INVITATION FOR BIDS

IFB Number: **RFx3160004245 MDEQ-IFB04122021**

To Provide: **Professional Services for Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools).**

Issue Date: **Monday, April 12, 2021**

CLOSING LOCATION

Mississippi Department of Environmental Quality

515 East Amite Street

Jackson, MS 39201

BID COORDINATOR

Aveleka Moore, Contracts Division Director

E-mail: amoore@mdeq.ms.gov

CLOSING DATE AND TIME

Bids must be received by 9:00 a.m., Tuesday, May 18, 2021

SECTION 1

1.1 Bid Acceptance Period

Bidders should submit one (1) signed original Invitation for Bid ("IFB"), along with one (1) digital copy in Portable Document Format ("PDF") on a Universal Serial Bus ("USB") flash drive with all of the attachments. The signed original bid and USB flash drive should be submitted in a sealed envelope or package as stated below no later than the time and date specified in Section 1.1.1 for submission deadline of Invitation for Bids. Timely submission of the bid is the responsibility of the Bidder. Bids received after the specified time shall be rejected and maintained in the procurement file. The envelope or package shall be labeled with the IFB Number: RFx3160004245 MDEQ-IFB04122021. The time and date of receipt shall be indicated on the envelope or package by Mississippi Department of Environmental Quality ("MDEQ"). Each page of the bid form and all attachments shall be identified with the name of the Bidder. Failure to submit a bid on the bid form provided shall be considered just cause for rejection of the bid. Modifications or additions to any portion of the procurement document may be cause for rejection of the Invitation for Bid. MDEQ reserves the right to decide, on a case-by-case basis, whether to reject an Invitation for Bid with modifications or additions as non-responsive. As a precondition to Invitation for Bid acceptance, MDEQ may request the respondent to withdraw or modify those portions of the Invitation for Bid deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

Submissions must be clearly marked with the following information on the **outside** of the package:

Mississippi Department of Environmental Quality
SEALED BID – DO NOT OPEN
RFx3160004245 MDEQ-IFB04122021
Opening Date: 10:00am, Tuesday, May 18, 2021
Attention: Aveleka Moore
515 East Amite Street
Jackson, MS 39201

The Mississippi Department of Environmental Quality ("MDEQ") will receive bids from Bidders having specific experience and qualifications in the area(s) identified in this solicitation. For consideration, bids for the project must contain evidence of the Bidder's experience and abilities in the specified area(s) and other disciplines directly related to the proposed service. Other information required by MDEQ is included herein. Unless otherwise stated, all Bidders 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 Bidder's expertise in the area(s) of this solicitation.

The bids shall be specific and sufficiently detailed to satisfy the requirements set forth in this solicitation. MDEQ will make award to the Bidder whose bid, in the opinion of MDEQ, best conforms to this solicitation and is most advantageous to the State of Mississippi and MDEQ.

1.1.1. Timeline

- **Invitation for Bid (IFB) Issue Date: Monday, April 12, 2021**
- **Questions to MDEQ Deadline: Tuesday, April 27, 2021 at 8:30 a.m.**
- **Anticipated Posting of Responses to Questions: Monday, May 3, 2021**
- **Bid Package Submission Deadline: Tuesday, May 18, 2021 at 9:00 a.m.**
- **Bid Package Opening: Tuesday, May 18, 2021 at 10:00 a.m.**
- **Anticipated Notice of Intent to Award: Wednesday, June 16, 2021 at 4:00 p.m.**
- **Anticipated Post-Award Debriefing Request Date: Monday, June 21, 2021 at 4:00 p.m.**
- **Post-Award Debriefing Held by Date: Thursday, June 24, 2021 at 4:00 p.m.**
- **Protest Deadline Date: Thursday, June 24, 2021 at 8:30 a.m.**

1.1.2. Late Submissions

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of bids. Where applicable, MDEQ will determine whether the late receipt was due solely to mishandling by MDEQ after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

1.2 Expenses Incurred in Preparing Bid

MDEQ accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the Bidder.

1.3 Bid Form

All pricing must be submitted on the bid form (**Attachment B**). Failure to complete and/or sign the bid form may result in the Bidder being determined nonresponsive.

1.3.1 Bidder Certification

The Bidder agrees that submission of a signed bid form is certification that the Bidder will accept an award made to it as a result of the submission.

1.4 Registration with Mississippi Secretary of State

By submitting a bid, the Bidder 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.

1.5 Debarment

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

1.6 Competitive Bids

Discussions may be conducted with Bidders who submit bids determined to be reasonably susceptible of being selected for award. Likewise, MDEQ also reserves the right to accept any bids as submitted for contract award, without substantive negotiation of proposed terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 Additional Information

Questions about this procurement document must be submitted in writing to MDEQ to Aveleka Moore at amoore@mdeq.ms.gov. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document. All questions and requests for clarifications must be submitted by the deadline specified in Section 1.1.1 and made in writing. The person submitting the question or request for clarification is responsible for its timely delivery. All questions, request for clarifications, and answers received by the deadline shall be published as an amendment on the agency website and onto the Mississippi Contract/Procurement Opportunity Search Portal in a manner that all will be able to view by the deadline specified in Section 1.1.1.

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid. The amendment must be received by MDEQ by the time and at the place specified for receipt of bids.

1.8 Type of Contract

Compensation for services will be in the form of a firm fixed-price agreement.

1.9 Written Bids

All bids shall be in writing.

SECTION 2

2.1 Purpose

Mississippi Department of Environmental Quality is seeking to establish a contract to provide Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools).
It is understood that any contract resulting from RFx3160004245 MDEQ-IFB04122021 requires approval by the Public Procurement Review Board ("PPRB") and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review ("OPSCR"). If any contract resulting from RFx3160004245 MDEQ-IFB04122021 is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made.

2.2 Scope of Services

The Contractor shall perform the following tasks:

1) Contractor shall provide two (2) Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools) per calendar year. The classroom training portion will emphasize the principles and practice of 40 C.F.R. Part 60, Appendix A, Test Method 9 observations as well as the certification procedures. (Each classroom portion will be approximately one-half day in length and may be held either online or in-person, as mutually agreed upon). The certification portion will afford students the opportunity to become certified as a qualified observer in Test Method 9.

2) The Contractor shall not charge any fee(s) to any eligible person attending MDEQ's Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools).

3) The Contractor shall provide registration of all applicants.

4) The Contractor shall provide course content, testing materials, and access for all online classroom training.

5) The Contractor shall timely notify all participants registered for classroom training that fail to successfully complete that portion of the training.

6) The Contractor shall provide sites for the field certification testing.

7) The Contractor shall provide all necessary fuel and equipment for field certification testing.

8) The Contractor shall provide certification testing in accordance with 40 C.F.R. Part 60, Appendix A, Test Method 9 requirements. For each Smoke School, testing for certification shall be continued until all applicants have completed qualifications or until at least twelve (12) runs are completed over the course of two (2) days of testing and evaluation. In the event weather conditions or smoke generator problems prevent the completion of all runs in the two (2) allotted days, mutually acceptable rescheduling will be arranged to complete the twelve (12) runs for each Smoke School.

9) The Contractor shall provide MDEQ with a report and summary of each Smoke School record. Said reports and summaries shall conform in content and detail as required by the Environmental Protection Agency ("EPA") Quality Assurance procedures.

10) The Contractor shall timely notify all participants of either their successful certification or failure to certify as a qualified observer in Test Method 9.

11) MDEQ shall schedule the Smoke Schools and notify potential applicants, limiting the total number of applicants to 300.

12) MDEQ shall provide sites for all in-person classroom training.

13) MDEQ shall provide instructional material, copies of handouts and test forms for aa in-person training.

14) MDEQ shall maintain on file the Smoke School records.

15) The Contractor shall perform other related tasks as directed by MDEQ.

2.3 Term

The term of the contract shall be for a period of four (4) years with an option to renew for one (1) year, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract subject to approval by the Public Procurement Review Board ("PPRB") and/or the MS Department of Finance and Administration Office of Personal Service Contract Review ("OPSCR"). The total contract term, including any renewals, shall not exceed a maximum total of five (5) years.

2.3.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.3.1.1 Requirements

a) Four (4) years of service.

b) A per training and certification session price shall be given and that price shall be the same throughout the contract.

c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.

d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.

e) A multi-term contract may be awarded. A contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.

SECTION 3

3.1 Insurance

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

A. Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars ($1,000,000.00). CONTRACTOR shall supply MDEQ endorsements from its carriers evidencing waiver of subrogation in favor of MDEQ.

For all of the insurance coverage required in Paragraph A, MDEQ, MDEQ's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ and that any insurance covering MDEQ shall be excess coverage over Contractor's coverage. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

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

SECTION 4

4.1 Bid Evaluation

Bids will be evaluated based on requirements set forth in RFx3160004245 MDEQ-IFB04122021, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and sustainability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set in this Invitation for Bids. Only Bidders who are found responsive and responsible will have their bids considered.

4.1.1 Responsive Bidder

Bidder must submit bid, which conforms in all material respect to this Invitation for Bids, RFx3160004245 MDEQ-IFB04122021, as determined by MDEQ.

4.1.2 Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. MDEQ reserves the right to permit the Bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by MDEQ of non-responsiveness based on the submission of nonconforming terms and conditions.

4.1.3 Conditioning Bid Upon Other Awards

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.1.4 Bid Submission Format

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

- Bid Cover Sheet **(Attachment A)**
- Bid Form **(Attachment B)**
- References **(Attachment C)**
- Certifications and Assurances **(Attachment D)**
- Any Amendments sent out after the bid issue date

4.1.5 Responsible Bidder

Bidder must have capability in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance, as determined by MDEQ.

4.1.6 Minimum Qualifications to be Deemed Responsible

- Bidder is capable or qualified to perform the service
- Bidder has the right equipment
- Bidder has minimum experience required
- Bidder has good performance in the past (references)

4.1.7 References

Each Bidder must furnish a listing of **at least three (3)** trade references along with the contact person, address, and phone number for each. These references must be familiar with the Bidder's abilities in the areas involved with this solicitation. MDEQ will use these references to determine the Bidder's ability to perform the services. It is the responsibility of the Bidder to ensure that the reference contact information is correct and current. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. The Bidder may submit as many references as desired. MDEQ will begin contacting references at the top of the list and will continue down the list until at least two (2) contacts have been reached.

References must be listed on **Attachment C**.

4.1.8 Minimum Score

Bidder must score a minimum of forty (40) points on the Reference Score Sheet (**Attachment E**) from reference interviews by MDEQ with two (2) Bidder/contractor references (for a total minimum score of 80 points), as well as all other requirements of this Invitation for Bids. (See **Attachments C** and **E)**

4.2 Bid Opening

Bid opening will be at the time listed in Section 1.1.1 at 515 East Amite Street, Jackson, MS 39201. The bid opening is open to the public; however, this will include opening, reading aloud, and listing the bid price on each bid only. No discussions will be entered into with any Bidder as to the quality or provisions of the specifications and no award will be made, either stated or implied at the bid opening.

4.3 Award

The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids.

4.3.1 Notification

All participating vendors will be notified of MDEQ's intent to award a contract. In addition, MDEQ will identify the selected vendor. Notice of award is also made available to the public.

4.3.2 Contract Management

If the Contractor fails to adhere to the Professional Services schedule, or if the Contractor fails to satisfactorily provide the prescribed service, the Contracting Agency will inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the Contracting Agency may terminate the contract without further obligation to the Contractor. MDEQ will use the form included as **Attachment G**, Professional Services Contract Discrepancy Report

SECTION 5

5.1 Post-Award Vendor Debriefing

A Bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Executive Director of MDEQ within three (3) business days of notification of the contract award. A post- award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing must occur within three (3) business days of receipt of the request. If a Bidder prefers to have legal representation present, the Bidder must notify the Executive Director of MDEQ in writing and identify its attorney by name, address, and telephone number. MDEQ will schedule and/or suspend and reschedule the meeting at a time when legal counsel can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post- Award Vendor Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

5.2 Protest of Award

Any actual or prospective Bidder or Contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the Bid Coordinator, Aveleka Moore, Contracts Division Director. The protest shall be submitted, in writing within seven (7) calendar days of the Notice of Intent to Award. All protests must be in writing, dated, signed by the Bidder or an

individual authorized to sign contracts on behalf of the protesting Bidder, and contain a statement of the reason(s) for 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 Bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Bid Coordinator, Aveleka Moore, Contracts Division Director, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after the seven (7) calendar days, will not be considered.

5.3 Standard Contract Terms and Conditions

Any contract entered into between MDEQ and a vendor/Bidder shall include the clauses found in **Attachment F** and those required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* as updated.

5.4 Mississippi Contract/Procurement Opportunity Search Portal

This Invitation for Bids, and the questions and answers concerning this Invitation for Bids, are posted on the Contract/Procurement Opportunity Search Portal.

5.5 Attachments

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

Attachment A

Bid Cover Sheet

MDEQ is seeking to establish a contract to provide Professional Services for Emissions Evaluation Training and Certification Sessions (Smoke Schools).

Bids are to be submitted as listed below, on or before 9:00 a.m., Tuesday, May 18, 2021.

PLEASE MARK YOUR ENVELOPE:

Mississippi Department of Environmental Quality
SEALED BID – DO NOT OPEN
RFx3160004245 MDEQ-IFB04122021
Opening Date: 10:00am, Tuesday, May 18, 2021
Attention: Aveleka Moore
515 East Amite Street
Jackson, MS 39201

Please complete the information below

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip Code: _____

Company Representative: _____

Telephone: _____

Fax: _____

E-Mail: _____

FEIN/EIN # (if company, corporation, or	
SS# (if individual):	

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation._____

_____

_____

If your company is not physically located in the region, how will you supply Professional Training Services to agencies in the region? _____

_____

_____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms.

_____

_____

_____

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids._____

_____

_____

For how many customers has your company provided Professional Smoke School Training and Certification Services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. _____

_____

_____

What is the largest customer your company has provided Professional Smoke School Training and Certification Services for in the past two (2) years? Please include the annual amount of the billing.

_____

_____

_____

Describe any specific services, which your company offers along with anyspecialized experience, certification, and/or education of your current staff. _____

_____

List all the equipment that your company has available or that is intended to be used to perform the services required in this Invitation for Bids in the charts below.

OWNED EQUIPMENT					
Year	**Make**	**Model**	**ID#**	**Capacity**	**Description**

RENTED/LEASED EQUIPMENT					
Year	**Make**	**Model**	**ID#**	**Capacity**	**Description**

Attachment B

Bid Form for Professional for Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools)

Company	Company Representative	Telephone

The pricing quoted must be inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any)
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

- **Amount per training and certification session:** _____

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Invitation for Bids, RFx3160004245 MDEQ-IFB04122021, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, RFx3160004245 MDEQ-IFB04122021, and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids, RFx3160004245 MDEQ-IFB04122021, and the attachments herein;
4. That the company will perform, without delay, the services required at the prices quoted in this **Attachment B**;
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date; and
6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.

Printed Name: _____

Signature: _____

Date: _____

Attachment C

References

Reference 1

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax: _____

Reference 2

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax: _____

Reference 3

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax: _____

The Bidder may submit as many references as desired by submitting as many additional copies of this Attachment C, References, as needed. MDEQ will begin contacting references at the top of the list and will continue down the list until two (2) contacts have been reached. See Section 4.1.7 of this Invitation for Bid.

Attachment D

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the bid to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by ***circling the applicable word or words in each paragraph below***:

1. **REPRESENTATION REGARDING CONTINGENT FEES**
   Contractor represents that it **has/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.

2. **REPRESENTATION REGARDING GRATUITIES**
   The bidder or Contractor represents that it **has/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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**
   The bidder certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate price.

4. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES**
   The prospective Contractor represents as a part of such Contractor's bid that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Name: _____

Signature: _____

Title: _____

Date: _____

Note: *Please be sure to* ***circle the applicable word or words*** *provided above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as nonresponsive.* ***Modifications or additions to any portion of this bid document may be cause for rejection of the bid.***

Attachment E

Reference Score Sheet

TO BE COMPLETED BY MDEQ ONLY

Bidder Name: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Service From/To Dates: _____

Able to provide Professional Training Services when you called?	Yes	No
Satisfied with the Professional Training Services provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling Professional Training Services?	Yes	No
Was the Professional Training Services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here .)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each "yes" is ten (10) points; each "no" is zero (0) points for the questions above. Bidder must have a minimum score of forty (40) from two (2) references (total of eighty (80) points) to be considered responsible and for its bids to be considered.

Score: _____

Do you have any business, professional or personal interest in the bidder's organization? If yes, please explain.	Yes	No

Called by: _____

Notes: _____

_____

_____

_____

_____

_____

Attachment F

Standard Contract Terms and Condition

1. Applicable Law

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

2. Availability of Funds

It is expressly understood and agreed that the obligation of the MDEQ 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 MDEQ, the MDEQ 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 MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. Acknowledgment of Amendments

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

4. Compliance with Laws

Contractor understands that the Agency 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.

5. 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 § 31-7-301 *et seq.*

6. 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:

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

b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or both.

c) In the event of such cancellation/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. 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.

8. Procurement Regulations

The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at http://www.DFA.ms.gov.

9. 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.

10. Representation Regarding Gratuities

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

11. Stop Work Order

a) *Order to Stop Work:* The Chief 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 Chief Procurement Officer shall either:

i. cancel the stop work order; or,

ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

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

i. 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,

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

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

12. 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.

13. 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 Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

c) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the 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 (1) or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and

performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

e) *Erroneous Termination for Default*. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, 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.

14. Termination Upon Bankruptcy

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

15. 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.

16. Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79- 23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq*. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi 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.

17. Anti-assignment/Subcontracting

Contractor acknowledges that it was selected by the State 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 State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer ofits obligations without such consent shall be null and void. No such approval by the State 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 State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

18. Antitrust

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

19. Approval

It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review, and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

20. 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.

21. 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.

22. Change in Scope of Work

MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project

or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDEQ and Contractor.

If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify MDEQ in writing of this belief. If MDEQ believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the services within the Contract.

23. Confidential Information

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

(1) to protect all confidential information provided by one party to the other;

(2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under state and/or federal law; and,

(3) except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission; and

(4) to do so by using those methods and procedures normally used to protect the party's own confidential information.

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

24. Confidentiality

A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

B. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Contract and designated by the

Contractor in writing as trade secrets or other proprietary confidential information, MDEQ shall following provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to Contractor for disclosure of information required by court order or required by law.

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

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

E. *Exceptions to Confidential Information.* Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("**Disclosing Party**") which is:

(1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;

(2) Generally known or easily ascertainable by nonparties to this Contract;

(3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

(4) Independently developed by the recipient without any reliance on confidential information;

(5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or

(6) Disclosed with the Disclosing Party's prior written consent; or

(7) Otherwise required to be disclosed by law.

25. Conflict of Interest

Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the U.S.

Department of the Treasury, RESTORE Council, MDEQ, or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

26. Contractor Personnel

The Agency 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 to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

27. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

28. Debarment and Suspension

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

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

C. has not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

E. has not, within a three-year period preceding this bid, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

29. Failure to Deliver

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

30. Failure to Enforce

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

31. Final Payment

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

32. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

33. HIPAA Compliance

Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

34. Indemnification

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by 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.

35. Infringement Indemnification

Contractor warrants that the materials and deliverables provided to MDEQ under this Contract, and their use by MDEQ, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the customer to discontinue using such items, in which case Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use and shall compensate the customer for the lost value of the infringing part to the phase in which it was used up to and including the Contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use.

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

36. Independent Contractor Status

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by

implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency 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, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

37. Insurance

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

A. Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars ($1,000,000.00). CONTRACTOR shall supply MDEQ endorsements from its carriers evidencing waiver of subrogation in favor of MDEQ.

For all of the insurance coverage required in Paragraph A, MDEQ, MDEQ's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ and that any insurance covering MDEQ shall be excess coverage over Contractor's coverage. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

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

38. Integrated Agreement/Merger

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by

a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

39. Modification or Renegotiation

This contract 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.

40. 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.

41. Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

For the Agency:	For Contractor:
Aveleka Moore, Contracts Division Director	[Name, Title]
MDEQ	[Contractor Name}
515 East Amite Street	[Address]
Jackson, MS 39201	[City, State, Zip]

42. Non-solicitation of Employees

Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

43. Oral Statements

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

44. Ownership of Documents and Work Papers

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDEQ and subject to any copyright protections.

45. Priority

The Contract consists of this agreement with exhibits, the Invitation for Bids RFx3160004245 MDEQ-IFB04122021 (hereinafter referred to as "IFB", and attached as Exhibit [ ]), and the response bid dated [date] by [CONTRACTOR NAME] (hereinafter referred to as "Bid" and attached as Exhibit [ ]). Any ambiguities, conflicts or questions interpretation of this contract shall be resolved by first, reference to this agreement/contract with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the Bid. Omission of any term or obligation from this agreement or attached Exhibits [ ] or [ ] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

46. 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. Except as provided below, all records related to this Contract shall be retained by Contractor for a minimum of three (3) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the 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.

Contractor is not required to retain the above-mentioned records for the three-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

A. Contractor has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the three (3) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before Contractor provides the records and corresponding certification to MDEQ, in which case, Contractor shall retain the records until all issues arising out of the action are finally resolved; and

C. Contractor provides MDEQ a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

47. Recovery of Money

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

48. Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. These records shall be made available during the term of the contract and the subsequent retention period, as applicable under the "Record Retention and Access to Record" provision of this contract for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

49. Right to Inspect Facility

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

50. 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.

51. State Property

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

52. 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.

53. Unsatisfactory Work

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

54. Waiver

MDEQ may waive any provision, in whole or in part, of this Contract not otherwise required by law. Failure by MDEQ, 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 MDEQ to enforce any provision at any time in accordance with its terms.

55. Headings

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

Attachment G

Professional Services Contract Discrepancy Report

Professional Visible Emissions Evaluation Training and Certification Sessions (Smoke Schools) located at: _____

_____

Date and Time of Service: _____

Report Date: _____

Discrepancy or Problem: (Describe in detail; attach supporting document; include reference to specification requirement; and attach continuation sheet if necessary).

_____

_____

_____

_____

Name: _____ **Signature:** _____ **Date:** _____

Contractor Response as to Cause, Corrective Action, and/or Actions to Prevent Recurrence: (Cite applicable existing or new Quality Control Program or Procedures; and attach continuation sheet if necessary).

_____

_____

_____

_____

Name: _____ **Signature:** _____ **Date:** _____

Contracting Agency Evaluation and Action: (Partial or full acceptance, rejection, payment deduction cure notice, show cause, termination, or other; attach continuation if necessary).

_____

_____

_____

_____

Name: _____ **Signature:** _____ **Date:** _____