

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
COMPETITIVE SEALED
REQUEST FOR STATEMENTS OF QUALIFICATIONS**

**Request for Statements of Qualifications to Provide Scientific Support
for Air Releases and Toxic Substances**

The Mississippi Department of Environmental Quality (“MDEQ”) hereby solicits written Statements of Qualifications (“SOQ”), subject to the conditions stated herein and attached hereto, from organizations licensed in the State of Mississippi (“Applicant”) to assist MDEQ, on an as needed basis, to provide scientific support for toxicology, response management, information technology, industrial hygiene, training, engineering support, legal support as necessary, risk assessment and contaminated site solutions related to air monitoring services. Applicants who meet the requirements of this Request for Qualifications (RFQ) will be selected as a qualified contractor to perform air monitoring services for MDEQ. Being selected as a qualified contractor in no way guarantees that such Applicant/Contractor will be selected to perform a specified amount of work under this RFQ and any resulting contract.

SOQs shall be submitted by 3:00 p.m. CST, Thursday, September 14, 2017, to:

**SOQ to Provide Professional Scientific Support for Air Releases and Toxic Substances
Mississippi Department of Environmental Quality
Attention: Aveleka Moore
515 East Amite Street
Jackson, Mississippi 39201**

The SOQs shall be limited to no more than a total of thirty (30) typed pages including contents pages, supporting appendices, etc (the page count includes every printed page except for the front and back cover, the transmittal letter, and any other exemption stated herein). Any information contained on pages that exceed the page limit may not be evaluated. Paper size shall be 8 1/2” x 11”. Text shall not be smaller than a font size of 12. Applicants shall submit the signed original and three (3) true and complete copies of the original SOQ, along with one (1) digital copy of the SOQ in PDF format on a CD-ROM or USB flash drive, in a sealed envelope or package to MDEQ on or before the date and time specified. The original must be signed by an authorized representative of the Applicant.

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

The SOQ shall be specific and sufficiently detailed to satisfy the requirements set forth in this solicitation. A selection committee shall review and evaluate SOQs.

I. Scope of Services

The scope of the engagement may include, but is not limited to, the following:

- A. Respond to emergency incidents involving hazardous materials/pollutants, primarily air releases and toxic substances as directed by MDEQ;
- B. Provide monitoring of site(s) including air surveillance and environmental sampling following U.S. EPA Protocol;
- C. Sample both hazardous and non-hazardous materials following appropriate State and Federal protocols;
- D. Analyze samples or sending the samples out to a twenty-four (24) hour laboratory service for sample analyzation/processing; and
- E. Other related tasks as directed by MDEQ.

II. Qualifications

- A. Experience in responding to emergency incidents involving hazardous materials/pollutants, primarily air releases and toxic substances in a safe and effective manner; and
- B. Has the equipment and personnel to effectively and safely respond to emergency incidents involving hazardous materials/pollutants, primarily air releases and toxic substances.

III. Period of Performance

The period of performance for any contract(s) awarded, pursuant to this RFQ will be for the period of December 1, 2017 – November 30, 2019 with an option at MDEQ’s discretion to renew for one (1) year at the same prices, terms, and conditions as in the original contract. The total contract period, including any renewals thereof, shall not exceed three (3) years. No minimum order or work is guaranteed.

IV. Contract Type

The resulting contract(s) will be an Indefinite Quantity contract(s). Compensation for services requested under this RFQ will be according to the rates and requirements included in the MDEQ Rate Schedule which is attached hereto as Attachment “A”.

V. Availability of Funds

It is expressly understood and agreed that the obligation of the MDEQ to proceed under any contract(s) awarded pursuant to this RFQ is conditioned upon the appropriation of funds by the

Mississippi State Legislature and 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 State, MDEQ shall have the right upon ten (10) working days written notice to Contractor to terminate any contract(s) awarded pursuant to this RFQ 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.

VI. Mandatory Requirements

The SOQ **MUST** contain **all** of the following information:

- A. Company Information: Applicants must provide the information below in the following manner and order:

1. Applicant's company name:	
2. Location of Applicant's principal place of business:	
3. The place of performance of the proposed contract:	
4. All appropriate company contact information, including the following Company's Physical Address: Designated Company Contact: Contact's e-mail address: Contact's phone number:	
5. Applicant's Data Universal Number System (DUNS) number:	
6. The age of Applicant's business:	
7. The average number of employees over the past three (3) years:	

- B. The Applicant must provide a list of personnel and their respective backgrounds, experience in emergency response operations involving air releases and toxic substances,

responsibilities, education, training, and work experience for the following job positions required for these services:

- 1) Toxicologist – with experience in evaluating chemical hazards and their impacts to human health during an emergency setting related to impacted air, surfaces, soil, surface water, and drinking water. The Applicant must have a dedicated toxicologist on staff and provide education, training and experience qualifications.
- 2) Certified Industrial Hygienist – with current accreditation by the American Board of Industrial Hygienists.
- 3) Project Manager – with experience in providing air, surface, soil, and water management support to projects involving chemical and biological impacts to human health.
- 4) Air Monitoring/Environmental Technician – capable of collecting samples for air, surfaces, groundwater, water intakes, surface water, and soil.

C. Certifications Required:

- a. The Applicant must certify, in writing, that it can provide services in this RFQ as the need arises on a twenty-four (24) hour, 365 days a year basis. The Applicant must have a physically monitored twenty-four (24) hour telephone number for the purposes of notification. Paging and answering machines are not acceptable.
- b. The Applicant must provide a certified list of relevant air monitoring training by involved employees.
- c. The Applicant must certify, in writing, that it possesses equipment to accomplish emergency activities described in Section I. Scope of Services. This includes, at a minimum, the equipment listed below:
 - AreaRAEs with photoionization detector (“PID”), lower explosive limit (“LEL”), remote telemetry, and additional sensors for chlorine, ammonia, carbon monoxide, and hydrogen sulfide.
 - MultiRAE Pros with PID, LEL, and additional sensors for chlorine, ammonia, carbon monoxide, and hydrogen sulfide.
 - PPB RAE PID or other PID capable of measuring in low part per billion (“PPB”) range.
 - UltraRAE benzene specific
 - Particulate Matter monitoring equipment capable of PM10, PM2.5, and total PM (TSI DustTrak DRX or equivalent)

- Ohio Lumex mercury vapor analyzer
 - Colorimetric tube capabilities with tubes in date and current for at least:
 - Acid gasses
 - Methanol
 - Ethylene oxide
 - Methane
 - Methylene chloride
 - Sulfur dioxide
- D. Applicant must list the names of laboratories that it utilizes on a regular basis and provide the telephone numbers and addresses for those laboratories, and denote those that can provide twenty-four hour turn around service for environmental samples.
- E. Applicant must certify in writing, that it will follow packaging requirements in accordance with U.S. Department of Transportation regulations for packaging and transportation of samples and wastes.
- F. In order to demonstrate direct experience, the Applicant shall submit, in writing, a summary reflecting that it was the Contractor on two (2) separate and verifiable projects, which have been completed within the last five (5) years. Information should be provided in written summary/report form for review.
- G. The Applicant must show proof of financial stability and good business practices for the past two (2) years through the submission of a letter of reference from its primary bank or lending institution.
- H. If an Applicant is a non-resident contractor, Applicant must provide a copy of the Applicant's current state bidder/Applicant preference law pertaining to that state's treatment of non-resident contractors pursuant to Miss. Code Ann. § 31-7-47 or a statement on letterhead signed by an officer or manager of the Applicant stating that no preference laws exist in that state. The state of residency of a contractor shall be the same as the corporate office reported by the Applicant to the Mississippi Secretary of State. Any documentation submitted under this Section is not included in the thirty (30) page limit of the RFQ.
- I. The Applicant must provide an official Certificate of Good Standing issued within sixty (60) days prior to the submission deadline from the Office of the Secretary of State of the State of Mississippi demonstrating that Offeror is in good standing to do business in Mississippi, which will not be included in the SOQ's thirty (30) page limit.
- J. Applicant must execute, notarize, and attach the Applicant's Affidavit to its SOQ, which will not be included in the SOQ's thirty (30) page limit. A copy of the Applicant's Affidavit is attached hereto as Attachment "C".

- K. Applicant shall acknowledge receipt of any amendment to this RFQ by signing and returning the amendment with its SOQ. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of SOQ. Any documentation submitted under this Section is not included in the thirty (30) page limit of the SOQ.
- L. Applicant shall acknowledge receipt of any Response to Inquiries issued in regard to this RFQ by signing and returning the Response to Inquiries with its SOQ. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of SOQ. Any documentation submitted under this Section is not included in the thirty (30) page limit of the SOQ.
- M. SOQ must comply with all the provisions in this RFQ, not including those deemed to be waived pursuant to Section X of this RFQ.

VII. Evaluation Procedure and Factors to Be Considered in the Evaluation Process

A selection committee (Committee) shall review and evaluate each SOQ as set forth below.

- A. Determination of Acceptability. SOQ(s) will be reviewed to ensure compliance with the Mandatory Requirements of this RFQ. The Committee shall classify SOQ(s) as “acceptable,” “potentially acceptable,” or “unacceptable.” SOQ(s) that do not comply with the Mandatory Requirements may be deemed “unacceptable” and rejected at any time prior to award of the Contract.
- B. Discussions with Individual Applicants. At MDEQ’s sole discretion, MDEQ may choose to hold discussions with individual Applicants whose SOQ are classified as “acceptable” or “potentially acceptable” to determine in greater detail each Applicant’s qualifications and to determine if an Applicant classified as “potentially acceptable” should be reclassified as “acceptable.” All Applicants so classified shall be given an equal and fair opportunity to participate in individual discussions. Discussions may also be held with acceptable Applicants to promote an understanding of MDEQ’s requirements and the Applicant’s SOQ, and to facilitate arriving at a contract that will be most advantageous to MDEQ.
- C. Evaluation Criteria. SOQ(s) will be reviewed/analyzed by the Committee to determine which SOQ(s) is most advantageous to the State based on the following factors:
 - 1) The overall quality of the Applicant’s SOQ and ability to demonstrate that the requirements described in the scope of work and Mandatory Requirements are met. Consideration will be given to the completeness of the response to the specific requirements of the solicitation. ***Importance Level = Very Important, Point Value = 20 Points;***
 - 2) Applicant’s ability to perform the required services as reflected/evidenced by qualifications (technical training and education, general experience, specific

experience in providing the required services, professional certification and licensure (as applicable), and the qualifications and abilities of personnel proposed to be assigned to perform the services etc.) and the personnel, equipment, facilities and financial resources to perform the services currently available or demonstrated to be available in an expeditious manner at the time of contracting. ***Importance Level = Critical, Point Value = 40 Points;***

- 3) Applicant's record of past performance of similar work, demonstrated by performance on contracts and/or subcontracts performed during the past three years, including active contracts and subcontracts, in the areas of quality of services; timeliness of performance; cost control; and customer satisfaction. ***Importance Level = Critical, Point Value = 40 Points.***

Based upon the above scoring method, a perfect score would be 100.

VIII. Rejection of Statements of Qualifications

SOQs that do not conform to the requirements set forth in this RFQ may be rejected by MDEQ. SOQ may be rejected for reasons which include, but are not limited to, the following:

- (A) The Applicant is determined to be non-responsible under Rule 3-401.03 of the Personal Services Contract Review Board Manual;
- (B) the SOQ contains unauthorized amendments to the requirements of the RFQ;
- (C) the SOQ is in the form of a conditional offer;
- (D) the SOQ is incomplete or contains irregularities that make the RFQ indefinite or ambiguous;
- (E) the SOQ is received late;
- (F) the SOQ is not signed by an authorized representative of the Applicant;
- (G) the SOQ contains false or misleading statements or references;
- (H) the SOQ does not offer to provide all services required by this RFQ;
- (I) the SOQ does not contain all of the Mandatory Requirements; or
- (J) the SOQ was not delivered in accordance with the requirements of this RFQ (i.e. not delivered sealed).

IX. Qualifications for Applicants

The Applicant may be required before the award of any contract to show to the complete satisfaction of MDEQ that it has the necessary facilities, ability, and financial resources to provide the service(s) specified therein in a satisfactory manner. The Applicant may also be required to give a past history and references in order to satisfy MDEQ in regard to the Applicant's qualifications. MDEQ may make reasonable investigations deemed necessary and proper to determine the ability of the Applicant to perform the work, and the Applicant shall furnish to MDEQ all information for this purpose that may be requested. MDEQ reserves the right to reject any SOQ if the evidence submitted by, or investigation of, the Applicant fails to satisfy MDEQ that the Applicant is properly qualified to carry out the obligations of the Contract and to complete the work described therein. Evaluation of the Applicant's qualifications shall include, without limitation, inquiry into the following:

- (1) the ability, capacity, skill, and financial resources to perform the work or provide the service required;
- (2) the ability of the Applicant to perform the work or provide the service promptly or within the time specified, without delay or interference;
- (3) the character, integrity, reputation, judgment, experience, and efficiency of the Applicant; and,
- (4) the quality of performance of previous contracts or services.

X. Informalities and Irregularities

MDEQ reserves the right, in its sole discretion, to waive minor defects or variations of a SOQ from the exact requirements set forth in this RFQ that do not give one Applicant an advantage or benefit not enjoyed by other Applicants, or that adversely impact the interest of MDEQ. If insufficient information is submitted by an Applicant for MDEQ to properly evaluate the SOQ, MDEQ has the right to require such additional information as it may deem necessary after the time set for receipt of SOQs, provided that the information requested does not change the quality or performance time of the services being procured. Waivers, when granted under Section IX of the RFQ, shall in no way modify the RFQ requirements or excuse an Applicant from full compliance with the RFQ specifications and other requirements of the contract in the event the Applicant being granted the waiver is awarded the contract.

XI. Disposition of Proposals

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

XII. RFQ Does not Constitute Acceptance of Offer

The release of the RFQ does not constitute an acceptance of any offered SOQ, nor does such release in any way obligate MDEQ to execute a contract with any Applicant. MDEQ reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. MDEQ reserves the right to negotiate final terms, including scope, a budget, and contract amount prior to the awarding of the contract. The final decision to execute a contract with any party rests solely with MDEQ, including the decision to make no award of contract.

XIII. Nonconforming Terms and Conditions

A SOQ that includes terms and conditions that do not conform to the terms and conditions in this RFQ is subject to rejection as “unacceptable”. MDEQ reserves the right to permit the Applicant to withdraw nonconforming terms and conditions from its RFQ prior to a determination by MDEQ of unacceptability based on the submission of nonconforming terms and conditions.

XIV. SOQ Acceptance Period

Applicants shall submit the signed original and three (3) true and complete copies of the original SOQ, along with one (1) digital copy of the SOQ in PDF format on a CD-ROM or USB flash drive of the SOQ and all attachments which shall be signed and submitted in a sealed envelope or package to:

Mississippi Department of Environmental Quality

Attention: Aveloka Moore

SOQ to Provide Professional Scientific Support for Air Releases and Toxic Substances

515 East Amite Street

Jackson, Mississippi 39201

No later than three o'clock p.m. (3:00 p.m.) central standard time (CST) on Thursday, September 14, 2017. Timely submission of the SOQ is the responsibility of the Applicant. SOQs received after the specified time will not be considered for award.

MDEQ will not be responsible for delayed or lost mail received after the deadline. All packages received after this deadline will not be considered for this award.

XV. Expenses Incurred in Preparing SOQs

MDEQ accepts no responsibility for any expense incurred by the Applicant in the preparation and presentation of an SOQ. Such expenses shall be borne exclusively by the Applicant.

XVI. Proprietary Information

The Applicant should mark any and all pages of the SOQ considered to be proprietary information which may remain confidential in accordance with Miss. Code Ann. §§ 25-61-9

and 79-23-1. The provisions of the Contract which contain the professional services provided, 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 in accordance with Miss. Code Ann. § 25-9-120 and the Mississippi Public Records Act. Any pages not marked accordingly will be subject to review by the general public after award of the Contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

XVII. Additional Information and Inquiries

All questions/inquiries about this RFQ must be submitted in writing to the above address or via fax or email to **Aveleka Moore** at fax number (601) 961-5715 or amoore@mdeq.ms.gov and must be received by MDEQ by 5:00 p.m. CST on Thursday, September 7, 2017. Applicants are cautioned that any statements made by any person shall not be relied upon unless subsequently ratified by a formal written response to the RFQ, such as an amendment or Response to Inquiries. MDEQ may issue one or more Response to Inquiries on or before September 7, 2017.

XVIII. Acknowledgement of Amendments or Addenda

Applicants shall acknowledge receipt of any amendment or addendum to the solicitation by signing and returning the amendment or addendum with the proposal, by filling out the spaces provided for this purpose on the amendment(s), addendum(s), or by letter. The acknowledgment must be received by MDEQ by the time and at the place specified for receipt of SOQs.

XIX. Debarment

By submitting a SOQ, the Applicant certifies that it is not currently debarred from submitting SOQ 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 SOQ for contracts issued by any political subdivision or agency of the State of Mississippi.

XX. Contract Terms and Conditions

Applicant's SOQ and any subsequently-awarded contract are subject to the Standard Contract Terms and Conditions, a copy of which is attached hereto as Attachment "B" and any additional terms and conditions included in the subsequently-awarded contract.

XXI. Debriefing Request

Unsuccessful Applicants may request a post-award Applicant debriefing, in writing, by United States mail or electronic submission to **Aveleka Moore** at amoore@mdeq.ms.gov, to be received by the agency within ten (10) business days after notification of the contract award or notice that no contract was awarded. An Applicant debriefing is a purely administrative function of MDEQ and not a hearing; therefore, legal representation is not required. If an Applicant prefers to have legal representation present, the Applicant must notify MDEQ and identify its attorney. MDEQ will strive to schedule the debriefing to occur within five (5) business days after receipt of the Applicant's request, and the debriefing may be conducted

during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to MDEQ. At a minimum, the debriefing information shall include the following:

- (A) the agency's evaluation of significant weaknesses or the agency's evaluation of significant weaknesses or deficiencies in the Applicant's SOQ, if applicable;
- (B) the overall evaluated cost or price and technical rating, if applicable, of the successful SOQ (s) and the debriefed SOQ;
- (C) the overall ranking of all Applicants, if a ranking was developed by the agency during the selection process;
- (D) a summary of the rationale for award; and
- (E) reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

The debriefing shall not include point-by-point comparisons of the debriefed vendor's bid, proposal, or SOQ with those of other offering vendors.

XXII. List of Attachments

The following are included as attachments to this RFQ:

Attachment A – MDEQ Rate Schedule

Attachment B - Standard Contract Terms and Conditions

Attachment C – Applicant's Affidavit

ATTACHMENT “A”

MDEQ RATE SCHEDULE

PERSONNEL

	<u>HOURLY RATE</u>
Industrial Hygiene Specialist I	\$ 98.00
Industrial Hygiene Specialist II	\$ 88.00
Environmental Scientist I	\$120.00
Environmental Scientist II	\$ 98.00
Environmental Specialist I	\$ 98.00
Environmental Specialist II	\$ 88.00
Toxicologist I/Risk Assessor I	\$155.00
Toxicologist II/Risk Assessor II	\$130.00
Environmental Chemist I	\$115.00
Environmental Chemist II	\$ 98.00
Environmental Engineer I/Geologist I	\$135.00
Environmental Engineer II/Geologist II	\$120.00
Medical Specialist	\$115.00
Medical Specialist I	\$ 99.00
IT Specialist II	\$120.00
Project Manager	\$167.50
Safety Specialist I	\$ 98.00
Safety Specialist II	\$ 88.00
Consultant	\$225.00
Consultant I	\$155.00
Paralegal	\$105.00
Senior Project Coordinator	\$ 98.00
Finance Coordinator	\$ 88.00
Project Coordinator	\$ 88.00
Project Assistant I	\$ 77.00
Project Assistant II	\$ 67.00

EQUIPMENT

	<u>DAILY/WEEKLY RATE</u>
AreaRAE 5-gas Monitor	\$ 275.00/\$ 1,237.50
CHARM Dispersion Modeling Software (rate/model)	\$ 500.00/ N/A
Drager Accuro Pump	\$ 25.00/\$ 112.50
Drager XAM5100	\$ 100.00/\$ 450.00
Primary Flow Meter	\$ 50.00/\$225.00
Riken Formaldehyde Monitor	\$ 65.00/\$292.50
GasTec GV-100 Piston Pump	\$ 25.00/\$112.00
GilAir Sampling Pump (per pump)	\$ 70.00/ \$315.00
Hapsite ER SituProbe Sampling System	\$750.00/\$5,250.00
Hapsite ER SPME Sampling System	\$150.00/\$1,050.00
Hapsite ER Thermal Desorber Sampling System	\$150.00/\$1,050.00
Hapsite GC/MS Headspace Unit**	\$500.00/\$3,500.00
Hapsite GC/MS Service Module**	\$500.00/\$3,500.00
Hapsite GC/MS**	\$1,500.00/\$10,500.00
HVS3 Vacuum	\$500.00/\$2,250.00

EQUIPMENT**DAILY/WEEKLY RATE**

IAQ Calc	\$ 40.00/\$180.00
Jerome 431-X Mercury Vapor Analyzer	\$275.00/\$1,237.50
Ludlum	\$ 65.00/\$292.50
Meteorological Station	\$250.00/\$1,500.00
Meteorological Station w/Dispersion Modeling Software	\$1,000.00/\$7,000.00
Minican Sampling Canister	\$ 50.00/\$350.00
MultiRAE Plus 5-gas Monitor	\$100.00/\$450.00
MultiRAE Lite	\$125.00/\$562.50
MultiRAE Pro	\$150.00/\$675.00
Nasal Ranger Field Olfactometer	\$100.00/\$450.00
Nextstep CLPX	\$275.00/\$1,237.50
3M Edge 5 Noise Dosimeter (per unit)	\$ 39.00/\$175.50
OHD Fit Tester 3000	\$225.00/\$1,012.50
3M AC-300 Calibrator	\$ 70.00/\$315.00
Ohio Lumex	\$650.00/\$2,925.00
ppbRAE Plus	\$275.00/\$1,237.50
ProRAE Host Control Kit	\$100.00/\$450.00
ProRAE Guardian Software	\$450.00/\$2,025.00
RAE Link Mesh Kit	\$100.00/\$450.00
Quest NoisePro DL (per unit)	\$ 39.00/\$175.50
Quest QC-10 Calibrator	\$ 70.00/\$315.00
Quest SoundPro Sound Level Monitor DLX	\$225.00/\$1,012.50
SKC Quick Take Hi-Vol Pump	\$ 70.00/\$315.00
RAE Link	\$ 75.00/\$337.50
SapphIRe IR with Thermomatch Software	\$200.00/\$900.00
Scott Nextstep SPM	\$275.00/\$1,237.50
SKC Analytical Pump (per pump)	\$ 70.00/\$315.00
Noise Contour Software	\$250.00/\$1,125.00
ToxiPro Personal Monitor	\$ 30.00/\$135.00
ToxiRAE Plus Personal Monitor	\$ 50.00/\$225.00
TSI AM510 Aerosol Monitor	\$115.00/\$517.50
TSI DustTrak Aerosol Monitor	\$115.00/\$517.50
TSI DustTrak-DRX	\$275.00/\$1,237.50
TVA-1000B (PID/FID)	\$200.00/\$900.00
UltraRAE 3000	\$275.00/\$1237.50
Velocimeter	\$ 65.00/\$292.50
Zefon Aerosol Pump	\$ 40.00/ N/A
YSI 55 Water Quality Meter	\$100.00/\$450.00
HACH Ammonia Kit	\$ 20.00/\$90.00
HACH Surface Water Quality Kit	\$ 50.00/\$225.00
Hand Auger	\$ 35.00/\$157.50
HazCat Kit (Hazardous Material Categorization Kit)	\$100.00/\$450.00
Hazmat ID (FTIR)	\$800.00/\$5,600.00
Horiba Water Quality Meter	\$250.00/\$1,125.00
Kemmerer Sampler	\$ 50.00/\$225.00
Manta II Datalogger	\$500.00/\$2,250.00
Manta II Dataport – computer interface	\$ 50.00/\$225.00

EQUIPMENT**DAILY/WEEKLY RATE**

Oil/Water Interface Probe	\$100.00/\$450.00
Peristaltic Pump	\$ 85.00/\$260.00
pH Meter	\$ 50.00/\$225.00
Ponar	\$ 75.00/\$337.50
Sampling Bomb	\$ 25.00/\$112.50
Self Leveling Transit w/ Tripod and Rod	\$ 20.00/\$90.00
Soil EC Meter	\$ 25.00/\$112.50
Stream Flow Meter	\$ 50.00/\$225.300
Lightning Strike Alert	\$ 35.00/\$157.50
ISCO Automated Discreet Composite Sampler	\$100.00/\$450.00
Trimble Geo 5 GPS Unit	\$ 60.00/\$270.00
Turbidity Meter	\$ 50.00/\$225.00
Water Level Meter	\$100.00/\$450.00
YSI Multi-Probe Plus	\$200.00/\$900.00
Mobile Command Center (44' or 24')	\$1,750.00/\$12,250.00
ATC Mobile Command Center 42'	\$1,750.00/\$12,250.00
Equipment Trailer	\$250.00/\$1,125.00
Digital Video Camera	\$ 50.00/\$225.00
DSLR Camera	\$ 20.00/\$90.00
GPS Navigation Unit	\$ 20.00 \$90.00
Hand-held Data Collection PDA & Software	\$125.00/\$562.50
Kestrel Weather Monitor	\$ 50.00/\$225.00
Flame Resistant Clothing ("FRC")	\$ 30.00/\$210.00
FLIR One	\$ 50.00/\$225.00
FLIR I7	\$300.00/ \$ 1,350.00
Respirator	\$ 30.00/ \$ 135.00
Respirator Cartridge (per pack):	
Multi-Purpose	\$ 25.00
Specialty	\$ 28.00
Mercury	\$ 36.00
Printer (laser or ink jet)	\$ 20.00/\$90.00
High Resolution Plotter	\$100.00/\$450.00
Badging System (excludes expendables)	\$ 50.00/\$225.00
Radio	\$ 30.00/\$135.00
Radio Communications Booster	\$100.00/\$450.00
Mobile Satellite Communications Trailer Unit	\$500.00 /\$2,250.00
Satellite Phone	\$ 50.00/\$225.00
UTV	\$300.00/\$2,100.00 + Actual fuel costs (receipts required)
Vehicle - Car	\$150.00/\$1,050.00 + Actual fuel costs (receipts required)
Vehicle - SUV, Truck, Van	\$200.00/\$1,400.00 + Actual fuel costs (receipts required)

Analytical Data Service fees

<100 Transactions per Day	\$ 200.00
101-500 Transactions per Day	\$ 700.00
>500 Transactions per Day	\$2,000.00

Personnel hours and holidays

- Hours over 8 hours per day, Monday through Friday. The work day will begin at 0000 hours and end at 2400 hours
- All hours worked on Saturday and Sunday. The work day will begin at 0000 hours on Saturday and end at 2400 hours on Sunday
- Weekends, off hours and holidays can be billed at company policy overtime rates for personnel but should not exceed double time rates

Lodging and Meals

- Per Diem for meals will be billed according to current General Services Administration (GSA) rates.
- Lodging will be charged at cost for each billable employee
- Accommodations utilized will be rated 3 diamonds or higher by AAA. Actual cost up to \$150/day (receipt required).

Airplane and crew

- Airplane will be charged at \$2,500.00 per flight hour plus a crew charge of
- \$550.00 per day (including lodging, meals and other expenses)

Supplies

- Consumable Supplies are charged at Manufacturer's Suggested Retail Price (MSRP)

Subcontractors

- Subcontractors will be reimbursed in an amount not to exceed the amount listed herein or the subcontractor's actual charge, whichever is less, plus a maximum of 10%

Travel time

- Travel time will be charged as per existing US Department of Labor Laws.

ATTACHMENT “B”

STANDARD CONTRACT TERMS AND CONDITIONS

1. Applicable Law

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

2. Availability of Funds

It is expressly understood and agreed that the obligation of the Mississippi Department of Environmental Quality (“MDEQ”) to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and 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 State, MDEQ shall have the right upon ten (10) working days written notice to Contractor to terminate this Contract without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. Representation Regarding Contingent Fees

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

4. Representation Regarding Gratuities

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

5. 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>.

6. Trade Secrets

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

7. Compliance with Laws

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

8. Stop Work Order

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

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

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

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

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

9. E-Payment

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

10. E-Verification.

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

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

- B. The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. Both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

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* Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration’s independent agency Contract website for public access at <http://www.transparency.mississippi>. 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. The personal or professional services to be provided, the price to be paid, and the terms of this Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

12. 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 Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

13. Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by MDEQ to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Unless subcontractors are otherwise identified and approved in accordance with the Request for Proposals, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Contractor must notify MDEQ in writing and submit a Request to Subcontract in the form provided by MDEQ prior to assigning or subcontracting any portion of this Contract. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any subcontract shall be deemed in any way to provide for the incurrence of any obligation

of MDEQ in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

14. Antitrust

By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDEQ all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State that relate to the services purchased or acquired by MDEQ under this Contract.

15. 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.

16. Attorney's Fees and Expenses

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

17. Authority to Contract

Contractor warrants that (a) it is a validly organized business with valid authority to enter into this Contract; (b) it is qualified to do business and in good standing in the State of Mississippi; (c) entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this Contract to the contrary, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

18. Change in Scope of Work

MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDEQ and Contractor. If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more

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

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

- A. *Notice of Claim.* If any action or omission on the part of a procurement officer or designee of such officer requiring performance changes within the scope of the Contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:
- (1) Contractor shall have given written notice to the procurement officer or designee of such officer:
 - (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
 - (ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
 - (iii) within such further time as may be allowed by the procurement officer in writing; and
 - (2) The notice required by subparagraph (1) of this paragraph shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time; and the procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
 - (3) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
 - (4) Contractor maintains and, upon request, makes available to the procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

- B. *Limitation of Clause.* Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the “Price Adjustment” clause of this Contract.

20. Confidential Information

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

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

Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDEQ shall result in the immediate termination of this Contract.

21. Confidentiality

- A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, 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.
- D. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of

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

- E. *Disclosure of Confidential Information.* In the event that either party to this Contract receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*
- F. *Wrongful Disclosure of Confidential Information.* Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDEQ may result in the immediate termination of this Contract.
- G. *Exceptions to Confidential Information.* Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“**Disclosing Party**”) which is:
 - (1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;
 - (2) Generally known or easily ascertainable by nonparties to this Contract;
 - (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - (4) Independently developed by the recipient without any reliance on confidential information;
 - (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
 - (6) Disclosed with the Disclosing Party’s prior written consent.

22. Contractor's Personnel

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

23. Copyrights

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

24. Debarment and Suspension

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

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. Have not, within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Contract under a public transaction;
- C. Have not, within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

D. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in subparagraphs B. and C. of this certification; and

E. Has not, within a three-year period preceding this Contract, had one or more public transactions (federal, state, or local) terminated for cause or default.

25. Failure to Deliver

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

26. Failure to Enforce

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

27. Final Payment

Upon satisfactory completion of the work performed under this Contract, as a condition before final payment under this Contract, or as a termination settlement under this Contract, Contractor shall execute and deliver to MDEQ a release of all claims against the State arising under, or by virtue of, the Contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this Contract, by state law, or otherwise expressly agreed to by the parties in this Contract, final payment under the Contract or settlement upon termination of this Contract shall not constitute waiver of the State's claims against Contractor under this Contract.

28. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("Force Majeure Events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how the Force Majeure event affects its performance, and the anticipated duration of the inability to perform. In the event of delays in delivery or in meeting completion dates due to Force Majeure Events, MDEQ will extend such dates for

a period not to exceed the duration of the delay caused by such events, unless the State determines that termination of the Contract is in the State's best interest.

29. Insurance Requirements

Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, and shall require its subcontractors to maintain said coverage, related to the work of the contractor and in connection with the contract.

- (A) Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00).
- (B) Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) aggregate.
- (C) Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.
- (D) Errors and Omissions/Professional Liability Coverage (If Applicable). This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

MDEQ, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi and its elected and appointed officers, employees and agents shall be named as additional insureds on such policies. The successful Applicant shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The successful Applicant's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the successful Applicant's coverage. Endorsements so stating shall be provided to MDEQ by the successful Applicant. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a

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

30. HIPAA Compliance

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

31. Indemnification

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages (including punitive damages), losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, costs of discovery and attorney’s fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this Contract. In MDEQ’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to MDEQ; Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without MDEQ’s concurrence, which MDEQ shall not unreasonably withhold.

32. Infringement Indemnification

Contractor warrants that the materials and deliverables provided to MDEQ under this Contract, and their use by MDEQ, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor’s expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the customer to discontinue

using such items, in which case Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use and shall compensate the customer for the lost value of the infringing part to the phase in which it was used up to and including the Contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use.

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

33. Independent Contractor Status

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges nor any other provision contained herein nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MDEQ, and MDEQ shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDEQ shall not withhold from the Contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, MDEQ shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

34. No Limitation of Liability

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

35. Ownership of Documents and Work Papers

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with this Contract, except for Contractor's internal administrative and quality assurance files and internal documents. Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of this

Contract. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDEQ and subject to any copyright protections.

36. Conflict of Interest

Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the U.S. Department of the Treasury, NFWF, MDEQ, or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

37. Record Retention and Access to Records

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by Contractor for a minimum of ten (10) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

38. Recovery of Money

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

39. Right to Inspect

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

40. Right to Audit

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

41. State Property

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

42. Severability

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

43. Termination for Convenience

- A. *Termination.* The procurement officer may, when the interests of the State so require, terminate this Contract in whole or in part for the convenience of the State. The procurement officer shall give written notice of the termination to Contractor specifying the part of the Contract terminated and when termination becomes effective.
- B. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer 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.

44. Termination for Default

- A. *Default.* If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof or otherwise fails to timely satisfy the Contract provisions or commits any other substantial breach of this Contract, the procurement officer may notify Contractor in writing of the delay or nonperformance. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the procurement officer, 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 procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- B. *Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due Contractor such sums as the procurement officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the procurement officer 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 procurement officer shall ascertain the facts and extent of such failure. If such officer determines that any failure to perform was occasioned by any one or more of the excusable causes and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience." (As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.)

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

45. Termination upon Bankruptcy

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

46. Third Party Action Notification

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

47. Unsatisfactory Work

If, at any time during the Contract term, the service performed or work done by Contractor is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MDEQ

shall have the right to order the correction of the deficiency by separate Contract or with its own resources at the expense of Contractor.

48. Waiver

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

49. Integrated Agreement/Merger

This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

50. Oral Statements

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

51. Modification or Renegotiation

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

52. Notices

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

53. Headings

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

ATTACHMENT “C”

APPLICANT’S AFFIDAVIT

NON-COLLUSION AND CONFLICT OF INTEREST AFFIDAVIT

State of _____
County of _____

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

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

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

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

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

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

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

Applicant’s Name: _____ RFQ Title: _____

Signature: _____ By (Print Name): _____

Title: _____

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

NOTARY PUBLIC

My Commission Expires:

[SEAL]