

# INVITATION FOR BIDS

No. 2022-03



Mississippi Department of Finance & Administration  
Office of Personal Service Contract Review

*Preapproved List of Vendors for  
Lawn and Landscaping Services*  
RFx # 3160005040

Issue Date:  
April 11, 2022

Closing Date:  
May 13, 2022 at 10:00 AM CST

**Contact Information for this IFB:**

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# GENERAL INSTRUCTIONS

## 1. Authority

The Public Procurement Review Board (“PPRB”) “may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board” (Mississippi Code Annotated § 27-104-7(2)(i)).

## 2. Purpose

The Office of Personal Service Contract Review (“OPSCR”) at the Mississippi Department of Finance and Administration (“DFA”), on behalf of the PPRB, seeks to establish a Preapproved Vendor List (“PVL”) for lawn and landscaping services for use by state agencies under the purview of the PPRB (individually referred to as a “Contracting Agency”) on an as-needed basis in accordance with the terms, conditions, and specifications contained in this Invitation for Bids (“IFB”). OPSCR invites bids from qualified lawn and landscaping service providers for placement on the list.

There will be eight separate lists for the eight regions of the State in which services may be provided: (1) North Delta, (2) Northeast, (3) South Delta, (4) East Central, (5) Central, (6) Pinebelt, (7) Southwest, and (8) Coastal. See *Attachment B* for a map showing the regions and a list of counties in each region. Bidders may bid to provide services in one or more regions, or they may bid on all regions. To bid on a region, bidders must complete the bid package as described herein and certify that they can provide services for the entire region on which they are bidding. Bidders who wish to bid on more than one region should submit a separate bid form for each region with their bid package.

Bidders will be recommended for placement on the PVL as described in Section 13 of this IFB. Multiple vendors may be listed per region. Being placed on the list does not guarantee contracts will be issued. After the list is established, agencies may select and contract with Vendors from the list, avoiding the need for procurement. Contracts exceeding \$75,000.00 must be approved by the PPRB. Vendor(s) agree to extend services under this IFB to all authorized agencies within the geographic limits of the regions bid upon at the same price and under the same terms and conditions offered in this PVL for a period of five years, except as described in Section 17.3 of this IFB.

Any reference to “OPSCR”, “DFA”, or the “PPRB” throughout this IFB includes all three entities to the extent relevant.

## 3. Timeline

Anticipated dates are subject to change by OPSCR. Any official date changes will be issued through an Amendment to the IFB. This IFB, questions and answers concerning this IFB, amendments to the IFB, and the contract award will be posted on the DFA website and on the procurement portal.

Unless specifically indicated otherwise, any reference to the “DFA website” refers to the website found at: <https://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/invitations-for-bids/>.

Any reference to the “procurement portal” throughout this IFB refers to the website found at: [https://www.ms.gov/dfa/contract\\_bid\\_search/Home/Buy](https://www.ms.gov/dfa/contract_bid_search/Home/Buy).

Invitation for Bids Issue Date:	April 11, 2022
Questions and Requests for Clarification Due:	April 22, 2022 at 5:00 pm CST
Anticipated Posting of Written Answers:	April 29, 2022
Bid Package Submission Deadline:	May 13, 2022 at 10:00 am CST
Bid Opening:	May 13, 2022 at 1:00 pm CST
Anticipated Notice of Intent to Award:	May 20, 2022

**4. Questions and Requests for Clarifications**

**4.1** All questions and requests for clarification must be directed *by email* to:

Suzanne Hudson  
 Office of Personal Service Contract Review  
 Mississippi Department of Finance and Administration  
 Suzanne.Hudson@dfa.ms.gov

**4.2** Questions and requests for clarification must be submitted via email and received by Suzanne Hudson on or before April 22, 2022 at 5:00 pm CST. The bidder bears all risk of delivery and all responsibility for submitting questions timely. Questions which are not received via email by the above-stated date and time may not be answered.

**4.3** All questions, requests for clarification, and answers will be published on the DFA website and the procurement portal in a manner that all bidders will be able to view.

**4.4** OPSCR, DFA, and PPRB will not be bound by any verbal or written information that is not contained within this IFB, unless an amendment to the IFB is issued.

**4.5 Acknowledgement of Amendments:** Should an amendment to the IFB be issued, it will be posted on the DFA website and the procurement portal in a manner that all bidders will be able to view. Further, bidders *shall acknowledge receipt of any amendment* to the solicitation by signing and returning the amendment with the bid package, 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 OPSCR by the time and at the place specified as the bid package submission deadline. Bidders bear all responsibility of monitoring the DFA website for amendments to the IFB.

**4.6 Attachments:** The attachments to this IFB are fully incorporated into the IFB.

## **5. Bid Preparation**

**5.1** Failure to prepare the bid package as required herein may result in the bidder being deemed non-responsive to the solicitation and the rejection of the bid.

**5.2** All bids shall be in writing.

**5.3** Each page of the bid package shall be identified with the name of the Bidder.

**5.4** All pricing must be submitted on the *Bid Form (Attachment C)*.

**5.4.1** Vendors bidding on more than one region may bid different rates in different regions. Bidders must submit a separate Bid Form for each region.

**5.4.2** Each Bid Form must be complete and signed by a person who has authority to execute contracts for the bidder.

**5.4.3** Modifications or additions to any portion of the procurement document may be cause for rejection of the bid. OPSCR reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive.

**5.4.4** As a precondition to bid acceptance, OPSCR may request the Bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

**5.5** *References (Attachment E):* Each bidder must furnish a listing of at least three references along with the contact person, address, email address, and phone number for each. These references must be familiar with the bidder's abilities in the areas involved with this solicitation. OPSCR will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. OPSCR will not track down references. OPSCR must be able to reach two references for a bidder within two business days of the bid opening to be considered responsive. The bidder must score a minimum of six points on each *Reference Score Sheet (Attachment F)* used by OPSCR when interviewing the references (for a total minimum scoring requirement of 12 points) to be considered responsive and/or responsible. Bidders may submit as many references as desired. OPSCR will begin contacting references at the top of the list and will continue down the list until they have completed Reference Score Sheets for two references. After two score sheets are completed, the reference check process will end. *OPSCR will also list the first three references listed by each successful bidder on the list of preapproved vendors such that any prospective Contracting Agency may inquire as to the Vendor's prior performance.*

**5.6** OPSCR, DFA, and PPRB accept no responsibility for expenses incurred by bidders in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

**5.7** *Independent Price Determination:* By submitting a bid, 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 bid. The prices quoted shall be inclusive of, but not limited to, the following: all required equipment/material; all required insurance; all required overhead; all required profit; all required vehicles; all required fuel; and all required licenses, certifications, fees, or permits.

## 6. Bid Submission Requirements

**6.1** Failure to submit the bid package as required herein may result in the bidder being deemed non-responsive to the solicitation and the rejection of the bid.

**6.2** The original and two copies of the bid package, three copies total, shall be signed and submitted in a sealed envelope or package to:

Suzanne Hudson  
Office of Personal Service Contract Review  
Mississippi Department of Finance and Administration

<i>Physical Address</i>	<i>Mailing Address</i>
501 North West Street, Suite 700	P.O. Box 267
Jackson, MS 39201	Jackson, MS 39205

**6.3** The bid package must be sealed and must contain the following completed forms:

ATTACHMENT A: Bid Cover Sheet

ATTACHMENT C: Bid Form (*bidders submitting bids for multiple regions must submit a separate Bid Form for each region.*)

ATTACHMENT D: Certifications & Assurances

ATTACHMENT E: References

**6.4** Bids must be received no later than **May 13, 2022 at 10:00 am CST**. The time and date of receipt shall be indicated on the envelope or package by OPSCR at the time the package is received.

**6.4.1** Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time will be rejected and shall remain unopened in the procurement file. The bidder assumes all risk regarding delivery of the bid. OPSCR, DFA, and PPRB will not be responsible for delivery delays, packages which are lost in the delivery process, or other deliver errors.

**6.5** Bids submitted via facsimile or electronic mail will not be accepted.

**6.6** 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.

**6.7** The outside of the sealed envelope or package containing the bid shall be marked:

Lawn and Landscaping Services  
RFx # 3160005040  
Bid Opening: May 13, 2022 at 1:00 pm CST  
SEALED BID – DO NOT OPEN

**6.8** *Trade Secrets or Confidential Commercial or Financial 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.

**6.8** *Registered to do Business in Mississippi:* By submitting a bid, the bidder certifies that it is registered to do business as prescribed by the Mississippi Secretary of State (Miss. Code Ann. § 79-4-15.01) or, if not already registered, that it will do so within seven (7) business days of being offered an award.

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

## **7. Bid Opening**

**7.1** The bid opening will be held:

May 13, 2022 at 1:00 pm CST  
Woolfolk State Office Building  
501 North West Street  
Jackson, Mississippi 39201  
Room 117 South

**7.2** The Bid Opening is open to the public. It will include opening, reading, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications. No award will be made, either stated or implied, at the bid opening.

## **8. Procurement Methodology**

**8.1** *Restrictions on Communication with staff and/or members of OPSCR, DFA, and PPRB:* At no time shall any bidder or its personnel contact, or attempt to contact, any PPRB, DFA, or OPSCR staff regarding this IFB except the contact person as set forth and in the manner prescribed in Section 4.1.

**8.2** *Rejection of Bids:* A bid response that includes terms and conditions that do not conform to the terms and conditions in the IFB document is subject to rejection as non-responsive.

Further, submission of a bid form that is not complete and/or signed is subject to rejection as non-responsive. OPSCR reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by DFA staff of non-responsiveness based on the submission of nonconforming terms and conditions.

### **8.3** *Withdrawal of Bid*

**8.3.1** If a bid is substantially lower than those of other bidders, a mistake may have been made. A bidder may withdraw its bid if certain conditions are met:

- a. The bid is submitted in good faith;
- b. The price bid is substantially lower than those of other bidders because of a mistake;
- c. The mistake is a clerical error, not an error of judgment; and,
- d. Objective evidence 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 of labor or material.

**8.3.2** To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to OPSCR of claim of right to withdraw a bid. Within two business days after the bid opening, the bidder requesting withdrawal must provide to OPSCR all original work papers, documents, and other materials used in the preparation of the bid.

**8.3.3** A bidder may also withdraw a bid prior to the time set for the opening of bids by simply making a request in writing to OPSCR. No explanation is required.

**8.4** *Note to Agencies and Vendors:* Agencies are cautioned that this procurement may not comply with guidelines from outside funding sources such as the federal government or various grants. It is the Contracting Agency's responsibility, when using such funding sources, to verify that this IFB meets all state and federal procurement requirements. *This procurement does not replace currently active service contracts, and agencies will not be asked to terminate their current contracts.* Agencies do not have to contract with the vendors on the PVL; however, using vendors from the list will eliminate the need for procurement.



## **SPECIFICATIONS**

### **9. Scope of Services**

**9.1** The PVL will be region-specific. The services may be provided in eight different regions of the state, including: (1) North Delta, (2) Northeast, (3) South Delta, (4) East Central, (5) Central, (6) Pinebelt, (7) Southwest, and (8) Coastal. There will be a separate PVL for each of these regions (*See Attachment B*). Bidders may bid to provide services in one or more regions, or they may bid on all regions. Bidders placing bids on more than one region should submit a separate Bid Form for each region (*See Attachment C*).

**9.1.1** Bidders must certify that they can provide services for the entire region on which they bid (*See Attachment D*).

**9.1.2** Being placed on the PVL does not guarantee contracts will be issued.

**9.2** The Contractor shall furnish all labor, material, supplies, vehicles, equipment, tools, skills, and supervision necessary for the satisfactory completion of all lawn and landscaping services specified. The equipment and materials provided by the Contractor shall remain the property of the Contractor. Professional lawn and landscaping services include, but are not limited to, litter, leaves, and debris pick up and removal prior to mowing (cups, napkins, bags, etc.); branch removal and placement in designated location (Contracting Agency to haul away); lawn mowing of all grass areas; grass border trimming or edge trimming of lawn adjacent to curbs, sidewalks, pavement, driveways, parking areas, buildings, property lines, etc.; string trimming around posts, fences, trees, monuments, hedges, planter beds, mulched areas, etc.; blowing all trimmings, leaves, clippings, and debris off of roadway, sidewalks, paths, walkways, pavilions, parking lots, and other surfaces or areas (do not blow onto streets or into storm drains); shrub bed maintenance (weed removal and removal of litter); and pruning.

**9.3** The Contractor must notify Contracting Agency of any safety issues and waste debris or large illegally dumped materials.

**9.4** Each time work is performed, the Contractor must check in and out with the Agency representative.

**9.5** All lawn and landscaping services must be performed at the Contracting Agency's convenience so as not to interrupt its normal operations. Services may be provided at a large range of facilities. Each agency may have more than one location in different regions of the State. Contractor may be required to perform the lawn and landscaping services outside of the Contracting Agency's regular business hours. Most agencies operate on a Monday – Friday, 8:00 AM to 5:00 PM business hours schedule. Contractor personnel may be required to sign-in and sign-out at state facilities. Security provisions for all state facilities must be strictly observed. All Contractor personnel must be uniformed or have visible identification at all times. Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities and/or grounds. The Contractor is advised that for all state facilities, Contractor personnel shall strictly abide by all state policies and procedures at all times. Deviations from these policies by

the Contractor or its personnel will not be tolerated and will be considered grounds for contract termination.

**9.6** Contractor shall maintain the grounds in a neat and clean condition. The grounds include all lawn areas, under shrubs and trees, and all shrubbery or planter beds. Professional lawn and landscaping services include, but are not limited to:

**9.6.1** *Debris Removal Requirements.* Prior to mowing, the Contractor shall be responsible for the collection and removal of all litter and debris to include, but not limited to, any foreign material (cups, napkins, bags, etc.), garbage, leaves, dead branches, lumber, tires, appliances, and mattresses. The litter shall be legally discarded off-site at a reputable landfill/waste facility. There shall be no debris and/or litter left at the curb. Any debris that requires special handling shall be collected and moved to a designated location or area identified by the Contracting Agency to haul away. Contractor shall notify the Contracting Agency of any safety issues and waste debris or large illegally dumped materials.

**9.6.2** *Mowing Requirements.* Contractor shall be responsible for the lawn mowing of all grass areas in accordance to the height standards set by the Contracting Agency. Contractor shall mow all grass areas to a continuous height, as dictated by rainfall accumulation and effect on growth. Mowing heights shall be measured with mower on a flat, paved surface. A high quality cut shall be provided using mowers with sharp cutting edges. Mowing shall be accomplished in such a manner as not to damage property, trees, shrubs, signs, or other appurtenances. Contractor shall remove minor obstacles or obstructions from areas to be mowed and replace when finished. When mowing around vehicles the Contractor shall mow in directions as to keep grass clippings off the vehicles. Deflective guards shall be in place during mower operations. Grass clippings thrown or blown onto paved areas must be removed. Grass clippings shall be removed when they are excessive, clump, or are such as to negatively impact the health of the lawn. Bunches and rows resulting from mowing shall be removed or raked out. Discharge from mowers does not need to be collected, but it must be evenly distributed (i.e., no clumping or rows left by mowers).

**9.6.3** *Trimming and Edging Requirements.* All grass under and around trees, shrubs, picnic tables, fences, poles, posts, signage, walls, building foundations, monuments, rocks, sprinkler heads, valves, HAV systems, planter beds, mulched areas, property lines, asphalt or concrete paved areas, curbs, sidewalks, walkways, driveways, ramps, garbage rack enclosures, or any other permanent structure or obstacle shall be trimmed to match the height and appearance of the surrounding mowed grass. Vegetation in banks, ditches, or any other area not accessible by mower that is within grounds location being mowed must also be trimmed each time the area is mowed. Trimming may be accomplished by hand clipping or by using “weed eater” type equipment. Any trees, shrubs, or grass areas that are killed by trimming operation shall be replaced by the Contractor; and any structure damaged by the trimming operation shall be repaired or replaced by the Contractor. Edging adjacent to all asphalt or concrete paved areas, such as but not limited to entrances to buildings, curbs, sidewalks, walkways, and driveways. Trimming and

edging operations shall be done the same day as grass cutting. Grass cutting shall not be considered complete until all trimming and edging operations are accomplished.

**9.6.4** *Blowing Requirements.* Contractor shall remove all trimmings, leaves, and clippings off of roadway, sidewalks, paths, walkways, entrance areas, pavilions, dumpster areas, parking lots, and other surfaces or areas. Grass clippings and trimmings shall be removed from sidewalks and other paved areas the same day the grass are cut. Contractor shall not blow litter, leaves, and other debris onto streets, adjacent streets, or into storm drains. Grass cutting shall not be considered complete until all blowing operations are accomplished.

**9.6.5** *Planter and Shrub Bed Maintenance.* Contractor shall ensure all mulched plant bed areas are consistently kept weed-free. Remove old mulch and replenish mulch as requested by the Contracting Agency. Contracting Agencies may occasionally purchase mulch for the Contractor to spread or annuals, perennials, or shrubs for the Contractor to plant.

**9.6.6** *Pruning Requirements.* Before the growing season Contractor shall shape, prune, and trim small trees and ornamental plantings, including shrubs, and remove all debris to a designated location or area identified by the Contracting Agency to haul away. Contractor will trim and shape all shrubbery, prune dead, broken, and diseased wood or branches from small trees and ornamental plantings, and remove “sucker shoots” from all deciduous trees. There shall be no debris and/or litter left at the curb. While litter shall be legally discarded off-site at a reputable landfill/waste facility at the Contractor’s expense, any debris that requires special handling shall be collected and moved by the Contractor to a designated location or area identified by the Contracting Agency to haul away. Contractor shall notify the Contracting Agency of any safety issues and waste debris or large illegally dumped materials.

**9.6.7** *Aeration Requirements.* All appropriate lawn areas shall be aerated once a year in the spring, excluding ball field areas and embankment areas.

**9.6.8** *Weed/Disease Control.* Contractor shall remove grass and weeds from cracks in all sidewalks, curbs, parking areas, graveled areas, asphalt or concrete paved areas, and around the building perimeters. Fenced areas shall be cleaned of all weeds and vines.

**9.6.9** *Lawn Maintenance.* Contractor shall fill in holes in the lawn with topsoil, reseed bare areas with seed that is appropriate to area seeded (sun, shade, or mixture thereof), apply initial watering for successful germination, and overseed all grassy areas once a year, in the fall, excluding ball field areas and embankment areas. If seed is required, it will be provided by the Agency.

**9.7** Detailed scope and specific requirements of the work required will be provided by the Contracting Agency when a Vendor on the PVL is selected for consideration with respect to a specific project or need. Such scope and requirements will include, but are not limited

to, description of work activities, definition of particular deliverables, time frames, and budget parameters. All lawn and landscaping services must equal or exceed the specifications listed. The absence of detailed specifications or the omission of a detailed description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality equipment and workmanship are to be used.

## **10. Contract Deliverables**

**10.1** Upon execution of a contract with a Contracting Agency, Vendors on the PVL shall, with respect to all lawn and landscaping services provided to a Contracting Agency:

**10.1.1** Assign a Contractor Account Representative to work directly with the Contracting Agency Representative;

**10.1.2** Maintain a sufficient pool of qualified Contractor personnel large enough to meet the Contracting Agency's needs; included in the workforce shall be a competent supervisor or crew foreman. Contractor's supervisor or crew foreman shall have control of all work crews assigned to perform work under contracts resulting from this IFB; is expected to be on-site during times when work crews are assigned to perform; and shall report without delay any damage to Contracting Agency property. In addition to directing the daily activities of the Contractor's employees, the Contractor's supervisor or crew foreman shall be responsible for security issues with the lawn care staff, equipment, and supplies.

**10.1.3** Provide all labor, materials, supplies, vehicles, equipment, tools, skills, and supervision necessary for the satisfactory completion of all lawn and landscaping services. The equipment and materials provided by the Contractor shall remain the property of the Contractor. All materials, equipment, etc., used in the provision of these services shall comply with industry standards and all Occupational Safety Hazards Act (hereinafter "OSHA") safety requirements. Further, that all costs necessary to bring the materials, equipment, etc. into compliance with aforementioned requirements shall be borne solely by the Vendor.

**10.1.4** Provide all lawn and landscaping services as needed and/or scheduled by the Contracting Agency during the hours specified by the Contracting Agency.

**10.1.4.1** The Contractor and Contracting Agency shall develop a schedule of services. Failure to maintain the schedule without concurrence of the Contracting Agency shall be considered a service deficiency. Failure to deliver satisfactory services may be considered default. The service schedule may be changed to meet the Contracting Agency's needs when mutually agreed upon by both parties. The Contractor shall coordinate with the Contracting Agency to schedule service times and dates. Schedule may be adjusted at any time by the Contracting Agency to better complement the Contracting Agency's requirements and to accommodate unexpected schedule changes and/or added events. The Contracting Agency may suspend the schedule during periods of dry weather or wet weather conditions.

- 10.1.4.2** If the Contractor fails to adhere to the lawn and landscaping service schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, the Contracting Agency will inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the Contracting Agency may terminate the contract without further obligation to the Contractor. (Contracting Agency may elect to use the form included as *Attachment I*, Contract Discrepancy Report.)
- 10.1.4.3** The Contractor shall respond to all lawn and landscaping services requests within a twenty-four (24) hour period.
- 10.1.4.4** Time between routine services shall vary based on precipitation patterns, temperature, and season. The frequency of mowing will be as needed, and the schedule will vary at the Contracting Agency's discretion as a result (i.e., the frequency of mowing will decrease during a drought; while extra mowing may be required in wet periods).
- 10.1.5** Be responsible for any damage to the facilities, building, interior, or their approaches in provision of lawn and landscaping services and shall be held responsible for replacing or repairing any damage due to negligence on the part of the Contractor or Contractor personnel to any person(s) and/or property. The Contractor shall replace and repair any damage to any building or property, including but not limited to the replacement of any damaged finished surfaces (sidewalks, curbs, etc.) caused by performance of the lawn and landscaping services. Contracting Agency may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property. Contractor shall take all necessary precautions to reduce or eliminate damage to irrigation system.
- 10.1.6** Abide by all State and/or agency policies, procedures, ordinances, and/or laws pertaining to the Contracting Agency's operation at all times, including but not limited to the items listed below. Deviations from these policies by the Contractor or its personnel will not be tolerated and will be considered grounds for contract termination.
- 10.1.6.1** All state facilities are non-smoking; the Contractor and its personnel must adhere to this requirement. The use of tobacco products is prohibited, except within designated smoking areas.
- 10.1.6.2** It is illegal to have in one's possession any illegal drug or alcoholic beverage while on state property. Contractor personnel shall not consume any illegal or illegally obtained drug or alcoholic beverage while on duty.

- 10.1.6.3** The Contractor's personnel should refrain from using foul, abusive, or profane language on state property.
  - 10.1.6.4** The Contractor's personnel shall not flirt or fraternize with Agency personnel or any visitor at the Agency.
  - 10.1.6.5** Contractor's personnel shall not solicit or otherwise interfere with the work of the Contracting Agency employees.
  - 10.1.6.6** Contractor's personnel shall not engage in personal activities (such as, but not limited to texting, personal phone calls, reading magazines, etc.) while on the job, and shall comply with the Agency's restrictions regarding visitation with friends, family members or acquaintances while on the job.
  - 10.1.6.7** The Contracting Agency reserves the right to inspect and search all Contractor personnel and/or vehicles anytime while on facility grounds.
  - 10.1.6.8** Contractor personnel are required to sign-in and sign-out at most state facilities. Security provisions for all state facilities must be strictly observed.
  - 10.1.6.9** Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities and/or grounds. Contractor identification badges, personal identification of the individual employee, and/or visitor badges shall be worn and clearly visible while on state property.
- 10.1.7** Perform all services provided in the contract between the Contractor and the Contracting Agency in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies. The Contractor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within this IFB shall negate compliance with any applicable governing regulation. The absence of detailed specifications or the omission of a detailed description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used.

**10.2** Contractors shall also:

- 10.2.1** Comply with all federal and state employment laws;
- 10.2.2** Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by

State, Federal, and local laws such as social security and withholding taxes for their business and employees;

- 10.2.3** Make all unemployment compensation contributions as required by federal and state law(s) and process claims as required;
  - 10.2.4** Provide qualified, competent, well-trained, drug-free, and appropriately dressed contract worker(s) and/or employee(s) to perform the duties required; proper dress shall include long pants (slacks) and shirts or blouses with sleeves (short or long). Shirts and blouses shall remain buttoned. Clothing should be appropriate for weather conditions. Examples of clothing not considered appropriate shall include tank tops, shirts with no sleeves, shirts with cut out sleeves, shirts with sleeves rolled up to the shoulder, shorts, and flagging vests with no shirts.
  - 10.2.5** Accurately describe the job duties required to its contract worker(s) and/or employee(s);
  - 10.2.6** Properly manage and supervise its contract worker(s) and/or employee(s);
  - 10.2.7** Handle disciplinary matters promptly and prohibit contract worker(s) and/or employee(s) from approaching Contracting Agency staff for assistance with their own management or supervisory issues;
  - 10.2.8** Remove from duty any contract worker(s) and/or employee(s) not properly and fully performing his/her duties;
  - 10.2.9** Communicate with and provide all required and/or necessary reports to the Contracting Agency Representative;
  - 10.2.10** Ensure that the contract worker(s) and/or employee(s) report to work at the time and place specified by the Contracting Agency; and,
  - 10.2.11** Replace immediately, at no additional expense to the Contracting Agency, any contract worker(s) and/or employee(s) not performing satisfactorily.
  - 10.2.12** Contractor must provide an annual usage report to the DFA OPSCR detailing the contract numbers and total amounts associated with each agency contract until this preapproved vendor list expires.
- 10.3** The Contracting Agency shall:
- 10.3.1** Extend all necessary cooperation in scheduling lawn and landscaping services;
  - 10.3.2** Designate a Contracting Agency Representative who will be the point of contact for the Contractor Account Representative during the contract period; and,
  - 10.3.3** Has the right to suspend the schedule during periods of dry weather or wet weather conditions in its sole discretion.

## **11. Required Insurance**

**11.1** Each successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits:

- *Workers' Compensation* as required by the State of Mississippi;
- *Comprehensive General Liability or Commercial Liability* with minimal limits of \$1,000,000.00 per occurrence for bodily injury, personal injury, accidental death, property damage, employee dishonesty, and identity theft; and,

**11.2** Each successful bidder and/or the carrier may be required to maintain the following types of insurance with coverage limits as identified and required by the Contracting Agency:

- *Motor Vehicle Liability Insurance* 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 person; and;
- *Motor Vehicle Property Damage Insurance* covering all property damage by vehicle with limits of \$500,000.

**11.3** All insurance policies will list the State of Mississippi as an additional insured and, upon request, the vendor will provide copies of any insurance documentation to the Contracting Agency.

**11.4** 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.

**11.5** The Contracting Agency may reserve the right to request from carriers certificates of insurance regarding the required coverage.

**11.6** Agencies may require greater limits and will negotiate with Vendors regarding the same. *This is the only negotiable contract term.*



## BID EVALUATION AND CONTRACT AWARD

### 12. Minimum Bidder Qualifications

- 12.1** A bidder who does not meet the minimum qualifications stated herein will be deemed non-responsible and their bid will be rejected.
- 12.2** Bidder must have been in business and provided lawn and landscaping services similar in requirements and scale to those described in this IFB for a minimum of two years.
- 12.3** Contracting Agencies may have additional minimum requirements, including specific certifications, licenses, designations, and/or trainings pertinent to the Contracting Agency's operations. Examples include, but are not limited to, the following: valid Mississippi driver's license; successful drug test passage; and completion of specialized training. If required, the Contractor must provide copies of the certifications, licenses, designations, etc., to the Contracting Agency. All certifications and licenses should be current and maintained in accordance with the contract.
- 12.4** Bidder should maintain an office in each region bid, or if bidder does not have an office in the region, bidder must explain how it will service the region bid on the Bid Form (*Attachment C*).
- 12.5** Bidder must receive a minimum score of six on the Reference Score Sheet (*Attachment F*) from reference interviews by OPSCR with two bidder references, for a total minimum scoring requirement of 12 points. (See Section 5.5).

### 13. Basis for Award

- 13.1** Bids will be evaluated based on the requirements set forth in this IFB. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids.
- 13.2** Only Bidders who are found responsive and responsible will have their bids considered.
- 13.2.1** *Responsive Bidder:* Bidder must submit its bid, including the Bid Form and all required Attachments and other documents, in a manner which conforms in all material respects to this Invitation for Bids as determined by OPSCR.
- 13.2.2** *Nonconforming Terms and Conditions:* A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. OPSCR reserves the right to permit the Bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by OPSCR of non-responsiveness based on the submission of non-conforming terms and conditions.
- 13.2.3** *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.

**13.3** For placement on each region's list of preapproved vendors, OPSCR intends to recommend all responsive and responsible bidders whose average bid price is not more than 125% of the mean of the lowest five average bid prices received.

**13.3.1** In order to determine placement on the PVL, each bidder's list of Hourly Rates provided on the Bid Form will be averaged. The five lowest averaged prices submitted by responsive and responsible bidders will then be averaged to obtain the mean of the lowest five bids.

**13.3.2** Any individual bid submitted in which the average bid price is more than 125% of the mean of the lowest five bids for that region shall *not* be placed on the list of preapproved vendors.

**13.3.3** The lowest responsive and responsible averaged bids will be placed on the list for that region, with the lowest average price being placed first on the list, the second lowest price being placed second on the list, and so on until the highest qualifying average price is placed last on the list.

**13.4** A Contracting Agency is encouraged, but not required, to contact the lowest priced vendor for the lawn and landscaping services needed.

#### **14. Rolling Awards**

**14.1** OPSCR will continuously accept bids for placement on the PVL. Contingent upon approval by the PPRB, the PVL will be updated on July 1, 2023 and July 1, 2024.

**14.2** Any bids received after May 13, 2022 at 10:00 am CST will be held by OPSCR and considered for inclusion in the updated list published on July 1, 2023.

**14.3** All bidders must be responsive and responsible, as described in this IFB.

**14.4** Bids in which the average unit price is more than 125% of the mean of the lowest five bids submitted for inclusion on the original PVL (i.e., submitted on or before May 13, 2022 in response to this IFB) will not be included on an updated PVL.

**14.5** Any bids included on an updated PVL will be placed on the PVL after the original list of vendors in descending price order.

**14.6** Any bidder submitting a bid after May 13, 2022 agrees to all the terms, conditions, and requirements as if the bid had been originally submitted on May 13, 2022.

**14.7** The outside of the sealed envelope or package containing any bid submitted after May 13, 2022 shall be marked:

**Lawn and Landscaping Services**  
**RFx # 3160005040**  
**SEALED BID – DO NOT OPEN**

**14.8** Notifications of public bid openings will be periodically posted on the DFA website. It is the responsibility of any vendor who submits a bid for a rolling award to monitor the DFA website for such notices.

**14.9** Any bidder submitting a bid after May 13, 2022 has debriefing and protest rights as described in Sections 16 and 17.

## **15. Award Notification**

Awards for this procurement will be posted on the DFA website. Bidders will be notified via e-mail or U.S. Mail of the awards.

## **16. Post-Award Vendor Debriefing**

**16.1** A bidder, successful or unsuccessful, has the right to request a post-award debriefing, in writing, by U.S. mail, postage prepaid, or electronic submission.

**16.2** A debriefing must be requested within three business days of the Notice of Intent to Award. A debriefing is “requested” when the written request is received by OPSCR. The responsibility to timely deliver the request to OPSCR lies entirely with the bidder.

**16.3** Unless good cause exists for a delay, a debriefing typically occurs within three business days of receipt of the written request.

**16.4** A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a bidder prefers to have legal representation present, the bidder must notify OPSCR in writing and identify its attorney by name, address, and telephone number. OPSCR 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.

**16.5** At a minimum, the debriefing information shall include:

**16.5.1** The agency’s evaluation of significant weaknesses or deficiencies in the debriefed vendor’s bid;

**16.5.2** The overall evaluated cost or price of the successful vendor(s) and the debriefed vendor;

**16.5.3** The overall ranking of all vendors, if the OPSCR develops a ranking during the selection process;

**16.5.4** A summary of the rationale for the contract award; and

**16.5.5** Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

**16.6** The debriefing shall not include a point-by-point comparison of the debrief vendor's bid with those of other bidders.

**16.7** For additional information regarding Post-Award Debriefing, please see Section 7-113 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

## **17. Protest of Solicitation or Award**

**17.1** Any actual or prospective bidder who is aggrieved in connection with the solicitation or award of a contract may protest to the Contact Person listed on the cover page of this IFB.

**17.2** A protest must be submitted in writing within seven calendar days of the Notice of Intent to Award or within seven calendar days of the solicitation posting if the protest is based on the solicitation.

**17.3** Protests filed after seven calendar days will not be considered. A protest is considered filed when it is received by the Contact Person listed on the cover page of this IFB. It is the sole responsibility of any protesting party to ensure timely delivery of the protest to the appropriate person.

**17.4** Protestors should seek resolution of their complaints initially with OPSCR, and such protest shall be decided by the Executive Director of DFA who will issue a statement in writing.

**17.4.1** Any person adversely affected by the protest decision of the Executive Director of DFA may appeal administratively to the Public Procurement Review Board. Any such appeal must be filed within seven calendar days of receipt of a protest decision.

**17.5** Should a protestor wish to, instead, seek resolution of their protest directly to the PPRB, the protest must be submitted to the Director of OPSCR and shall clearly state, "PROTEST SUBMITTED DIRECTLY TO PPRB."

**17.5.1** Any party filing a protest directly to PPRB shall file the protest with the Director of OPSCR within seven calendar days after the aggrieved party knew or should have known of the facts and circumstances upon which the protest is based, but in no event later than within seven calendar days of the solicitation posting or award.

**17.5.2** The PPRB shall decide whether the solicitation or award was in accordance with the Constitution, statutes, rules and regulations, and the terms and conditions of the solicitation.

**17.6** A protest must be in writing, dated, and signed by the protestor. It must also include:

**17.6.1** The name and address of the protestor;

- 17.6.2** An appropriate identification of the procurement and, if a contract has been awarded, its number;
- 17.6.3** A statement of the specific basis for the protest and a statement of the reason(s) for protest, citing the law(s), rule(s), regulation(s), or procedure(s) on which the protest is based;
- 17.6.4** Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated, and
- 17.6.5** Be submitted in an envelope labelled “PROTEST” or via email with a subject line that reads “PROTEST.”

**17.7** In the event of a timely protest, OPSCR will not proceed further with the solicitation or the award of the contract until the Public Procurement Review Board approves the determination that continuation of the solicitation or award of the contract without delay is necessary to protect substantial interests of the State.

## **18. Contract Terms & Conditions**

- 18.1** Following establishment of a list of preapproved vendors for Lawn and Landscaping Services, OPSCR will establish a contract template for use by Contracting Agencies. Because time is of the essence in engaging a Contractor under the circumstances contemplated by this IFB, Vendors must understand and agree that the form contract will be used without substantial revision. By submitting a bid, Vendors agree to utilize this form without substantial revisions when engaged by a Contracting Agency.
- 18.2** Compensation for services will be in the form of an indefinite quantity contract. An indefinite quantity contract is a contract for an indefinite amount of services to be furnished at specific times, or as ordered, that establishes unit prices of a fixed price type.
- 18.3** *Multi Term Contract and Period of Performance:* Vendors added to the PVL will remain on the list for three years following the effective date of the PVL, at which time the list will expire. However, if a Contracting Agency enters into a contract with a Vendor on the PVL prior to the expiration date, that contract may be renewed at the same rates listed on the PVL up to two additional years, for a total contract period not to exceed five years. Prices submitted in response to the IFB will remain firm, valid, and renewable for five years following the effective date of the PVL, except that a bidder may raise prices to reflect a rise in the federal minimum wage, but only to the extent of the actual minimum wage increase.
- 18.4** *Required Contract Terms and Conditions:* Any contract entered into with a Contracting Agency pursuant to a bidder being placed on the PVL shall include the clauses required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, listed herein in *Attachment G*. Such clauses shall be updated during the life of the contract by the Contracting Agency as required by the PPRB, from time to time.

**18.5** *Optional Contract Terms and Conditions:* Any contract entered into with a Contracting Agency pursuant to a bidder being placed on the PVL may include, at the discretion of the Contracting Agency, the optional clauses for use in contracts as provided in the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, listed herein in *Attachment H*. Such clauses shall be updated during the life of the contract by the Contracting Agency as required by the PPRB, from time to time.

**18.6** It is understood that if a contract resulting from IFB# 3160005040 requires approval by PPRB and or DFA OPSCR and is not approved, it is void and no payment shall be made thereunder.

## **19. Contract Management**

**19.1** If a Contractor fails to satisfactorily provide the prescribed service to all or any service area, the Contracting Agency will inform the Contractor, and the Contractor shall complete corrective action within 24 hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the Contracting Agency may terminate the contract in accordance with Termination clauses without further obligation to the Contractor.

**19.2** *Removal from Preapproved List of Vendors:* Bidders added to the PVL may be removed from the list for cause by OPSCR and/or added to the debarment list pursuant to Section 5-101, Debarment or Suspension, of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*. A bidder's failure to honor submitted rates for the five years following the effective date of the PVL or repeated instances of non-performance as described in Paragraph 19.1 may result in removal from the PVL and/or debarment.

## ATTACHMENT A: Bid Cover Sheet

The Office of Personal Service Contract Review at the Mississippi Department of Finance and Administration, on behalf of the Public Procurement Review Board, is seeking to establish a list of vendors for Lawn and Landscaping Services to be used on an as-needed basis by state agencies under the purview of the PPRB.

Bids are to be submitted on or before **May 13, 2022, 10:00 am CST**.

Envelopes and/or packages containing sealed bids must be marked:

**Lawn and Landscaping Services**  
**RFx # 3160005040**  
**Bid Opening: May 13, 2022 at 2:00 pm CST**  
**SEALED BID – DO NOT OPEN**

Name of Company: \_\_\_\_\_

Quoted By: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Company Representative: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

FEI/FIN# (if company, corporation or partnership): \_\_\_\_\_

Social Security # (if individual): \_\_\_\_\_

**In addition to providing the above contact information, please answer the following questions regarding your company. This information will be provided to prospective Contracting Agencies on the list of preapproved vendors.**

What year was your company started? \_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

For how many customers has your company provided lawn and landscaping services in the past two years? Please include the dates, the size company of the area maintained, and the annual amount of the billing to each customer. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What is the largest customer your company has provided lawn and landscaping service for in the past two years? Please include the annual amount of the billing. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

List all the equipment that your company has available or that is intended to be used to perform the services required in this IFB. *(Add as many lines as necessary.)*

<b>OWNED EQUIPMENT</b>					
Year	Make	Model	ID#	Capacity	Description

<b>RENTED/LEASED EQUIPMENT</b>					
Year	Make	Model	ID#	Capacity	Description



## ATTACHMENT B: Regional Map

**North Delta**

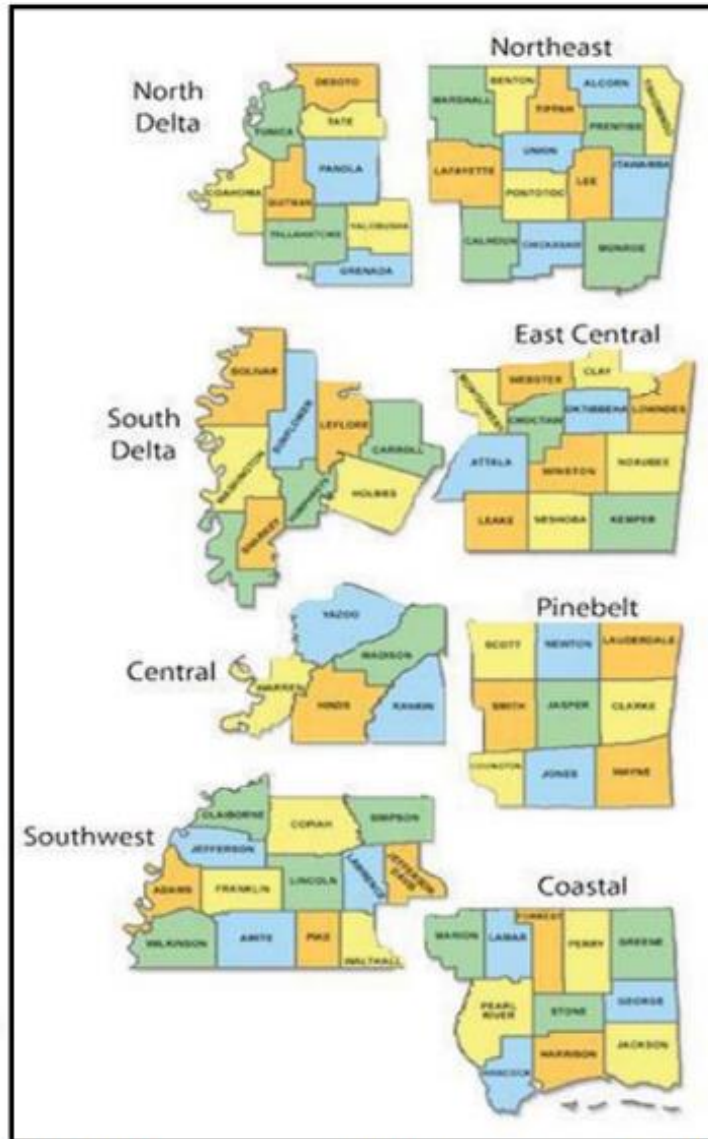
Coahoma  
Desoto  
Grenada  
Panola  
Quitman  
Tallahatchie  
Tate  
Tunica  
Yalobusha

**South Delta**

Bolivar  
Carroll  
Holmes  
Humphreys  
Issaquena  
Leflore  
Sharkey  
Sunflower  
Washington

**Central**

Hinds  
Madison  
Rankin  
Warren  
Yazoo



**Northeast**

Alcorn  
Benton  
Calhoun  
Chickasaw  
Itawamba  
Lafayette  
Lee  
Marshall  
Monroe  
Pontotoc  
Prentiss  
Tippah  
Tishomingo  
Union

**East Central**

Attala  
Choctaw  
Clay  
Kemper  
Leake  
Lowndes  
Montgomery  
Neshoba  
Noxubee  
Oktibbeha  
Webster  
Winston

**Southwest**

Adams  
Amite  
Claiborne  
Copiah  
Franklin  
Jefferson  
Jefferson Davis  
Lawrence  
Lincoln  
Pike  
Simpson  
Walthall  
Wilkinson

**Pinebelt**

Clarke  
Covington  
Jasper  
Jones  
Lauderdale  
Newton  
Scott  
Smith  
Wayne

**Coastal**

Forrest  
George  
Greene  
Hancock  
Harrison  
Jackson  
Lamar  
Marion  
Pearl River  
Perry  
Stone

**ATTACHMENT C: Bid Form  
Lawn and Landscaping Services**

Services to be provided in Region: \_\_\_\_\_

Company: \_\_\_\_\_

Company Representative: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

1. All required equipment/material;
2. All required insurance;
3. All required overhead;
4. All required profit;
5. All required vehicles;
6. All required fuel, mileage, and travel time;
7. All required labor per man-hour and supervision;
8. The cost of any business and professional licenses, permits, or fees; and,
9. Any and all other costs.

All pricing for lawn and landscaping services should include all associated costs with no additional or hidden fees.

<b>Lawn &amp; Landscaping Services</b>	<b>Price Per Hour</b>	<b>Estimated # of Workers</b>
Mowing		
Edging		
String Trimming		
Blowing		
Debris Pickup		
Tree Limbing/Pruning below 15 feet		
Pressure Washing		
Mulching (each application)		
Aerate		

A bidder may use “n/c” to indicate no charge for a unit item; however, bidders must provide all services listed in each Region bid.

Location of Bidders' Office in Region: \_\_\_\_\_

If your company is not physically located in the region, how will you supply lawn and landscaping services to agencies in the region? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

1. That he/she has thoroughly read and understands this Invitation for Bids (RFx # 3160005040), the attachments hereto, and any amendments;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, the attachments hereto, and any amendments;
3. That it is licensed, certified, and possess the requisite credentials to perform lawn and landscaping services.
4. That the company agrees to all provisions of this Invitation for Bids, the attachments hereto, and any amendments;
5. That the company will perform, without delay, the services required at the prices quoted above; and
6. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ATTACHMENT D: Certifications & Assurances

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

1. *REPRESENTATION REGARDING CONTINGENT FEES*: Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
2. *REPRESENTATION REGARDING GRATUITIES*: The bidder, offeror, or 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*.
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, the intention to submit a bid, or the methods or factors used to calculate the prices bid.
4. *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 not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
5. *NON-DEBARMENT*: This certification is a material representation of fact relied upon by the Contracting Agencies. If it is later determined that the Contractor did not comply with 2 C.F.R. part 180, subpart C, and 2 C.F.R. part 3000, subpart C, in addition to remedies available to DFA and other Contracting Agencies, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
6. Bidder certifies that it can provide services in the entire region for each region on which it has submitted a bid.
7. Bidder certifies that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids, the attachments hereto, and any amendments.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Modifications or additions to any portion of this document may be cause for rejection of the bid.*

## ATTACHMENT E: References

### REFERENCE 1

Name of Company: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

### REFERENCE 2

Name of Company: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 3**

Name of Company: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 4**

Name of Company: \_\_\_\_\_

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

*Bidder may submit as many references as desired by submitting as many additional copies of Attachment E, References, as deemed necessary. References will be contacted in order listed until two references have been interviewed and Reference Score Sheets completed for each of the two references. No further references will be contacted; however, bidders are encouraged to submit additional references to ensure that at least two references are available for interview. OPSCR must be able to contact two references within two (2) business days of bid opening to be considered responsive.*

## ATTACHMENT F: Reference Score Sheet

[To Be Completed by OPSCR Only]

Bidder Name: \_\_\_\_\_

Reference Name: \_\_\_\_\_

Person Contacted, Title/Position: \_\_\_\_\_

Date/Time Contacted: \_\_\_\_\_

Service From/To Dates: \_\_\_\_\_

Able to provide lawn and landscaping services when you called?	Yes	No
Satisfied with the lawn and landscaping services provided and/or with containers provided by the vendor, if any? If no, please explain.	Yes	No
Vendor easy to work with when scheduling lawn and landscaping services?	Yes	No
Were the lawn and landscaping services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is one point; each “no” is zero points. Bidder must have a minimum score of “6” from two references (total of “12” points) to be considered responsible and for its bid to be considered.

Score: \_\_\_\_\_

Do you have any business, professional or personal interest in the bidder’s organization? If yes, please explain.	Yes	No
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Called by: \_\_\_\_\_

Notes: \_\_\_\_\_

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## **ATTACHMENT G: Required Contract Clauses**

*The following clauses are required to be included in a contract between any Contracting Agency and any vendor on the preapproved list resulting from this IFB. Words appearing in brackets “[ ]” may be substituted for the appropriate Contracting Agency.*

### **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.

### **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.

### **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.

### **TERMINATION FOR CONVENIENCE**

- (1) *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.
- (2) *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.



## TERMINATION FOR DEFAULT

- (1) *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.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) *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.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

(5) *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 a termination for convenience.

(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.

## **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.

## **AVAILABILITY OF FUNDS**

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

## **COMPLIANCE WITH LAWS**

Contractor understands that the [State] 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.

## **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>.

## **REPRESENTATION REGARDING CONTINGENT FEES**

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

## **REPRESENTATION REGARDING GRATUITIES**

The bidder, offeror, or 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*.

## **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.

## **STOP WORK ORDER**

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

(a) cancel the stop work order; or,

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

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

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

## **E-PAYMENT**

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

## **E-VERIFICATION**

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

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

## **TRANSPARENCY**

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

## **ATTACHMENT H: Optional Contract Clauses**

*This Attachment includes (alphabetically by title) various service contracting clauses which are available for use by a Contracting Agency. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., [time], [date]). Clarifications of clauses are in parentheses within or at the end of the clause. These are discretionary and the agency is neither required to use them nor prohibited from using others which are not included in this appendix.*

### **ANTI-ASSIGNMENT/SUBCONTRACTING**

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

### **ANTITRUST**

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

### **APPROVAL**

It is understood that this contract requires approval by the Public Procurement Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

### **ATTORNEY'S FEES AND EXPENSES**

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

### **AUTHORITY TO CONTRACT**

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan,

security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

## **CHANGE IN SCOPE OF WORK**

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

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

## **CLAIMS BASED ON A CHIEF PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS**

(1) *Notice of Claim.* If any action or omission on the part of a Chief Procurement Officer or designee of such officer requiring performance changes within the scope of the contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (a) Contractor shall have given written notice to the Chief Procurement Officer or designee of such officer:
  - i. prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
  - ii. within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
  - iii. within such further time as may be allowed by the Chief Procurement Officer in writing.

This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The Chief Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable

in the discretion of the Chief Procurement Officer or designee of such officer;

(b) The notice required by subparagraph (a) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,

(c) Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) *Limitation of Clause.* Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

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

## **INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL**

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

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

## **CONFIDENTIALITY**

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

## **CONTRACTOR PERSONNEL**

The [agency] shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the [agency] reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the [agency] in a timely manner and at no additional cost to the [agency]. The day-



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

## **COPYRIGHTS**

Contractor agrees that [agency] shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Further, Contractor hereby grants to [agency] a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

## **DEBARMENT AND SUSPENSION**

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

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

## **DISCLOSURE OF CONFIDENTIAL INFORMATION**

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the

termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

### **EXCEPTIONS TO CONFIDENTIAL INFORMATION**

Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:

- (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) is independently developed by the recipient without any reliance on confidential information;
- (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (6) is disclosed with the disclosing party’s prior written consent.

### **ERRORS IN EXTENSION**

If the unit price and the extension price are at variance, the unit price shall prevail.

### **FAILURE TO DELIVER**

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

### **FAILURE TO ENFORCE**

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

### **FINAL PAYMENT**

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the *[agency]* a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set

forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.

## **FORCE MAJEURE**

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

## **HIPAA COMPLIANCE**

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

## **INDEMNIFICATION**

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

## **INDEPENDENT CONTRACTOR STATUS**

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of

principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the [agency], and the [agency] shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The [agency] shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the [agency] shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

## **INFRINGEMENT INDEMNIFICATION**

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

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, at its own expense, the State against, and pay all costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

## **INSURANCE**

Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$\_\_\_\_\_ per occurrence and fidelity bond insurance with minimum limits of \$\_\_\_\_\_. All general liability, professional liability and fidelity bond insurance will provide coverage to the [agency] as an additional insured. The [agency] 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.

## **INTEGRATED AGREEMENT/MERGER**

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

## **LIQUIDATED DAMAGES**

*With Termination for Default Clause:* The following clause is authorized for use in service contracts when it is difficult to determine with reasonable accuracy the amount of damage to the State due to delays caused by late Contractor performance or nonperformance and the contract contains the Termination for Default clause set forth in Section 4-101.05.

### **Liquidated Damages**

When Contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the Termination for Default clause of this contract and fails to cure in the time specified, Contractor shall be liable for damages for delay in the amount of \$ \_\_\_\_\_ per calendar day from date set for cure until either the State reasonably obtains similar services if Contractor is terminated for default, or until Contractor provides the services if Contractor is not terminated for default. To the extent that Contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default clause of this contract, liquidated damages shall not be due the State. Contractor remains liable for damages caused other than by delay.

*In Other Situations:* If the contract will not have a Termination for Default clause or the liquidated damages are to be assessed for reasons other than delay, the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

## **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 state revisions of any applicable laws or regulations make changes in this agreement necessary.

## **NO LIMITATION OF LIABILITY**

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

## **NOTICES**

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

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

## **NON-SOLICITATION OF EMPLOYEES**

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

## **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 *[agency]* and agreed to by Contractor.

## **OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

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

## **PATENTS AND ROYALTIES**

Contractor covenants to save, defend, keep harmless, and indemnify the *[agency]* and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost--including court costs and attorney's fees, charges, liability, and exposure, however caused--for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the *[agency]*. If Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work.

## **PRICE ADJUSTMENT**

- (1) *Price Adjustment Methods.* Any adjustments 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.* 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*.

## **PRIORITY**

The contract consists of this agreement, the Invitation for Bids (RFx #3160005040), including any amendments and the Question and Answer document, and the response by *[Contractor]* dated *[date]*. 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 IFB and, if still unresolved, by reference to the Contractor's response to the IFB. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

## **QUALITY CONTROL**

Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the *[agency]*.

## **RECORD RETENTION AND ACCESS TO RECORDS**

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

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

## **RECOVERY OF MONEY**

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

## **RENEWAL OF CONTRACT**

*(Use this clause when the Contractor **cannot** decline a renewal.)*

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

*(Use this clause when the Contractor **has** the right to decline the renewal.)*

Upon written agreement of both parties at least [number] days prior to each contract anniversary date, the contract may be renewed by the [agency] for a period of [number] successive one-year period(s) under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

## **REQUIREMENTS CONTRACT**

During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the [agency] shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the [agency] for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the [agency] is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the [agency] may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

## **RIGHT TO AUDIT**

Contractor shall maintain such financial records and other records as may be prescribed by the [agency] or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the [agency], 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.

### **RIGHT TO INSPECT FACILITY**

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

### **SEVERABILITY**

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **STATE PROPERTY**

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

### **THIRD PARTY ACTION NOTIFICATION**

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

### **UNSATISFACTORY WORK**

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

### **VARIATIONS IN ESTIMATED QUANTITIES**

*Definite Quantity Contracts:* The following clause is authorized for use in definite quantity service contracts:

#### **VARIATION IN QUANTITY**

Upon the agreement of the parties, the quantity of services specified in this contract may be increased by a maximum of ten percent provided:

- (1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and,
- (2) the Chief Procurement Officer makes a written determination that such an increase will either be more economical than awarding another contract, or that it would not be practical to award another contract.

*Indefinite Quantity Contracts:* No clause is provided here because, in indefinite quantity contracts, the flexibility as to the State's obligation to order and Contractor's obligation to deliver should be designed to meet using agency needs while making the contract as attractive as possible to potential Contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the State of Mississippi; however, in each case, the contract should State:

- (1) the minimum quantity, if any, the State is obligated to order and Contractor to provide;
- (2) whether there is a quantity the State expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;
- (3) any maximum quantity the State may order and Contractor must provide; and,
- (4) whether the State is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in Section 3-503 (Multiple Source Contracting), that the State will order its actual requirements from Contractors under the multiple award subject to any minimum or maximum quantity stated.

## **WAIVER**

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

## ATTACHMENT I: Contract Discrepancy Report

**Lawn and Landscaping Services located at:** \_\_\_\_\_  
\_\_\_\_\_

**Date and Time of Service:** \_\_\_\_\_

**Report Date:** \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_