

INVITATION FOR BIDS
IFB NUMBER: RFX3160001518

The State Fire Academy will accept sealed bids until 2:00 P.M. on Thursday, June 8, 2017 and opened immediately thereafter, for:

Cartridge Refills for Fire Extinguishers

CLOSING LOCATION

**Mississippi Fire Academy
#1 Fire Academy USA
Jackson, MS 39208**

BID COORDINATOR

Paul Ammerman
Office Director
Telephone: 601-932-2444
Fax: 601-932-2819
Email: pammerman@msfa.ms.gov

Bids must be submitted on the Bid Cover Sheet (Attachment A), and Bid Form, signed and delivered in a sealed envelope addressed as follows:

State Fire Academy
Attn: Paul Ammerman
#1 Fire Academy USA
Jackson, MS 39208-9600

Indicate in the lower left-hand corner of the sealed envelope:

Bid#: RFX3160001518

Bid Opening: 2:00 P.M. Thursday, June 8, 2017

CLOSING DATE AND TIME

Bids must be received by 2:00 P.M., Thursday, June 8, 2017

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GENERAL CONDITIONS

ALL BIDS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN. THE BID PROCEDURES FOLLOWED BY THIS OFFICE WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL BIDDERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A BID.

1. PREPARATION OF BIDS

- 1.1 Bids shall be sealed to the State Fire Academy, #1 Fire Academy U.S.A., Jackson, MS 39208.
- 1.2 Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- 1.3 Price each item separately. Unit prices shall be shown. Bid prices must be net.
- 1.4 Specification. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the bidder.
- 1.5 Information and Descriptive Literature. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with the State Fire Academy will not satisfy this provision.
- 1.6 Samples. Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, State of Mississippi commodity number, bid number and item reference.
- 1.7 Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications.

2. SUBMISSION OF BIDS

- 2.1 Bids must be signed and sealed with bidder's name and address on outside of envelope, and the time and date of the bid opening and the bid file number shown in the lower-left hand corner of the envelope.
- 2.2 Bids and modifications or corrections received after the closing time specified will not be considered.

3. ACCEPTANCE OF BIDS

- 3.1 The State Fire Academy reserves the right to reject any and all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The State Fire Academy reserves the right to modify or cancel in whole or in part its Invitation for Bids. If a bidder fails to state the time within which a bid must be accepted, it is understood and agreed that the State Fire Academy Management shall have 60 days to accept.
- 3.2 Only sealed bids will be accepted. Facsimile or electronic mail bids will not be accepted.

4. ERROR IN BID

- 4.1 In case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids.

5. DISCOUNT PERIOD

- 5.1 Time in connection with a discount offered will be computed from date of delivery at destination or from the date correct invoices are received, if the latter date is later than the date of delivery. Cash discounts will not be considered in the award process.

6. AWARD

- 6.1 Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications, except as otherwise specified in the bid specifications. Where more than one item is specified in the specifications, the State Fire Academy reserves the right to determine the low bidder either on the basis of the individual item(s) or on the basis of all items included in its Invitation for Bids, or as expressly provided in the State Fire Academy Invitation for Bids.
- 6.2 Unless the bidder specified otherwise in the bid, the State Fire Academy may accept any item or group of items of any kind.
- 6.3 A written purchase order or contract award furnished to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract without further action by either party. The contract shall consist solely of these General Conditions, the Instructions and Special Conditions, the successful bidder's bid, and the written purchase order or contract award. The contract shall not be assignable in whole or in part without the written consent of the State Fire Academy.

7. INSPECTION

- 7.1 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. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State of Mississippi or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

8. TAXES

- 8.1 The State Fire Academy 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. Exemption certificates will be furnished upon request. Contractors making improvements to, additions to or repair work on real property on behalf of the State are liable for any applicable sales or use tax 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 the State for use in connection with their contracts.

9. GIFTS, REBATE, GRATUITIES

- 9.1 Acceptance of gifts from bidders is prohibited. No officer or employee of the State Fire Academy, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State Fire Academy may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.
- 9.2 Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State Fire Academy during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State Fire Academy.

10. BID INFORMATION

10.1 Bid information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

11. DEFINITIONS

11.1 The use of the word agency in any Bid Invitation solicitation or specification shall be intended to mean state agencies only. The words "governing authority" when used in any of the above documents shall be intended as meaning county or local entities.

12. PRECEDENCE

12.1 Bids shall be made and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

13. COMPETITION

13.1 There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with bidders whereby a lower price to the State must automatically be given to the U.S. Government.

14. WAIVER

14.1 The State Fire Academy reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

15. CANCELLATION

15.1 Any contract or item award may be canceled with or without cause by the State Fire Academy with the giving of 30 days written notice of intent to cancel. Cause for the State Fire Academy to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The Contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by the State Fire Academy does not relieve the Contractor of any liability arising out of a default or nonperformance. If a contract is canceled by the State Fire Academy due to a Contractor's request for increase in prices or failure to perform, that Contractor will be disqualified from bidding for a period of 24 months. The Contractor may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Contractor to cancel may include, but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

16. SUBSTITUTIONS DURING CONTRACT

16.1 During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by the State Fire Academy and the substitutions are deemed to be in the best interest of the State.

17. APPLICATION

- 17.1 It is understood and agreed by the Bidder that any contract entered into as a result of this Invitation for Bids is solely for the convenience of the state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the State Fire Academy.

Under the provisions of Section 31-7-7 Mississippi Code of 1972, Annotated, the prices offered herein shall be extended to the governing authorities. However, the governing authorities, by provisions of Section 31-7-12 Mississippi Code, may purchase products covered by state contracts from any source offering an identical product at a price that does not exceed the state contract price.

Employees of the State Fire Academy have acted exclusively as agents of the State Fire Academy for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the state agencies that utilize the contract.

18. ADDENDA

- 18.1 Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

19. NONRESPONSIVE BIDS

- 19.1 Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternate products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

20. SPECIFICATION CLARIFICATION

- 20.1 It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the bid opening. Such clarification will be answered only in response to a written request.

21. BID OPENINGS

- 21.1 Bid openings will be open to the public. The bid opening will serve only to open and read the bid price on each bid. No discussion 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.
- 21.2 If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "**Force Majeure** Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as

set forth herein. The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.

22. FIRM BID PRICE

- 22.1 Prices quoted shall be firm for the term of the contract except that the State shall receive the benefit of any price decrease in excess of five (5) percent. The contractor must provide written price reduction information within ten (10) days of its effective date.

23. CONTRACT EXTENSION

- 23.1 Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the State Fire Academy.
- 23.2 The State Fire Academy reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon the agreement of the Contractor and shall not exceed three (3) months.
- 23.3 Contract renewals/extensions, if agreed upon by both parties, are acceptable by law to not exceed a total of 5 years

24. SUSPENSION AND DEBARMENT

- 24.1 By submitting a bid, the bidder is certifying that neither the bidder nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in federal assistance programs.

25. ASSIGNMENT

- 25.1 The Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the State Fire Academy.

26. Vendor Registration

- 26.1 All vendors must be registered with the State of Mississippi. If not registered, please go to <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/> register your company and to receive a supplier number. Suppliers who have completed the registration process must attach a W-9 to their account in the MAGIC. Alternatively, suppliers may submit a valid W-9 to email ofmmagic@dfa.ms.gov or fax 601-359-5525.

Special Instructions to Bidder:

Please read the instructions carefully. You should return each bid pages:

Attachment A (Bid Cover Sheet page 14 – 15)

Attachment B (Bid Form page 16)

Attachment C (References page 17)

Attachment D (References Score Sheet page 18)

GENERAL INSTRUCTIONS – Cartridges Refills for Fire Extinguishers

Section 1 – Purpose

The State Fire Academy is seeking to secure a contract for Cartridge Refills for Fire Extinguishers.

Section 2 – Timeline

Invitation for bid (IFB) Issue Date:	May 17, 2017
Bid Package Submission Deadline:	June 8, 2017, 2:00PM CST
Bid Opening:	June 8, 2017, 2:00PM CST

Section 3 – Questions/Requests for Clarification

All questions and requests for clarification should be directed to:

Paul Ammerman, at 601-932-2444

Email: pammerman@msfa.ms.gov

Section 4 – Scope of Services – Cartridge Refills for Fire Extinguishers

4.1 Company shall furnish to the State Fire Academy, cartridges for 20 pound Ansul fire extinguishers.

4.2 Company shall furnish only certified Ansul new or refilled cartridges with the Ansul ID on burst disk. Cartridges which fail to discharge an extinguisher will not be charged to the State Fire Academy.

4.3 All cost of shipping to and from the State Fire Academy will be covered by bidder

4.4 Orders will be placed a minimum of 5 working days before the Academy will be using the cartridges. Each order will be a minimum of 200 cartridges.

4.5 Failure to provide the State Fire Academy with cartridges which do not have 90% or better success rate for discharging extinguishers can void contract.

4.6 The State Fire Academy may increase or decrease the units listed within the contract time.

4.7 Estimated number of cartridges purchases last fiscal year is 1,000.

Section 5 – Basis for Award

Bids will be evaluated for the lowest and best responsible bidder. Bids with escalation clauses shall not be considered.

Section 6 – Contract Deliverables

6.1 Upon execution of a contract, Bidder shall

6.1.1 Ensure that the staff are in complete uniform and well-groomed at all times;

6.1.2 Provide uniforms to easily recognizable and identify the staff as an employee of the vendor.

6.1.3 Abide by all ordinances and laws pertaining to the agency's operation and secure all required licenses and permits;

6.1.4 Make all unemployment compensation contributions as required by federal and state law and process claims as required;

6.1.5 Perform all services provided in the contract in accordance with customary and reasonable industry standards.

6.2 The company shall be able to provide a **detailed invoice** to the Academy for services provided. Payment shall be made by the Academy within forty-five (45) days of the receipt of invoice, per state

statute.

Section 7 - Minimum Bidder Qualifications to be Deemed Responsible

7.1 Bidder must have been in business and providing trash collection services similar in requirements and scale to those described in this IFB for a minimum of five years.

7.2 Bidder must maintain an office in the local area.

7.3 Bidder must maintain a pool of qualified workers to fill the requests from agencies. Please provide the average number of workers you have that meet the minimum requirements.

7.4 These minimum qualifications are in addition to a minimum score of four on the Reference Score Sheet (**Attachment D**) from reference interviews by the Academy with **two** bidder references (for a total minimum score of eight), as well as all other requirements of this IFB. (See **Section 9.1.2** and **Attachments C and D**.)

Section 8 - Duration and Renewals

8.1 Contract Award Date of July 1, 2017. Work should start July 1, 2017.

8.2 Prices submitted in response to this IFB will remain firm and valid for one year, except that a bidder may raise prices to reflect a rise in the federal minimum wage, but only to the extent of the actual minimum wage increase.

8.3 Upon written agreement of both parties, at least sixty (60) days prior to each contract anniversary date, the contract may be renewed for a period of four (4) successive one year periods under the same prices, terms, and conditions as in the original contract. The total number of years permitted shall not exceed five years.

Section 9—Bid Submission Requirements

9.1 Submission format

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

9.1.1 Bid Cover Sheet and Bid Form (**pages 14 - 16**)-pricing must be submitted on the bid form.

9.1.2 References (**Attachment C**) – each bidder must furnish a listing of **at least** three trade references along with the contact person, address, and phone number for each. These references must be familiar with the bidder's abilities in the areas involved with this solicitation. These references are to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. Further, the bidder must score a minimum of four (4) points on each Reference Score Sheet which will be used by the Academy staff when interviewing the two references (for a total minimum scoring requirement of eight (8) points) to be considered responsive. (See Section 9.1.2 and Attachments C and D.) Only bidders who are found responsive will have their bids considered. Bidder may submit as many references as desired. The Academy will begin contacting references at the top of the list and will continue down the list until they have completed Reference Score Sheets for two references. After two score sheets are completed, the staff will stop the reference check process.

9.2 Submission requirements

9.2.1 The original bid package shall be signed and submitted in a sealed envelope or package addressed to 1 Fire Academy USA, Jackson MS 39208 no later than **2:00 P.M., June 8, 2017**. (Also see, **9.2.3**. and

9.2.11.)

9.2.2 Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened.

9.2.3 The envelope or package shall be marked with the bid opening date and time, and the number of the invitation for bids.

9.2.4 The time and date of receipt will be indicated on the outside of the envelope or package.

9.2.5 Each page of the bid form and all attachments shall be identified with the name of the bidder.

9.2.6 Failure to submit a bid on the bid form provided will be considered cause for rejection of the bid. Modifications or additions to any portion of the bid document may be cause for rejection of the bid.

9.2.7 The Academy reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as nonresponsive.

9.2.8 As a precondition to bid acceptance, the Academy may request the bidder to withdraw or modify those portions of the bid deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

9.2.9 Any bidder claiming that its response contains information exempt from the Mississippi Public Records Act (*Miss. Code Ann. § 25-61-1, et. seq*), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption.

9.2.10 All bid packages must be received no later than **2:00 p.m. (CST), June 8, 2017**. Bids submitted via facsimile (faxes) or electronically **will not** be accepted. The Academy will not be responsible for mail delays or lost mail.

9.2.11 Sealed bids should be mailed or hand delivered to and labeled as follows:

Cartridge Refills for Fire Extinguishers

Bid No. RFX 3160001518

Opening Date: June 8, 2017

State Fire Academy

Attention: Paul Ammerman

#1 Fire Academy USA

Jackson, Mississippi 39208-9600

SEALED BID – DO NOT OPEN

Section 10 – 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.

Section 11 – 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, 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.

Section 12 – Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business with the Mississippi Secretary of State or, if not already registered, that it will do so within seven business days of being notified of an award.

Section 13 – Insurance

Each successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits:

- ☐ **Comprehensive General Liability** - \$1,000,000 each occurrence, with the State of Mississippi added as an additional insured;
- ☐ **Workers Compensation** as required by the State of Mississippi; and,
- ☐ **Employee Dishonesty Bond Insurance** with third party liability coverage and with limits of \$100,000.

Proof of coverage must be provided upon award.

Section 14 – Bid Opening

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

Section 15 – Award Notification

All bidders will be notified of the outcome of the awards by letter.

Section 16 – Procurement Methodology

16.1 Cost of preparing bid

The Academy 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.

16.2 Independent price determination

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

16.3 Rejection of bids

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 nonresponsive. The Academy reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the Academy of nonresponsiveness based on the submission of nonconforming terms and conditions.

16.4 Withdrawal of bid

16.4.1 If a bidder's price bid is substantially lower than those of other bidders, a mistake may have been made.

16.4.2 A bidder may withdraw its bid from consideration if certain conditions are met:

- (1) The bid is submitted in good faith;
- (2) The price bid is substantially lower than those of other bidders because of a mistake;
- (3) The mistake is a clerical error, not an error of judgment; and,
- (4) Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

16.4.3 To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to the Academy of claim of right to withdraw a bid. Within two business days after the bid opening, the bidder requesting withdrawal must provide to the Academy all original work papers, documents, and other materials used in the preparation of the bid. A bidder may also withdraw a bid, prior to the time set for the opening of bids, by simply making a request in writing to the Academy. No explanation is required.

16.5 Protests

Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with this solicitation or the outcome of this IFB may file a protest with the Director of the Academy. The protest shall be submitted in writing within five (5) days after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. A protest is considered filed when received by the Director of the Academy. Protests filed after the fifth day will not be considered.

Section 17 – Required Contract Terms and Conditions

Any contract entered into with the agency pursuant to a vendor/bidder being awarded a contract shall have the required clauses found in **Attachment E**. These clauses are required by the Personal Service Contract Review Board's Rules and Regulations.

Section 18 – Optional Contract Terms and Conditions

Any contract entered into with an agency pursuant to a vendor/bidder being awarded a contract may have, at the discretion of the contracting agency, the optional clauses found in **Attachment E**. These clauses are discretionary under the Personal Service Contract Review Board's Rules and Regulations.

Section 19 – Attachments

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

Attachment E

Required Clauses in IFBs, RFPs, and RFQs

APPLICABLE LAW

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

AVAILABILITY OF FUNDS

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

PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

COMPLIANCE WITH LAWS

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

STOP WORK ORDER

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

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default

clause or the Termination for Convenience clause of this contract.

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

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

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

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

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

REPRESENTATION REGARDING CONTINGENT FEES

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

REPRESENTATION REGARDING GRATUITIES

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

ACKNOWLEDGMENT OF AMENDMENTS

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

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

Note: The following clause shall be completed and conspicuously placed within the response bid or proposal.

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's bid or proposal that such Contractor has/has not (*use applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

E-VERIFICATION

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

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

TRANSPARENCY

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

TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

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.

TERMINATION FOR CONVENIENCE

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

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

TERMINATION FOR DEFAULT

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

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

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

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes

such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination").

(As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

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

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

TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by Mississippi State Fire Academy 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.