

REQUEST FOR PROPOSALS

RFP Number: RFx 3120001338

To Provide: Laboratory Services

Request for Proposals Issue Date: December 8, 2017

CLOSING LOCATION

**Mississippi State Department of Health
Bureau of Public Water Supply
570 East Woodrow Wilson
Jackson, MS 39216**

PROPOSAL COORDINATOR

Thomas Long

Telephone: (601) 576-7521

Fax: (601) 576-7822

E-Mail: thomas.long@msdh.ms.gov

CLOSING DATE AND TIME

**Proposals must be received by 1:00 p.m. central standard time,
Friday, January 12, 2018**

SECTION 1

1.1 Proposal Acceptance Period

The original and 3 copies of the proposal (4 copies total) shall be signed and submitted in a sealed envelope or package to: Mississippi State Department of Health, Bureau of Public Water Supply, referenced as MSDH, Attn. Thomas Long, 570 East Woodrow Wilson, Jackson, MS 39216 no later than the time and date specified for receipt of proposals. Timely submission is the responsibility of the respondent. Proposals received after the specified time shall be rejected and returned to the respondent unopened. The envelope or package shall be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt shall be indicated on the envelope or package by MSDH. Each page of the proposal and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the proposal. The MSDH reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, the MSDH may request the respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1 Timeline

Request for Proposals Issue Date	December 8, 2017
Questions and Request for Clarification to the MSDH	December 22, 2017 2:00 p.m.
Anticipated Posting of Answers	December 28, 2017 2:00 p.m.
Proposal Package Submission Deadline	January 12, 2018 1:00 p.m.
Bid Opening	January 12, 2018 2:00 p.m.
Anticipated Date of the Notice of Intent to Award	January 19, 2018
Anticipated Post-Award Debriefing Request Due	January 24, 2018 2:00 p.m.
Anticipated Post-Award Debriefing Held By	January 31, 2018
Protested Deadline	February 5, 2018 1:00 p.m.
NOTE: Central Standard Time (CST)	

The MSDH will accept sealed proposals until 1:00 p.m. CST (Central Standard Time), Friday January 12, 2018, for the following: Laboratory services for compliance with EPA Safe Drinking Water Act, UCMR4. Detailed specifications may be obtained by contacting Thomas Long at (601) 576-7521, email address: thomas.long@msdh.ms.gov or at MSDH, Attn. Thomas Long, 570 East Woodrow Wilson, Jackson, MS 39216 in reference to **MAGIC Rfx 3120001338**. It is suggested that if you mail in a proposal, post it certified mail with a return receipt guaranteed. The MSDH will not be responsible for mail delays or lost mail. Proposals will be opened on Friday January 12, 2018 at 2:00 p.m.

1.1.2 Rejection of Proposals

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

- 1) The proposal contains unauthorized amendments to the requirements of the Request for Proposals.
- 2) The proposal is conditional.
- 3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- 4) The proposal is received late.
- 5) The proposal is not signed by an authorized representative of the party.
- 6) The proposal contains false or misleading statements or references.
- 7) The proposal does not offer to provide all services required by the Request for Proposal.

1.2 Expenses Incurred in Preparing Offer

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

1.3 Proprietary Information

The respondent should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Mississippi Code Annotated § 25-61-9 and 79-23-1 (1972, as amended). Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

1.4 Registration with Mississippi Secretary of State

By submitting a proposal, the respondent 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 proposal, the respondent 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 of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi.

1.6 Competitive Proposals

Discussions may be conducted with respondents who submit proposals determined to be Reasonably susceptible of being selected for award. Likewise, MSDH also reserves the right to accept any proposal 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

All questions must be submitted in writing and received by December 22, 2017, 2:00 p.m. CST. Questions about the contract portions of the procurement document must be submitted in writing to Thomas Long, 570 East Woodrow Wilson, Jackson, MS 39216. Fax (601) 576-7822. Email thomas.long@msdh.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Janet Hartin at 570 East Woodrow Wilson, Jackson, MS 39216. Fax (601) 576-7822. Email janet.hartin@msdh.ms.gov. This RFP and all questions and answers will be posted on the Mississippi State Department of Health website, at <https://msdh.ms.gov/> and on the Contract/Procurement Opportunity Search Portal at https://www.ms.gov/dfa/contract_bid_search/ by December 28, 2017 2:00 p.m. CST. Respondents are cautioned that any statements made by contact persons, that cause a material change to any portion of the procurement document, shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.8 Type of Contract

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

1.9 Written Proposals

All proposals shall be in writing.

1.10 Acknowledgement 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 MSDH, by the time and at the place specified for receipt of bids.

1.11 Cancellation of Solicitation Notice

MSDH reserves the right to cancel this solicitation in accordance with the rules and regulations approved by the Personal Service Contract Review Board (PSCRB), effective July 1, 2016 issued by the State shall declare that the solicitation may be canceled as provided herein.

SECTION 2

2.1 Purpose

The MSDH is seeking to establish a contract for lab services at contractor's laboratory. The United States Environmental Protection Agency (U.S. EPA) requires that all large public water systems meet the monitoring and reporting requirements of the Safe Drinking Water Act (SDWA) and the Unregulated Contaminant Monitoring Rule 4 (UCMR4). The MSDH must secure an EPA approved lab to analyze samples for compliance with the UCMR4 for large water systems (population > 10,000). These samples must be analyzed by an EPA approved lab for UCMR4 testing.

2.1.1 Procurement and Contract Approval

This RFP is issued in accordance with the regulations approved by the PSCRB effective July 1, 2016. A copy of these regulations is available at the Office of Personal Service Contract Review (OPSCR), 501 North West Street, Suite 1301A, Jackson, MS 39201. Effective January 1, 2018 the PSCRB will be abolished and the Public Procurement Review Board (PPRB) and the OPSCR will assume regulatory authority of any contract resulting from this RFP. It is understood that any contract resulting from RFx 3120001338 requires approval by the PPRB.

2.2 Scope of Services

The laboratory must be authorized/approved by the Environmental Protection Agency to analyze drinking water samples for the contaminants specified in the Unregulated Contaminant Monitoring Rule 4 (UCMR4) with sampling anticipated to begin April 9, 2018.

Preparation for Sampling: MSDH will provide the laboratory with a list of public water system sampling points and contact information for the Mississippi public water systems subject to the (EPA) UCMR4. The laboratory will schedule the sampling so that all requirements of the UCMR4 timeframe and frequency requirements are achievable. Prior to shipping any kits to the public water systems, the laboratory will provide MSDH with a prototype of each sample kit (Assessment Monitoring 1 [AM1] list, Assessment Monitoring 2 [AM2] list, and Assessment Monitoring 3 [AM3] list) which will include all sampling supplies, sampling and shipping instructions, and return shipping label. MSDH must approve sampling and shipping instructions prior to shipment to public water systems. Instructions shipped with the kit must include sample collection instructions; shipping instructions; collection date (range); contact information for the laboratory individual overseeing sample kit shipment, sample collection, and sample receipt; and MSDH contact information. These instructions must also be emailed to the public water system.

Shipping Sample Kits and Instructions: The laboratory will ship directly to the water systems UCMR4 sample kits which include all necessary sampling supplies, sampling and shipping instructions, laboratory and MSDH contact information, and prepaid return shipping labels. Laboratory will notify the water system via email (message will include laboratory and MSDH contact information as well as collection and shipping instructions) that the sample kit has been shipped to or delivered to the water system. Laboratory will notify MSDH, by the close of the following business day of all undeliverable email messages and all undeliverable sample kits.

Receiving Samples: By the close of the following business day the laboratory will notify MSDH of sample receipt. For each kit, within five (5) business days of scheduled sample receipt date MSDH will be notified of samples not received, and the public water system will be sent an email message informing them that their sample kit has not been received by the laboratory.

Analyzing Samples: The laboratory will follow EPA methods and guidance to analyze samples and report results into the Safe Drinking Water Accession and Review System (SDWARS).

Rejecting Samples and Invalidating Results: By the close of the following business day the laboratory will notify MSDH of any rejections and invalidations. The cause(s) for any rejections and invalidations will be included with this notification.

Reporting of Results: Results must be emailed to the public water system and MSDH. Results also must be submitted electronically to the EPA by loading directly into the SDWARS within one-hundred twenty (120) days of sample collection. By the 10th day of each month the laboratory will provide a spreadsheet to MSDH of all sample results which were finalized and reported during the previous month. Once all samples have been reported a final summary spreadsheet of samples and results must be provided to the MSDH.

Invoicing for Results: The laboratory will invoice MSDH on a monthly basis and will attach supporting documentation so that charges association with each list (AM1, AM2, or AM3), sample identification number, and public water system sampling point can be identified. The invoice must include only charges for sample results which have been reported for the previous calendar month.

Approximately 288 sampling points to be sampled up to 4 times each are included in the AM1 list which consists of the following contaminants: germanium, manganese, alpha-hexachlorocyclohexane, chlorpyrifos, dimethipin, ethoprop, oxyfluorfen, profenofos, tebuconazole, total permethrin (cis-&trans-), tribufos, 1-butanol, 2-methoxyethanol, 2-propen-1-ol, butylated hydroxyanisole, o-toluidine, quinolone.

Approximately 681 sampling points to be sampled up to 4 times each are included in the AM2 list which consists of the following contaminants: Dichloroacetic acid, monochloroacetic acid, trichloroacetic acid, monobromoacetic acid, dibromoacetic acid, bromochloroacetic acid, bromodichloroacetic acid, chlorodibromoacetic acid, tribromoacetic acid, total organic carbon, bromide.

Approximately 15 sampling points to be samples up to 8 times each are included in the AM3 list: which consists of the following contaminants: total microcystins, microcystin-LA, microcystin-LF, microcystin-LY, microcystin-RR, microcystin-YR, microcystin-LR, nodularin, anatoxin-a, cylindrospermopsin. Laboratory must assume that all contaminants must be analyzed for all sampling points when preparing schedule but must take advantage of the option to not analyze all samples collected based on the result of the Adda enzyme linked immunosorbent assay (ELISA).

2.3 Term

The term of the contract is anticipated to be from April 9, 2018 through December 31, 2020. Upon written agreement of both parties at least sixty (60) days prior to the expiration date, the contract may be renewed by the MSDH for a period up to one (1) successive one-year period(s) under the same prices, terms, and conditions as in the original contract subject to approval by the PPRB.

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 three (3) 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.

2.4 Requirements

- a) Approximately 984 samples to be analyzed before December 31, 2020;
- b) A unit price shall be given for each service, and that unit 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; and
- e) A multi-term contract may be awarded.

SECTION 3

3.1 Insurance

The successful vendor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance, with minimum limits of \$0.00 per occurrence and fidelity bond insurance with minimum limits of \$0.00. All workers' compensation, comprehensive general liability, professional liability, and fidelity bond insurance will provide coverage to the Mississippi State Department of Health, Bureau of Public Water Supply as an additional insured. The MSDH reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor shall be prepared to provide evidence of required insurance upon request by the MSDH at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 4

4.1 Written Proposals Shall Contain the Following Minimum Information

- 1) The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed contract;
- 2) The age of the respondent's business and average number of employees over a previous period of time, as specified in the Request for Proposal;
- 3) The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services;
- 4) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposal;
- 5) A written plan giving as many details as is practical explaining how the services will be performed; and
- 6) Sealed **proposals** must be mailed or hand-delivered to and labeled as following:

UCMR4 Opening Date: 2:00 PM CST, January 12, 2018 Attention: Thomas Long 570 East Woodrow Wilson Jackson, MS 39216 SEALED BID – DO NOT OPEN
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4.2 Evaluation Procedure

4.2.1 Step One:

Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

4.2.1.1 Responsive Respondent

Respondent must submit a proposal which conforms in all material respects to this Request for Proposals, RFx 3120001338, as determined by MSDH.

4.2.1.2 Responsible Respondent

Respondent 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 MSDH.

4.2.2 Step Two:

Proposals that satisfactorily complete Step One will be reviewed and analyzed to

determine if the proposal adequately meets the needs of MSDH. Factors to be considered are as follows:

- 1) The plan for performing the required services; 25%
- 2) Ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; 15%
- 3) The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; 15%
- 4) A record of past performance of similar work; and 15%
- 5) Price 30%.

4.2.3 Step Three:

The MSDH Executive Director or his/her designee will contact the respondent with the proposal which best meets MSDH needs (based on factors evaluated in Step Two) and attempt to negotiate an agreement that is deemed acceptable to both parties.

4.3 The Following Response Format Shall Be Used for All Submitted Proposals:

- 1) **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service;
- 2) **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks;
- 3) **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service;
- 4) **Personnel:** Attach resumes' of all those who will be involved in the delivery of service (from principals to field technicians) that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract;
- 5) **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person;
- 6) **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed;

- 7) **Additional data:** Provide any additional information that will aid in evaluation of the response; and
- 8) **Cost data:** Estimate the annual cost of the service. Cost data submitted at this stage is binding and is subject to negotiation if your firm is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals.

4.4 Nonconforming Terms and Conditions

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

4.5 Conditioning Proposal Upon Other Awards

Any proposal 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.

4.6 Intent to Award

Award shall be made to the responsible respondent whose proposal is determined in Writing, within thirty (30) business days, to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation.

4.7 Notification

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

SECTION 5

5.1 Post-Award Vendor Debriefing

A respondent, 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 Director of the Mississippi State Department of Health Bureau of Public Water Supply 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 typically occurs within five (5) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Director of the MSDH in writing and identify its attorney by name, address, and telephone number. The Mississippi State Department of Health Bureau of Public Water Supply will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the Personal Service Contract Review Board's Rules and Regulations, effective July 1, 2016.

5.2 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 Proposals may file a protest with the Proposal Coordinator, Thomas Long (Compliance section). The protest shall be received on or before 1:00 p.m. February 5, 2018, 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 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, Thomas Long (Compliance section), via either U.S. mail, postage prepaid, or personal delivery. Protests received after 1:00 p.m. February 5, 2018 will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment B** and those required by the Personal Service Contract Review Board's Rules and Regulations, effective July 1, 2016.

5.4 Optional Contract Terms and Conditions

The proposed contract, which includes additional contract terms, is found in **ATTACHMENT C**.

5.5 Mississippi Contract/Procurement Opportunity Search Portal

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

5.6 Attachments

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

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 Request for Proposals, RFx 3120001338, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Proposals, RFx 3120001338, and the attachments herein;
3. That the company agrees to all provisions of this Request for Proposals, RFx 3120001338, and the attachments herein;
4. 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 Request for Proposals.

Printed Name: _____

Signature/Date: _____

ATTACHMENT A
Certifications and Assurances

I/We make the following certifications and assurances as a required element of the offer 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):

1. REPRESENTATION REGARDING CONTINGENT FEES

Initial

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 proposal.

2. REPRESENTATION REGARDING GRATUITIES

Initial

The Respondent 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 Personal Service Contract Review Board Rules and Regulations, effective July 1, 2016.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

Initial

The respondent 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 respondent or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

Initial

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

Name/Title: _____

Signature/Date: _____

NOTE: Please initial items 1-4 and be sure to **circle the applicable word or words** provided above. Failure to circle the applicable word or words and/or to sign the proposal form may result in the proposal being rejected as nonresponsive. **Modifications or additions to any portion of this document may be cause for rejection of the proposal.**

ATTACHMENT B

Required Clauses for Service Contracts Resulting from this Request for Proposals

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 Agency 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 Agency, the Agency 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 Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. **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.
4. **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.

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

In the event of such 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.

6. Pay mode. 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. Procurement Regulations. The contract shall be governed by the applicable provisions of the Mississippi Personal Service Contract Review Board Rules and Regulations, effective July 1, 2016. A copy of these regulations is available at the Office of Personal Service Contract Review (OPSCR), 501 North West Street, Suite 1301A, Jackson, MS 39201.
8. 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 proposal.

9. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations, effective July 1, 2016.

10. Stop Work Order.

a. *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 ninety (90) days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the 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 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.

11. 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.

12. 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 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 here under which endangers such performance) if Contractor has notified the Agency Head or designee within fifteen (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". (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.

- 13. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency 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.
- 14. 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.
- 15. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated § 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated § 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

16. Acknowledgement of Amendments. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the Mississippi State Department of Health, Bureau of Public Water Supply, by the time and at the place specified for receipt of bids.

ATTACHMENT C
Proposed Terms of Contract

1. Contracted Services: The Contractor agrees to provide

In accordance with the specifications set forth on the preceding page of this contract, titled "Contract Between Department and Contractor" and any other documents as set forth by the Department, and are hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

Attachment B – Conflicts of Interest

2. ABILITY TO CONTRACT

The Contractor warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the Department. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that it is qualified to do business and in good standing in the State of Mississippi; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract 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 contract.

3. 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.

4. COMPLIANCE WITH LAWS

Contractor understands that the Department 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. PROCUREMENT REGULATIONS AND APPROVAL

The procurement of this contract shall be governed by the applicable provisions of the Mississippi Personal Service Contract Review Board (PSCRB) Rules and Regulations, effective July 1, 2016, a copy of which is available at the Office of Personal Service Contract Review ("OPSCR"), 501 North West Street, Suite 1301A, Jackson, MS 39201. Effective January 1, 2018 the PSCRB will be abolished and the Public Procurement Review Board ("PPRB") will assume regulatory authority of this contract. It is understood that should this contract require approval, which must be granted by the PPRB, and is not approved, it is void and no payment shall be made hereunder.

6. PERS COMPLIANCE

This section applies only to a Contractor who is an individual and presently receives retirement benefits from the Mississippi Public Employees' Retirement System (PERS), as follows:

- a. The Contractor certifies that the ninety day separation period required by PERS regulations has been met prior to the effective date of this contract.
- b. The Contractor is responsible for notifying PERS of re-employment and for submission of required documentation to PERS for review and concurrence of the Contractor's status as an independent contractor as required by PERS regulations.
- c. Contractor's date of retirement from state service: N/A

7. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained 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 proposal

8. REPRESENTATION REGARDING GRATUITIES

The bidder, offer or, respondent, or contractor represents that is has not violated, is not violating, an 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, effective July 1, 2016.

9. 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 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;
- c. has not, within a three (3) 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;

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 (b) and (c) of this certification; and,

e. has not, within a three (3) year period preceding this proposal, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

10. INTEGRATED AGREEMENT/MERGER

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

11. MODIFICATIONS AND CHANGES IN SCOPE OF WORK

All modifications to the contract must be made in writing and signed by both parties to the contract. The Department may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Department and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the Department in writing of this belief. If the Department believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

12. AVAILABILITY OF FUNDS

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

13. E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Department 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 Department within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

14. 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.

15. 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,**
- C. both. 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.

16. STOP WORK ORDER

This section applies only to personal or professional services contracts that require approval from the Mississippi Personal Service Contract Review Board (PSCRB) or the Public Procurement Board (PPRB), as follows:

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

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

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

1. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Department 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.

17. 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.

18. 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 Department, 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 fifteen (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 (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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

19. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the Department 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.

20. RECORDS AND AUDIT

The Contractor shall maintain such financial records and other records as may be prescribed by the Department or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Rules and Regulations, effective July 1, 2016 and the Public Procurement Review Board (PPRB), effective January 1, 2018. The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Department, 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. Where audits are required to be submitted to the Department before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the Department reserves the right to cancel or suspend the contract at the Department's discretion.

21. RECORDS RETENTION

The Contractor agrees to submit to the Department quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the Department quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable

period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the Department; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives shall have unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits,

examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for 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 contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

22. ASSIGNMENT AND RECEIPT OF AMOUNTS PAYABLE

This section applies only to a Contractor which serves as a clinical or healthcare provider for the Department, as follows:

1. The Contractor authorizes the Department to accept assignment and receive any amounts payable under Part of Title XVII and Title XIX of the Social Security Act and/or any monies collected for service rendered by the Contractor under the terms of this contract, including but not limited to private insurance, third-party arrangements, or such other payment or reimbursement mechanisms as may be applicable or available. The Contractor agrees that the Department shall be the payer or financial reimbursement mechanism of last resort when other sources are mandated or are available.
2. The Contractor agrees that no additional charges will be made to patients/clients to whom services are provided under the terms of this contract.
3. The Contractor's payment records will be submitted to:
4. The Department agrees to assure physician supervision as required by law for the services to be provided under the terms of this contract.

23. REIMBURSEMENT

The Department agrees to provide reimbursement for the contract period. For contracts that include the use of Federal funds, the Department agrees to provide reimbursement for the contract period in accordance with the requirements set forth in OMB Circular A-87. Such reimbursement will be made upon receipt of the necessary billing listing salaries, Social Security, retirement, and other items provided in this contract, including copies of payroll requisitions and invoice copies for materials, equipment, or supplies. Any final billings shall be submitted to the Department no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated

timeframe for this contract may be grounds for the Department to reject such reimbursements. It is agreed by both parties that the following items will be made only when approved by both parties:

1. Reimbursement in excess of the amount budgeted for any item; or
2. Reimbursement of items not included in the budget; or
3. The transfer of monies between items within the budget.

It is agreed by both parties that no reimbursement will be made by the Department until this contract has been signed by the appropriate personnel of both parties and until a budget for expenditures pursuant to the contract has been approved by the Department.

24. SALARIES AND FRINGE BENEFITS

If the contract provides for the payment of salaries and/or fringe benefits (identified as a line item in the contract's budget and/or budget narrative), it is understood by both parties that fringe benefits may be spent only for bona fide retirement programs and employee insurance plans. Before any retirement and/or insurance program is initiated or financed with funds received pursuant to this contract, approval must be obtained from the Department. Insurance plans shall be limited to health, life, unemployment, and workers' compensation. Documentation must be available to the Department of all fringe benefit payments. This clause does not apply where the contract may be used for the payment of salaries and/or fringe benefits, but such were not specifically itemized as budgetary items in the contract.

25. INDEPENDENT CONTRACTOR STATUS

This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:

The Contractor, at all times, shall be regarded as 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 Department, the Contractor, or any third party as creating the relationship of principal and agent, partners, joint ventures, or any similar such relationship between the Department and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Department or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the Department and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the Department. Neither the Contractor nor its employees, under any circumstances, shall be considered servants, agents, or employees of the Department; and the Department shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The Department shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Department shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Department for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the Department. The Department, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the

Contractor. If the Department reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Department in a timely manner and at no additional cost to the Department. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.

26. 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.

27. CONFIDENTIAL INFORMATION

A. Definition: "Confidential Information" shall mean:

1. Those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and
2. All data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the Department, and any other information designated in writing as confidential by the Department or the State of Mississippi.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, 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 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 the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the Department shall result in the immediate termination of this contract.

B. Disclosure: In the event that either party to this contract 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 State 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 of 1972, Annotated, Section 25-61-1, et. seq. regarding public access to public records.

C. Exceptions: The Contractor and the Department shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("The Disclosing Party") which:

1. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
2. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
3. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;