

# **REQUEST FOR PROPOSALS**

RFP Number: RFP **3200001090**

To Provide: Food Services

Issue Date: April 1, 2024

## **CLOSING LOCATION**

Mississippi Veterans Affairs

120 North State Street

Jackson, Mississippi 39201

## **PROPOSAL COORDINATOR**

Eddie Williams, Chief Procurement Officer

Telephone: (601) 576-4862

E-Mail: [contractpurchasing1@msva.ms.gov](mailto:contractpurchasing1@msva.ms.gov)

## **CLOSING DATE AND TIME**

Proposals must be received by 3:00 p.m. May 17, 2024

## SECTION 1

### 1.1 Proposal Acceptance Period

The original and 7 copies of the proposal, 8 copies total in three-ring loose-leaf binder shall be signed and submitted in a sealed envelope or package to MSVA, Attention: Eddie Williams, Chief Procurement Officer, 120 North State Street, Jackson, MS 39201 no later than the time and date specified for receipt of proposals. Timely submission is the responsibility of the respondent. **Proposals received after the specified time shall be rejected.** The envelope or package shall be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt shall be indicated on the envelope or package by Purchasing Department. The front page, reference page and signature pages may have the Respondent's name. Modifications or additions to any portion of the procurement document may be cause for rejection of the proposal. The MSVA reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, the MSVA may request the respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

#### 1.1.1 Electronic Submission

Proposals may be submitted electronically through the State. Please refer to the links below for the Vendor Registration website as well as tutorials. Please contact the MASH Help Desk (601-359-1343 option 2) if you require any assistance.

#### Registration and Submission link:

[www.dfa.ms.gov/index.php/mississippi-suppliersvendors](http://www.dfa.ms.gov/index.php/mississippi-suppliersvendors)

#### 1.1.2 Timeline

Request for Proposals Issue Date:	April 1, 2024
First Publication:	April 1, 2024
Second Publication:	April 8, 2024
Deadline for Submission of Questions:	April 19, 2024 at 12:00 p.m. CST
Anticipated Posting of Answers to Questions:	April 26, 2024
Proposal Packet Submission Deadline:	May 17, 2024 at 3:00 p.m. CST
Anticipated Award Notification:	May 29, 2024
Anticipated Post Award Debriefing Request Deadline:	June 3, 2024 at 12:00 p.m. CST
Post-Award Debriefing Held by Date:	June 6, 2024
Protests Due:	June 7, 2024 at 12:00 p.m. CST
Projected Contract Date:	July 1, 2024 (if construction completion is on schedule)

### **1.1.3 Rejection of Proposals**

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

- 1) The proposal contains unauthorized amendments to the requirements of the Request for Proposals.
- 2) The proposal is conditional.
- 3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- 4) The proposal is received late. Late proposals will be maintained unopen in the procurement file.
- 5) The proposal is not signed by an authorized representative of the party.
- 6) The proposal contains false or misleading statements or references.
- 7) The proposal does not offer to provide all services required by the Request for Proposal.
- 8) The proposal lists the name of the Respondent on pages other than the front page, references page or signature pages.
- 9) The vendor does not attend a scheduled tour of the facility.

### **1.2 Expenses Incurred in Preparing Offers**

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

### **1.3 Proprietary Information**

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

### **1.4 Registration with Mississippi Secretary of State**

By submitting a proposal, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award.

### **1.5 Debarment**

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

### **1.6 Competitive Proposals**

Discussions may be conducted with respondents who submit proposals determined to be



reasonably susceptible of being selected for award, but proposals or qualifications may also be accepted without those discussions. For these reasons, all parties are advised to propose their most favorable terms initially.

**1.7 Additional Information**

Questions about the contract portions of the procurement document must be submitted in writing to Eddie Williams, Chief Procurement Officer, 120 North State Street, Jackson, MS 39201, [contractpurchasing1@msva.ms.gov](mailto:contractpurchasing1@msva.ms.gov). Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document. Close of questions is at 12:00 p.m. CST on April 19, 2024. Anticipated posting of answers will be April 26, 2024, on the MSVA website: [www.msva.ms.gov/procurement-notice](http://www.msva.ms.gov/procurement-notice) .

**1.8 Type of Contract**

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

**1.9 Access to facility**

A guided tour of the facility will be scheduled for any vendor interested in submitting a proposal. Tours will be on April 16<sup>th</sup> & 17<sup>th</sup> at 10am & 2pm each day. **You must send a request for a guided tour by e-mail to Piccolar Johnson at [pjohnson@msva.ms.gov](mailto:pjohnson@msva.ms.gov).** If for any reason a vendor cannot make the dates of the tour, the vendor must contact Mrs. Johnson to schedule a tour. Failure to examine the facility will be at the offeror's risk. It shall be incumbent upon the offeror to understand the specifications of the facility.

**1.10 Written Proposals**

All proposals shall be in writing.

## SECTION 2

**2.1 Purpose**

The Mississippi Veterans Affairs (MSVA) is seeking to establish a contract for food services at State Veterans Homes in Biloxi, MS. These services are needed to provide food and nourishment for the Veteran Residents at this Home. This Home is a 100-bed skilled-care veterans nursing home. The home has an equipped kitchen. It is understood that any contract resulting from RFP 3200001090 requires approval by the Mississippi Veterans Affairs Board. If any contract resulting from RFP 3200001090 is not approved by the Mississippi Veterans Affairs Board, it is void and no payment shall be made.

**2.2 Scope of Services, Specifications and Requirements**

The following services will be provided by the Offeror and its staff:

1. Regulations and Standards: The Vendor will adhere to all federal and state regulations and standards that govern MSVA and which are applicable to the State Veterans Homes:

- A. The vendor will adhere to all regulations and standards that govern MSVA:
  - (1) U.S. Department of Veterans Affairs;
  - (2) Mississippi Department of Health, Division of Licensure and Certification;
  - (3) Nursing Home Regulations;
  - (4) Rules, Regulations, and Minimum Standards for Institutions  
for the Aged or Infirm;
  - (5) MSVA Policies and Procedures;
  - (6) USDA Food Safety and Handling Guidelines

2. Nourishments

- A. Food and drink items will be requisitioned by MSVA Nursing Staff for feeding of residents between meals. Procedures will be agreed upon by vendor and MSVA.
- B. MSVA reserves the right to make additions and deletions to the nourishment list. Items to be available include, but are not limited to:
  - (1) Coffee and Decaffeinated Coffee;
  - (2) Tea;
  - (3) Water;
  - (4) Sugar and artificial sweeteners;
  - (5) Fruit Juices;
  - (6) Soups;
  - (7) Cheese;
  - (8) Crackers;
  - (9) Cookies;
  - (10) Peanut Butter;
  - (11) Fresh fruit;
  - (12) Bread;

- (13) Lunch meat and meat spreads;
- (14) Cereals, dry and instant hot;
- (15) Condiments;
- (16) Single-Serve Ice Cream;
- (17) Sandwiches;
- (18) Pudding;
- (19) Pre-packaged thicken liquids;
- (20) Pre-packaged thicken liquids for individuals.

C. The vendor's dietitians will develop a weekly nourishment calendar appropriate for diets of residents of the nursing home.

3. Medication-Treatment Products

A. Food items used as medicine or to administer medications will be available.

B. Items include, but are not limited to:

- (1) Fruit Juices;
- (2) Applesauce;
- (3) Bran;
- (4) Drink Mix;
- (5) Supplements, i.e. Boost, Ensure, Medpass, etc.

4. Supplements

A. The vendor will establish a formulary of commercial dietary supplements with input from MSVA Administrator or assigned staff.

B. Supplements will be supplied based on physicians' orders and nutritional needs of residents, i.e. Boost, Ensure, Medpass, etc.

C. Any deviation from the physicians' orders must be reviewed by the administrator and approved by the physician.

## 5. Scope of Service

### A. Resident Meals

1. The Respondent is responsible for the planning, preparation, service and delivery (carts taken to each wing) of all resident meals (3 times per day unless specified by physician orders) that meet or exceed the caloric intake required and in compliance with physician orders. For noon and evening meals, at least two entree options and at least three side items will be available. Residents will select entree and sides items on the day prior to meal. Vendor staff will be responsible for recording selected meal items on a ticket (tickets/tablet service with meal options available will be supplied by Food Service Staff) for each Resident for the noon and evening and submitting the ticket to Food Service staff the day prior to the meal being prepared. At least two dessert options will be available for the noon and evening meals.
2. Breakfast: Breakfast shall include, but not be limited to, an entree, a meat and a bread and cereal, hot or cold, seven days a week.
3. Desserts: Desserts shall include pies and cakes and will be available for lunch and dinner seven days a week. All dessert must be served covered.
4. Soup/Salad: Soup and individual salad will be offered.

### B. Programmatic/Recreational Meals

1. Vendor will provide meals for resident recreational activities based on a selection of set menus provided by the vendor. Examples: picnics, sack lunches, cookouts.
2. These meals will replace a meal on the seasonal three (3) month cycle menu approved by MSVA staff.
3. These meals will include all paper goods, disposable utensils, etc. as well as food.
4. Vendor will provide special theme meals for all residents each month. Schedules shall be coordinated with the MSVA Activities Department.
5. Vendor will provide birthday cake, ice cream, disposable plates and utensils for all residents once per month. This will be coordinated with the MSVA Activities Department. The vendor will establish and publish a reasonable "cut-off time for final changes before special events other than birthdays and theme meals.
6. These meals are to be included in the guaranteed meal price.
7. Vendor will provide sack lunches for residents as necessary for medical appointments.
8. Vendor will allow residents to set menu for one meal per month. Vendor will

confer with the Resident's Food Council at the home to determine the menu.

*C. Cafeteria: Resident, Family Member, Employee and Guest Dining*

1. Meal service will be available in the cafeteria for all three meals 7 days per week.
2. Vendor must provide written explanation of service options and a fixed price for each meal pursuant to CI for each Resident.
3. Vendor should list cost plus tax for meals to be purchased by Employees, Family Members, and Guests.

*D. Catering*

1. Vendor will be notified by MSVA at least 5 days prior to the event to be catered.
2. Vendor will charge MSVA at cost for food, supplies, and labor used.
3. Charges for catering events are to be billed on separate invoices referencing event and approved by MSVA.
4. Catered events will be conducted in an efficient, professional manner without adversely affecting the food service for residents.
5. Vendor has the right to establish a maximum number of events to be handled at one time.
6. Vendor will establish menus and fixed prices for MSVA to choose from for catered events.

**6. Quality Management/Performance Improvement Requirements**

- A. Performance standards as stated in the MSVA/Vendor contract may be measured through unannounced Quality Assurance Surveillance Plan conducted by MSVA staff
  - (1) Compliance with sanitation, safety and acceptable levels of service will be monitored.
  - (2) If compliance is deficient, MSVA will notify the vendor. Penalties may be assessed if applicable as stated in Subsection 7 labeled Penalties.
- B. When compliance rates fall below the expected standard, the vendor must submit a written corrective action plan to MSVA within three (3) calendar days of notification of deficiency.
- C. The corrective action must include:
  - (1) Flow to correct the deficiency for residents affected.



- (2) Flow to identify those residents potentially affected by the same deficiency.
  - (3) How to prevent the deficiency from recurring.
  - (4) How the vendor will monitor and ensure compliance with the corrective action plan and prevent the same deficiency from recurring.
- D. Vendor shall develop and implement the plan of correction for survey deficiencies; MSVA Administrator must approve the plan of correction before implementation.
  - E. MSVA and other regulatory agencies will at all times have access to the premises to inspect and ensure that property furnished is being maintained, used properly and accounted for.
  - F. Audit of meal tickets and dietary orders monthly and upon request. Results of audit shall be reported promptly to the Home's Administrator.

## **7. Penalties**

- A. If at any time MSVA Nursing Home Administrator assesses that performance standards are not being met, a penalty can be assessed.
- B. The penalty will be 5% of weekly billings until performance standards are met with a minimum penalty of 5% of billing for the week immediately following discovery of noncompliance by MSVA staff.
- C. Once a deficiency is discovered, MSVA will send an email notifying the vendor of the issue. The vendor will have 24 hours to correct the issue. MSVA will reinspect 24 hours later and if the issue is not resolved the MSVA Director of Operations will be notified to decide the penalty of vendor.
- D. If MSVA Director of Operations and vendor do not agree, the matter will be referred to the Executive Director for a final decision.
  - (1) If vendor is found to be out of compliance, penalty will be assessed as in item B above from date of first notification by MSVA to the vendor of the assessment.
  - (2) If vendor is found to be in compliance, no penalty will be assessed.
- E. Penalty will be assessed for non-timely corrective action.
- F. If a citation from a MDH, VA or other survey results in monetary fine attributed to vendor, vendor will pay the fine.

- G. MSVA will not pay for any food items that are spoiled or unwholesome at the time of delivery, do not meet specifications for food components or menu items, or do not otherwise meet requirements of this contract.
- H. Vendor shall pay any claims, including attorney fees, due to vendor negligence or non-compliance with regulations for the 3-year period for which records are subject to review by the MDFI or USDA.

**8. Sanitation and Safety**

- A. Vendor is responsible for safety, sanitation, and maintenance in the following areas:
  - (1) Physical plant of kitchen and dining room, including food service equipment, as well as dishes, dinnerware, serving platters and utensils.
  - (2) Food supply and storage, handling during preparation, transportation and service.
  - (3) Personal hygiene of food service employees.
  - (4) Weekly inspections of the food preparations, serving line, dry storage, walk in freezer and coolers. Carts that transport the meals to the wings must be thoroughly and entirely cleaned on a weekly basis.
  - (5) All equipment must be moved to clean the entire food prep areas including walls and floors on a weekly basis.
  - (6) The fryer must be cleaned inside and out, including the electronic compartment weekly.
  - (7) The tilt skillet must be cleaned and all grease drained after each use.
  - (8) The outside and inside of the convection oven must be cleaned daily.
  - (9) Robo-Coup must be cleaned daily to include the base of the Robo-coup and accessories.
  - (10) The steamer must be cleaned daily.
  - (11) The dishwasher must be cleaned inside and out, which includes emptying the baskets and drain below the dishwasher daily.
  - (12) The water in the serving line must be emptied each day and cleaned, including the glass or sneeze guard.
  - (13) The ice cream machine must be cleaned every third day.
  - (14) The Food Service Manager and Dietitian office must be cleaned on a weekly

basis.

(15) Meat Slicer must be cleaned after every use

**9. Personnel**

- A. MSVA reserves the right of final interview and approval for all management personnel. If at any time a vacancy occurs in the senior management team, including but not limited to, General Manager, Dietary Manager, Dietician, the vacancy must be filled within 30 days and the Vendor will have personnel available to handle or support the daily activities of said home.
- B. Vendor will furnish sufficient on-site qualified personnel to ensure that the food service program is operating according to MDH and VA quality food service standards and personal conduct standards acceptable to MSVA. This requirement includes, but is not limited to, a fulltime qualified registered dietitian that works 8 hours per day, Monday through Friday.
- C. The vendor will pay all employees employed by the vendor.
- D. These employees are subject to the vendor's direct supervision and approval and are members of the vendor's staff.
- E. Personnel policies will be those of the vendor. Vendor will present these policies to MSVA upon acceptance of contract.
- F. In addition to on-site personnel, sufficient personnel must be employed by the vendor's company to keep the food service operation current on new food products, menu ideas, appropriate research and new food production equipment and methods.
- G. Consultation with vendor's supervisory and technical staff may be requested and utilized by MSVA administration for proper functioning of the food service program.
- H. The vendor must have access to qualified replacement personnel to ensure continuity of service in the event of a strike, resignation, dismissal or illness of on-site personnel.
- I. The expense of temporary employees will be borne entirely by the Vendor.
- J. Should labor problems arise to the extent that legal advice and assistance are necessary, such expense will be borne by the vendor.
- K. Vendor agrees not to hire any MSVA employees without the express written approval of MSVA Executive Director.
- L. Vendor will employ a certified food service director at the Home.

- M. Vendor will be responsible for the cost of background checks on each employee. Each employee must submit fingerprints for submission to the MS State Board of Health. A copy of this report must be submitted to MSVA.
- N. Vendor will be responsible for the Tuberculosis Skin Test of each employee. Results of Tuberculosis Skin Test should be submitted to VA Home Administrator prior to employment.
- O. Registered Dietitians are to participate in the weekly weight meeting under the direction of the Nursing Home Administrator. Registered Dietitians should report weight loss percentages, and pounds if requested, in weekly weight meetings.
- P. Vendor is required to complete the dietary section of Minimum Data Set.
- Q. The Vendor will ensure that employees attend all mandatory in-service training of the Home.
- R. Vendor will ensure staff receive dementia training upon hire and quarterly either electronically or in person at the facility.
- S. Vendor will provide uniforms for staff at Vendor's cost.
- T. Vendor will have a cost plan to handle wearing appropriate personal protection equipment (PPE), regular cleaning and disinfecting for infection control purposes when in the Homes when the need arises. This will be at the vendor's expense.
- U. Any physical altercations involving Vendor employees, the employees will be removed from MSVA facility immediately, and written statements will be provided to MSVA Administrators within 12 hours.

**10. Billing**

- A. Vendor will submit a weekly bill to MSVA within three (3) days after the end of each week.
- B. Vendor will submit final bills for the MSVA fiscal year (July 1 through June 30) by July 15 each year. Failure to submit any unpaid invoices from previous fiscal year before the deadline could result in the invoice not being paid.
- C. Each bill will show a breakdown of charges and an overall summary.
- D. Vendor will maintain documentation to support costs above and beyond normal operations.
- E. Vendor will bill MSVA based only on the daily recorded census

**11. Financial Records/Monthly Report**

- A. Vendor will utilize generally accepted accounting principles and practices in the maintenance of financial records for the food service operation.
- B. Vendor will permit MSVA or other regulatory agencies to:
  - (1) Audit its accounts relating to this contract
  - (2) Verify all reports, records and data
  - (3) Obtain other desired information by direct reference to ledgers, correspondence, memoranda and any other records pertinent to food service operation.
- C. Vendor will submit detailed information to MSVA as requested regarding the following:
  - (1) Nourishment;
  - (2) Medication;
  - (3) Special events;
  - (4) Catering;
  - (5) Commodity activity.

**12. Food Service Facility, Equipment, Supplies, Services Provided by MSVA**

- A. All food production and food service facilities, as equipped and ready to operate.
  - (1) Such fixtures and equipment must be maintained in a manner that is acceptable to regulatory agencies.
  - (2) Any replacement of equipment that wears out as a result of normal wear will be provided through negotiation between MSVA and vendor.
  - (3) Maintain inventory and replace misuse or breakage of equipment or supplies.
- B. Pest control. If additional pest services are needed due to a cleanliness issue, all cost will be the responsibility of the vendor.
- C. Preventive maintenance, repair and replacement of existing equipment owned by MSVA.
- D. All utilities



- E. Local phone service
- F. MSVA will maintain a joint inventory with the MSVA Property Officer and the Home Administrator.
- G. Cleaning of resident cafeteria tables, chairs, walls, draperies, blinds, windows and floors.

**13. Equipment, Supplies, Service to be provided by Vendor**

- A. Routine/weekly cleaning of food preparation area, service area and office areas occupied by vendor.
- B. Daily cleaning of the kitchenettes and serving areas in each wing
- C. Supplies used in food production and service to residents and employees and for catered events.
- D. Replacement of all small supply items due to wear and tear or damage due to negligence on the vendor's part.
- E. Napkins and condiments for meal services. Disposable napkins, condiments, plates and serving trays for Residents in isolation.
- F. Exterior cleaning of hoods, ducts, and filters.
- G. Maintenance, repairs, and replacement of equipment owned by vendor.
- H. Building/facilities renovation to accommodate new systems or changes implemented by vendor upon review and approval by the MSVA Director.
- I. Repair, replacement, and/or payment for damage to MSVA property caused by vendor/Vendor negligence.
- J. Long distance telephone service/fax, computer lines.
- K. Pumping out grease pit quarterly, or as needed.
- L. Provide for storage and disposal of used cooking oil.
- M. If drain or disposal is clogged due to improper dumping of food and requires MSVA to outsource repair, then the cost of unclogging repair will be assessed to the Vendor.
- N. The Vendor will purchase all supplies for kitchen equipment that meets manufacture guidelines.
- O. All equipment will be maintained to MSVA and manufactures guidelines.

- P. Kitchen equipment will be inspected weekly either by Administrator or Director of Food Service for MSVA.
- Q. Once the vendor has assumed control of Kitchen equipment, convection oven, stove, dishwasher, tilt skillet, steamer, robot-coup, fryer, steam table, pellet charger, ice cream machine, water dispenser, coffee machine, and all equipment in the kitchenettes will be the sole responsibility of the vendor to daily maintain to the manufacturer's standards and repair if needed.
- R. The vendor is responsible for preparing and plating food for residents. The vendor is responsible for delivering food to MSVA kitchenettes, placing food in the service counters, and plating food for MSVA to serve to residents in each kitchenette.
- S. Temp-logs must be kept when meals depart the kitchen and prior to plating of first tray when food arrives in the kitchenettes for each meal.
- T. Knife sharpening
- U. All cleaning supplies

**14. DISASTER PREPAREDNESS.**

- A. In the interest of continuous consistent delivery of essential services to the residents, in the event of a disaster, the vendor agrees that: Vendor will maintain a 7-day supply which includes food, paper products, utensils, water (one [1] gallon per resident, per day), and cooking supply. During Hurricane Season, June 1-November 30, the Vendor will maintain a 10-day supply which includes food, paper products, utensils, water (one [1] gallon per resident, per day), and cooking supply.
- B. Vendor will provide nourishing meals, three (3) times per day, plus snacks for the residents. Diets will vary from regular to therapeutic. Meals will be provided to employees in the Home during duration of emergency. Snacks and meals provided to employees and guests during the duration of the emergency will be charged at the price agreed upon by vendor and MSVA unless MSVA notifies Vendor that said meals are to be billed to MSVA as a separate invoice. The Vendor will also provide MSVA a signed daily meal count sheet for staff meals provided during emergency period. The MSVA Administrator and vendor will be in discussion concerning supplies upon notification of pending disasters.
  - C. Vendor will make emergency arrangements for the procurement and delivery of water for cooking needs at the Home at the cost of Vendor. Vendor will make

emergency arrangements, at the request of MSVA, for the procurement and delivery of potable water for the resident's needs at the Home. MSVA will work in good faith with Vendor to assist in the supply of water in the event of an act of God or natural disaster.

**15. Communication and Computer Access**

- A. Vendor will provide its own long distance/fax telephone service.
- B. MSVA will provide modem quality lines through the MSVA telephone switch for external electronic communication and connectivity.
- C. Vendor will provide their own PCs, printers, printer paper, printer ink or toner, software, and any other hardware/software necessary for connection and communication (e-mail, time, reports, etc.) to the vendor's home office.

**16. Raw Food Specifications:**

- A. The following specifications establish minimum qualities acceptable to MSVA in the procurement of raw foods by the successful vendor: Bidders must furnish with the bid a complete list of the grades and qualities of raw food to be used.
  - (1) Canned Fruits: USDA Grade A
  - (2) Dairy Products: USDA Grade A
  - (3) Eggs: USDA Grade A whole eggs. Whole egg alternates maybe considered if approved by the agency Executive Director, the Chief Operating Officer, Food Service Director, and the Home Administrator.
  - (4) Frozen fruits and frozen juices: USDA Grade A
  - (5) Frozen vegetables: USDA Grade A
  - (6) Canned vegetables: USDA Grade A
  - (7) Fresh Produce/Fruits: US or No. 1, USDA Grade A
  - (8) Spices and seasonings: Shall be prepared in accordance with best commercial practices, under strict sanitary conditions from clean, sound, true products and made from which no portion of any volatile or other flavoring principle has been removed, and shall be free from artificial coloring, adulterants and impurities.
  - (9) All food items, including frozen, chilled, and dry storage, must be dated on day of receipt.
- B. Meat and Poultry: All meat to be US Domestic and must have the official

inspection mark of the USDA and/or MDAC.

- (1) Beef for Dry Roasting: USDA Choice
  - (2) Beef for Pot Roasting/Braising: USDA Choice
  - (3) Ground Beef: Made from 80/20 USDA Choice beef not to exceed 20% trimmable fat. Prepared beef thoroughly blended prior to grinding. Initial grinding through a plate having 1/8 inch holes in diameter. Shall not contain organ meats. Ground beef packed immediately upon conclusion of grinding and quick frozen. USDA or MDAC official inspection mark required.
  - (4) Fish and Seafood must have permit from manufacturer that provides information the plant is approved by USDA
  - (5) All meats and seafoods must be dated upon receipt.
- C. Textured Vegetable Protein: Not allowed or acceptable as a substitute for meat or fish protein
- D. USDA Foods donated by the US Department of Agriculture shall be used in accordance with standard menu practices based upon availability.

### **2.3 Term**

The term of the contract shall be for a period of two (2) years, starting August 1, 2024 through July 31, 2026. Upon written agreement of both parties, the contract may be renewed by the MSVA for a period of one (3) successive one-year period(s) under the same prices, terms, and conditions. The total number of renewal years permitted shall not exceed one (1).

#### **2.3.1.1 Requirements**

- a) A unit price shall be given for each service, and that unit price shall be the same throughout the contract.
- b) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the vendor's rights under any termination clause in the contract.

## **SECTION 3**

### **3.1 Insurance**

The successful vendor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance and fidelity bond insurance. All workers' compensation, comprehensive general liability, professional liability, and fidelity bond insurance will provide coverage to the MSVA as an additional insured. The MSVA reserves the right to request from carriers, certificates of insurance

regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor shall be prepared to provide evidence of required insurance upon request by the MSVA at any point during the contract period and should consult with legal counsel regarding its obligations.

## **SECTION 4**

### **4.1 Written Proposals Shall Contain the Following Minimum Information**

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

### **4.2 Evaluation Procedure**

#### **4.2.1 Step One:**

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

##### **4.2.1.1 Responsive Respondent**

Respondent must submit a proposal which conforms in all material respects to this Request for Proposals, RFP 3200001090, as determined by MSVA.

##### **4.2.1.2 Responsible Respondent**

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

#### **4.2.2 Step Two:**

Proposals that satisfactorily complete Step One will be reviewed and analyzed to determine if the proposal adequately meets the needs of MSVA. Factors to be considered are as follows:

#### **The Following Factors will be Evaluated and Point System Given:**

1. *Cost Factor – 36%*



- a. Contractor expects vendor to provide a budget in its Request for Proposal with detailed cost components. Price will be scored objectively, and the evaluation will be based on each proposal's total cost
2. *Technical Factors – 20%*
  - a. Expert's plan for performing the required services to include graphs and or outlines as necessary. Meeting the standards of requirements under the proposed RFP 3200001090 and addressing all items, ensuring the responses are clear and meet minimum requirements requested.
3. *Corporate Experience or Past Performances – 15%*
  - a. The experience factor focuses on the degree to which an offeror has actually performed similar work. The past performance factor focuses on the quality of the work previously performed.
4. *Long Term Care Experience – 20%*
  - a. A diverse array of services provided over a sustained period of time to people of all ages with chronic conditions and functional limitations with similar bed capacity.
5. *In House Training and Sustainability Factors – 9%*
  - a. Training courses to equip employees with the skills and knowledge to identify and implement efficiency measures across various aspects of their work and ongoing training to maintain proficient in their skills.

#### **4.2.3 Step Three;**

MSVA will schedule a meeting with representatives from the top three proposals via in person or electronically (Zoom, Teams, etc.) to provide feedback on any questions the MSVA team may have.

#### **4.2.4 Step Four:**

MSVA will contact the respondent with the proposal which best meets MSVA needs based on factors evaluated in Step Two) and **attempt to negotiate an agreement that is deemed acceptable** to both parties.

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

- 1) **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
- 2) **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks.
- 3) **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.

- 4) **Personnel:** Attach resumes of all those who will be involved in the delivery of service (from principals to field technicians) that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
- 5) **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person. References may be contacted by the Evaluation team. References will be used in Management Factors.
- 6) **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed.
- 7) **Additional data:** Provide any additional information that will aid in evaluation of the response.
- 8) **Cost data:** Estimate the annual cost of the service. Cost data submitted at this stage is binding. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals. An exact cost per day needs to be listed per Resident. There needs to be an exact cost for each meal charged to family members and employees. The contract price may be adjusted on yearly basis due to inflation of prices. The adjustment will be the greater of three percent (3%) or the annual inflation rate as determined by the United States Department of Labor's Consumer Price Index (CPI) for the month of April.
- 9) The Proposal must be in a three-ring loose leaf binder.

#### 4.4 **Nonconforming Terms and Conditions**

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

#### 4.5 **Conditioning Proposal Upon Other Awards**

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

#### 4.6 **Award**

Award shall be made to the responsible respondent whose proposal is determined in writing, within seven (7) business days, to be the most advantageous to the State taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation.

##### 4.6.1 **Notification**

All participating vendors will be notified of the MSVA's intent to award a contract.

#### 4.7 **Acknowledgment of Amendments**

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

## SECTIONS

### 5.1 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or e-mail. The written request must be received by Eddie Williams, Chief Procurement Officer (CPO), for the MSVA within three (3) business days of notification of the contract award. Post-Award Debriefing requests are due by June 3, 2024, at 12:00 p.m. CST. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. Post-Award Debriefing will be scheduled by June 6, 2024. If a respondent prefers to have legal representation present, the respondent must notify the CPO of the MSVA in writing and identify its attorney by name, address, and telephone number.

### 5.2 Protest of Award

Any actual or prospective respondent or vendor who is aggrieved in connection with this solicitation or the outcome of the Request for Proposals may file a protest with the CPO, Eddie Williams. The protest shall be submitted on or before 12:00 p.m. CST on June 7, 2024, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by Eddie Williams, CPO, via either U.S. mail, postage prepaid, electronic mail or personal delivery. Protests filed after 12:00 p.m. CST on June 7, 2024, will not be considered.

### 5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment B** and those required by the *Public Procurement Review Board's Office of Personal Service Contract Review's Rules and Regulations* as updated.

### 5.4 Priority

The Requests for Proposals, its amendments, AND the offeror's proposals shall constitute the contract.

### 5.5 Optional Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment C** and those within the *Public Procurement Review Board's Office of*

*Personal Service Contract Review's Rules and Regulations* as updated.

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

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

**5.7 Attachments**

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

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

1. That he/she has thoroughly read and understands this Request for Proposals, RFP 3200001090, all Amendments and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Proposals, RFP 3200001090, all Amendments and the attachments herein;
3. That the company agrees to all provisions of this Request for Proposals, RFP 3200001090, all Amendments and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Proposals.

**Printed Name:** .....

**Signature/Date:** \_\_\_\_\_

**ATTACHMENT A**

**Certifications and Assurances**

**This page must be completed and included in the proposal.**

I/We make the following certifications and assurances as a required element of the offer to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

**1. REPRESENTATION REGARDING CONTINGENT FEES**

Vendor 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 Vendor's proposal.

**2. REPRESENTATION REGARDING GRATUITIES**

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

**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

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

**4. PROSPECTIVE VENDOR'S CONTINGENT FEES**

**REPRESENTATION REGARDING**

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

**Name/Title:** .....

**Signature/Date:** \_\_\_\_\_

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



## ATTACHMENT B

**Required Clauses for Service Contracts Resulting from this Request for Proposals:**  
*By submitting a proposal, the vendor is agreeing to these clauses*

1. **APPLICABLE LAW** - The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Vendor shall comply with applicable federal, state, and local laws and regulations.
2. **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.
3. **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 Vendor's choice. The State may, at its sole discretion, require Vendor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Vendor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
4. **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 Vendor specifying the part of the contract terminated and when termination becomes effective. There will be a thirty (30) day written notice given to the Vendor.
  - (2) **Vendor's Obligations.** Vendor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Vendor will stop work to the extent specified. Vendor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Vendor 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 Vendor to assign Vendor's right, title, and interest under terminated orders or subcontracts to the State. Vendor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
5. **TERMINATION FOR DEFAULT**
  - (1) **Default.** If Vendor 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

Vendor 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 Vendor'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. Vendor 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) Vendor's Duties. Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Vendor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Vendor 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 Vendor 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 subcontractor, Vendor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Vendor to make progress in the prosecution of the work hereunder which endangers such performance) if Vendor 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, Vendor 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 Vendor to meet the contract requirements. Upon request of Vendor, 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, Vendor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience."

(5) Erroneous Termination for Default. If, after notice of termination of Vendor'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.

6. **TERMINATION UPON BANKRUPTCY** - This contract may be terminated in whole or in part by MSVA upon written notice to Vendor, if Vendor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Vendor of an assignment for the benefit of its creditors. In the event of such termination, Vendor 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.
7. **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 MSVA, MSVA shall have the right upon ten (10) working days written notice to Vendor, to terminate this agreement without damage, penalty, cost or expenses to the MSVA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
8. **COMPLIANCE WITH LAWS** - Vendor understands that MSVA 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 Vendor agrees during the term of the agreement that Vendor will strictly adhere to this policy in its employment practices and provision of services. Vendor 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.
9. **REPRESENTATION REGARDING CONTINGENT FEES** - Vendor 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 Vendor's bid or proposal.
10. **REPRESENTATION REGARDING GRATUITIES** - The bidder, offeror, or Vendor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
11. **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.

12. STOP WORK ORDER

(1) Order to Stop Work: The Chief Procurement Officer, may, by written order to Vendor at any time, and without notice to any surety, require Vendor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 120 days after the order is delivered to Vendor, 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, Vendor 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, Vendor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Vendor 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 Vendor's cost properly allocable to, the performance of any part of this contract; and,
- (b) Vendor 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.

13. E-PAYMENT - Vendor 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.

14. E-VERIFICATION - If applicable, Vendor 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. Vendor 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, Vendor agrees to provide a copy of each such verification. Vendor 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 Vendor 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 Vendor 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, Vendor 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.

15. **TRANSPARENCY** - This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Vendor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
16. **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.
17. **REPRESENTATION REGARDING CONTINGENT FEES** - Vendor 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 Vendor's bid or proposal.

18. REPRESENTATION REGARDING GRATUITIES - The bidder, offeror, or Vendor 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*.
19. ACKNOWLEDGMENT OF AMENDMENTS -Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MSVA by the time and at the place specified for receipt of bids.
20. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION - The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.
21. PROSPECTIVE VENDOR'S REPRESENTATION REGARDING CONTINGENT FEES - The prospective Vendor represents as a part of such Vendor's bid or proposal that such Vendor has/has not (use applicable word or words) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
22. ANTI-ASSIGNMENT/SUBCONTRACTING - Vendor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Vendor's special skills and expertise. Vendor 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.
23. ANTITRUST - By entering into a contract, Vendor conveys, sells, assigns, and transfers to the MSVA 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<sup>4</sup> or services purchased or acquired by the MSVA under said contract.
24. 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.
25. ATTORNEY'S FEES AND EXPENSES - Subject to other terms and conditions of this agreement, in the event Vendor defaults in any obligations under this agreement, Vendor 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. Vendor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Vendor.

26. **AUTHORITY TO CONTRACT** - Vendor 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.
27. **CHANGE IN SCOPE OF WORK** - The MSVA 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 Vendor that the scope of the project or of Vendor's services has been changed, requiring changes to the amount of compensation to Vendor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MSVA and Vendor.

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

28. **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 Vendor for additional compensation, damages, or an extension of time for completion, Vendor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Vendor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) Vendor 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 Vendor knows of the occurrence of such action or omission;
- ii. within 30 days after Vendor knows of the occurrence of such action or omission, if Vendor 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 Vendor regards the act or omission as a reason which may entitle Vendor 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 Vendor believes that additional compensation, damages, or an extension of time may be remedies to which Vendor is entitled; and,

(c) Vendor 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 Vendor from compliance with any rules of law precluding state officers and Vendors 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.

29. INFORMATION DESIGNATED BY VENDOR AS CONFIDENTIAL - Any disclosure of those materials, documents, data, and other information which Vendor 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 Vendor or its subcontractor shall rest with Vendor. Disclosure of any confidential information by Vendor or its subcontractor without the express written approval of the [agency] shall result in the immediate termination of this agreement.

30. CONFIDENTIALITY - Notwithstanding any provision to the contrary contained herein, it is recognized that MSVA 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 MSVA pursuant to the agreement and designated by the Vendor in writing as trade secrets or other proprietary confidential information, MSVA 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 Vendor for disclosure of information required by court order or required by law.
31. VENDOR PERSONNEL - The MSVA shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Vendor. If the MSVA reasonably rejects staff or subcontractors, Vendor must provide replacement staff or subcontractors satisfactory to the MSVA in a timely manner and at no additional cost to the MSVA. The day-to-day supervision and control of Vendor's employees and subcontractors is the sole responsibility of Vendor.
32. COPYRIGHTS - Vendor agrees that MSVA shall determine the disposition of the title

to and the rights under any copyright by Vendor or employees on copyrightable material first produced or composed under this agreement. Further, Vendor 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 Vendor 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 Vendor 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.

33. DEBARMENT AND SUSPENSION

Vendor 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.

34. 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.

35. EXCEPTIONS TO CONFIDENTIAL INFORMATION

Vendor 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 Vendor from any nonparty; or,

(6) is disclosed with the disclosing party's prior written consent.

36. ERRORS IN EXTENSION - If the unit price and the extension price are at variance, the unit price shall prevail.
37. FAILURE TO DELIVER - In the event of failure of Vendor to deliver services in accordance with the contract terms and conditions, the MSVA, after due oral or written notice, may procure the services from other sources and hold Vendor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MSVA may have.
38. FAILURE TO ENFORCE - Failure by the MSVA 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 MSVA to enforce any provision at any time in accordance with its terms.
39. 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, Vendor 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 Vendor 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 Vendor under this contract.
40. 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, Vendor 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.
41. HIPAA COMPLIANCE - Vendor 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.
42. INDEMNIFICATION - To the fullest extent allowed by law, Vendor 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 Vendor 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, Vendor may be allowed to control the defense of any such claim, suit, etc. In the event Vendor defends said claim, suit, etc., Vendor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Vendor 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. Vendor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

43. **INDEPENDENT VENDOR STATUS** - Vendor shall, at all times, be regarded as and shall be legally considered an independent Vendor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Vendor, 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 Vendor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Vendor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Vendor. Vendor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Vendor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MSVA, and the MSVA shall be at no time legally responsible for any negligence or other wrongdoing by Vendor, its servants, agents, or employees. The MSVA shall not withhold from the contract payments to Vendor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Vendor. Further, the MSVA shall not provide to Vendor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.
44. **INFRINGEMENT INDEMNIFICATION** - Vendor 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, Vendor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Vendor fail to obtain for the customer the right to use such items, Vendor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Vendor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Vendor may require the customer to discontinue using such items, in which case Vendor 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 Vendor in writing of any alleged infringement claim of which it has knowledge, Vendor 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.

45. 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 Vendor. Vendor 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 Vendor on the basis of draftsmanship or preparation hereof.
46. 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 Vendor performance or nonperformance and the contract contains the Termination for Default clause set forth in Section 4-101.05.
47. 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.
48. NO LIMITATION OF LIABILITY - Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Vendor for harm caused by the intentional or reckless conduct of Vendor or for damages incurred through the negligent performance of duties by Vendor or the delivery of products that are defective due to negligent construction.
49. 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 Vendor: name, title, Vendor, address for the agency: name, title, agency, address.
50. 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 Vendor.
51. 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 MSVA and agreed to by Vendor.

52. **OWNERSHIP OF DOCUMENTS AND WORK PAPERS** - MSVA 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 Vendor's internal administrative and quality assurance files and internal project correspondence. Vendor shall deliver such documents and work papers to MSVA upon termination or completion of the agreement. The foregoing notwithstanding, Vendor shall be entitled to retain a set of such work papers for its files. Vendor shall be entitled to use such work papers only after receiving written permission from MSVA and subject to any copyright protections.
53. **PATENTS AND ROYALTIES** - Vendor covenants to save, defend, keep harmless, and indemnify the MSVA 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 MSVA. If Vendor 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.
54. **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.** Vendor 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.
55. **QUALITY CONTROL** - Vendor 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 Vendor'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 MSVA.
56. **RECORD RETENTION AND ACCESS TO RECORDS** - Provided Vendor is given reasonable advance written notice and such inspection is made during normal business

hours of Vendor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Vendor'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 Vendor 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.

57. RECOVERY OF MONEY - Whenever, under the contract, any sum of money shall be recoverable from or payable by Vendor to the MSVA, the same amount may be deducted from any sum due to Vendor under the contract or under any other contract between Vendor and the MSVA. The rights of the MSVA are in addition and without prejudice to any other right the MSVA may have to claim the amount of any loss or damage suffered by the MSVA on account of the acts or omissions of Vendor.
58. REQUIREMENTS CONTRACT - During the period of the contract, Vendor shall provide all the service described in the contract. Vendor understands and agrees that this is a requirement contract and that the MSVA shall have no obligation to Vendor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the MSVA for the period of the contract. The amount is only an estimate and Vendor understands and agrees that the MSVA is under no obligation to Vendor 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. Vendor further understands and agrees that the MSVA 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.
59. RIGHT TO AUDIT - Vendor shall maintain such financial records and other records as may be prescribed by the MSV A or by applicable federal and state laws, rules, and regulations. Vendor shall retain these records for a period of three years after final payment, or until they are audited by the MSV A, 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.
60. RIGHT TO INSPECT FACILITY - The State may, at reasonable times, inspect the place of business of a Vendor or any subcontractors which is related to the performance of any contract awarded by the State.
61. 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.

62. STATE PROPERTY - Vendor will be responsible for the proper custody and care of any state-owned property furnished for Vendor's use in connection with the performance of this agreement. Vendor will reimburse the State for any loss or damage, normal wear and tear excepted.
63. THIRD PARTY ACTION NOTIFICATION - Vendor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Vendor 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 Vendor is considered by the MSVA to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Vendor shall, on being notified by the MSVA, immediately correct such deficient service or work. In the event Vendor fails, after notice, to correct the deficient service or work immediately, the MSVA shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Vendor.
64. 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>.
65. 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.