# INVITATION FOR BIDS

## IFB #3160002842

**To Provide: HVAC WATER TREATMENT PROGRAM**

**For: Capitol Facilities Buildings in Jackson, MS, and Bolton Building in Biloxi, MS**

**Issue Date: March 28, 2019**

# Office of Capitol Facilities

Department of Finance and Administration
501 North West Street, Suite 2001-A
Jackson, MS 39201


**Contact**
Alison Bradford, Bureau Director
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Fax: (601) 359-2875
E-Mail: Alison.Bradford@dfa.ms.gov


**Bids Due: Monday, April 29, 2019, at 3:00:00 p.m.**

## SECTION 1

### 1.1 Bid Acceptance Period

The Original shall be signed and submitted in a sealed envelope or package to 501 North West Street, Suite 1301-B, Jackson, MS 39201 no later than the time and date specified for receipt of bids. Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened. The envelope or package shall be marked with the bid opening date and time, and the IFB number to prevent premature opening. The time and date of receipt shall be stamped/marked on the outside of the envelope or package by the DFA Procurement Officer. Failure to submit bid on the bid form provided or to include required documents may be cause for rejection of the bid as non-responsive. The Office of Capitol Facilities (DFA), may, but is not obligated to, consider the omission of any information requested as an informality, or irregularity, when in their opinion the omitted information does not alter the amounts contained in the submitted bid, or place other bidders at a disadvantage.

### 1.2 Timeline

- Invitation for Bid (IFB) Issue Date: 03/28/2019, 2:00 p.m. CST
- Questions to Office of Capitol Facilities: 04/08/2019, 5:00 p.m. CST
- Anticipated Posting of Written Answers to Questions: 04/12/2019, 5:00 p.m. CST
- Bid Package Submission Deadline/Opening: 04/29/2019, 3:00 p.m. CST
- Anticipated Notice of Intent to Award: 05/02/2019, 5:00 p.m. CST
- Anticipated Post-Award Debriefing Request Date: 05/07/2019, 5:00 p.m. CST
- Post-Award Debriefing Held By Date: 05/12/2019, 5:00 p.m. CST
- Protest Deadline Date: 05/19/2019, 5:00 p.m. CST

### 1.3 Expenses Incurred

The Office of Capitol Facilities accepts no responsibility for any expense incurred by the bidder in the preparation or presentation of a bid. Such expenses shall be borne exclusively by the bidder.

### 1.4 Bid Form

All pricing must be submitted on the bid form (Attachment A). Failure to complete and/or sign the bid form may result in the bidder being deemed nonresponsive. 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 and agrees to all contract terms and conditions in the attached proposed form of contract (Attachment D). No oral bids will be considered.

## 1.5 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.

## 1.6 Debarment

By submitting a bid, the bidder 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 bids for contracts issued by any political subdivision or agency of the State of Mississippi.

## 1.7 Withdrawal of Bid

A bidder may withdraw a bid, prior to the time set for the opening of bids, upon request; however, no bid may be withdrawn after such time except when notice of a claim of error by bidder is submitted in writing to the Office of Capitol Facilities within two (2) working days after the bid opening and all of the following conditions are met:

1.7.1 The bid is submitted in good faith;

1.7.2 The bid price is substantially low than those of other bidders because of a mistake;

1.7.3 The mistake is a clerical error, not an error of judgment; and,

1.7.4 Objective evidence is drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity.

## 1.8 Additional Information

Questions about the contract portions of the procurement shall be submitted in writing to Judy Miller by Mail at 501 North State Street, Suite 1301-B, Jackson, MS 39201, or by E-Mail at judy.miller@dfa.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Alison Bradford by Mail at 501 North State Street, Suite 2001-A, Jackson, MS 39201, by Fax: (610) 359-2875, or by E-Mail at Alison.Bradford@dfa.ms.gov. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement documents shall not be relied upon unless subsequently ratified by a formal written addendum amending the procurement documents.

**1.9 Amendments**

Should an amendment to the IFB be necessary, it will be issued as an addendum and posted on the DFA website (http://www.dfa.ms.gov) in a manner that all bidders will be able to view. Further, bidders must acknowledge receipt of any addendum to the solicitation by identifying on the applicable space on the bid form provided (Attachment A). Failure to acknowledge any such addendum shall cause bid to deemed non-responsive. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

**1.10 Type of Contract**

Contract shall be a firm fixed-price agreement Department of Finance and Administration Personal Services Contact (Attachment D).

## SECTION 2

**2.1 Purpose**

The Department of Finance and Administration, Office of Capitol Facilities is seeking to establish a contract that shall provide a full comprehensive Heating, Ventilation, and Air Conditioning (HVAC) Water Treatment Program to meet the current and future needs of the Department of Finance and Administration (DFA) Central Plants and the following Buildings together with Domestic Water treatment for the Governor's Mansion. Buildings included in the Jackson, Mississippi Capitol Complex are: (1) Woolfolk Building; (2) Woolfolk CMP; (3) MS History & Civil Rights Museums; (4) New Capitol; (5) Sillers; (6) Gartin; (7) Robert E. Lee; (8) Robert Clark; (9) Central High; (10) Heber Ladner; (11) War Memorial; (12)Capers; (13) Depot; (14) Old Capitol; (15) Naval Reserve Center; (16) William Winter Building; (17) William Winter CMP; (18) 515 E. Amite/Patrick Alan Nunnelee; (19) 700 North State Street; (20) 620 North Street; (21) 660 North Street; (22) Bolton State Office Building in Biloxi, Mississippi.

**2.2 Scope of Services**

Proposer shall propose a program that includes: furnishing, installing and maintaining necessary equipment for treatment of boiler and cooling tower systems, a regular supply of the treatment chemicals, and bi-weekly inspections of chemical feed operation and testing of the program. Also, testing is required as needed by the DFA for unusual circumstances.

Proposer shall adequately acknowledge its ability to meet the minimum technical and general requirements set forth below.

Following are the minimum technical requirements the successful Proposer must meet:

A. Technical requirements

a.1 The successful Proposer shall provide a water treatment program in DFA's Central Plants to include boiler systems, condensate systems and condenser water systems for the cooling towers. Two central chilled water closed loop systems shall also be included in the proposed program.

a.2 The Successful proposer shall provide a water treatment program in DFA's outlying buildings specified above, to include boiler system closed loops and either condenser water systems or chilled water closed loops, depending on the needs of the building as listed in following parts of the specifications.

a.3 The successful proposer shall maintain water chemistry parameters at the levels specified or as recommended by the system equipment manufacturers. They shall also submit for review, after award of the contract, the water chemistry parameters and setpoints they will be controlling to throughout their contract.

a.4 Installed capacities for the Central Plants and outlying buildings are summarized in the following table:

| **Location** | **Chiller Capacity (tons)** | **Boiler Capacity (Thousand British Thermal Units) (BTU) per hour (MBH) heating water** |
|---|---|---|
| | | |
| Woolfolk Building | n/a | n/a |
| Governor's Mansion | 2 @ 60 tons each (Air Cooled) | 2 @ 1,500 |
| Woolfolk CMP | 3 @ 1,250 tons each and ten each Marley Cooling Towers | 3 @ 21,000 ea (600 HP each) |
| New Capitol | n/a | n/a |
| Sillers | n/a | n/a |
| Gartin | n/a | n/a |
| Robert E. Lee | No Chiller(1 BAC Cooling Tower) | 2 each HW boilers 3,500 MPH each |
| Robert Clark | n/a | n/a |
| Central High | 2 @ 325 tons each and 2 cooling towers | 2 @ 2,000 ea |
| Heber Ladner | 40 (Air Cooled) | 800 |
| War Memorial | n/a | n/a |
| Capers | n/a | n/a |
| Depot | n/a | n/a |
| Old Capitol | n/a | n/a |
| Naval Reserve Center | n/a | n/a |
| William Winter Building | n/a | 1 steam boiler |
| William Winter CMP | 1 @ 850 tons ea + 2 @ 1, 250 tons and 2 cooling towers | 2 @ 10,461 each + 1 @ 14,700 |
| 515 East Amite Street Patrick Alan Nunnelee | 2 @ 250 tons each (Air Cooled) | 2 @ 5,225 each |
| 700 North State Street | 225 tons (Air Cooled) | 2 @ 1,020 each |
| 620 North Street | Roof top units | Roof top units |
| 660 North Street | Roof top units | Roof top units |

| | | |
|---|---|---|
| Bolton State Office Building | 2 @ 250 tons each and 2 cooling towers | 2 @ 2,000 MBH |
| Mississippi History & Civil Rights Museums | n/a | 2 steam boilers |
| | | |

a.5 The successful Proposer's treatment program shall maintain water quality for the above referenced systems by:

a.5.1 Controlling Corrosion and build-up of scale and biological growth;

a.5.2 Maximizing the efficiency of the systems; and

a.5.3 Preventing hazard to operating personnel or the environment.

a.6. The successful proposer shall provide for the treatment of chilled water and heating loop systems for the outlying buildings as follows:

| | |
|---|---|
| | Bypass feeders for heating water loop and treatment of chilled water loop. |
| 515 Amite Street Building | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Governor's Mansion | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Central High School | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Heber Ladner | Bypass feeders for heating water loop and treatment of chilled water loop. |
| 700 North State Street | Bypass feeders for heating water loop and treatment of chilled water (chilled water auto). |
| William Winter CMP | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Woolfolk CMP | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Bolton Building | Bypass feeders for heating water loop and treatment of chilled water loop. |
| Naval Reserve | Bypass feeders for heating water loop and treatment of chilled water loop. |
| | |
| | |

a.7 The following are parameters for program operating of the cooling towers:

a.7.1 Proposer shall assume 40% annual system load for Chillers.

a.7.2 Successful Proposer (Vendor) shall use 15,000 system volume and _____gallons/year total treatment volume for the Woolfolk CMP

and 10,000 system volume and _____gallons/year total treatment volume for the Winter CMP.

a.7.3 Vendor shall maintain control cycles of concentration to between three (3) and four (4).

a.7.4 The Vendor shall use high-grade phosphonates with organic corrosion inhibitors and Tolyltriazole CAS No.: 29385-43-1 (TTA) for inhibitor. Do not use 1-Hydroxyethylidene-1, 1-Diphosponic Acid-CAS Number 2809-21-4 phosphonates (HEDP). Molybdate shall be used for testing purposes only. Inhibitor should be fed into systems at a rate of 5-10 parts per million (PPM) organophosphonate.

a.7.5 Vendor shall use biocides that are United States Environmental Protection Agency (USEPA) registered for use in cooling towers and capable of meeting all regulatory requirements for public facilities. The program should include both oxidizing and non-oxidizing biocides along with a bio-dispersant. The oxidizing biocide should be fed continuously to achieve a free chlorine residual of 0.5 to 1.5 ppm in all condenser water systems. The non-oxidizing biocide and bio-dispersant should be slug-fed weekly at rates specified on the product labels.

a.7.6 Vendor shall use the same standards for cycles of concentration, inhibitor treatment and biocide treatment for cooling towers at the Robert E. Lee (1 tower), Central High (1 tower), William Winter (3 towers), Woolfolk (10 towers) and Bolton Buildings (2 towers).

a.8 The following are the parameters for program operation of the Condensate System:

a.7.1 The vendor shall use an amine-blend treatment product with distribution rates to control pH in the entire condensate system between 7.5 and 9.0.

a.9 The following are parameters for program operation of the Chilled and Heating Water Closed Loops in the 515 E. Amite Building, Governor's mansion, 700 North State Street, Heber Ladner, Robert E. Lee, Central High, Woolfolk, William Winter, Bolton Building and Naval Reserve Buildings.

a.9.1 The vendor shall provide and maintain the following sodium nitrite concentration in these building systems.

a.8.1.1 Heating Water loops at 1,000-1,500 ppm; and Chilled Water loops at 800-1,000 ppm.

a.8.1.2 Treatment product should contain nitrite and TTA.

a.9.2. The water treatment analysis table below is provided for use in calculations.

| **Measurement Parameter** | **City Water** |
|---|---|
| | |
| Total Alkalinity as CaCO3 (ppm) | 7.5 |
| Chlorides as Cl (ppm) | 7.2 |
| Total Hardness as CaCO3 (ppm) | 64 |
| Calcium as CaCO3 (ppm) | 52 |
| Magnesium as CaCO3 (ppm) | 12 |
| Silica as SiO2 (ppm) | 6.2 |
| Sulfate as SO4 (ppm) | 60 |
| pH | 8.2 |
| Specific Conductance Micro-ohms, 18° C | 192 |
| Total Iron as Fe (ppm) | 0.09 |
| | |
| | |

a.9.3 Reverse Osmosis filters and softener systems for the steam boilers at the William Winter Building and Mississippi History & Civil Rights Museums must be changed at least once annually. Also, vendor is to provide salt for softener as required.

a.9.4 The UV lamps in the domestic water filtration system at the Governor's Mansion must be changed twice annually or as needed more frequently.

B. The following are the minimum general requirements the successful proposer must meet:

General Requirements:

Bypass feeders for heating water loop and treatment of chilled water loop.

b.1 The successful Proposer shall install, own and maintain the treatment program and all required equipment.

b.2 The successful Proposer shall provide a management employee to oversee the implementation and maintenance of the treatment program.

b.3 The successful Proposer shall, in the event of a failure which requires immediate attention, have a management employee on-site at DFA within one (1) hour of receiving notice of the event.

b.4 The successful Proposer shall have a management employee that makes weekly service calls to DFA.

b.5 The successful Proposer shall employ a Certified Technologist (CWT), as designated by the Association of Water Technologies to be responsible for designing and administering the treatment program.

b.6 The successful Proposer's CWT shall be responsible for making bi-monthly service calls to DFA and site visits when appropriate and as requested by DFA.

b.7 The successful Proposer shall have access to, and pay for use of, authorized laboratory facilities for testing in order to provide water and deposit analyses, as well as metallurgical and ion exchange analyses.

b.8 The successful Proposer shall furnish, handle and apply all chemicals involved with the treatment program. No DFA employees shall be required to handle and/or apply any chemicals related to the treatment program.

b.9 The successful Proposer shall be responsible for the ordering and transporting of all chemicals to the proper DFA location on an as-needed basis. Bulk storage of chemicals on-site will not be allowed.

b.10 The successful Proposer shall supply secondary spill containment for all chemicals with a containment capacity of 120% of chemicals stored. A minimum of ten (10) injection points shall require spill containment.

b.11 The successful Proposer shall use liquid products for cooling tower corrosion inhibitor, boiler sludge conditioner, and condensate line treatment and shall not use solid or paste products, except solids can be used in the Robert E. Lee and the Central High systems.

b.12 The successful Proposer shall furnish and install the feed and control equipment, conduct an operational check out, and start up service for the treatment program and shall be responsible for all maintenance of equipment.

b.13 The successful Proposer shall provide operating and service training for specified DFA personnel, including applicable Operation and Maintenance (O & M) manuals.

b.14 The successful Proposer shall provide the following services on a weekly basis.

b.14.1 Perform checks of the program

b.14.2 Collect samples for submission to an authorized laboratory facility; and

b.14.3 Submit detailed reports to DFA Capitol Facilities that include: Treatment limits, test summaries, proposed corrective actions, and log sheets.

b.15 The successful Proposer shall provide as-needed visits to service the treatment program to address problems that may occur between Bi-weekly system checks.

b.16 The successful Proposer shall use modeling software that predicts scaling and corrosion as functions of cycles of concentration, pH, and temperature. An example of this type of report shall be provided with the Proposer's proposal submittal.

The Proposals shall also include the following items of information.

C. Proposal requirements:

c.1 Proposal shall include a resume of the potential management employee to oversee the implementation and maintenance of the treatment program; showing relevant experience with similar programs as requested in this RFP.

c.2 Proposal shall Provide appropriate certification and documentation of an employee who is a Certified Water Technologist (CWT) as certified by the Association of Water Technologies (AWT). The CWT will be responsible for designing and administering the treatment program. If CWT certification is not available at time of opening of proposals, the proposer shall provide appropriate documentation showing the ability of an employee or potential employee to obtain such designation before implementation for the treatment program. Resumes for the individual(s) meeting these qualifications must be submitted with the proposal. Failure to obtain CWT certification by date of implementation of the treatment program shall result in prevention of a contract agreement with DFA or cancellation of any agreement entered into between DFA and the proposer.

c.3 Proposal shall provide a certificate of authorization for a laboratory testing facility.

c.4 Proposal shall provide a schematic layout of the proposed treatment program and cut sheets for necessary equipment.

c.5 Proposal shall provide a proposed schedule for installation and startup for the treatment program.

c.6 Proposal shall provide a list of all proposed chemicals to be used in the treatment program, including: Feed or dosage rates; Material Safety Data Sheets (MSDS); and estimated weight to be applied during the potential five (5) year agreement.

c.7 Proposal shall provide an overview regarding operating and service training for the treatment program.

c.8 Proposal shall include a sample modeling software report that is proposed to be used to predict scaling and corrosion as functions of cycles of concentration, pH and temperature.

**2.3 Term**

The term of contract shall be for a period of 4 years, with one (1) option to renew for one additional year. Upon written agreement of both parties at least 90 days prior to the end of the contract time, the contract may be renewed by the Department of Finance and Administration, Office of Capitol Facilities for additional successive one-year periods under the same prices, terms and conditions as in the original contract subject to approval by PPRB. The total number of renewal years permitted shall not exceed one.

## SECTION 3

**3.1 Insurance**

The successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The Department of Finance and Administration, Office of Capitol Facilities reserves the right to request from carriers, certificates of insurance regarding the required coverage.

**3.1.1 Workers' Compensation** – as required by the State of Mississippi

**3.1.2 Comprehensive General of Commercial Liability**

Provide at least $1,000,000 each occurrence for bodily injury, personal injury, accidental death, and property damage with the State of Mississippi added as an additional insured.

**3.1.3 Motor Vehicle Liability Insurance**

Provide covering all vehicles, owned or otherwise, used in the contract work with limits of at least $1,000,000 per occurrence for injuries including accidental death to any person and subject to the same limit for each person for any one accident involving two or more persons with the State of Mississippi added as an additional insured.

**3.1.4 Motor Vehicle Property Damage**

Provide covering all property damage by vehicle with limits of $250,000 with the State of Mississippi added as an additional insured.

## SECTION 4

### 4.1 Bid Evaluation

Bids will be evaluated and awarded to the lowest responsive, responsible bidder meeting all mandatory minimum requirements as follows:

#### 4.1.1 Responsive Bidder

Bidder must submit bid including Bid Form and all required Attachments and other documents which conform in all material respects to this Invitation for Bids IFB #3160002842, as determined by the Department of Finance and Administration, Office of Capitol Facilities.

#### 4.1.2 Nonconforming Terms and Conditions

A bid response that includes submission of terms and conditions in addition to or proposed as modifications to those included in this solicitation shall constitute a conditional bid and subject to rejection as nonresponsive. The Department of Finance and Administration, Office of Capitol Facilities reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to determination of responsiveness of bidder.

#### 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 Quote package must be sealed and must contain the following:

- Bid Form (**Attachment A**)
- Certifications and Assurances (**Attachment B**)
- Bidder References (**Attachment C**)
- Required Clauses in IFBs, RFPs, and RFQs **(Attachment D)**
- DFA Personal Service Contract **(Attachment E)**

#### 4.1.5 Confidential Information

Any bidder claiming that its response contains information exempt from the Mississippi Public Records Act (Mississippi Code Annotated §§ 25-61-1, *et. seq.*, and 79-23-1), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption.

#### 4.1.6 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 the Department of Finance and Administration, Office of Capitol Facilities. Bidder shall also meet the following minimum qualifications in order to be deemed responsible:

##### 4.1.6.1 Previous Experience

Bidder shall document a minimum of two (2) years of successful previous experience providing similar services at one or more properties with elevators in numbers totaling no less than total required by the scope of this IFB. Include a minimum of there (3) contact references including number of elevators maintained for validation of such experience on References Form (Attachment C). Provide a minimum of two (2) additional contact references documenting experience of bidder providing such services at a Mississippi Landmark and/or National buildings. All information received from those clients, if contacted, must verify that a high level of satisfaction was provided in that service trace.

### 4.2 Bid Opening

Bid opening will be open to the public; however, this will include opening, reading aloud, and listing the bid unit prices and total prices 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 Notice of Intent to Award

Notice of Intent to Award, subject to approval of PPRB, shall be made to the winning bidder in writing and shall be posted on the Department of Finance and Administration website within three days of receipt of bids. Such notice shall also include a tabulation of all bids received and indicate any bids rejected as non-responsive or non-responsible.

## SECTION 5

### 5.1 Post-Award Vendor Debriefing

A responding vendor, 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 the Department of Finance and Administration within three (3)

business days of notification of intent to 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 vendor prefers to have legal representation present, the vendor must notify the Executive Director in writing at the time of request and identify its attorney by name, address, and telephone number. The Department of Finance and Administration will schedule any debriefing at which vendor will have legal representation present 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 *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.*

**5.2 Protest of Award**

Any actual or prospective responding vendor or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Proposals may file a protest with the Department of Finance and Administration Purchasing Director. The protest shall be submitted on or before 5:00 p.m. CST, June 13, 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 responding vendor or an individual authorized to sign contracts on behalf of the protesting responding vendor, 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 responding vendor must provide facts and evidence to support the protest. A protest is considered filed when received by the Purchasing Director via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 5:00 p.m. CST, May 19, 2019, will not be considered.

**5.2 Contract Terms and Conditions**

Contract terms and conditions shall be limited to those as included in the Department of Finance and Administration Personal Services Contract (Attachment D).

**5.3 Mississippi Contract / Procurement Opportunity Search Portal**

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

# ATTACHMENT A

## BID FORM

## HVAC WATER TREATMENT PROGRAM

| Location | MONTHLY BILLING RATE ($) | BASIC HOURLY BILLING RATE |
|---|---|---|
| Woolfolk Central Plant | | |
| Woolfolk Building | | |
| Governor's Mansion<br>HVAC Chemical treatment and (domestic water treatment) | | |
| Woolfolk CMP | | |
| New Capitol | | |
| Sillers | | |
| Gartin | | |
| Robert E. Lee | | |
| Robert Clark | | |
| Central High | | |
| Heber Ladner | | |
| War Memorial | | |
| Capers | | |
| Depot | | |
| Old Capitol | | |
| Naval Reserve Center | | |
| William Winter Building | | |
| William Winter CMP | | |
| 515 East Amite Street/Patrick Alan Nunnelee | | |
| 700 North State Street | | |
| 620 North Street | | |
| 660 North Street | | |
| Bolton State Office Building | | |
| Mississippi History & Civil Rights Museums | | |
| | | |
| | | |
| | | |

**Total per month proposal amount** $_____

**Total yearly proposal amount** $_____

**Total 4 year contract period amount** $_____

**ADDENDA ACKNOWLEDGMENT:** (if any)

No. _____ No. _____

No. _____ No. _____

No. _____ No. _____

**ACCEPTANCE:**

I certify that I have thoroughly read, understand, and agree to all provisions of this Request for Proposals and the attachments herein, that the company meets all requirements and acknowledges all certifications

herein, has, or will secure, all applicable personnel who shall be qualified to perform the duties required to be performed, and will perform, without delay, the services required at the prices quoted, and am authorized to enter into a binding contract if this proposal is accepted.

Signature: _____ Date: _____

Name / Title: (Printed) _____

Name of Business: _____ (as recorded at the Secretary of State)

Physical Street Address: _____

City/State/Zip: _____

Mailing Address: (if different) _____

City/State/Zip: _____

# ATTACHMENT B

## 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 and that the truthfulness of the facts affirmed herein and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by signing below:

1. **REPRESENTATION REGARDING CONTIGENT FEES**
   The bidder represents as a part of Contractor's bid that Contractor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

2. **REPRESENTATION REGARDING GRATUITIES**
   The bidder represents that it ____ has or ____ 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 Services Contract Review Rules and Regulations*.

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**
   The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, intention to submit a bid, or the methods or factors used to calculate price.

4. **REPRESENTATION REGARDING REQUIRED SUPERVISON**
   Bidder represents that it has and will provide experienced and qualified supervisory personnel who will be present at all times during performance of any and all work of this contract. Contractor Account Manager(s) shall be made available for a regularly scheduled progress meetings with representatives of the Office of Capitol Facilities and/or tenants on not more than a monthly basis.

Signature: _____ Date: _____

Name/Title: (printed) _____

# ATTACHMENT C
## REFERENCES

**Reference #1:**

Client Name/Location: _____

Services Provided: _____

Dates of Service: _____

Account Manager: _____

Contact Name: _____

Phone: _____ E-Mail: _____

**Reference #2:**

Client Name/Location: _____

Services Provided: _____

Dates of Service: _____

Account Manager: _____

Contact Name: _____

Phone: _____ E-Mail: _____

**Reference #3:**

Client Name/Location: _____

Services Provided: _____

Dates of Service: _____

Account Manager: _____

Contact Name: _____

Phone: _____ E-Mail: _____

**Reference #4:**

Client Name/Location: _____

Services Provided: _____

Dates of Service: _____

Account Manager: _____

Contact Name: _____

Phone: _____ E-Mail: _____

**Reference #5:**

Client Name/Location: _____

Services Provided: _____

Dates of Service: _____

Account Manager: _____

Contact Name: _____

Phone: _____ E-Mail: _____

The bidder may submit as many references as desired by submitting as many additional copies of this Attachment C, References, as needed. The Department of Finance and Administration will begin contacting references at the top of the list and will continue down the list until at least three contacts have been reached.

## ATTACHMENT D

### Required Clauses in IFBs, RFPs, and RFQs

**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 said State. The Contractor shall comply with applicable federal, state, and local laws and regulations.

**Availability of Funds**

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

**Procurement Regulations**

The Contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review 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.

**Compliance with Laws:**

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

**Stop Work Order:**

(1) **Order to stop work**. The Chief Procurement Officer, may by written order to the Contractor at any time, and without notice to any surety, require the 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 the 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, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to 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:

(a) cancel the stop work order; or,

(b) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.

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

(a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and,

(b) Contractor asserts a claim for such an adjustment within thirty (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.

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

(4) **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

**Representation Regarding Contingent Fees**

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

**Representation Regarding Gratuities**

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

**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 acknowledgment must be received by the Department of Finance and Administration (DFA) by the time and at the place specified for receipt of bids.

## Certification of Independent Price Determination

The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

## Prospective Contractor's Representation Regarding Contingent Fees

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

## E-Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA 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 the invoice. Mississippi Code Annotated § 31-7-301, *et seq*.

## 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 approval of the Social Security Administration or Department of Homeland Security when required, the 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 the Contractor to the following:

(1) termination of this Contract for services and ineligibility for any state or public

contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public;

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

(3) In the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to the Contract cancellation or loss of license or permit to do business in the State.

**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 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 the 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.

**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.

**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 the Contractor's choice. The State may, at its sole discretion, require the 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.

## ATTACHMENT E

***(UTILIZE FOR INDEPENDENT CONTRACTOR PERSONAL SERVICES CONTRACTS GREATER THAN $75,000.00)***

## PERSONAL SERVICE CONTRACT

This Personal Service Contract is made by and between the Department of Finance and Administration, a state agency, (the "DFA") whose address is 501 North West Street, Suite 1301 Woolfolk Building, Jackson, Mississippi 39201 and _____, (the "Contractor") whose address is _____ on the ____ day of _____, 20__, under the following terms and conditions:

1. **Scope of Services**: (*Insert the scope of services to be performed by Contractor*)

   The Contractor will provide services as specified in the (*Request for Proposal, Invitation for Bid, etc…*) (hereinafter referred to and attached as Exhibit "A"), and the (*Proposal Bid, etc…*) by the Contractor dated (*insert date*) (hereinafter referred to and attached as Exhibit "B").

2. **Contract Term**: (*May be entered into for a period of time, not to exceed four (4) years, with an option to renew for one (1) year.*)

3. **Consideration**: (*Insert payment amount, schedule of payments, etc…*)

4. **E-Payment**: The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA 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 the invoice. Miss. Code Ann. § 31-7-301, *et seq.*, as amended.

5. **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 the Contractor's choice. The State, may at its sole discretion, require the Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

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

7. **Record Retention and Access to Records:** Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the DFA or any duly authorized representatives shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the Contractor for a period of three (3) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

8. **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 said State. The Contractor shall comply with applicable federal, state, and local laws and regulations.

9. **Anti-Assignment/Subcontracting:** The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the DFA, which the DFA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations, without said consent, shall be null and void. No such approval by the DFA of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the DFA 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.

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

11. **Transparency:** This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at http://www.transparency.mississippi.gov. Information identified by the 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.

12. **E-Verification:** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. § 71-11-1, *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State 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. The Contractor agrees to maintain records of such compliance. Upon request of the State and approval of the Social Security Administration or Department of Homeland Security when required, the Contractor agrees to provide a copy of each such verification. The 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 the Contractor to the following:

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

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

(3) both. In the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to the Contract cancellation or loss of license or permit to do business in the State.

13. **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. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DFA. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA, and the DFA shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The DFA 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 DFA shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

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

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

16. **Representation Regarding Contingent Fees:** The Contractor represents that it has not retained a person to solicit or secure a DFA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid, proposal or qualifications.

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

18. **Termination for Convenience:**

    (1) Termination. The DFA may, when the interests of the DFA so require, terminate this Contract in whole or in part, for the convenience of the DFA. The DFA shall give written notification of the termination to the Contractor specifying the part of the Contract terminated and when the termination becomes effective.

    (2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The DFA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the DFA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

19. **Termination for Default:**

    (1) *Default.* If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the DFA may notify the 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 DFA, the DFA may terminate the Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the DFA may procure similar supplies or services in a manner and upon terms deemed appropriate by the DFA. The Contractor shall continue performance of the Contract to the

extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) *Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the DFA has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the DFA shall be at the contract price. The DFA may withhold from amounts due the Contractor such sums as the DFA deems to be necessary to protect the DFA against loss because of outstanding liens or claims of former lien holders and to reimburse the DFA for the excess costs incurred in procuring similar goods and services.

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the DFA 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 make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the Contract requirements. Upon request of the Contractor, the DFA shall ascertain the facts and extent of such failure, and, if DFA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the DFA 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).

(5) *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the

provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the DFA, be the same as if the notice of termination had been issued pursuant to such clause.

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

20. **Stop Work Order:**

(1) *Order to stop work.* The Chief Procurement Officer, may by written order to the Contractor at any time, and without notice to any surety, require the 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 the 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, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to 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:

(b) cancel the stop work order; or,

(b) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.

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

(b) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and,

(b) the 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 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.

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

(4) *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

21. **Price Adjustment:**

(1) *Price Adjustment Methods.* Any adjustment in contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the additional performance;

(b) by unit prices specified in the contract;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Contract; or,

(d) by the price escalation clause.

(2) *Submission of Cost or Pricing Data.* The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.*

22. **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 DFA and agreed to by the Contractor.

23. **Ownership of Documents and Work Papers:** The DFA 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 the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the DFA upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to

use such work papers only after receiving written permission from the DFA and subject to any copyright protections.

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

25. **Third-Party Action Notification:** The Contractor shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this Agreement.

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

| For the Contractor: | For the DFA: |
|---|---|
| Name | Laura D. Jackson |
| Title | Executive Director |
| Address | Post Office Box 267 |
| City, State, & Zip Code | Jackson, Mississippi 39205-0267 |

27. **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.

28. **Priority:** The Contract consists of this Agreement, the request for proposal *[number]* (hereinafter "RFP" and attached as Schedule [ ]), and the response proposal by *[Contractor]* dated *[date]* (hereinafter "Proposal" and attached as Schedule [ ]). Any ambiguities, conflicts or questions of interpretation of this Contract shall be resolved by first, reference to this Agreement and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this Agreement or attached Schedules [ ] or [ ] shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this contract.

29. **Change in Scope of Work:** The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the DFA and the Contractor.

    If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the DFA in writing of this belief. If the DFA 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 Contract.

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

31. **Recovery of Money:** Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the DFA, the same amount may be deducted from any sum due to the Contractor under the Contract or under any other contract between the Contractor and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the

amount of any loss or damage suffered by the DFA on account of the acts or omissions of the Contractor.

32. **Failure to Enforce:** Failure by the DFA 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 DFA to enforce any provision at any time in accordance with its terms.

33. **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.

34. **Termination Upon Bankruptcy:** This Contract may be terminated in whole or in part by the DFA upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the 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.

35. **Confidentiality:** Notwithstanding any provision to the contrary contained herein, it is recognized that DFA 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 the DFA pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the DFA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The DFA shall not be liable to the Contractor for disclosure of information required by court order or required by law.

36. **Contractor's Insurance**: Contractor shall comply with the Worker's Compensation Laws of the State of Mississippi. Contractor shall maintain general liability insurance with the limits of $1,000,000 per occurrence for bodily injury, accidental death, and property damage. Contractor shall maintain motor vehicle liability covering all vehicles, owned or otherwise used, in the contract work with the limits of $1,000,000 per occurrence. Contractor shall also maintain motor vehicle property damage coverage for all property damage by vehicle with the limits of $250,000. The State of Mississippi shall be the certificate holder for this policy of insurance.

Witness our signatures, on the date first written.

| (Insert Contractor) | Department of Finance and Administration |
| --- | --- |
| By:_____ | By:_____ |
| Name | Laura D. Jackson |
| Title | Executive Director |