

INVITATION FOR BIDS

No. 2022-01



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

***Preapproved List of Vendors for
Emergency Repair & Remediation Services
RFx # 3160004825***

Issue Date:
February 4, 2022

Closing Date:
March 2, 2022 at 2:00 PM 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 List of Vendors (“PVL”) for emergency repair and remediation 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 emergency repair and remediation service providers for placement on the list.

There will be three separate lists for the three regions of the State in which services may be provided: (1) Western; (2) Eastern; and (3) Southern. *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.

Each bidder deemed responsive and responsible for each region shall be placed on the list. 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.

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.

Invitation for Bids Issue Date:	February 4, 2022
Questions and Requests for Clarification Due:	February 11, 2022 at 5:00 pm CST
Anticipated Posting of Written Answers:	February 16, 2022 at 5:00 pm CST
Bid Package Submission Deadline:	March 2, 2022 at 2:00 pm CST
Bid Opening:	March 3, 2022 at 2:00 pm CST
Anticipated Notice of Intent to Award:	March 9, 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 February 11, 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 should 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

ATTACHMENT I: Certification Regarding Lobbying

6.4 Bids must be received no later than **March 2, 2022 at 2:00 pm 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:

Emergency Repair and Remediation Services
RFx # 3160004825
Bid Opening: March 3, 2022 at 2:00 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 of the federal government.

7. Bid Opening

7.1 The bid opening will be held:

March 3, 2022 at 2:00 pm CST
501 North West Street
Jackson, Mississippi 39201
Room 702

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 three different regions of the state, including: (1) Western, (2) Eastern, and (3) Southern. 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*). Bidders may bid on all categories or formats but must be able to provide each service in the format or category bid on in the entire region in which they bid.

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

9.2 The Contractor must be able to provide services including, but not limited to, the following: surface cleaning; water extraction and moisture control; sanitization; deodorization; mold remediation; microbial remediation; biohazard remediation; debris removal; glazing (removal, repair, and replacement); fire, smoke, and water damage recovery; drying and dehumidification; commercial cleaning and decontamination of HVAC units, ductwork, drapes, and interior surfaces; media restoration (documents, books, vital records, and electronics); mechanical and electrical systems restoration and repair; equipment and inventory recovery, including telecommunications systems; post-construction clean-up; temporary roofing/board-up; and relocation services, including pack-out, cleaning, and short/long-term storage. This list is not all-inclusive.

9.2.1 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, timeframes, and budget parameters.

9.3 The Contractor shall provide remediation, restoration, and emergency repair services only. The Contractor will not be responsible for reconstruction except to the extent necessary to complete remediation work. Permanent repairs or reconstruction are not part of the scope of services contemplated by this IFB.

9.3.1 Emergency declarations are issued by the Governor of Mississippi, the President of the United States, or the Head of the Contracting Agency and will determine the beginning of the emergency or “loss” as used herein.

9.3.2 “Construction” is defined as “the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.” In Mississippi, public projects require contractors with certificates of responsibility issued by the Mississippi State Board of

Contractors, in addition to other insurance and bonding requirements which are not applicable to this IFB's Scope of Services.

9.3.3 If any projects or level of work reaches the purview of construction, a separate contract must be issued.

9.4 The Contractor must develop standard operating procedures in coordination with the Contracting Agency, which includes pre-planning for services to be performed in the event of a loss and identifying key Agency and Contractor contacts;

9.5 The Contractor must reply or respond as follows:

9.5.1 Respond to all notifications of a request for service (a loss) within 1.5 hours (i.e. directly reply to the State's notification).

9.5.2 Respond to a non-catastrophe event within 1 to 4 hours of notification when property is accessible (if loss involves fire, explosion or restrictions due to civil unrest) with both personnel and equipment.

9.5.3 Respond to a catastrophe event within 1 to 12 hours with personnel and 24 hours with equipment.

9.5.4 Provide a cost estimate and detailed scope of work within 24 hours after arrival.

9.5.5 Contractor must be accessible 24 hours a day, 7 days a week to perform remediation and emergency services for Contracting Agencies in responding to loss, including large disasters and catastrophic events.

9.5.6 The Contractor shall have a 24-hour emergency response telephone number.

9.6 The Contractor must be able to respond to catastrophic events that cause damage to large numbers of properties. The Contractor must also be able to respond to damages to a single property.

9.7 The Contractor shall furnish all labor, skills, tools, materials, supplies, equipment, and supervision necessary to perform the tasks as specified.

9.8 The Contractor must ensure all emergency repair and remediation services are provided during the times specified by the Contracting Agency.

9.9 The Contractor must have a fully staffed office capable of arriving within stipulated timeframes and performing the required services.

9.9.1 The Contractor must assign a Contractor Account Representative to work directly with the Contracting Agency Representative.

9.9.2 The Contractor must provide a Project Manager for all projects with an appropriate amount of experience, as determined by the Contracting Agency, to

successfully manage and complete the required services.

9.11 In the event of a loss, the Contractor shall, with regard to Project Management:

9.11.1 Ensure all subcontractors comply with Contracting Agency requirements stipulated in any awarded contract.

9.11.2 Ensure all work is delivered in accordance with Mississippi Emergency Management Agency (“MEMA”) requirements.

9.11.3 Ensure all work is delivered in accordance with all Federal Emergency Management Agency (“FEMA”) requirements.

9.11.4 Provide a Rough Order of Magnitude and Initial Scope of Loss Report within twenty-four (24) hours of each loss event.

9.12 Upon completion of the work, the Contractor shall provide the Contracting Agency with a comprehensive final report with detailed information that summarizes all completed services provided by the Contractor and in sufficient detail to satisfy FEMA and insurance company requirements in order to maximize payment of claims and reimbursement of expenses.

9.13 Upon request, the Contractor must identify and provide reports of the status of local equipment and resources available to the Contracting Agency in the process for planning for a loss event;

9.14 With regard to pre-loss assessments, the Contractor shall:

9.14.1 Provide Executive Summaries detailing the functional use of the building(s) and highlighting the items to note from the report, particularly any special needs that would be required to support the building post-loss (i.e. freeze drying);

9.14.2 Provide assessments that include general building information, key contacts; operational analysis; engineering integration considerations; detailed pictorials of key facility nodes centric to recovery considerations; general photos of the building(s) interior and exterior; directions to access buildings) and surrounding area(s); appropriate floorplans and utility plans that may be needed post-loss (provided by the Contracting Agency); and asbestos test results and plans (provided by the Contracting Agency); and

9.14.3 Upon request, provide training to the Contracting Agency on services and procedures.

9.15 The Contractor must provide a written guarantee that the State will be given priority status by the Contractor when providing services needed due to a catastrophic event. (*See Attachment D: Certifications and Assurances*).

9.16 The Contractor must certify that they can provide services for the entire region. (*See*

Attachment D: Certifications and Assurances).

9.17 All emergency repair and remediation services must equal or exceed the specifications listed. The absence of detailed specifications or the omission of detailed descriptions 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. Additional Requirements

10.1 Contractor is required to abide by all applicable federal and state laws and regulations, including but not limited to: OSHA, HIPAA, FACTA, Red Flag, Gramm/Leach/Bliley, Privacy Act, JCAHO, Implied Contract Breach, Trade Secret Protections, etc.

10.2 The Contractor is required to abide by all ordinances and laws pertaining to the Contracting Agency's operation and obtain and pay for all necessary permits, licenses, and fees for work performed and give all notices and comply with all laws, ordinances, rules, and regulations at no additional cost to the Agency.

10.3 The Contractor must ensure no violation of any state, federal, or local law, including HIPAA guidelines; ensure that there are appropriate safeguards to prevent use or disclosure of the information; immediately inform the Contracting Agency of any use or disclosure of the information; and ensure that any personnel are aware not to use or disclose the information.

10.4 The Contractor must abide by all state and/or agency 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.

10.5 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.

10.6 It is illegal to have in one's possession any illegal drug or alcoholic beverage while on state property.

10.7 The Contractor's employees should refrain from using foul, abusive, or profane language on state property.

10.8 The Agency reserves the right to inspect and search all Contractor personnel and/or vehicles anytime while on facility grounds.

10.9 Security provisions for all state facilities must be strictly observed. Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities.

10.10 The Contractor shall be responsible for all damages 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.

10.11 The Contractor shall exercise precautions at all times for the protection of persons (including employees) and property. The Contractor shall make such investigations to enable them to fully understand the facilities, difficulties, and restrictions attending the execution of the work on-site. The project shall at all times be properly supervised and adequately manned by an experienced crew of appropriate size. At no time shall equipment be operated without guards, shields, or other manufacturer's recommended safety accessories in place and functioning as intended by the manufacturer. All work shall be accomplished by skilled workers familiar with and trained to do this type of work. Workers shall be qualified to operate and/or use the equipment necessary to accomplish this work. Proper safety barricades, protective, and covering devices shall be used to divert traffic and protect personnel. Normal safety signs, necessary lighting, and temporary fencing/barricades around work areas shall be installed and maintained in accordance with industry standards. The Contractor shall ensure that its personnel are equipped with proper safety items. The Contractor shall be responsible for the supervision and direction of the work performed by its personnel. The Contractor shall be responsible for instructing its personnel in all safety measures. All equipment used by the Contractor shall be maintained in safe operating condition at all times, and be free from defects or wear that may in any way constitute a hazard to any person or persons on state property. All incidents involving Agency property or personnel shall be reported to the designated Agency contact immediately upon occurrence.

10.12 The Contractor shall 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 agents. 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 detail specifications or the omission of detail 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.

10.13 Contractor shall also:

10.13.1 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.

10.13.2 Make all unemployment compensation contributions as required by Federal and State law(s) and process claims as required for their business and employees.

10.13.3 Perform a background check and/or drug screening prior to placement if requested by the Contracting Agency and verify and/or provide the results.

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,
- *Employee Dishonesty or Fidelity Bond Insurance* with minimum limits of \$1,000,000.00.

11.2 Each successful bidder 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 \$1,000,000.00 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 at least \$250,000.00.

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 emergency repair and remediation services similar in requirements and scale to those described in this IFB for a minimum of five years.
- 12.3 Bidder must be appropriately licensed and/or have legal authority to render the proposed services. Provide a copy of pertinent license, certificate of appointment or other such documentation to demonstrate qualifications.
- 12.4 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.
 - 13.2.4 *Rate Schedules – Labor, Materials, Equipment*: Bidder will submit rates for personnel (labor), equipment, and material that the bidder anticipates may be required to provide complete response to any potential event/loss. Such rates must be submitted on *Attachment C: Bid Form* and *Exhibits C1-C6*. Bids which are not submitted on the provided forms may be deemed non-responsive.

13.2.4.1 Bidders are to submit the Labor Rate Schedule for emergency repair and remediation services hourly rates. The schedule should be listed by personnel classification.

- a) Individuals identified and/or billed for rates related to supervisors, project managers, various skilled technicians and tradesmen, etc. must have the experience and specified certifications (if applicable) to support the personnel classification.
- b) The support documentation/credentials must be available upon the request of the State and/or its designee. If additional workers are added throughout the project that fall under supervisory or skilled technician and/or tradesmen classification, their certifications and/or credentials must be made available upon request by the State and/or its designee.

13.2.4.2 Bidders are to submit the Equipment Rate Schedule for equipment. Rates for equipment rental must allow for a weekly and monthly rate. The weekly and monthly rates will be based on the daily rates provided by the Bidder. The weekly and monthly rates will be calculated based upon the following:

- a) Weekly (7 days) rates will be based upon four (4) daily rental charges. Example of rate calculations:
 - Equipment used for seven days, daily rate \$35, weekly rental rate is \$140 ($\35×4), rental charge is \$140.
 - Equipment used for 10 days, daily rate is \$35, rental charge is \$245 (weekly rate of \$140 plus $\$35 \times 3$ days).
- b) Monthly rates will be based upon three weekly rental charges. Example of rate calculations:
 - Equipment used for 31 days, weekly rental rate is \$140 (as calculated above), monthly rental rate is \$420 ($\140×3), rental charge is \$420.
 - Equipment used for 40 days (based on above daily, weekly, and monthly rates), rental charge is \$630 ($\420 monthly, $\$140$ weekly, $\$35 \times 2$ days).

13.2.4.3 Bidders are to submit the Material Rate Schedule of products. If the Material Rate Schedule lists a specific unit of measurement, then the cost should be provided based upon that specific unit.

- 13.2.4.4** Total rental rate of any individual rented equipment used for each project may not exceed the current market value of the equipment being rented. The State has the option of capping rental fees on any equipment used during a project once the market value has been reached on each piece of equipment.
- 13.2.4.5** The Bidder's Rate Schedules must include the mandatory items listed on Exhibit C5.
- a) Exhibit C5 includes personnel, materials, and equipment. The Bidder shall include and incorporate the mandatory items on the appropriate Rate Schedule when submitting the bid response. The mandatory items are in red font and *should be in RED FONT when the Bidder includes the items on the appropriate Rate Schedule.*
- 13.2.4.6** Rate Schedule forms are Exhibit C1-C4; the Mandatory Items List is Exhibit C5. The Bidder must utilize the provided Rate Schedule forms, in Excel format, when submitting the bid response. The exhibits are in the provided Excel workbook. It is the Bidder's responsibility to ensure that the mandatory items AND all other personnel positions, materials, and equipment needed to allow for complete response to Projects arising from this IFB are represented on the Schedules.
- a) If additional lines/rows are needed to list all the items, the Bidder may add/insert as many rows as necessary to accommodate the needed entries.
- 13.2.4.7** A Small Tools charge shall be calculated based on general labor only and must fall within the range of 0% to 3%. Bidder shall include the Small Tools charge on the provided Schedule (Exhibit C4); this is a required item.
- a) A list of items that fall within the Small Tools category is attached as Exhibit C6, this is not an all-inclusive list.
- 13.2.4.8** Bidder shall provide a Catastrophe Fee that will be applicable only when responding to a Catastrophe Event. This fee shall be calculated based only upon the contractor's labor and must fall within the range of 0% to 5%.
- a) The Catastrophe Fee will not be applied to Bidder's material or equipment billing nor is it applied to reimbursable expenses or Subcontractor billing.

- b) Bidder shall include the Catastrophe Fee on the provided Schedule (Exhibit C4); this is a required item. This fee applies to any size project, when applicable.

13.2.4.9 Bidder shall include the Contractor's Overhead and Profit (O&P) charge on the provided Rate Schedule (Exhibit C4); this is a required item. Note: O&P is based on overhead and profit, not overhead on profit. The contractor must provide the percent for O&P separately. The combined amounts of O&P must fall within the range of 0% to 20%.

13.3 OPSCR intends to recommend that all responsive and responsible bidders be placed on the list of preapproved vendors.

13.4 A Contracting Agency is encouraged, but not required, to contact the lowest priced vendor for the emergency repair and remediation service or services needed in the category of service they need.

14. 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.

15. Post-Award Vendor Debriefing

15.1 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.

15.2 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.

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

15.4 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.

15.5 At a minimum, the debriefing information shall include:

15.5.1 The agency's evaluation of significant weaknesses or deficiencies in the debriefed vendor's bid;

- 15.5.2** The overall evaluated cost or price of the successful vendor(s) and the debriefed vendor;
 - 15.5.3** The overall ranking of all vendors, if the OPSCR develops a ranking during the selection process;
 - 15.5.4** A summary of the rationale for the contract award; and
 - 15.5.5** Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.
- 15.6** The debriefing shall not include a point-by-point comparison of the debrief vendor's bid with those of other bidders.
- 15.7** 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*.

16. Protest of Solicitation or Award

- 16.1** 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.
- 16.2** 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. 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.
- 16.3** 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.
- 16.3.1** 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.
- 16.4** 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."
- 16.4.1** 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.

16.4.2 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.

16.5 A protest must be in writing, dated, and signed by the Protestor. It must also include:

16.5.1 The name and address of the protestor;

16.5.2 An appropriate identification of the procurement and, if a contract has been awarded, its number;

16.5.3 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;

16.5.4 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

16.5.5 Be submitted in an envelope labelled "PROTEST."

16.6 In the event of a timely protest, the Agency shall 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.

17. Contract Terms & Conditions

17.1 Following establishment of a list of preapproved vendors for Emergency Repair and Remediation 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.

17.2 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.

17.3 *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.

17.4 *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.

17.5 *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.

17.6 *FEMA and other Federal Regulations:* Any contract entered into between a Contracting Agency and a vendor on the preapproved list in which the vendor will be compensated using funds provided, in whole or in part, by the Federal Emergency Management Agency (“FEMA”) or any other entity of the federal government, shall include the executed Certification found in *Attachment I*, the required clauses found in *Attachment J*, and the clauses required by FEMA under CFR Part 200.

17.7 Bidders agree to make any Contracting Agency a priority client and pledge to provide priority and timely services by making equipment and resources available to the State of Mississippi through this contract especially following large disasters or catastrophic events. The Contractor shall be available to any Contracting Agency 24 hours a day and 7 days a week via an emergency response line.

17.8 It is understood that if a contract resulting from IFB# 3160004825 requires approval by PPRB and or DFA OPSCR and is not approved, it is void and no payment shall be made thereunder.

18. Contract Management

18.1 If a Contractor fails to adhere to the emergency repair and remediation services 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 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. The Contracting Agency may elect to use the form included as *Attachment K, Emergency Repair and Remediation Services Contract Discrepancy Report*.

- 18.2** *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 three years following the effective date of the PVL 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 Emergency Repair and Remediation 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 **March 2, 2022, 2:00 pm CST**.

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

Emergency Repair and Remediation Services
RFx # 3160004825
Bid Opening: March 3, 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: _____

FEL/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: _____

If your company is not physically located in the regions for which you submitted bids, how will you supply Emergency Repair and Remediation Services to Contracting Agencies in the region(s)? _____

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. _____

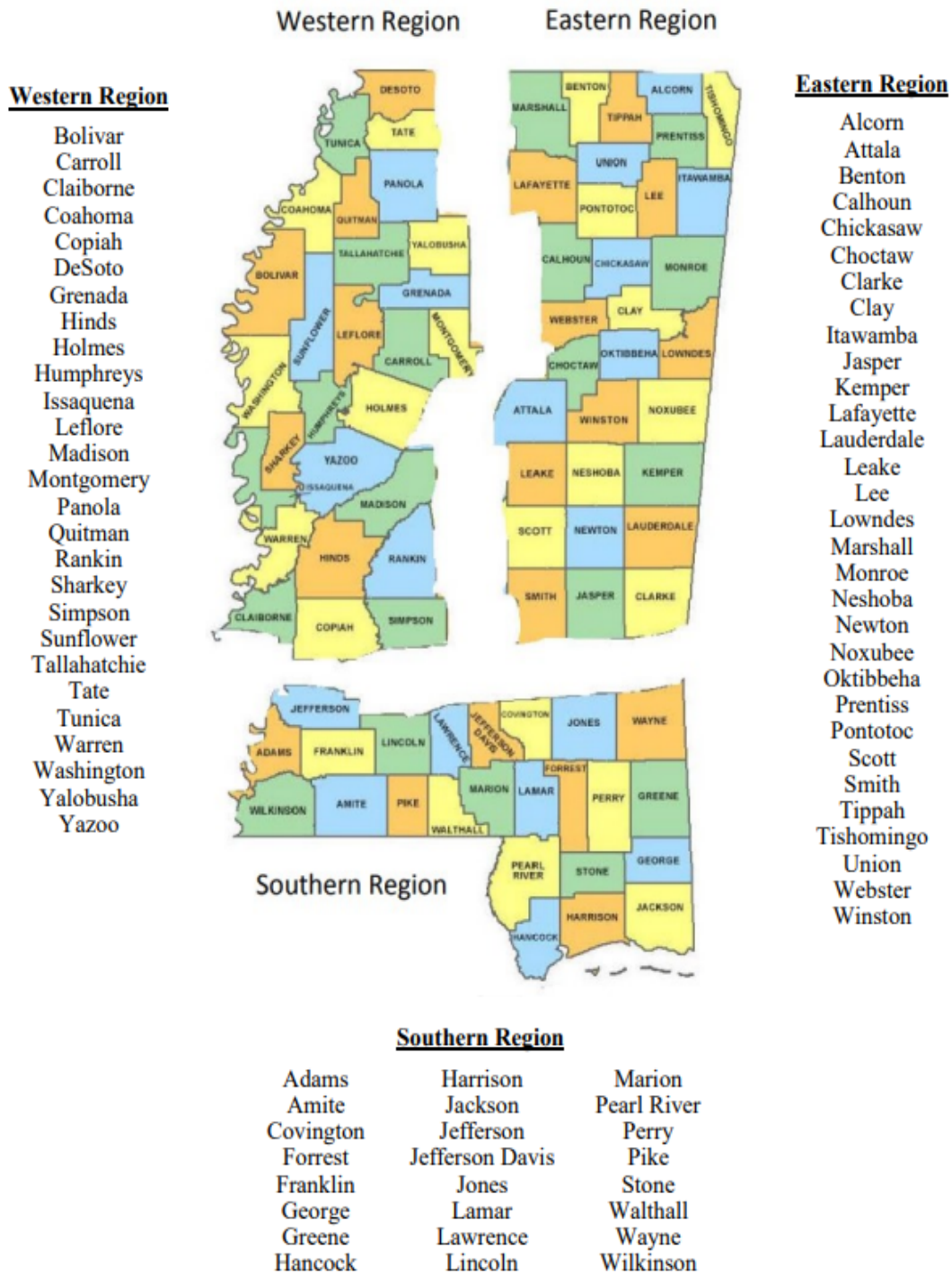
For how many customers has your company provided Emergency Repair and Remediation Services in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. _____

What is the largest customer your company has provided Emergency Repair and Remediation Services for in the past two (2) years? Please include the annual amount of the billing. _____

Describe any specific services which your company offers along with 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 Invitation for Bids. _____

ATTACHMENT B: Regional Map



ATTACHMENT C: Bid Form

Emergency Repair and Remediation Services

Services to be provided in Region: _____

Company: _____

Company Representative: _____

Telephone Number: _____

Email Address: _____

Exhibits C1 through C6 must be submitted with this Bid Form in accordance with the instructions in Section 13.2.4 of this IFB (RFx # 3160004825). A separate Bid Form should be submitted for each region in which the bidder intends to submit a bid.

The pricing quoted shall be inclusive of, but not limited to all required insurance; all required overhead; all required profit; all required vehicles, fuel, and mileage; the cost of any business and professional licenses, permits, or fees; and any and all other costs necessary to complete the required emergency repair and remediation services which are not specifically priced herein. All pricing for emergency repair and remediation services includes all associated costs for the items; no additional or hidden fees are allowed.

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 # 3160004825), 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 the company agrees to all provisions of this Invitation for Bids, the attachments hereto, and any amendments;
4. That the company will perform, without delay, the services required at the prices quoted in Exhibits C1 through C6; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

Printed Name: _____

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/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/has not** violated, **is/is not** violating, and promises that it **will/will not violate** the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.
3. *CERTIFICATION OF INDEPENDENT PRICE DETERMINATION*: The bidder certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate 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/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 bid.
7. Bidder guarantees that it will give any Contracting Agency priority status and pledges to provide priority and timely services by making equipment and resources available to the State of Mississippi through this contract, especially following large disasters or catastrophic events.
8. 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.

9. Bidder certifies that all material, equipment, etc., contained in the bid meets all Occupational Safety Hazards Act (“OSHA”) requirements, and that if any material, equipment, etc., delivered by it is subsequently found to be deficient pursuant to any OSHA requirement in effect on the date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with OSHA requirements shall be borne solely by the bidder.

Name: _____

Title: _____

Signature: _____ Date: _____

Please be sure to circle the applicable words or words provided above. Failure to circle the applicable word or words and/or to sign Appendix D may result in the bid being rejected as non-responsive. 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 emergency repair and remediation services when you called?	Yes	No
Satisfied with the emergency repair and remediation 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 emergency repair and remediation services?	Yes	No
Were the emergency repair and remediation 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
---	-----	----

Called by: _____

Notes: _____

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 #3160004825), 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: Certification Regarding Lobbying

44 CFR PART 18 – Required to Receive Federal Funding
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [*Contractor*] certifies, to the best of his or her knowledge, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[*Contractor*] certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, [*Contractor*] understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Name of Contractor's Authorized Official: _____

Title of Contractor's Authorized Official: _____

Signature: _____ Date: _____

ATTACHMENT J: Required Federal Procurement Clauses

Required Federal Procurement Clauses as this Contract may be eligible for reimbursement from the Federal Emergency Management Agency (“FEMA”):

1. *Remedies.* Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.
 - a. *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.
2. *Equal Employment Opportunity.* During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to

employees and applicants for employment.

- d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. *Contract Work Hours and Safety Standards Act.*

- a. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay

for all hours worked in excess of forty hours in such workweek.

- b. *Violation: liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required for permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- c. *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- d. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

4. *Clean Air Act.*

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*
- b. The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. *Federal Water Pollution Control Act.*

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*
- b. The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

6. *Debarment and Suspension.*

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. The Bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7. *Byrd Anti-Lobbying Amendment. 31 U.S.C. § 1352 (as amended).* Contractors who apply or bid for an award of \$100,000 or more shall file the required certification in Attachment I. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

8. *Procurement of Recovered Material.* A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, 7.

- a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- b. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>.

9. *Additional FEMA Requirement.*

- a. *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.
- b. *Access to Records.*
 - i. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of

their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

10. *DHS Seal, Logo, and Flags.* The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

11. *Compliance with Federal Law, Regulations, and Executive Orders.* This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

12. *No Obligation by Federal Government.* The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

13. *Program Fraud and False or Fraudulent Statements or Related Acts.* The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

ATTACHMENT K: Discrepancy Report

Emergency Repair and Remediation Services Contract Discrepancy Report

Location of Services: _____

Date and Time of Service: _____

Report Date: _____

Discrepancy or Problem (Describe the issue in detail, attach supporting documentation, include reference to the specification requirement; attach a continuation sheet if necessary): _____

Name: _____

Signature: _____ Date: _____

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

Name: _____

Signature: _____ Date: _____

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

Name: _____

Signature: _____ Date: _____

EMERGENCY REPAIR AND REMEDIATION SERVICES
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Contractor/Bidder:

EXHIBIT C1: LABOR RATE SCHEDULE

Item	Description	Unit	Rate
1			
2			
3			
4			
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35			
36			

EMERGENCY REPAIR AND REMEDIATION SERVICES
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Contractor/Bidder:

EXHIBIT C2: EQUIPMENT RATE SCHEDULE

Item	Description	Unit	Daily Rate	Completed by OPSCR	
				Weekly Rate	Monthly Rate
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
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27					
28					
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31					
32					
33					
34					

EMERGENCY REPAIR AND REMEDIATION SERVICES
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Contractor/Bidder:

EXHIBIT C3: MATERIAL RATE SCHEDULE

Use the specified unit measurement provided with any mandatory items. For all other entries, use the standard/customary units of measurement, e.g. gallon, bottle, box, can, lf, each, etc. If using a measurement such as box and package, ensure the description provides detail of the quantity in the box, package, etc. Do not use RTU measurements.

Item	Description	Unit	Rate
1			
2			
3			
4			
5			
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11			
12			
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EMERGENCY REPAIR AND REMEDIATION SERVICES
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Contractor/Bidder:

EXHIBIT C4: ADDITIONAL FEES and DISCOUNTS

Item	Description	Discount %	Fee/Charge %
1	Catastrophe Fee; applied to labor only, any size project when applicable, capped range is 0%-5%		
2	Small Tool Charge; applies to general labor only, capped range is 0% to 3%; not applicable on Xactimate estimates		
3	Overhead & Profit, capped range is 0% to 20%		

EMERGENCY REPAIR AND REMEDIATION SERVICES

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EXHIBIT C5: MANDATORY PERSONNEL (LABOR), EQUIPMENT, AND MATERIALS*These items must be included on the appropriate rate schedules in RED.*

#	DESCRIPTION	UNIT
1	Adhesive Remover	cn
2	Adhesive Spray	cn
3	Air Compressor, Portable electric	ea
4	Air Mover	ea
5	Air Scrubber 600 Small	ea
6	Air Scrubber Large	ea
7	Airless Sprayer	ea
8	All Purpose Cleaner	gal
9	Assistant Project Manager (APM)	hr
10	Axial Fan	ea
11	Bags, (6 mil 33"x 50"), black (75 count)	bx
12	Carpet Degreaser	gal
13	Carpet Machine (cold)	ea
15	Certified Mold Remediation Technician (CRT)	hr
16	Chemical Sponges , Dry Cleaning Sponge (42082)	ea
17	Clothing, Tyvek coverall with hood and boot	ea
18	Dehumidifier, Medium	ea
19	Dehumidification Technician	hr
20	Dehumidifier, Large	ea
21	Dehumidifier, Small	ea
22	Desiccant Dehumidifier > 10000 CFM	ea
23	Desiccant Dehumidifier 500-1000 CFM	ea
24	Desiccant Dehumidifier 5000 CFM	ea
25	Disinfectant, Sanitizer, Virucide	gl
26	Distribution Cable - 220V converted box	ea
27	Distribution Cables - 220V	ea
28	Distribution Panel - 50 Amp	ea
29	Distribution Panel - 600 Amp	ea
30	Duct, Lay Flat	lf
31	Duct, Flex 12" (25')	lf
32	Duct, Flex 20" (25')	lf
33	DX Unit - 10 Ton	ea
34	DX Unit - 20 Ton	ea
35	Electrical Cable, CamLock 50'	ea
36	Electrical Cable, CamLock 100'	ea
37	Electrical Cable, 3 gang Box	ea
38	Electrical Cable, Quad Box (10') cable	ea
39	Filter f/ portable dehu	ea
40	Filter, Air Scrubber - Carbon/Charcoal	ea

EMERGENCY REPAIR AND REMEDIATION SERVICES

RFx 3160004825

EXHIBIT C5: MANDATORY PERSONNEL (LABOR), EQUIPMENT, AND MATERIALS

These items must be included on the appropriate rate schedules in RED.

#	DESCRIPTION	UNIT
41	Filter, Air Scrubber - HEPA	ea
42	Filter, Air Scrubber - Pleated Secondary	ea
43	Filter, Air Scrubber - Primary media	ea
44	Filter, Vacuum - HEPA Dust Bags	ea
45	Filter, Vacuum - HEPA small	ea
46	Filter, Vacuum Bags, Backpack (52112)	ea
47	Fosters 40-20 Fungicidal Protective Coating (white pigmented) (5 gal)	p/5 gal
48	General Labor	hr
49	Glass Cleaner	gal
50	Gloves, Latex / Nitrile Disposable Large (41508) (100 count box)	box
51	Gloves, Leather palm work, pair	pair
52	Green Degreaser (or equivalent)	gal
53	Health & Safety Officer (HSO)	hr
54	HydroxI Generator, Boss	ea
55	Microban Disinfectant (25204)	gal
56	Mop Head	ea
57	Personal Fall Protection (PFP) - Harness and Lanyard	ea
58	Personal Protection Equipment (Hard Hat, Goggles, Vest, PR Gloves)	ea
59	Plastic Sheeting (20'X100') 6-Mil	sf
60	Plastic Sheeting 6-mil Fire Retardant 12' x 100'	sf
61	Pressure Washer - 1000 psi electric cold water	ea
62	Project Coordinator/Director	hr
63	Project Manager (PM)	hr
64	Respirator - Half Face	ea
65	Restoration Supervisor (RS)	hr
66	Restoration Tech (RT)	hr
67	Rubber Boots	ea
68	Scaffold, (Baker / Perry - per section)	ea
69	Skilled Labor (Experienced in Restoration work)	hr
70	Tape, Blue Painters	rl
71	Tape, Brown packing	rl
72	Tape, Caution, (1000 FT)	rl
73	Tape, Duct	rl
74	Towel, Dust Cloth, Treated 12"x17" (41535) (40 count box)	bx
75	Towels, Microfiber - per dozen (40226), pack	pk
76	Towels, Terry Towels (40555), 25 lb box	bx
77	Trailer - 53' Semi	ea
78	Trailer - 53' Semi Mobile Office	ea
79	Trailer - Enclosed < 20'	ea

EMERGENCY REPAIR AND REMEDIATION SERVICES

RFx 3160004825

EXHIBIT C5: MANDATORY PERSONNEL (LABOR), EQUIPMENT, AND MATERIALS*These items must be included on the appropriate rate schedules in RED.*

#	DESCRIPTION	UNIT
80	Trailer - Flatbed 21' - 35'	ea
81	Vacuum, Backpack HEPA	ea
82	Vacuum, HEPA 55 Gallon	ea
83	Vacuum, HEPA	ea
84	Vacuum, Shop (Canister or Wet/Dry)	ea
85	Vehicle - Box Truck	ea
86	Vehicle - Mobile Command Center	ea
87	Vehicle - Semi Tractor	ea
88	Vehicle - Van - Cargo / Passenger	ea
89	Zip Wall Poles (Pair)	set
90	Zipper, Zip wall per package of 2	pk
91	Dust Masks N95 (20 per Box), ea mask	ea
92	All Purpose Cleaner	gl
93	Sticky Mat, 24"x36", 30 sheets p/package	pk

EMERGENCY REPAIR AND REMEDIATION SERVICES

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EXHIBIT C6: SMALL TOOLS

List of items that are in the Small Tools category. This list is not an all inclusive.

Description	
Screw Driver	Brush, Wire
Hammer	Buckets
Wrench	Bulb, Demo Light
Saws	Chain, 25' Lengths
Bar, Crow	Chairs - folding
Bar, Flat Pry	Chalk and Chalk Line
Bolt Cutters	Drill Bit Set
Cordless Drill	Drinking Cups
Saw, Sawzall	Scissors
Sander	Scraper, Long Handle
Impact Driver	Shears, Sheet Metal, Hand
Work Light	Shears, Sheet Metal, (Electric)
Battery Pack	Small Power Tools (all others)
Battery Charger	Small Hand Tools (all others)
Moisture Meter	Siphon Pump
Floor Squeegee	Socket Set, 3/8"
Fuel Can	Sprayer, Pump
Funnel	Squeegee, Window
Generator Aux. Adapter, 220V	Staple Gun
Face Shield, Disposable	Table
Fire Extinguisher	Tape Gun
First Aid Kit	Washtub
Flashlight, w/o Batteries	Unger Pole w/ Fixi Clamp
Hand Truck	Water Cooler
Heater, Electric	Water Hose - up to 150' per job
Heater, Propane, w/o Tank	Water Hose Spray Nozzle
Ice Chest	Water Hose Y Connector
Layflat Tie / Cord / Twine	Floor Dolly
Lock, Master, #1, #5	Wheel Barrow
Lock-Out, Tag-Out Kit	Measuring Tapes
Pallets jacks	Nail Sets
MSDS	Trash Cans
O2 Meter	Mop buckes, Mop Handle, Mop Wringer
Pan, Dust	Shovel
Putty Knife	Ladders, 14' and under
Repair Kit – Hose, Airless, Electri.	Demolition Carts
Rope, 50", Nylon / Hemp	Extension Cords
Brush, all paint < 5"/Roller	Brooms
Brush, Scrub	Small Power Tools (all others)
Brush, Tooth	Small Hand Tools (all others)