippi State Hospital desires to contract for the sale of scrap metal as specified in the attached bid invitation.

#### 2. GENERAL REQUIREMENTS

- 2.1 Term. The term of the contract shall be for **three (3) years** for the products or services as specified in the sales schedule. The estimated start date for this

contract shall be June 8, 2017 and the end date shall be June 8, 2020. These dates are subject to change as needed by MSH.

- 2.2 Volume. It is our intent to sale the products for the quantities listed in the procurement schedule attached as part of this invitation to bid, however quantities may be increased or decreased accordingly if the needs of MSH require such a change. MSH does not guarantee any specific volume of scrap metals during the contract period and for reference only the amount of scrap metals sold over the last two years has averaged 60,000 pounds of various metals to include but not limited to aluminum, tin and other metals.

### 2.3 GENERAL REQUIREMENTS-QUALIFICATIONS

- A. Failure to examine any drawings, specifications, and instructions will be at bidder's risk. It shall be incumbent upon the bidder to understand the specifications. Any requests for clarifications shall be in writing and shall be submitted to the MSH Purchasing Office at least five (5) days prior to the date and time set for the bid opening.
- B. If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal amendment only. If the solicitation includes a contact person for technical information, bidders are cautioned that any oral or written representation made by this or any person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the MSH Purchasing Office. For determination as to whether any representation made requires that an amendment be issued contact the MSH Purchasing Office at (601) 351-8056.
- C. It is the intent of the specifications to obtain a product or services that will adequately meet the needs of MSH while promoting the greatest extent of competition that is practicable. It is the responsibility of the prospective bidder to notify Mississippi State Hospital if the

specifications, terms or conditions are formulated in a manner which would unnecessarily restrict competition. Any protest or question concerning the bid invitation or bidding procedures must be received in the MSH Purchasing Office not less than 72 hours prior to the date and time set for the bid opening.

- D. The minimum specifications are used to set a standard and in no case are used with the intention to discriminate against any manufacturer. Bidders should note the name of manufacturer and model number of the product they propose to furnish and submit descriptive literature as applicable.
- E. Questions or problems arising from bid procedures or subsequent order and delivery procedures should be directed to H.L. Lockhart, Purchasing Chief, Mississippi State Hospital, P.O. Box 1, Whitfield, MS 39193, (601) 351-8056.
- F. Only one bid, per line item, per bidder. This means that only a single bid will be accepted from each bidder for each line item requested. Alternate bids unless specifically requested will not be considered.
- G. Prices quoted by vendor shall be fixed and firm for the term of the contract and for no less than the stated time of acceptance which is understood to be no less than sixty (60) days. Bids may be held by MSH for up to sixty (60) days from the date of opening for the purpose of reviewing the bids and investigating the qualifications of bidders prior to awarding a contract. Bidders may not withdraw or cancel their bid for a period of sixty (60) days after bid(s) are opened.
- H. Invoices are to be billed to Mississippi State Hospital, P.O. Box 1, Whitfield MS 39193, Attn: Accounts Payable. Payments by state agencies using the Statewide Automated Accounting System (MAGIC) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State

may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically 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. It is understood that MSH shall make all payments in accordance with Mississippi state code section 31-7-301, et. Seq. of the 1972 Mississippi Code annotated, as amended, which generally provides for payment by MSH within forty-five days of the date the invoice is received and the services or goods are inspected and accepted as satisfactory. It is further understood that all payments, partial and full, shall become due at the end of each month services have been performed.

- I. No bid shall be altered or amended after the specified time for opening bids. Bids and modifications or corrections thereof received after the closing time specified will not be considered.
- J. No addendum will be issued within a period of five (5) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the five day period prior to the bid opening, the bid opening date will be reset giving bidders sufficient time to answer the 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 acknowledgement must be received by Mississippi State Hospital by the time and at the place specified for receipt of bids.
- K. If purchase orders or contracts are canceled because of the awarded vendor's failure to perform or a request for price increase, that vendor shall be removed from our bidder's list for a period of no less than twenty four (24) months.

- L. The bidder understands that Mississippi State Hospital 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, or any other such discrimination; and the bidder, by signing this bid, agrees during the term of the agreement that the bidder will strictly adhere to this policy in its employment practices and provision of products or services.
- M. Both Mississippi State Hospital and the successful vendor will agree that the initiation and continuance of the contractual agreement will be based on the availability of funds. Should there be no funds available at the time of the bid opening or during the contract period the contract will be canceled with no further obligation by Mississippi State Hospital. Any property covered by the contract will be returned to the vendor. Provided however that all payments due for the current fiscal year (July 1 through June 30) will be paid in full.
- N. Mississippi State Hospital reserves the right to reject any and all bids in whole or in part and unless otherwise specified by the bidders, to award items, parts of items or by any group of items on the bid. Also the right is reserved to waive technical defects. If the bidder fails to state the time within which bids must be accepted, it is understood and agreed that Mississippi State Hospital shall have 60 days to accept.
- O. It is the intent of Mississippi State Hospital to procure only the services/products that meet the minimum standards stated herein. Alternates will be considered only if deviations to those standards are fully substantiated and submitted by potentially responsive sources denoting their equality to standards stated herein, along with adequate documentation: including specifications, and construction details along with bid for evaluation and approval.

- P. All items/services must equal or exceed the specifications listed. The absence of detail specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used. All equipment bid shall be of current production and of the latest design and construction. All equipment will be new and not re-manufactured and will not have operation time beyond product testing requirements.
- Q. Bid openings will be conducted open to the public. However, they will serve only to open the bids. No discussion will be entered into with any vendor as to the quality or provisions of the specifications, and no award will be made either stated or implied at the bid opening. All bidders are invited and encouraged to attend the bid opening meeting to review the submitted bids. After the close of the bid opening meeting, the bids will be considered to be in the evaluation process and will not be available for review by bidders. Bid files may be examined during normal working hours by bid participants. Non-participants will be prohibited from obtaining any information relative to the bid until after the official award has been made.
- R. Material Standards: The successful vendor will ensure that any written material prepared by the vendor in response to the requirements of this solicitation shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved by the designated MSH Project Officer, and shall be submitted in a draft form for advance review and comment by the Project Officer. The cost of correcting grammatical errors or other revisions required to bring written materials into compliance with the solicitation requirements shall be borne by the successful vendor. Requirements may be waived by MSH if it is determined to be in the best interest of the hospital.

- S. Return/Pick-Up of Equipment. The successful vendor will, upon termination of agreement, on the date agreed upon by both parties, disconnect, dis-assemble, crate, insure and ship all vendor owned equipment, covered by this agreement, to a destination designated by the owner at no cost to MSH. This requirement applies to the successful vendor and to any third party that may become a party to this procurement. This requirement will still be in effect in the event that the original contract period has to be extended to allow for transition to a new contract.
- T. Contract. The total contract shall consist of this invitation for bid, the MSH standard agreement shown as Sample ATTACHMENT - A, and the proposed bid offer submitted by the successful vendor. No other documents shall be a part of the formal contractual agreement. In no event is a vendor to submit its own standard contract terms and conditions in response to this solicitation. This contract shall take priority over any other agreements that may be signed separately in conjunction with this invitation for bid, to include third party leasing agreements.
- U. Changes To Invitation To Bid. Vendor will not change or alter this bid invitation in any way. Award will be based on acceptance of this invitation in its entirety.
- V. Negotiation Delay. If a written agreement cannot be negotiated within thirty (30) days of notification of the successful bidder(s), MSH may at its sole discretion at any time thereafter, terminate negotiations with that bidder and either negotiate a contract with the next qualified bidder or choose to terminate the IFB process and not enter into a contract with any of the bidders.
- W. Tie bids. Tie low bids shall be awarded as specified in paragraph 3.202.15 of the State of Mississippi Procurement Manual.

- X. Bid errors. Errors in bids submitted shall be determined and resolved as specified in paragraph 3.202.13 of the State of Mississippi Procurement Manual.
  - Y. Bid modification and withdrawal. Bids may be modified or withdrawn by written notice received in the MSH Purchasing Office prior to the time and date set for bid opening.
  - Z. Mississippi State Hospital shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project services covered by the agreement resulting from this IFB, except for the bidder's internal administrative and quality assurance files and internal project correspondence. The bidder shall deliver such documents and work papers to MSH upon termination or completion of agreement. The foregoing notwithstanding, the bidder shall be entitled to retain a set of such work papers for its files. Bidder shall be entitled to use such work papers only after receiving written permission from MSH and subject to any copyright protections.
- 2.4 Award Criteria. Award will be made to the highest and best bid by Group of Items based on the total highest percentage for the greatest number of line items. Factors to be considered in determining the best bid include: (1) Total bid price percentage (2) Conformity to Specifications (3) Responsibility of Bidder (4) Responsiveness of Bidder.
- 2.5 Bidder's Qualification. Bidders must, upon request of the Mississippi State Hospital, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. The Mississippi State Hospital reserves the right to make the final determination as to the bidder's ability.
- 2.6 Inspection and Acceptance. Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall

be subject to inspection and test at all times and places, and when practicable. Rejected material shall be removed by and at the expense of the contractor promptly after notification of rejection. Final inspection and acceptance or rejection of the supplies shall be made as promptly as practicable, not to exceed thirty (30) days after final acceptance by MSH, but failure to inspect and accept or reject supplies shall not impose liability on the Mississippi State Hospital for such supplies as are not in accordance with the specification. In the event necessity requires the use of supplies not conforming to the specification, payment therefore may be made at proper reduction in price. Upon notice from the successful contractor that installation has been completed to terms, the designated MSH Officer(s) will schedule a time to make final inspections and provide written acceptance of items covered by this bid invitation, if applicable.

2.7 Taxes. The Mississippi State Hospital is exempt from Federal excise taxes and state and local sales or use taxes and bidders must quote prices which do not include such taxes. Evidence of exemption will be furnished upon request. Contractors making improvement to, additions to or repair work on real property on behalf of the Mississippi State Hospital are liable for any applicable sales or use taxes on purchase of tangible personal property for use in connection with the contracts. Contractors are likewise liable for any applicable use tax on tangible personal property furnished to them by Mississippi State Hospital for use in connection with their contracts. Contractors shall also be liable for all personal property taxes that become due as a result of this procurement.

2.8 References. Vendor will provide a minimum of two (2) references as a part of their bid offers. References will be verifiable at the time of the bid opening and within fifteen (15) working days thereafter. A minimum of two references, for sale of products and/or services the same or similar to those specified in this bid invitation, completed within the most recent 48 months prior to the bid opening date, must be provided and must include a name, address, and telephone number of references. MSH reserves the right to waive this requirement if it is in the best

interest of Mississippi State Hospital.

#### REFERENCES

|   | Organization | Telephone | Contact Person |
|---|--------------|-----------|----------------|
| 1 |              |           |                |
| 2 |              |           |                |

**YEARS IN BUSINESS:** Indicate the length of time you have been in business providing the products and services requested in this invitation for bid:

       Years        Months.

#### 2.9 BONDING AND INSURANCE

- A. Successful vendor will be responsible for providing liability insurance for all vendor employees and for any subcontractor(s) hired by the vendor to perform any part of the job(s) required by the specifications in this bid invitation. Contractor must without limiting its obligations or liabilities and at its own expense, provide and maintain throughout the contract term, Comprehensive General Liability Insurance in an amount not less than \$1,000,000.00 inclusive per occurrence insuring against bodily injury, personal injury and property damage. All required insurance will be endorsed to provide MSH with 30 days advance notice of cancellation or material change. Contractor must provide a Certificate of Insurance which is completed, certified by the original signature of an insurance company authorized to do business in Mississippi. Contractor will provide the Certificate of Insurance, showing MSH as certificate holder, within five (5) working days after execution and delivery of the contract. Contractor will be responsible for providing liability and property insurance coverage for all contractor owned/provided equipment covered by this bid for the entire contract period, when applicable. Neither a bid bond or performance bond is required with this bid.

- 2.10 Literature/Specifications/Samples. All bidders must provide descriptive literature, product and installation specifications, samples and MSDS sheets (if applicable), no later than the date and time of the bid opening. Demonstration products will be provided to the designated MSH site as directed by the designated MSH Purchasing Officer, free of expense to MSH. If the demonstration products (samples) are not destroyed in testing they will, upon request by the vendor, be returned at the bidder's expense. Request for the return of demonstration products must be made within ten (10) working days following the date of the bid opening. Vendor may alternatively, at their total expense, provide for a minimum of two (2) MSH employees to visit an off-site location to review proposed bid products. This off-site alternative must include round trip travel, lodging and all meals. Bidders may also use products already in place at MSH, as demonstration products provided it is the same product being bid and schedules for demonstrations are approved by the designated MSH Officer. Each individual sample must be labeled with the bidder's name, manufacturer and order number, bid line item number and bid file number. MSH reserves the right to waive this requirement in whole or in part.
- 2.11 Operation/Care/Parts Manuals. Successful vendor will provide MSH with a minimum of one (1) each operation/care and parts manual for each unit of product as applicable.
- 2.12 Shipment/Installation. The vendor will ship (F.O.B MSH - Freight Prepaid) and install all products/equipment, personnel, and materials necessary to successfully complete any awarded contract to the designated MSH receiving/installation site. All shipment costs **(to include all fuel surcharges)** will be paid by the vendor with no expense to MSH. No MSH agent will be involved in or responsible for conveying any material, equipment or personnel to the designated receiving/installation site. Successful vendor will schedule all shipments Monday-Friday, 7:30 A.M. to 3:30 P.M. unless otherwise approved by the designated MSH Officer. Deliveries will be made to the following location unless otherwise notified:

Mississippi State Hospital  
3550 Hwy 468  
Whitfield, MS 39193  
Attn: Building 93 Receiving

- 2.13 Service/Support. Vendor will provide a toll free telephone/pager number that can be used five days a week and eight hours daily to obtain technical and troubleshooting (modification, repair and procurement) support by phone. Vendor will perform all on-site product support within twenty four (24) hours after notification by the designated MSH Officer during the contract period. Vendor will provide written documentation of all service performed satisfactory to meet current JCAHO requirements. Vendor will be responsible for providing that all work is performed by properly trained and qualified personnel. Vendor will be responsible for providing preventative maintenance as required by the manufacturer and all repairs as needed during the contract period no cost to MSH. Repairs will include all needed parts, labor and travel at no cost to MSH during the contract period as stated below. Repair service will be provided 8 hours/day (8:00 a.m. to 5:00 P.M.), 5 days (Monday through Friday) per week. If depot repair or PM services are bid by vendor than the successful vendor shall provide loaner equipment, when requested by MSH.
- 2.14 Training/In-service. Vendor will perform initial, continuing and advanced in-service training which includes a complete operation and care demonstration of all awarded products if applicable and as requested by the designated MSH Officer. Successful vendor will perform all training within ten (10) working days after receiving a request from the designated MSH Officer. Training shall be provided on-site for equipment. A minimum of two (2) MSH employees will be trained for all related products. The number of employees requiring training may vary and will be determined by MSH.
- 2.15 Warranty. Vendor will warrant, in writing, all material and craftsmanship to be free from defects for a period of no less than the one (1) year, to start from the date of acceptance by the designated MSH

Officer for any applicable equipment or supplies provided by the vendor.

2.16 Design and Construction.

- A. It is the intent of these specifications to provide products/services which are acceptable and approved for use in a healthcare facility.
- B. All products or services shall be listed and approved to UL, CSA, CE or equal standards where applicable to its intended use at MSH as determined by the designated MSH Officer. Products and services will comply with JOINT COMMISSION, FDA, EPA, OSHA, CAP, ACORN, NFPA, ASME, FMVSS, CDC, AHA, NSTM and GSA regulations and standards where applicable to the product or service intended use or application at MSH as determined by the designated MSH Officer. MSH will be the final authority in determining if any applicable standard or regulation will be applied in whole or part for the products or services specified in this bid invitation.

2.17 Final Acceptance. Upon notice from the successful vendor that installation has been completed to terms, the designated MSH Officer(s) will schedule a time to make final inspections and provide written acceptance of items covered by this bid invitation, when applicable.

2.18 Specifications. See attached procurement schedule pages: 16 - 18.

2.19 Submission of Bids. Bids must be signed and sealed with the bidder's name and address on the outside of envelope, and the time **(3:00 P.M.)**, date of the bid opening **(May 24, 2017)**, and MSH Bid file number **(MSH 05.24.2017.446)** on the outside lower left corner of the envelope. Bid prices must be submitted on the pricing schedule provided in this bid invitation. All bid information must be submitted in blue or black ink. Errors, alterations or corrections must be initialed by the person signing the bid.

2.20 Late bids. Any bid received after the time and date set for receipt of bids is late. No late bid, late

modification, or late withdrawal will be considered unless receipt would have been timely but for the action or inaction of state personnel directly serving MSH. Bidders submitting late bids which shall not be considered for award shall be so notified as soon as practicable.

- 2.21 On-site Investigation/Inspection. Before submitting a bid, each bidder shall make all investigations and examination necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by MSH upon which the bidder will rely. If the bidder receives an award as a result of their bid submission, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the contract document, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contractor for additional compensation.
- 2.22 Certification. The vendor agrees that submission of a signed bid form is certification the vendor will accept an award made to it as a result of the submission.
- 2.23 Third Party Financing. Vendors shall list the name, business address, telephone number, and Contact Name for any Third Party to be used by vendor to finance rental equipment when applicable.
- 2.24 Mississippi State Hospital accepts no responsibility for any expenses incurred by the bidder in the preparation and presentation of a proposal. Such expenses shall be borne exclusively by the bidder.
- 2.25 Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid or prior to submitting the bid, by identifying the amendment number and date in space provided for this purpose on the amendment form, or by letter. The acknowledgement must be received by Mississippi State Hospital by the time, date and at the place specified for receipt of bids.

- 2.26 The bidder should mark any and all pages of the bid considered proprietary information. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled applicable legal procedures.
- 2.27 Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically 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. Please see ATTACHMENT - B for applicable rules and the signature page which must be signed and returned with your bid.
- 2.28 Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. 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/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or

other document granted to Contractor/Seller 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/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit."

- 2.29 The contract may be cancelled by MSH in whole or in part by written notice of default to the Contractor upon non-performance, violation of contract terms, delivery failure, bankruptcy or insolvency, or the making of an assignment for the benefit of creditors. An award may then be made to the next low bidder, or when time is of the essence, similar commodities and/or service may be purchased on the open market. In either event, the defaulting Contractor (or his/her surety) shall be liable to MSH for cost to MSH in excess of the defaulted contract price. Lack of knowledge by the Contractor will in no way be a cause for relief from responsibility.

**Sales Schedule: MSH Bid File 05.24.2017.446**

**Sale of Scrap Metals**

**Method of Award: By Group of Items Total For All Metals**

| Line No. | Annual Qty | Description                                                                                                                                                                                                                                                                                       | Bid Price %                                                                                                                                                                                       |
|----------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.       | Open       | <p>Sale of scrap metals in the form of equipment, furniture and appliances containing metals such as iron, steel, aluminum, copper and chrome.</p> <p><b>Note: Vendor must bid a percentage of total sale value made on each type of metal. Vendor is responsible for sorting all metals.</b></p> | <p>% _____<br/>Percentage - Iron</p> <p>% _____<br/>Percentage - Steel</p> <p>% _____<br/>Percentage - Aluminum</p> <p>% _____<br/>Percentage - Copper</p> <p>% _____<br/>Percentage - Chrome</p> |

**NOTE: Bidders shall bid a fixed percentage of the sales value and that percentage will remain the same throughout the contract**

period. The sales value shall be equal to the actual market value of the specific metal(s) sold at the time of the sale.

#### VENDOR SERVICE REQUIREMENTS

1. Vendor shall understand that all metals will be sold as as is, without warranty, either expressed or implied.
2. Vendor shall provide a minimum of one (1) 40 yard waste dumpster or equal sized approved trailer at the designated MSH collection site to be picked up no less than once per month and as needed due to filling.
3. Vendor shall submit payment to MSH for collected scarp metals within 45 calendar days after pick up and the form of payment shall be check or money order made out to the payment of Mississippi State Hospital.
4. Vendor shall accept mixed material scrap metals and will be solely responsible for any required sorting.
5. Vendor staff will understand that upon arrival at MSH they must report to the guard gate located on Hwy 475 South and receive approval to enter the MSH campus.
6. Vendor shall follow MSH traffic rules while on the MSH campus, park in designated areas only, remove keys and lock their vehicle upon exiting it for any length of time.
7. Vendor shall understand that alcoholic beverages, illegal drugs, and firearms are prohibited on the MSH campus.
8. Vendor staff shall understand that MSH is an institution for the long term care of the mentally ill and geriatric clients and shall be considerate of them and their home. Vendor shall seek authorization to enter buildings on the MSH campus.
9. Vendor shall ensure that the waste containers provided in fulfillment of this bid shall be in good working condition and sanitary condition and will promptly repair or remove any equipment in need of repair.
10. Vendor shall be solely responsible for picking up, transporting and sorting scrap metal as scheduled. MSH staff shall be responsible for loading and notifying vendor of the need for the pick up of filled containers as needed to prevent overfilling.
11. Vendor shall provide service during the work week, Monday through Friday 7:30 A.M. to 4:00 P.M. unless special requests are made, by MSH, and approved in advance.

BIDS WILL BE OPENED: 3:00 P.M. Wednesday, May 24, 2017 at Building 93, Mississippi State Hospital.

I certify that I am authorized to enter into a binding contract, if this bid is accepted.

Contractor's Quotation No. \_\_\_\_\_ Date \_\_\_\_\_

Name of Company \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Fax \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

We submit the above prices and agree to provide products or services within \_\_\_\_\_ day(s) after receipt of purchase order or notice to proceed. Unless notified to the contrary, this offer is good for 60 days from the date of the bid opening. In submitting the above bid, it is expressly agreed that upon proper acceptance of any or all items by Mississippi State Hospital, a contract shall hereby be created only after a written purchase order and contract award notice are mailed or otherwise furnished to the successful bidder within the time of acceptance specified above without further action by either party. The contract shall not be assignable by the contractor in whole or in part without the written consent of Mississippi State Hospital.

H.L. Lockhart



Purchasing Chief

## VENDOR INFORMATION

IN ADDITION TO INFORMATION SUPPLIED ELSEWHERE WITHIN THE IFB, PLEASE COMPLETE THE FOLLOWING WHICH WILL BE USED IF YOU ARE AWARDED A CONTRACT.

PAYMENT TERMS: \_\_\_\_\_ FEDERAL ID NUMBER: \_\_\_\_\_

SHIPMENT WILL BE MADE: \_\_\_\_\_ DAYS A.R.O.

**SEND ORDERS TO:**

VENDOR NAME & ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**INVOICES WILL BE FROM:**

VENDOR NAME & ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONTRACT CONTACT:**

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

Telephone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**WARRANTY SERVICE CONTACT:** Name: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**SALES REPRESENTATIVE:**

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

Telephone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

**ATTACHMENT – A**  
**SAMPLE SERVICE AGREEMENT**



## AGREEMENT BETWEEN MISSISSIPPI STATE HOSPITAL of

Whitfield Mississippi (MSH) and \_\_\_\_\_.

This agreement is entered into by Mississippi State Hospital, hereafter called "Hospital" whose address is Post Office Box 157-A, 3550 Highway 468 West, Whitfield, Mississippi

and \_\_\_\_\_, hereinafter called "Independent Contractor" for the provision of services as set out herein. The term "Hospital" includes Whitfield Medical Surgical Hospital, Jaquith Nursing Home, Oak Circle Center, and other programs and divisions of Mississippi State Hospital

NOW THEREFORE, the parties agree to the terms and conditions herein.

### 1. INDEPENDENT CONTRACTOR

Neither Independent Contractor nor its employees shall, under any circumstances, be considered servants or agents of the Hospital or any of its subordinate programs and Hospital or any of its subordinate programs shall be at no time legally responsible for any negligence or other wrongdoing by the Independent Contractor or its servants, or agents. Hospital agrees to compensate as outlined in Attachment A, which is attached hereto and made a part of as if fully copied herein. These funds shall be paid directly to the Independent Contractor by Hospital. Hospital or any of its subordinate programs shall not withhold from the Independent Contractor payments for any federal or state unemployment taxes, federal or state income taxes, Federal Insurance Contributions Act (FICA) withholdings, or any other amounts for benefits to Independent Contractor. Further, Hospital or its subordinate programs shall not provide to Independent Contractor any insurance coverage or other benefits including Workers Compensation, normally provided by the state for its employees.

### 2. SCOPE OF WORK

Independent Contractor agrees to provide services to the Hospital as described, and under the conditions, as set out in Attachment A which is attached hereto and made a part of as if fully copied herein.

### 3. PERIOD OF AGREEMENT

Performance of the services will begin on or about \_\_\_\_\_ and will end on or about \_\_\_\_\_.

4. RESERVATION OF RIGHT

Any and all forms, reports, designs, and other materials prepared by Independent Contractor for Hospital shall be used by Hospital only for its own internal operations. Hospital retains all rights and interest in said reports.

5. 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 hereto shall be brought in the courts of the state. The Independent Contractor shall comply with applicable federal and state local laws and regulations.

6. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Hospital 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 Hospital, the Hospital shall have the right upon ten (10) working days written notice to the Independent Contractor, to terminate this agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

7. REPRESENTATION REGARDING CONTINGENT FEES

The Independent Contractor represents that it has not retained a person to solicit or secure a Hospital contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor's bid or proposal.

8. REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, or Independent 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 Procurement Regulations*.

9. PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the Personal Services Contract Review Board Regulations, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS for inspection.

10. 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.

11. 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 Independent 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.

12. COMPLIANCE WITH LAWS

The Independent Contractor understands that the Hospital is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, religion, physical handicap, disability, genetic information, or any other consideration made unlawful and the Independent Contractor agrees during the term of the agreement that the Independent Contractor will strictly adhere to this policy in its employment practices and provisions of services. The Independent 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, "as well as in accordance with the standards of the Joint Commission (JC)."

13. HIPAA

Independent Contractor agrees to comply with the Final Omnibus Rule of the Health Insurance Portability and Accountability Act of 1996 and any amendments there too, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the service under this contract."

14. TERMINATION FOR CONVENIENCE

(a) *Termination.* The Hospital Director 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 Hospital Director or designee shall give written notice of the termination to Independent Contractor specifying the part of the contract terminated and when termination becomes effective.

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

15. TERMINATION FOR DEFAULT

(a) *Default.* If Independent 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 Hospital Director or designee may notify Independent 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 Hospital Director or designee, such officer may terminate Independent 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 Hospital Director or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Hospital Director or designee. Independent 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) *Independent Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Independent Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Independent 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 Independent Contractor such sums as the Hospital Director 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, Independent 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 Independent Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Independent Contractor has notified the Hospital Director 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, Independent 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 Independent Contractor to meet the contract requirements. Upon request of Independent Contractor, the Hospital Director 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, Independent Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination").

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

(f) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### 16. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the Hospital upon written notice to Independent Contractor, if Independent Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Independent Contractor of an assignment for the benefit of its creditors. In the event of such termination, Independent 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.

17. E-PAYMENT

Independent Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Hospital 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.

18. E-VERIFICATION

Independent Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act 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. Independent Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Independent Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Independent Contractor understands and agrees that any breach of these warranties may subject Independent Contractor to the following:

- (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public, or
- (b) the loss of any license, permit, certification or other document granted to Independent 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, Independent Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

19. ANTI-ASSIGNMENT/SUBCONTRACTING

The Independent Contractor acknowledges that it was selected by the Hospital to perform the services required hereunder based, in part, upon the Independent

Contractor's special skills and expertise. The Independent Contractor shall not assign, subcontract, or otherwise transfer this agreement in whole or in part without the prior written consent of the Hospital, which the Hospital 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 Hospital of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Hospital 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 Hospital may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

## 20. STOP WORK ORDER

(a) Order to Stop Work: The procurement officer, may, by written order to the Independent Contractor at any time, and without notice to any surety, require the Independent 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 the Independent 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, the Independent 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:

- (1) Cancel the stop work order; or,
- (2) Terminate the work covered by such order as provided in 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, the Independent Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Independent 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 the Independent Contractor's cost properly allocable to, the performance of any part of this contract; and,
- (2) the Independent Contractor asserts a claim for such an adjustment within 30

days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

#### 21. 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 Independent Contractor's choice. The State may, at its sole discretion, require Independent Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Independent Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

#### 22. APPROVAL

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

#### 23. AUTHORITY TO CONTRACT

Independent 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.

#### 24. CHANGE IN SCOPE OF WORK

The Hospital 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 Independent Contractor that the scope of the project or of Independent Contractor's services has been changed, requiring changes to the amount of compensation to Independent Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Hospital and Independent Contractor.

If Independent 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 Independent Contractor, Independent Contractor must immediately notify the Hospital in writing of this belief. If the Hospital believes that the particular work is within the scope of the contract as written, Independent Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

25. INFORMATION DESIGNATED BY INDEPENDENT CONTRACTOR AS  
CONFIDENTIAL

Any disclosure of those materials, documents, data, and other information which Independent 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 Independent Contractor or its subcontractor shall rest with Independent Contractor. Disclosure of any confidential information by Independent Contractor or its subcontractor without the express written approval of the Hospital shall result in the immediate termination of this agreement.

26. CONFIDENTIALITY

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

27. INDEPENDENT CONTRACTOR PERSONNEL

The Hospital shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Independent Contractor. If the Hospital reasonably rejects staff or subcontractors, Independent Contractor must provide replacement staff or subcontractors satisfactory to the Hospital in a timely manner and at no additional cost to the Hospital. The day-to-day supervision and control of Independent Contractor's employees and subcontractors is the sole responsibility of Independent Contractor.

28. DEBARMENT AND SUSPENSION

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

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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,
- (e) 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.

29. 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.*

30. EXCEPTIONS TO CONFIDENTIAL INFORMATION

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

- (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (b) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (c) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (d) is independently developed by the recipient without any reliance on confidential information;

(e) is or later becomes part of the public domain or may be lawfully obtained by the State or Independent Contractor from any nonparty; or,

(f) is disclosed with the disclosing party's prior written consent.

### 31. FAILURE TO DELIVER

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

### 32. FAILURE TO ENFORCE

Failure by the Hospital 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 Hospital to enforce any provision at any time in accordance with its terms.

### 33. 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, Independent Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

### 34. INDEMNIFICATION

To the fullest extent allowed by law, Independent 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 Independent 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, Independent Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Independent Contractor defends said claim, suit,

etc., Independent Contractor shall use legal counsel acceptable to the State. Independent 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. Independent Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

### 35. INDEPENDENT CONTRACTOR STATUS

Independent 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, Independent 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 Independent Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Independent Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Independent Contractor. Independent Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Independent Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Hospital and the Hospital shall be at no time legally responsible for any negligence or other wrongdoing by Independent Contractor, its servants, agents, or employees. The Hospital shall not withhold from the contract payments to Independent Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Independent Contractor. Further, the Hospital shall not provide to Independent Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

### 36. 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.

### 37. NO LIMITATION OF LIABILITY

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

### 38. 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 Hospital or Independent Contractor and agreed to by the other party in the contract.

44. 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 Independent Contractor:

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

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

For the Hospital: Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: Post Office Box 157-A, Whitfield, Mississippi  
3550 Highway 468 West, Whitfield, Mississippi

45. 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 Independent Contractor. Independent 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 Independent Contractor on the basis of draftsmanship or preparation hereof.

\_\_\_\_\_  
James G. Chastain  
Director  
Mississippi State Hospital

\_\_\_\_\_  
Date

\_\_\_\_\_  
Independent Contractor

\_\_\_\_\_  
Date

39. RECOVERY OF MONEY

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

40. STATE PROPERTY

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

41. THIRD PARTY ACTION NOTIFICATION

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

42. UNSATISFACTORY WORK

If, at any time during the contract term, the service performed or work done by Independent Contractor is considered by the Hospital to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Independent Contractor shall, on being notified by the Hospital, immediately correct such deficient service or work. In the event Independent Contractor fails, after notice, to correct the deficient service or work immediately, the Hospital shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Independent Contractor.

43. WAIVER

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

## ATTACHMENT - B

### MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION ADMINISTRATIVE RULE FOR MANDATORY ELECTRONIC PAYMENT OF VENDORS AND ELECTRONIC INVOICING BY VENDORS

Vendor Name ("Vendor"): \_\_\_\_\_

Vendor has received a copy of the "Mississippi Department of Finance and Administration Administrative Rule on Mandatory Electronic Payment of Vendors."

Vendor understands that MSH is an agency of the State of Mississippi, and as such, its payments are processed by the Mississippi Department of Finance and Administration ("DFA").

Vendor agrees to one of the following:

- a) Within 60 days, enroll in the State of Mississippi E-Payment vehicle, currently Paymode™, for the receipt of payment from the State of Mississippi.
- b) Obtain an exemption from DFA before providing any good or services which may be billable to MSH.

Vendor understands that payment will not be received from the MSH until enrollment in Paymode™ is complete, or an exemption is granted by DFA.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION  
ADMINISTRATIVE RULE  
MANDATORY ELECTRONIC PAYMENT OF VENDORS

**I. General Purpose.**

- A. The Mississippi Department of Finance and Administration (DFA) serves as the primary executive branch agency for fiscal management. Under §7-7-41, the State Fiscal Officer has the authority to prescribe rules and regulations concerning the issuance of warrants and other forms of payments for all departments, institutions and agencies of the state. This rule, unless otherwise noted, is to set as the standard that vendors of the State of Mississippi shall be paid electronically and shall be provided the supporting remittance detail by electronic means.
- B. This rule is a means for reducing the costs to produce paper warrants and remittance advices. The State has documented significant savings in the move to electronic payment and remittance. The State avoids the costs associated with printing, sorting, distributing, copying, and mailing warrants. Additionally, the State has determined that there are reduced opportunities for fraud and lost payments under this means of payment and remittance.
- C. Vendors benefit by receiving notification of pending deposits of funds and have options for interfacing the remittance data from the State into their accounts receivable systems.

**II. Definitions.**

- A. ACH: Automated Clearing House. Affiliated with the U. S. Treasury and the Federal Reserve System and used as the conduit for electronic payments and collections.
- B. EFT: Electronic Funds Transfer. Electronic Funds Transfer (EFT) provides for electronic payments and collections. EFT is safe, secure, efficient, and less expensive than paper check payments and collections. Issuance costs for EFT payments are approximately 80% less than the cost to issue the same payment on a paper warrant. EFT transactions use the ACH network associated with the Federal Reserve System.
  - 1. The State of Mississippi uses "standard EFT" for transferring funds to employee bank accounts for direct deposit of payroll payments and for some transfers to checking accounts of State agencies.
  - 2. The State uses expanded EFT in the transfer of funds and remittance information using PayMode™. The State has established PayMode™ as the default payment method for those payments and transfers requiring supporting remittance information.
- C. E-payment vehicle: Tool that captures the payment and remittance information and pushes it electronically to the designated vendor from the source system (MAGIC). The ACH is used to move the funds while a proprietary system is used to provide access to supporting remittance data and notification of the availability of funds to the State's vendors.
- D. Existing Agreements: Individual agreements in place for the acceptance of electronic payments prior to the implementation of this policy.
- E. PayMode™: A Bank of America product, PayMode™ is the State's present e-payment vehicle.

- F. MAGIC: Mississippi Accountability System for Government Information and Collaboration, the successor system for SAAS and SPAHRS.
- G. Vendor payments: Payments initiated and approved by State Agencies for various goods and services or as used to transfer funds to other governing authorities such as school districts, cities, and counties.

### III. Requirements for Transitioning to E-payment Vehicle

- A. All existing vendors presently set up for payment through standard EFT, unless otherwise approved as an exemption, must be enrolled in PayMode™.
- B. All vendors established as new vendors in the State Magic System must be established for e-payment and remittance via PayMode™.
- C. All remaining MAGIC vendors, unless specifically exempted, must convert to PayMode™ on the schedule determined by DFA.
- D. To register for PayMode™, vendors should go to the Bank of America's™ enrollment website at <http://www.bankofamerica.com/paymode/ms>.
  - 1. Vendor must have a valid email address in order to enroll with PayMode™.  
This email address can be obtained through one of the free email services such as Yahoo or Hotmail.
  - 2. Vendor must have access to a computer. As computers are generally accessible in all businesses as well as in Public Libraries or other public forums, no exemption will be granted for having only limited or no access to a computer.
  - 3. Vendor may request assistance in enrolling with the State's e-payment service provider by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us) or by calling MASH at (601) 359-1343.

### IV. Requirements for Transitioning to E-invoicing

- A. All vendors who contract with a state agency must agree to invoice the State electronically through PayMode.
- B. To register for PayMode E-invoicing, vendors must first register with PayMode for E-payment.
- C. Vendors must then complete additional information on the PayMode website to enroll in E-invoicing.
- D. Vendors may request assistance in enrolling in PayMode E-invoicing by contacting PayMode Customer Support at 1-866-252-7366.

### V. Exemptions

- A. The following are exempt from this rule:
  - 1. State employees as defined in §25-9-107;
  - 2. Contract workers – note that Independent Contractors are **not** exempt from this rule;
  - 3. Vendors specifically approved for “one of” payments using the

specific vendor number designated for that purpose by the Office of Fiscal Management;

4. Right-of-Way acquisition payments made by the Mississippi Department of Transportation.
5. Debt service payments made by the Office of the State Treasurer;
6. Tax payments to the IRS (standard EFT);
7. Tax payments to the Mississippi State Tax Commission (standard EFT);
8. Transfers to the Public Employees Retirement System of Mississippi (standard EFT);
9. Transfers to the Mississippi Deferred Compensation and Trust/SBA (standard EFT);
10. Vendors who apply for exemption and are approved by DFA.

B. To apply for exemption, the vendor must submit a written application to: Director, Office of Fiscal Management  
Department of Finance and Administration  
501 North West Street, Suite  
1101B Jackson, Mississippi 39201

C. Application must detail the following:

1. Reason(s) exemption requested. This must be a narrative explanation of the reason for the request;
2. Documentation of supporting cost and legal issues associated with the request for the exemption.

D. DFA will issue a written determination within 10 business days of the receipt of the exemption request. The written determination of DFA will be considered the final determination.