

GENERAL TERMS AND CONDITIONS

PLEASE NOTE ALL CLAUSES IN THIS SECTION WILL BE INCLUDED IN ANY RESULTING CONTRACT.

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. The 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 MSCL (MS Crime Lab) 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 MSCL, the MSCL shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the MSCL 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 Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capital Street, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at www.mspb.ms.gov.

STOP WORK ORDER

(1) **Order to Stop Work:** The procurement officer, may, by written order to the offeror at any time, and without notice to any surety, require the offeror to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the offeror, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the offeror 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, the offeror shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or offeror 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 the offeror's properly allocable to, the performance of any part of this contract; and,

(b) the offeror 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.

CONTRACT TERMS

The contract will be awarded as a multi-term contract with option of four yearly renewals under the same terms and conditions as original contract.

RENEWAL OF CONTRACTS

The contract may be renewed at the discretion of the agency upon written notice to the contractor at least 60 days prior to the contract anniversary date for a period of one year under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed one.

RFP DOES NOT CONSTITUTE ACCEPTANCE OF OFFER

The release of the Request for Proposal does not constitute an acceptance of any offer, nor does such release in any way obligate the Mississippi Crime Laboratory to execute a contract with any other party. The Mississippi Crime Laboratory reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with the Mississippi Crime Laboratory.

EXCEPTIONS AND DEVIATIONS

Offerors taking exception to any part or section of the solicitation shall indicate such exceptions on the proposal and shall be fully described. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written. Conditional or qualified offerors, unless specifically allowed, shall be subject to rejection in whole or in part.

REPRESENTATION REGARDING CONTINGENT FEES

The offeror/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 the offeror's RFP or proposal.

REPRESENTATION REGARDING GRATUITIES

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

ACKNOWLEDGMENT OF AMENDMENTS

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

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The offeror 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 offeror or competitor relating to those prices, the intention to submit a RFP, or the methods or factors used to calculate the contracts RFP.

E-PAYMENT

Offeror 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," Mississippi Code Annotated §31-7-301, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice.

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

COMPLIANCE WITH LAWS

The Contractor understands that the MSCL 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 the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The 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.

E-VERIFICATION

Offeror represents and warrants that it shall ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§ 71-11-1 and 71-11-3, and shall register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the legal 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. Offeror agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Offeror further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject Offeror to the following:

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

COMPETITIVE NEGOTIATION

The proposal method to be used is that of competitive negotiation from which MSCL is seeking the best combination of price, experience and quality of service. Discussions may be conducted with the offerors/proposers who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and based on factors listed in Step II of the Request for Proposal. MSCL also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of offered terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

INSURANCE REQUIREMENTS

The successful offeror/proposer will be required to procure professional liability coverage in the amount of \$1,000,000 per occurrence for each year of the contract and offer proof of such coverage. Proof of insurance coverage is required to be submitted with the Offeror's proposal.

REJECTION OF PROPOSALS

Proposals that do not conform to the requirements set forth in this RFP may be rejected by MSCL. Proposals may be rejected for reasons that include, but are not limited to, the following:

- A. The proposal contains unauthorized amendments to the requirements of the RFP.
- B. The proposal is conditional.
- C. The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- D. The proposal is not received by the deadline.
- E. The proposal is not signed by an authorized representative of the party.
- F. The proposal contains false or misleading statements or references.
- G. The proposal does not offer to provide all services required by the RFP.

NONCONFORMING TERMS AND CONDITIONS

A proposal that includes terms and conditions that do not conform to the terms and conditions in the Request for Proposal is subject to rejection as non-responsive. The Mississippi Crime Laboratory reserves the right to permit the offeror to withdraw nonconforming terms and conditions from its proposal prior to a determination by the Mississippi Crime Laboratory of non-responsiveness based on the submission of nonconforming terms and conditions.

ACCEPTANCE OF PROPOSALS

MSCL reserves the right in its sole discretion to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP which does not affect the price of the proposal or give one party an advantage or benefit not enjoyed by other parties or adversely impact the interest of MSCL. Waivers when granted shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements if the party is awarded the contract.

EXPENSES INCURRED IN PREPARING OFFERS

The Mississippi Crime Laboratory accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the offeror.

DISPOSITION OF PROPOSALS

All submitted proposals become the property of MSCL.

PROPRIETARY INFORMATION

The offeror/proposer should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code. 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.

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.*, (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). 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.* (1972, as amended). 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.

DEBARMENT

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

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 (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the MS Crime Laboratory immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MS Crime Laboratory determines it to be in its best interest to terminate the agreement..

CONFIDENTIALITY

The offeror/contractor shall agree to assure the confidentiality of any records obtained from MSCL as required by State and Federal privacy laws. No information, documents or other material provided to or prepared by the offeror deemed confidential by MSCL pursuant to State and Federal privacy laws, shall be made available to any person or

organization without the prior approval of MSCL. Any liability resulting from the wrongful disclosure of confidential information on the part of the offeror shall rest with the offeror/contractor.

ANTITRUST

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Mississippi Crime Laboratory all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the Mississippi Crime Laboratory under said contract.

APPROVAL

It is understood that the Contract is void and no payment shall be made in the event that the Personal Service Contract Review Board does not approve this contract.

ATTORNEYS' FEES AND EXPENSES

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

AUTHORITY TO CONTRACT

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

CHANGE IN SCOPE OF WORK

The Mississippi Crime Laboratory may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Mississippi Crime Laboratory and the Contractor.

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

CONTRACTOR PERSONNEL

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

FAILURE TO DELIVER

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

FAILURE TO ENFORCE

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

INDEMNIFICATION

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

INDEPENDENT CONTRACTOR STATUS

The Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as an agent for the MS Crime Laboratory. Nothing contained herein shall be deemed or construed by the MS Crime Laboratory, the 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 MS Crime Laboratory and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MS Crime Laboratory or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the MS Crime Laboratory and the 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 the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the Mississippi Crime Laboratory; and the Mississippi Crime Laboratory shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Mississippi Crime Laboratory shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Mississippi Crime Laboratory shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

NO LIMITATION OF LIABILITY

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

NOTICES

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

ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Mississippi Crime Laboratory.

OWNERSHIP OF DOCUMENTS AND WORK PAPERS

The Mississippi Crime Laboratory shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the contract services which are the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to Mississippi Crime Laboratory upon termination or completion of the Agreement. The foregoing notwithstanding, the 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 Mississippi Crime Laboratory and subject to any copyright protections.

RECORD RETENTION AND ACCESS TO RECORDS

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the MS Crime Laboratory or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the Contractor for three (3) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year

period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

RECOVERY OF MONEY

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

RIGHT TO INSPECT FACILITY

The State may at reasonable times inspect the place of business of a Contractor or any Subcontractor which is related to the performance of any Contract awarded by the State.

STATE PROPERTY

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

TERMINATION FOR CONVENIENCE CLAUSE

- (1) Termination. The Procurement Officer of the MS Crime Laboratory 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 the Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The 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 the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the MS Crime Laboratory. The 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 CLAUSE

- (1) **Default.** If the 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 otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer of the MS Crime Laboratory may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the 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. The 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, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- (3) **Compensation.** Payment for completed services delivered and accepted by the MS Crime Laboratory shall be at the contract price. The MS CRIME LABORATORY may withhold from amounts due the 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.
- (4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of Subcontractors, the 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 the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the 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, the 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 the Contractor to meet the contract requirements.

Upon request of the Contractor, the Procurement Officer 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, the 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).

- (5) Erroneous Termination for Default. If, after notice of termination of the 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.

THIRD PARTY ACTION NOTIFICATION

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

UNSATISFACTORY WORK

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

WAIVER

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

**THIS FORM MUST BE SIGNED AND
RETURNED WITH PROPOSAL**

EMPLOYEES NOT TO BENEFIT

I (we) hereby certify that if the contract is awarded to our firm, partnership, corporation, that no employee of the Mississippi Department of Public Safety or MSCL or members of his/her family, including spouse, parents or children has received or been promised directly or indirectly, any financial benefit by way of fee, commission, finder's fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

**PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING
CONTINGENT FEES**

The prospective contractor represents as a part of such contractor's RFP or proposal that such contractor [] **has** [] **has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

CONFLICTS OF INTEREST

The Offeror [] **is** [] **is not** aware of any information bearing on the existence of any potential organizational conflict of interest.

COLLUSION

I (we) hereby certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm or person submitting an offer for the same services, materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal laws and can result in fines, prison sentences, and civil damage awards.

I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of the proposal and certify that I am authorized to sign for my company.

Signature

Date

Name (Printed)

Title