

MISSISSIPPI DEPARTMENT OF CORRECTIONS



Promoting ♦ Public ♦ Safety

REQUEST FOR PROPOSALS

RFP No. 18-006

**WORKERS' COMPENSATION
THIRD PARTY ADMINISTRATOR AND
LOSS CONTROL/RISK MANAGEMENT SERVICES
ISSUE DATE: OCTOBER 2, 2017**

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**Pelicia Hall, Commissioner
MS Department of Corrections**

CLOSING DATE AND TIME

Proposals must be received by November 27, 2017

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Exhibits

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SECTION 1

1. Introduction

The Mississippi Department of Corrections (MDOC) is seeking a Third Party claims Administrator (TPA) for its self-insured workers' compensation program. The Mississippi Department of Corrections is a model professional agency that adheres to the values of integrity, honesty and openness in all of its practices. As correctional leaders we believe the safety of the public is of paramount importance and fundamental to our mission. Recognizing that people make an organization, we value all of our employees and are committed to their professional development and well-being. MDOC has an estimated 2,200 employees that are located statewide at the Central Office in Jackson, MS, Mississippi State Penitentiary (MSP), in Parchman, MS, Central Mississippi Correctional Facility (CMCF), in Pearl, MS, South Mississippi Correctional Institution (SMCI), in Leakesville, MS, fifteen (15) Regional facilities, four (4) private prisons, fifteen (15) Community Work Centers, four (4) Restitution Centers, Classifications and Records, and numerous Probation/Parole offices across the state.

SECTION 2

2.0 Purpose of this RFP

- 2.1 MDOC is hereby accepting proposals for a Provider of Workers' Compensation Third Party Administrator and Loss Control/Risk Management Services. MDOC will receive proposals from companies having specific experience and qualifications in the area identified in the solicitation. For consideration, proposals must contain evidence of the company's experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by MDOC may be included elsewhere in this solicitation. Unless otherwise stated, all proposals 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 Vendor's expertise in the area of the solicitation.

A copy of this RFP, including any subsequent amendments, along with a copy of all questions from Vendors and responses to those questions, will be posted on MDOC's website at www.mdoc.ms.gov under the heading "Requests for Proposals". Before the award of any contract, the Vendor will be required to provide sufficient evidence to prove to MDOC that it has the necessary capabilities to provide the services specified in this RFP at the time the contract is awarded. MDOC may make reasonable investigations, as it deems necessary and proper, to determine the ability of the Vendor to perform the work, and Vendors shall furnish to MDOC all information that may be requested for this purpose. MDOC reserves the right to reject any proposal if the Vendor fails to satisfy MDOC that the Vendor is properly qualified to carry out the obligations of the contract and to complete the work described in this RFP.

MDOC reserves the right to amend the contents of this RFP as it deems necessary. It is the Vendor's sole responsibility to monitor the MDOC's website, (www.mdoc.ms.gov) for amendments to this RFP to ensure that their response is pursuant to the amended RFP, if applicable. If applicable, the acknowledgement of amendment(s) must accompany the proposal immediately following the Proposal Cover Sheet.

2.2 Terms

The contract term will be for three (3) years, with an option to renew for two (2) additional years, based solely on the Commissioner of MDOC's discretion. This contract shall be governed by the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations, a copy of which is available for inspection from the Mississippi State Personnel Board located at 210 East Capitol Street, Suite 800, Jackson, Mississippi, 39201, or to download at www.mspsb.ms.gov.

It shall be the responsibility of the Vendor to thoroughly familiarize themselves with the provisions of this Request for Proposal's specifications. After executing the contract, no consideration will be given to any claims of misunderstanding.

The Vendor agrees to abide by the rules and regulations as prescribed herein and as prescribed by MDOC as the same now exist, or may hereafter from time-to-time be changed in writing.

2.3 Type of Contract

Compensation for services will be in the form of a Firm Fixed-Price Contract.

2.4 Vendor's Conference

All prospective Vendors are required to attend a pre-proposal conference and a tour of the institutional facilities. The Vendor Conference will be held:

October 31, 2017
10:00 A.M. CST
ADMINISTRATION BUILDING
PARCHMAN, MISSISSIPPI

The purpose of the vendor's conference is to allow potential vendors an opportunity to present questions to staff and obtain clarification of the requirement of the request for proposal. Because MDOC considers the conference to be critical to understanding the proposal requirements, attendance is mandatory in order to qualify as a vendor. Minutes of the conference will not be published.

If any information from the vendor's conference results in the need to change the RFP, an amendment will be issued.

A tour of the facilities at all three institutions will be conducted according to the proposed procurement schedule in Section 2.9 below. These will be the only tours of the facilities available to vendors. MSP will be on October 31, 2017 at 10:00 a.m., CST, CMCF will be on November 1, 2017 at 9:00 a.m., CST, SMCI will be on November 2, 2017 at 10:00 a.m. CST and exit conference at the Central Office will be on November 27, 2017 at 9 a.m. CST. Attendance is required for all 4 days.

Promptness is a necessity. *COMMENTS MADE DURING THIS TOUR WILL HAVE NO VALIDITY UNLESS SUBSTANTIATED IN WRITING BY MDOC FOLLOWING THE TOUR.*

An attendance roster must be signed by a representative of all attendees. Because mandatory attendance is stipulated in the RFP, only vendors who arrived on time and who attended all four days of the mandatory conferences and tours, will be accepted. Late-comers may attend, but will not be allowed to sign the attendance roster.

2.5 Letter of Intent (Exhibit B)

Respondents shall notify MDOC of their intention to submit a proposal. The letter of intent shall be submitted via email to SPepper@mdoc.state.ms.us by October 20, 2017 @ 2:00 p.m., Central Time. The letter of intent shall include the title of this request for proposal,

the Vendor's organizational name and address, one (1) to two (2) sentences stating that the Vendor's organization intends to submit a proposal for this service, location of the service area, and the contact person's name, title, phone number, fax number, Tax I.D. number, DUNS number, address and email address. The submission of a Letter of Intent is requested, but not required, in order to propose. The submission of a Letter of Intent does not obligate your company to submit a proposal.

*SPepper@mdoc.state.ms.us shall acknowledge receipt of letter of intent via email. A **NON-ACKNOWLEDGEMENT** is a **NON-RECEIPT** of required letter of intent.*

2.6 Mandatory Authorization for Release of Information

The personnel (maximum of two (2)) who will be in attendance for the vendor's conference and facility tours must be preapproved to enter the facilities.

The enclosed AUTHORIZATION FOR RELEASE OF INFORMATION form (**Exhibit F**) must be completed in its entirety for each person planning to attend the vendor's conference and tours.

The Authorization for Release of Information Form for each individual must be sent to Sharon Pepper, 633 North State Street, Jackson, MS 39202 or email Ms. Pepper at SPepper@mdoc.state.ms.us.

The authorization forms must be received by Ms. Pepper no later than 2:00 p.m. CST on October 20, 2017.

2.7 Statement of Compliance Requirement

Carefully review the information located *Error! Reference source not found.***9 – Statement of Compliance** and include a copy **signed by an officer, principal, or owner** of the organization with your completed proposal. Failure to submit a signed Statement of Compliance may result in your proposal being eliminated from further consideration. **If you object to any of the terms and conditions included in the draft *Third Party Claims Administration Services Contract* (see Attachment D), or any requirements listed in this RFP, note and explain your objections on the *Statement of Compliance*. Clauses in blue and italic type in the draft *Third Party Claims Administration Services Contract* (see Attachment D) are mandatory and are not negotiable.**

2.7 Questions/Written Clarification to Specifications

Vendors are cautioned that any statements made by the contract or technical contract person that materially change any portion of the Request for Proposal shall not be relied upon unless subsequently ratified by a formal written amendment to the Request for Proposal.

If any Vender contemplating submitting a proposal under this solicitation is in doubt as to the meaning of the specification or anything in the RFP documents, the vendors must submit a "request of clarification" to Sharon Pepper, MDOC's Human Resources Director.

All requests for clarification must be received by Sharon Pepper at SPepper@mdoc.state.ms.us or at 633 North State Street, Jackson, MS 39202 by 4:00 p.m. CST on November 13, 2017.

All such requests must be made in writing and the person submitting the request will be responsible for its timely delivery.

Responses to the questions will be distributed no later than November 17, 2017 to each vendor via email.

Any questions received after the deadline will be answered at the discretion of MDOC if time allows to meet the deadline for responses to questions.

A summary of all questions received by the deadline along with MDOC responses shall be supplied to all prospective vendors known to have received an RFP and who attended the mandatory conferences and tours.

2.8 Acknowledgement of Amendments to RFP/Specifications

Should an amendment to the RFP be issued, it will be posted on MDOC's website at www.mdoc.ms.gov under "Request for Proposals". Vendors shall acknowledge receipt of any amendment to the RFP by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgement must be received by MDOC via email by the time and at the place specified for receipt of proposals.

2.9 Procurement Schedule

October 2, 2017 – RFP Advertisement in newspaper and MAGIC

October 9, 2017 – RFP second advertisement in newspaper

October 20, 2017 – 2:00 p.m. CST, Deadline for Mandatory Authorization for Release of Information Forms and Letter of Intent

October 31, 2017 – 10:00 a.m. CST, Mandatory Pre-proposal Conference tour at MSP.

November 1, 2017 - 9:00 a.m. CST, Mandatory Pre-proposal Conference tour at CMCF.

November 2, 2017 – 10:00 a.m. CST, Mandatory Pre-proposal Conference tour at SMCI.

November 3, 2017 – 9:00 a.m. CST, Mandatory Pre-proposal Conference tour/Exit Conference at Central Office.

November 13, 2017 – 4:00 p.m. CST, Deadline for Pre-proposal Written Questions/Clarification

November 23 – 24 – Thanksgiving Holiday

November 28, 2017 – 11:00 a.m. CST, Deadline for submitting Proposals to MDOC

November 28, 2017 – 2:00 p.m. CST, Proposal Openings at Central Office Training Room, 633 North State Street, Jackson, MS 39202

December 1, 2017 – Anticipated Completion of Evaluation

December 8, 2017 – Anticipated Notice of Contract Award

December 14 – 18, 2017 – Anticipated Post-Award Debriefings

December 29, 2017 – 1:00 p.m. CST, Deadline for Protest

TBA – Anticipated deadline to submit for DFA Contract Board meeting

TBA – Anticipated DFA Contract Board meeting

July 1, 2018 – Begins new contract

2.10 Right to Reject, Cancel and/or Issue another RFP

MDOC specifically reserves the right to reject any or all proposals received in response to the RFP, cancel the RFP in its entirety, and/or issue another RFP. Proposals which do not conform to the requirements set for in this proposal may be rejected for reasons which include, but are not limited to, the following:

- The proposal contains unauthorized amendments to the requirements of the RFP;
- The proposal is conditional;
- The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
- The proposal is received late;
- The proposal is not signed by an authorized representative of the Vendor;
- The proposal contains false or misleading statements or references;
- The proposal ultimately fails to meet the requirements indicated in the RFP in some material aspect or is determined to be unacceptable by reason of its failure to meet the requirements of the scope of services or permissible alternatives or other acceptable criteria set forth in the RFP;
- The Vendor is determined to be non-responsive or non-responsible;
- The Vendor did not complete and/or sign the required exhibits and include as part of submission.

2.11 Corrections and Clarifications

MDOC reserves the right to request clarifications or corrections to proposals. Any proposal received which does not meet the requirements in the *Submission Requirements*, the requirements in *Minimum Vendor Requirements*, or comply with other proposal

requirements of this RFP, including clarification or correction requests, may be considered non-responsive and eliminated from further consideration.

2.12 Errors or Omissions

The Vendors will not be allowed to take advantage of any errors or omissions in the scope of services. Where errors or omission appear in the specifications, the Vendor shall promptly notify the MDOC in writing of such error(s) or omissions(s) it discovers.

To be considered, any significant errors, omissions or inconsistencies in the scope of services are to be reported no later than ten (10) days before time for the proposal response is to be submitted.

MDOC will only grant waivers of minor defects or variations, obtain additional information to supplemental insufficient information, or allow conditional or qualified offers that will not compromise the competitive procurement process.

MDOC reserves the right in its sole discretion to waive minor irregularities in the 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 MDOC. Waivers, when granted, shall in no way modify the RFP requirements or excuse the part from full compliance with RFP specifications and other contract requirements, if the party is awarded the contract.

2.13 Proposal Acceptance Period

Proposals shall remain binding through the date of the contract execution.

2.14 Expenses Incurred in Preparing Proposals

MDOC accepts no responsibility for any expense incurred by the vendor in the attending of the pre-vendor's conferences and tours or preparing of an offer. Such expenses shall be borne exclusively by the vendor. MDOC will not provide reimbursement for such costs.

2.15 Trade Secrets and Proprietary Information

Any proposal, including accompanying attachments, will be available for review by State of Mississippi personnel, MDOC, members and staff of the Legislature and oversight boards, and MDOC's consultants. The proposal is further subject to the "Mississippi Public Records Act of 1983," codified as Miss. Code Ann. §§ 25-61-1 *et seq.*, (1972, as amended) and exceptions found in Miss. Code Ann. § 79-23-1 (1972, as amended). MDOC understands that the Vendor may consider some of the information provided in the proposal proprietary.

MDOC requests that each page of the proposal that Vendor considers confidential be on a different color paper than non-confidential pages and be marked in the upper right hand corner with the word "CONFIDENTIAL." Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being

released subject to a public records request. For this reason, MDOC requests that Vendor provide one electronic copy in portable document format (PDF) of the complete proposal, including all exhibits and appendices, with all trade secrets or confidential commercial or financial information redacted to be released immediately upon receipt of a public records request for proposals. The Vendor will still have 30 days to seek a court-issued protective order as provided in Rule 1.7 Third Party Information of the Public Information Policy of the Mississippi Department of Finance and Administration (DFA). (www.dfa.ms.gov/Content/publicinfopolicy.pdf).

“Mississippi Public Records Act of 1983,” codified as Miss. Code Ann. §§25-61-1 *et seq.*, and exceptions found in Miss. Code Ann. §79-23-1 provide that Vendor may request, prior to the release of any information that the Vendor designates as trade secrets or confidential commercial or financial information, that Vendor will be notified of the request for the information and given sufficient time to seek protection from the appropriate court. **If Vendor does not obtain protection from the appropriate court, all information supplied whether marked confidential or not, may be released.** MDOC will accept no additional restrictions on the release of information contained in your proposal.

2.16 Registration with Mississippi Secretary of State

By submitting a proposal, the Vendor certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

2.17 Debarment

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

2.18 Representation Regarding Contingent Fees

Vendor 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 Vendor’s bid or proposal.

2.19 Certification of Independent Price Determination (Exhibit E)

By submission of a proposal, the Vendor certifies that the fees submitted in response to the RFP have been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other Vendor or competitor relating to those fees, the intention to submit a proposal, or the methods or factors used to calculate the fees proposed.

2.20 Representation Regarding Gratuities

The Vendor 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*. A copy of the regulations may be obtained by contacting the Mississippi State Personnel Board located at 210 E. Capitol Street, Suite 800, Jackson, Mississippi 39201, or by accessing their website at www.mspb.ms.gov.

2.21 Withdrawal of a Proposal

A Vendor may withdraw a submitted proposal by submitting a written notification for its withdrawal to MDOC, signed by the Respondent, and e-mailed, or mailed to MDOC at the address provided. MDOC will not accept any amendments, revisions, or alterations to proposals after the due date unless requested by MDOC.

SECTION 3

3.0 SCOPE OF SERVICES

- 3.1** This section contains information on services and procedures that the TPA must provide, or adhere to, in servicing the MDOC's account, either directly or through identified subcontractors. The descriptions are not all-inclusive, but are provided to alert you to services or procedures that may require additional planning or programming on your part. The following is a list of services MDOC expects the successful proposer to provide.

Please respond by restating each service listed below, including the number, and confirm your intention to provide the service as described, respond by stating, "*Confirmed*". If your organization can provide the service, but not exactly as described, respond by stating, "*Confirmed, but with exceptions*", and state the specific exceptions. If your organization intends to provide a listed service through a subcontractor, respond by stating, "*Confirmed, service will be provided through subcontractor*", and name the subcontractor. If your organization is currently unable to provide a listed service, respond by stating, "*Unable to provide this service*". Any additional details regarding these services should be provided in your responses to the questionnaire, or as additional information included as an appendix to your proposal.

The primary function of the Third Party Administrator (TPA) will be the prompt and accurate adjudication of workers' compensation claims filed by MDOC and/or their employees. TPA services will include claims investigations, compensability determinations, claim and expense payments, litigation management, medical case management, and overall management of claim files to include completion and timely filing of reports required by the Mississippi Workers' Compensation Commission, as well as statistical and management reports to MDOC. The selected TPA may also be requested to provide safety/risk control services, at MDOC's discretion. MDOC reserves the right to unbundle specific elements of service associated with MDOC workers' compensation claims. These can include, but are not limited to: medical case management, bill review, utilization review, and pharmacy benefit management. The TPA's duties and responsibilities shall include, but are not limited to, the following:

1. Provide a dedicated claims unit composed of professionally trained, appropriately licensed claims staff to ensure excellence in all areas of service required under this contract and meeting the minimum experience requirements specified in MDOC's Request for Proposal (RFP 18-006) (which will be attached to the contract) and the TPA's response to the Request for Proposals (which will likewise be attached to the contract).
2. As needed, perform a complete and timely implementation of third party claims administration services from MDOC's incumbent third party claims administration vendor, to meet the July 1, 2018 contract effective date.
3. TPA will provide an online claims processing system and to provide a minimum of two (2) sessions of initial training to MDOC Human Resources staff prior to the start date of the contract, as well as annual refresher or introductory training as

necessary throughout the contract.

4. Agree to cooperate with all other contractors of MDOC in the on-going coordination and delivery of services to MDOC, and in any transfer of responsibility.
5. Review each claim filed by an employee, or a member for personal injury, sickness disease, or death incurred, or alleged to have occurred, in the course of employment. This review will include a thorough investigation of any claim or loss that is questionable in nature, to determine any compensation.
6. All compensable claims will be processed in accordance with applicable statutory and administrative procedures and professional adjusting techniques.
7. Prepare, file and furnish all reports, as required by the Mississippi Workers' Compensation Commission, to the Human Resources Department. The selected TPA must be able to provide to MDOC access to comprehensive industry standard and customized reports to ensure the optimal management of the program. The TPA should provide web-based or similar electronic reporting tools and access that will allow MDOC the ability to run selected management statistical reports as needed. The TPA should likewise have the capability to allow telephonic and/or electronic claim submission.
8. Prepare thoroughly documented notes to the file with respect to liability, reserve history, expected settlement/closure date, telephone conversations, etc. Provide read-only, on-line access to MDOC, to include any required software. The online access shall include, but is not limited to, access by claim to the claim historical data, supervisory and adjuster note screens, diary screen, all payment detail, and notes on system confirming file review frequency. Optimally, the online access should also provide MDOC the ability to run selected management and statistical reports and provide ongoing training of software as needed.
9. Conduct a thorough investigation of each reported incident, claim or loss to the extent necessary, which may include but not be limited to, photographs, diagrams, police reports, statements, from involved parties and all witnesses to determine MDOC's liability, etc.
10. Pay all legitimate medical benefits, death benefits, and temporary or permanent disability benefits in a timely manner. This is to include, but is not necessarily limited to, all orders or benefits specifically directed by the administrative judge or full commission.
 - a. When the first report of injury is received a three (3) point contact will be conducted within twenty-four (24) hours.
 - b. When the employee is temporarily totally or permanently totally disabled, the benefits are paid in a timely manner according to the Mississippi Workers' Compensation Act. Benefits are paid in accordance to SB 2977

(2008 Regular Session of the Mississippi Legislature). **All calculations are completed by the Third Party Administrator.**

- c. All other legitimate expenses to a claim are paid within the time frame of the fee schedule (45 days).
 - d. Take all actions required to negotiate settlements on appropriate claims. No settlement will be offered without the prior approval of MDOC.
- 11. The TPA will provide defense of litigated claims, in the negotiation of settlements for litigated claims, and in the preparation of subrogation or contribution actions. The Third Party Administrator representation at workers' compensation hearings shall be expected. MDOC shall have the final approval of any settlement and/or compromises.
 - 12. Take an active role in monitoring lost time cases thereby controlling temporary disability cases.
 - 13. Monitor the treatment programs recommended for employees by physicians, specialists, and other health care providers by reviewing all reports prepared by them and maintaining such contact with these providers as may be appropriate.
 - 14. Assist with the interpretation of medical reports to evaluate the circumstances under which an ill or injured employee could return to work in the shortest period of time. Arrange for medical cost containment services, to include access and channeling to Preferred Provider Organization (services, supplies/equipment, and pharmacy) networks and other preferred providers, medical bill review, and provider fee negotiation. This may also include as needed hospital bill review and prompt payment negotiations.
 - 15. Coordinate all efforts in arranging for vocational rehabilitation of employees, when appropriate, to lower exposure of any loss of wage earning capacity.
 - 16. Assist in arranging for rehabilitation or retraining of employees as appropriate. Included in this assistance is working with and advising the employee and MDOC's Human Resources Director or designee in "return to work" efforts.
 - 17. Analyze each claim for the purpose of establishing an estimated cost for medical and disability expenses. This estimate will be reviewed each time additional information is received to insure appropriateness. The process of establishing an appropriate dollar amount, includes a professional, experience tested, review of claim specifics and evaluation of the legal and current costs associated with the current legal trends.
 - 18. Arrange for independent investigators, medical professionals, or other experts to the extent deemed necessary by the TPA in connection with processing any incident, claim, or loss. If it is mutually deemed necessary to assign an independent, third party claims investigator (fee adjuster) to handle a portion of the

investigation of a qualified claim or loss, the fee for services of such fee adjuster will be paid by the TPA, not out of MDOC's funds, if those are services that the TPA staff is equally capable and qualified to handle. The fee adjuster will be mutually agreed upon and determined by geography and the type of claim/injury involved.

19. Perform administrative clerical work in connection with the process of reporting claims, including the following:
 - a. Maintain a current and complete file on each claim, or loss, reported to be available for review and/or audit by MDOC. This file will include the following, at a minimum:
 - Copies of the first report of injury and any other Mississippi Workers' Compensation Commission required forms
 - Copies of bills received
 - Copies of lost time reports
 - Copies of expenditures for bills received with documentation for differences
 - Computer generated pay history
 - Calculation of workers' compensation benefits and paid leave should employee receive both benefits simultaneously not to exceed 100% of wages earned in state government at the time of injury
 - Copies of all medical reports, letters, and other communications pertaining to the claim
 - Copies of all legal documents, or communications, pertaining to the claim
 - Computer generated notes of the claim file
 - b. Prepare all checks, or drafts drawn in the account established for same.
 - c. Obtain quotes and provide documentation for excess loss insurance coverage.
20. Cost containment systems and practices are expected such as coordination of provider networking discounts, pharmacy benefit management, utilization review and bill review. Financial reports shall be provided to MDOC at least quarterly which identify total charges processed, reductions achieved and associated fees for a final net percent reductions calculation. Given national concerns regarding opioid abuse within the workers' compensation claims system, the Third Party Administrator shall establish protocols for identifying cases with high-risk of opioid abuse and dependency and take appropriate action on cases where abuse and/or dependency is evident.
21. Provide Loss Control/Risk Management services. The services will include the following as a minimum:
 - a. Provide investigations as requested by the MDOC and as deemed necessary to prevent frivolous claims.

- b. Monitor MDOC's claims reporting and management process and provide recommendations for improvements.
 - c. Monitor for repetitive injuries and make recommendations for curtailment.
 - d. Provide reports to the MS Workers' Compensation Commission as required.
 - e. Assist the MDOC in evaluating Medical Providers to determine the effectiveness in treating MDOC's Workers' Compensation Injuries.
 - f. Provide twenty-four (24) hour contact for MDOC's Human Resources and Loss Prevention Department.
 - g. Conduct Risk/Loss Control Audits and Visits as requested by MDOC.
 - h. Provide Loss Control Analysis Reports with recommendations for corrective measures and improvements.
 - i. Provide assistance with the Return to Work Program by instituting medical case management services.
 - j. Assist with Safety Training as requested by the MDOC.
 - k. Lend assistance to special projects for the Loss Prevention Department.
 - l. Attend Human Resources Department and other staff meetings as required by the Human Resources Director and/or the Commissioner of MDOC.
- 22. Safety/loss personnel must make on-site contact within one business day of the notice to the TPA of the incident, claim, or loss, in the event of notification of an incident, claim, or loss involving death of an employee, or a serious injury with an initial indemnity and medical reserve over \$50,000.
 - 23. Assist in arranging for rehabilitation or retraining of employees as appropriate. Included in this assistance is working with and advising the employee and the member agency in "return to work" efforts.
 - 24. All files, records, and other work products incidental to the services provided are to be the sole property of MDOC and shall be surrendered upon expiration of the contract. All files and records will be accessible only to Respondents personnel, MDOC's personnel, and to appropriate legal and medical personnel, during normal business hours.
 - 25. Handle, to their conclusion, all claims and their obligations incurred during the contract period.

26. Excess coverage/reinsurance for MDOC will be marketed to providers within the industry on an annual basis.
27. Notify and coordinate with excess insurers of all claims that may exceed MDOC's retention and provide such excess insurers with necessary information on the current status of those claims and losses, to include appropriate funds recovery for MDOC on claims made to the excess insurers.

3.2 Insurance

Copies of insurance certificates shall be filed with the MDOC Deputy Commissioner of Administration and Finance within ten (10) days of award notice, and before the effective date of the contract. Vendor shall maintain, at their expense, the established levels of insurance as shown below for Workers' Compensation, Comprehensive General Liability and Property, Blanket Fidelity, and Professional Liability/Errors and Omissions Insurance coverage.

1. Workers' Compensation as required by the State of Mississippi.
2. Employee Dishonesty or Fidelity Bond Insurance with third party coverage and with limits of \$1,000,000.00.
3. Comprehensive General (Public) Liability or Professional General Liability with minimum \$1,000,000.00 per occurrence that includes, but not limited to:
 - a. Premises/Operations
 - b. Independent Contractors
 - c. Personal Injury
 - d. Contractual Liability-Bodily Injury \$1,000,000.00 per occurrence
 - e. Property damage \$1,000,000.00 per occurrence
4. Prior to the effective date of the contract, the successful contractor shall furnish the MDOC with and appropriately executed certificate of insurance. Such certificate shall identify the Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated or materially altered. All insurance certificates will provide coverage to the MDOC as an additional insured.
5. Failure on the part of the successful contractor to procure and maintain the required insurance and provide proof thereof to the MDOC, shall constitute a material breach of the Contract, upon which the MDOC may immediately terminate the Contract.
6. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a certificate of authority from the Mississippi Department of Insurance.

3.4 Submission Requirements

The Respondent shall submit one (1) original signed proposal, four (4) copies of the proposal, one complete (1) electronic copy and one (1) electronic redacted copy of the

proposal in Microsoft Office® in a sealed envelope or package/container to MDOC as instructed in this proposal, no later than November 17, 2017 @ 11:00 a.m., Central Time.

Each page of the proposal and all Exhibits shall be identified with the name of the Respondent.

Failure to submit a proposal in the required format and with the required documents will be considered cause for rejection of the proposal. Modifications or additions to any portion of the proposal document may be cause for rejection of the proposal.

MDOC reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as nonresponsive.

Proposals submitted via facsimile (faxes) will not be accepted. It is suggested that if a proposal is mailed to MDOC, it should be posted in certified mail with a return receipt requested. MDOC will not be responsible for mail delays or lost mail.

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package, and the package must be marked, “**Proposals – Do Not Open.**” A label containing the information below must be clearly typed and affixed to the package in a clearly visible location.

Sealed proposals should be mailed or hand-delivered and must be labeled as follows:

WORKERS’ COMPENSATION THIRD PARTY ADMINISTRATOR AND LOSS CONTROL/RISK MANAGEMENT SERVICES PACKAGE

Proposal No. 18-006

Opening Date: November 27, 2017 @ 2:00 p.m., Central Time

Human Resources Department

Attention: Sharon Pepper, Human Resources Director

633 North State Street

Jackson, Mississippi 39202

SEALED PROPOSAL –DO NOT OPEN

Proposals must be organized and submitted in the format set forth below in order for MDOC to conduct a uniform and objective review of all proposals. Failure to follow this format may be cause for rejection of a proposal.

The following information must be included with all proposals. Failure to provide any of the information requested is grounds for the MDOC to reject a proposal.

Tab 1 -Title Page – This title page should reflect the Request for Proposal subject, name of the firm, address, telephone number, contact person and date of preparation. The contact person will be responsible for answering any and all question regarding proposals.

Tab 2 -Table of Contents – The table of contents must indicate the material included in the proposal by section and page number.

Tab 3 -Letter of Transmittal – Please limit to two pages. A letter of transmittal must be submitted with the vendor's proposal. The letter must include:

1. A statement of the vendor's understanding of the services required in the scope of services of this RFP.
2. The names of the persons who are authorized to make representations on behalf of the vendor (include their titles, addresses, and telephone numbers).
3. A statement that the individual who signs the transmittal letter is authorized to bind the vendor to contract with MDOC.

Tab 4 - Minimum Vendor Requirements – Vendors must read and provide documentation showing how their organization meets the minimum requirements stated in **Section 4** of this RFP.

Tab 5 - References – Provided a minimum of four (4) references for contracts performed in the past three (3) years. Provide complete current addresses and telephone numbers for each reference, as well as the name, title, and telephone number of a contact person. The contact person shall be knowledgeable of the contracts and shall be able to answer any questions concerning such contract. Describe the contract, the scope of the contract, the length of the contract and the prices quoted in the contract for each contract. References will be contacted and each vendor scored based on the Reference Score sheet included on **Exhibit B**.

Tab 6 - Questionnaire – Vendor must read and provide information asked in **Section 5** of this RFP. Vendors are asked to give general information and description of the vendor's business, ownership and staffing, previous operation, personnel assigned to the proposed contract, previous contracts, costs, recording keeping, claims processing, certified financial statements, loss control and risk management service, and other pertinent information required by this RFP.

Tab 7-Cost Quotation Forms – Vendor must provide “Administrative/Consultative Services” and “Medical Cost Containment Services” as instructed in **Section 8** of this RFP.

SECTION 4

4.0 MINIMUM VENDOR REQUIREMENTS

(The use of Vendor will be replaced by TPA Vendor or TPA)

The following minimum vendor requirements are mandatory. Failure to meet any of these requirements will result in disqualification of the proposal submitted by your organization. Please respond by restating each requirement, including the number, listed below with documentation that proves specifically how your organization meets that requirement. Note that for purposes of fulfilling the minimum vendor requirements, except as otherwise indicated, “TPA Vendor” refers to the primary contracting vendor only, not including any proposed subcontractors. Please include in your responses the total number of years and types of experience of your organization. If, in the opinion of the evaluation team, you fail to prove that your organization meets any of these minimum requirements, the proposal will be deemed non-responsive and notified of such.

- 4.1 TPA Vendor must currently provide workers’ compensation third party administrator services to at least one large client, individual employer or group, with 2,000 or more employees. Provide the client name, address, contact, title, phone number, fax number, size of group, and type of service(s) provided (be specific), and number of years the contract has been in place with your organization.
- 4.2 TPA Vendor must have minimum of five (5) years of experience as of July 1, 2017, as an organization providing the type and scope of TPA services to be procured through this competitive process. Provide client references with the following information for each client you list to document your organization meets this requirement:
 - a) Name
 - b) Address
 - c) Contact
 - d) Contact title
 - e) Telephone number
 - f) Email address
 - h) Number of covered lives and/or size of the account
 - i) Scope of services provided (BE SPECIFIC)
 - j) First contract effective date
 - k) Total number of years the agreement has been in place with your organization
- 4.3 Claims Manager(s) to be assigned to this account must have experience in investigation, evaluation and settlement negotiation of workers’ compensation claims, as well as workers’ compensation claims supervisory experience.
- 4.4 The Risk Control professional to be assigned to this account must have experience in recognition, evaluation, assessment, analysis and reporting of potential workers’ compensation loss exposures. The Risk Control consultant must have experience in development, implementation, and monitoring of safety programs, as well as experience in conducting safety training and/or workshops.

- 4.5** TPA Vendor must be properly licensed to provide the services requested by this RFP.
- 4.6** TPA Vendor must currently have, or if selected, be willing to open within three (3) months of the award of this contract, a claims office within the State of Mississippi. (Section 71-3-125 of the Mississippi Code).
- 4.7** TPA Vendor must agree that all services performed on the behalf of MDOC will be provided within the Continental United States.
- 4.8** TPA Vendor must agree to place at least 5% of all administrative fees at-risk for compliance with mutually agreed upon TPA performance standards.
- 4.9** TPA Vendor must agree to provide a performance guarantee to ensure timely and complete establishment of the contract and related services in the amount of seven hundred fifty thousand dollars (\$750,000). If the vendor chooses to make this guarantee in the form of a performance bond, MDOC must be named as exclusive beneficiary. Any failure of the TPA Vendor to perform timely and complete establishment of such services shall result in damages recoverable by MDOC against the TPA Vendor and/or his performance bond. Upon MDOC's agreement that the TPA Vendor has fulfilled its implementation and transition responsibilities and related administrative services, any such performance bond shall be released.

SECTION 5

5.0 QUESTIONNAIRE

5.1 General Information

1. State the full name of your organization, and describe its services and organizational structure, including the location of your main and branch offices, how long you have been in business, and your average number of full-time employees as of June 30, 2017.
2. Provide the name, title, mailing address, e-mail address, facsimile number and telephone number of the contact person for this proposal.
3. Provide the State(s) in which your organization is licensed to provide the services requested within this proposal.
4. How long has your organization been in business providing Third Party Claims Administration services? Please indicate the month and year in which your organization was established.
5. State if the proposed account manager, any officers or principals and/or their immediate families are, or have been within the preceding 12 months, employees of MDOC.
6. Provide the location(s) from which you plan to service this account. If different locations will be used for the different services to be provided, list each with the respective service area (claims processing, risk control, etc.). Include the office hours (of operation) for each location listed.
7. MDOC requires that the TPA vendor shall cooperate with all other contractors of MDOC in the on-going coordination and delivery of MDOC services and in any transfer of responsibility. Confirm you will comply with this requirement.
8. Provide a job description including experience or requirements of the Claims Manager(s), claims adjusters, and any supervisory and/or support personnel who will be assigned to this contract. If you have already identified a specific claims manager, include a resume of this person and how many other clientele or caseload he/she is managing.
9. Has your organization ever been involved in a lawsuit involving any area covered by the RFP? If yes, provide details including dates and outcomes.
10. During the past five (5) years, has your organization, related entities, principals or officers ever been a party in any material criminal litigation, whether directly related to the RFP or not? If so, provide details including dates and outcomes.

11. If you are selected as the TPA, how do you propose to organize the transition and implementation schedule for a contract effective July 1, 2018? Provide an implementation chart outlining the specific tasks required, actions involved, the responsibilities of all parties during each phase, and the corresponding dates.

5.2 Claims Administration Services

1. For claim services provided by the administrative office that will service MDOC, provide the following workers' compensation data and how your system captured this data of all clients (in total, not client specific), for the 2017 calendar year: **NOTE:** If you do not currently have a claims office in Mississippi, provide the requested statistics for your total book of business:
 - a. Average number of days from date the lost time claim was reported to the date claimant was contacted
 - b. Average length (in days) of disability per claim excluding those that are medical only
 - c. Average paid medical cost per claim
 - d. Average indemnity cost per claim
 - e. Number of claims subrogated and dollar amount collected/recovered
 - f. Average number of days to pay medical bills on non-controverted claims
 - g. Average number of days files closed after last activity
 - h. Average response time to client inquiries from time of receipt
 - i. Maximum number of open lost time files handled by an adjuster
 - j. Number of times you were cited by the Mississippi Workers' Compensation Commission for untimely filing
2. Explain your firm's medical cost containment program, describing each service in detail. In addition, restate each service listed below and state whether your firm currently performs the service in-house or contracts with an outside firm. If a contractual agreement exists, provide the name and physical location of the firm providing each service, and include a brief description of the nature and length of your relationship with each listed service provider.
 - a. Fee Schedule Review
 - b. Hospital Bill Review
 - c. Inpatient Pre-certification: (1) Initial Review, (2) Concurrent Reviews
 - d. Outpatient Pre-certification
 - e. RN Telephonic Case Management
 - f. RN On-Site Case Management
 - g. Usual, Customary, and Reasonable Review
 - h. Peer Review
 - i. Utilization Review
 - j. Physical Therapy Pre-certification
 - k. Pharmacy Benefit Management
 - l. Other PPO Arrangements

Provide information on any other related services you may offer that are not listed above. **MDOC reserves the right to select or reject any, all, or none of the services discussed in this section.**

3. MDOC requires the TPA to have an online claims processing system. Describe in detail your claims processing system, including any related file documentation process and system. If your process is completely paperless, provide the date that the transition to be completely paperless process was completed. Discuss in detail and provide sample screenshots of paperless file documentation pertaining to the key claims administration functions of:
 - a. Daily activity notes
 - b. Scanning of documents and correspondence (e.g. medical reports, written letters, email communications, etc.)
 - c. Case reserve maintenance
 - d. Supervisory instructional correspondence to the handling examiner
 - e. Periodic status reports to the client
 - f. Other electronic documentation capabilities
4. Describe in detail how you propose to receive and manage claim submissions from each MDOC facility. Indicate the extent to which you utilize electronic and/or toll-free telephonic claims reporting.
5. Describe in detail how you accomplish rapid response and communication among the adjuster, the provider, the claimant, the employer, MDOC, and other related parties in claims administration.
6. What, if any, are your plans for future claims system enhancements?
7. Describe in detail how you propose to load and maintain all of MDOC's claims data from the prior TPA for all claims, open and closed, in a manner to ensure consistency in claims data reporting. This shall include your plan to renumber/re-catalog all claim files or maintain the current claim file numbers on transferred open and closed claims.
8. Provide a written statement detailing your understanding of the services requested herein as well as a detailed written plan outlining how you propose to provide the services required by the RFP.
9. Provide your written procedures documenting the security and off-site storage of all data contained on tapes, discs, files, batch files, and other records pertinent to the TPA services to be provided to and on behalf of MDOC. Include a brief description of your disaster recovery plan to demonstrate how you will recover lost data and utilize alternate resources to operate in the event of such an occurrence.
10. Provide examples of the management reports your system is capable of producing. Indicate which reports can be electronically accessed directly by MDOC.

11. Complete the **Cost Quotation Forms (Section 8)**. Please note that MDOC prefers guaranteed flat bundled fee for claims administration services and will not accept a fee based on a percentage of payroll, number of claims, or any other variable statistic. The fees include, but are not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the TPA. Reasonable and necessary travel is allowable for Safety/Risk Control consultant and utilization/case management professionals at prevailing Mississippi State employee limits. Unit rates in **Section 8** are to be charged for actual hours worked only and shall not include travel time. No additional compensation will be provided by MDOC for any expense, cost, or fee not specifically authorized by the contract, or by written authorization from MDOC. Cost containment fees will be charged to the specific claim(s) receiving the services. As the contract MDOC proposes to award, as a result of the RFP, is for three years with an option to renew for two additional years, please provide fee quotations for each of the five years listed.
12. MDOC requires that administrative and medical cost containment fees be fully guaranteed for the term of the contract. Confirm that you agree to comply with this requirement.
13. MDOC shall not provide any prepayments or initial deposits in advance of services being rendered. Only those services agreed to by contract shall be considered for reimbursement or compensation by MDOC. Payment for any and all services provided by the TPA to the Board and/or the Trust shall be made only after said services have been duly performed and properly invoiced.
14. The TPA shall submit all invoices in a form acceptable to MDOC with all of the necessary supporting documentation prior to the payment of allowable costs. Such invoices will, at a minimum, include the appropriate descriptions of the services being billed or other bases for charges included in **Section 8**.
15. The payment of an invoice by the Board shall not prejudice MDOC's right to object or question any invoice or matter in relation thereto. Such payment by MDOC shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. TPA's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by MDOC, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to MDOC by the TPA, MDOC reserves the right to (1) deduct from amounts which are or shall become due and payable to MDOC under contract between the parties; or (2) request and receive payment directly from the TPA within fifteen (15) days of such request, at MDOC's sole discretion.
16. Indicate your willingness to guarantee a return on investment (ROI) for any of the medical cost containment services. Describe how the ROI would be measured, and provide the financial guarantees you are willing to make.

17. Confirm that your rates include maintaining a toll-free telephone number for calls from claimants, employer units, providers, and MDOC.
18. Does your firm routinely undergo SAS 70 Type II or SSAE 16 audits? Indicate how often these audits are performed. If so, when was the last such audit completed, and were there any material findings? Please provide a copy of most recent audit.

5.3 Loss Control/Risk Management Services

1. Provide a job description, including experience requirements, of the risk control consultant(s) who may be assigned to this contract. If you have already identified a specific risk control consultant(s), include resume(s) of the person or persons, along with a brief statement as to why they are qualified to provide the requested services at a correctional facility.
2. Provide the criteria your organization uses to measure the effectiveness of risk control efforts.
3. List any “value-added” items or resources that will be provided with the proposed risk control services, such as online resources, newsletters, video library, etc.
4. Provide sanitized samples of risk control reports, recommendations, and results from previous services performed by the risk control consultant(s) proposed herein.

SECTION 6

6.0 EVALUATION PROCEDURES

6.1 Qualification of the Vendor

1. The Vendor may be required before the award of any contract to show to the complete satisfaction of MDOC that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner.
2. The Vendor may be required to give a past history and references in order to satisfy MDOC in regard to the vendor's qualifications.
3. MDOC may make reasonable investigations deemed necessary and proper to determine the ability of the vendor to perform the work, and the bidder shall furnish to MDOC all information for this purpose that may be requested.
4. MDOC reserves the right to reject any bid if the evidence submitted by, or investigation of, the vendor fails to satisfy MDOC that the vendor is properly qualified to carry out the obligations of the contract and to complete the work described therein.
5. Evaluation of the vendor's qualifications shall include:
 - a. The ability, capacity, skill, financial resources to perform the work or provide the services required;
 - b. The ability of the vendor to perform the work or provide the service promptly or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgement, experience, and efficiency of the vendor; and,
 - d. The quality of performance of previous contracts or services.

6.2 Evaluation

1. The evaluation process will be completed by MDOC staff to determine the following:
 - a. Did the vendor attend the Pre-Bid and Exit Conference?
 - b. Did the vendor attend all of the Tour of the Facilities?
 - c. Did the vendor submit Exhibit A to this RFP – *Authorization for Release of Information* – completed on each individual attending the Tour of Facilities by the date and time specified?
 - d. Is the proposal package in the format outlined in Section 3?
 - e. Was the proposal submitted by the date and time specified?
 - f. Does the proposal have the Title Page with required information?
 - g. Does the proposal have the Table of Contents with required sections and page numbers?
 - h. Signed original proposal, requested number of copies of proposal, and complete electronic copy of proposal in Microsoft Office® format on flash drive or compact disc.

- i. Does the proposal have Cost Quotation Forms in Section 8?
- j. Did the Vendor answer all the questions and submit all the required documents of the “Minimum Vendor Requirements” in Section 4?
- k. Do all terms and conditions in the proposal conform to the terms and conditions in the Response for Proposal?

The Vendors whose proposals are in the above and have the required content will be considered “responsive”. If the answer to any of the questions numbered (a) through (k) is “NO” the vendor will be considered “non-responsive” and the proposal will be put aside. MDOC staff will immediately notify the “non-responsive” vendor that their proposal will not be considered and why it will not be considered.

2. In this phase of the evaluation process, the evaluation committee will utilize consensus scoring to determine numerical scores for each qualified proposal received, relative to the cost and technical merits of each proposal. Areas are listed in order of their relative importance and weight:

1. Plan for Providing Requested Services – The quality and completeness of responses to the questions and information requested; The responses clearly demonstrate the respondents capability to process claims timely and accurately, in accordance with industry best practices, including appropriate reserving, investigation, cost containment, medical management, litigation management, file maintenance, and communications and interfaces with providers, claimants, employers, regulatory entities, other related parties and MDOC. The responses also demonstrate the Respondent’s capability to provide paperless file documentation and retrieval, non-paper alternative claims submission options, standard and customized management reporting, and appropriate system access to the Board. **(30%)**
2. Pricing - The competitiveness of the proposed fees. **(30%)**
3. Technical Capability – The availability of personnel, equipment, and facilities to provide comprehensive reporting of worker’s compensation claims; the ability to establish and maintain the appropriate data interface with the MDOC’s vendors and benefit personnel for the transmittal or receipt of required data elements; the ability to perform the service reflected by technical training, education and general experience of staff. **(25%)**
4. Record of Past Performance – A detailed narrative providing written evidence of successful completion of previous work that is of the same type of service identified in this solicitation. **(15%)**

The evaluation committee will review and compare the numerical scores from among the remaining vendors in order to determine finalists. The top scoring vendor, as well as all other vendors with scores within ten points of the top scoring vendor, will be named as finalists and will be further evaluated.

3. A log of all proposals received will be maintained as proposals are received to include

the day and time received. Proposals will be opened publicly in the presence of one or more witnesses on “TBA” at 2:00 p.m., CST in the training room located at 633 North State Street, Jackson, MS 39202.

6.3 Debriefing Request

1. A vendor, successful or unsuccessful, that submitted a proposal for this RFP may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission writing three (3) business days of notification of the contract award, to be received by Ms. Sharon Pepper, Director of Human Resources, 633 North State Street, Jackson, MS 39202, or by email to SPepper@mdoc.state.ms.us.
2. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify MDOC and identify its attorney by name, address, and telephone number. MDOC shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General and a member of MDOC’s legal staff can be present.
3. Unless good cause exist for delay, the debriefing should occur within five (5) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or by any other method acceptable to MDOC.

6.4 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Proposal may file a protest within ten (10) business days from the receipt of the intent to award letter with the Proposal Coordinator, Sharon Pepper, Director of Human Resources. The protest shall be submitted on or before 1:00 p.m. CST, December 14, 2017 in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for the protest, citing the law(s), rule(s), or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Proposal Coordinator, Sharon Pepper, Human Resources Director, via either U.S mail, postage prepaid, or personal delivery. Protests filed after 1:00 p.m. CST, December 14, 2017 will not be considered.

SECTION 7

7.0 REQUIRED CONTRACT TERMS AND CLAUSES (The use of TPA Vendor is replaced by Contractor)

7.1 Applicable Law

The agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law, 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.

7.2 Availability of Funds

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

7.3 Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the MDOC to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract or otherwise transfer this agreement in whole or in part without the prior written consent of the MDOC, which the MDOC may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the MDOC of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the MDOC may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

7.4 Antitrust

By entering into a contract, Contractor conveys, sells, assigns, and transfers to the MDOC 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 MDOC under said contract.

7.5 Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's 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 attorney's fees or costs of legal action to Contractor.

7.6 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.

7.7 Acknowledgment of Amendments

Contractors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal(s), by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgment must be received by the MDOC by the time and at the place specified for receipt of proposal(s).

7.8 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.

7.9 RFP Investigations

Before submitting a response to a Request for Proposal, each contractor shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representation made by MDOC upon which the contractor will rely. If the contractor receives an award as a result of its response to a proposal, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

7.10 Books and Records

Contractor shall retain and shall require all of its Subcontractors to retain for inspections and audit by MDOC of all books, accounts, reports, files and other records relating to the RFP and performance of this contract for a period of three (3) years after its completion.

Upon request by MDOC, a legible copy of all such records shall be produced by the Contractor at the administrative office of MDOC or at the office of the MDOC's Auditor. The original of all such records shall also be available and produced for inspection and audit when requested by the State Auditor or MDOC to verify the authenticity of copy.

7.11 Change in Scope of Work

The MDOC 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 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 the MDOC 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 the MDOC in writing of this belief. If the MDOC 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 work within the contract.

7.12 Compliance with Laws

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

7.13 Confidentiality

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

7.14 Contract Personnel

MDOC 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 the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of the Contractor.

7.15 Debarment and Suspension

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

1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
2. Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
3. Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
5. Has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

7.16 Disclosure of Confidential Information

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

7.17 E-Payment

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

7.18 E-Verification

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

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

7.19 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:

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

- (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (6) is disclosed with the disclosing party's prior written consent.

7.20 Failure to Deliver

In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the MDOC, 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 the MDOC may have.

7.21 Failure to Enforce

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

7.22 Financial Audit

Contractor shall maintain such financial records and other records as may be prescribed by MDOC or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of five (3) years after final payment, or until they are audited by MDOC, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's office, its designees, or other authorized bodies.

7.23 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 MDOC 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 MDOC determines it to be in its best interest to terminate the agreement.

7.24 HIPAA Compliance

The Contractor agrees to comply with the “Administrative Simplifications” 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.

7.25 Indemnification

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDOC, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by 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, 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 the State. 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. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.

7.26 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 MDOC. Nothing contained herein shall be deemed or construed by MDOC, 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 MDOC and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of MDOC or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of MDOC 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 MDOC, and the MDOC shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDOC 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, MDOC shall not provide to Contractor or any insurance coverage or other benefits, including Workers’ Compensation, normally provided by the State for its employees.

7.27 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 Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or

financial information. Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of MDOC shall result in the immediate termination of this agreement.

7.28 Legal Action

MDOC will be responsible for all legal actions filed which name MDOC as a defendant, when MDOC personnel are involved or when applicable MDOC rules and regulations are at issue. Responsibility of defense of legal actions against the vendor will be that of the vendor.

7.29 Modification or Renegotiations

This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

7.30 No Limitation of Liability

Nothing in this agreement 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.

7.31 Notices

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

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

7.32 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 MDOC and agreed to by Contractor.

7.33 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.

7.34 Priority

The contract consists of this agreement, the Request for Proposal 18-006 (hereinafter “RFP” and attached as Attachment []), and the response proposal by [Contractor] dated [date] (hereinafter “Proposal” and attached as Attachment []). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Schedules [] or [] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

7.35 Procurement Regulations

The agreement 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>.

7.36 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 agreement shall be retained by 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 project 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.

7.37 Recovery of Money

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

7.38 Renewal of Contract

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

7.39 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.

7.40 Representation Regarding Gratuities

The 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*.

7.41 Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by MDOC or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by MDOC, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

7.42 Severability

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement 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 agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

7.43 Stop Work Order

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

or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

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

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

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

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

7.44 Termination Clauses

1. Termination for Convenience

- a. Termination - The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. Contractor's Obligations - Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts

to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

2. Termination for Default

- a. Default - If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. Contractor's Duties - Notwithstanding termination of the contract and subject to any directions from the 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 to Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. Excuse for Nonperformance or Delayed Performance - Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit

Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

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

3. Termination Upon Bankruptcy

This contract may be terminated in whole or in part by MDOC 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 price.

7.45 Third Party Action Notification

Contractor shall give the customer 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.

7.46 Trade Secrets, Commercial and Financial Information

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

7.47 Transparency

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

7.48 Unsatisfactory Work

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

7.49 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.

SECTION 8

8.0 COST QUOTATION FORMS

ADMINISTRATIVE/CONSULTATIVE SERVICES: MDOC prefers a guaranteed flat “bundled” administration fee for Claims Administration Services and a flat (hourly) fee for Safety/Loss Control Services. Explain what services are included, as well as what services are not included, in your proposed bundled administrative fee. Your proposed fee for Claims Administration Services should assume the following conditions: (1) the TPA selected will administer all claims still open as of 12/31/2017, as well as any run-out claims (IBNR) incurred prior to 12/31/2017.

Guaranteed Flat “Bundled” Administration Fee					
SERVICE	Year 1	Year 2	Year 3	Year 4	Year 5
Claims Administration					
Includes:					

Flat Hourly Fees					
SERVICE	Year 1	Year 2	Year 3	Year 4	Year 5
Safety/Loss Control					
Includes:					

MEDICAL COST CONTAINMENT SERVICES: Provide the following information concerning the allocated fees you will charge to each file for the services listed below. Fully describe how the fee will be charged, and what savings guarantee/ROI pertains to the service. Please indicate by asterisk (*), any of these fees which are not guaranteed. Indicate by two asterisks (**), with a short explanation below the chart, any of the services you do not offer, and any services to be performed outside your organization by contract with another party. Provide full names and addresses of any vendors you will contract with to provide certain services. If there is no double asterisk (**) beside any service, we will assume this service is to be provided by you “in house”.

SERVICE	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022
Comprehensive Bill Review and Audit (Physician Services, Inpatient Services, Outpatient, DME, etc)					
Treatment Authorization (pre-certification and retrospective review)					
Utilization/Case Management					
Pharmacy Benefit					
PPO and Other Network Services					
Other:					

SECTION 9

9.0 STATEMENT OF COMPLIANCE

This section contains the *Statement of Compliance*. If you object to any of the terms and conditions included in the draft contract provided in Attachment D – draft *Third Party Claims Administration Services Contract*, or any requirements listed in this RFP, note and explain your objections on the *Statement of Compliance*.

Statement of Compliance

We agree to adhere to all conditions and requirements as set forth in the Mississippi State Agencies Self-Insured Workers' Compensation Trust's Request for Proposal for Third Party Claims Administration Services dated October 2, 2017, including the conditions contained in the draft contract included as Attachment D – draft *Third Party Administration Services Contract*, except as listed below:

We hereby certify that the fees submitted in response to the RFP have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other proposer or competitor relating to those fees, the intention to submit a proposal, or the methods or factors used to calculate the fees proposed. We hereby certify that we have not retained any person or agency on a percentage, commission, or other contingent arrangement to secure a contract.

An original signature is required below.

Name

Date

Title

Company

Please have the appropriate officer sign this statement and include it as a part of your proposal.