

INVITATION FOR BIDS

Project: Emergency Response and Cleanup Activities Involving Oil, Diesel, Kerosene and Non-Hazardous Materials in Inland Areas in Mississippi

Contracting Agency: Mississippi Department of Environmental Quality

To: Prospective Bidders

1.0 PURPOSE AND STATEMENT OF WORK

The Mississippi Department of Environmental Quality (“MDEQ”, “Agency”, or “State”) is seeking sealed bids for the Emergency Response and Cleanup Activities involving Oil, Diesel, Kerosene and Non-Hazardous Materials in Inland Areas in Mississippi, excluding petroleum containers suspected of damage (the “Project”) from organizations licensed in the State of Mississippi to assist MDEQ, on an as needed basis, with effective and safe Emergency Response and Cleanup Activities.

MDEQ may award multiple contracts under this solicitation. Bidders who meet the requirements of this solicitation (responsive and responsible bidder(s)) shall be listed to perform emergency response and cleanup activities ***involving oil, diesel, kerosene and other non-hazardous materials, herein collectively referred to as (“Oil”)*** in inland areas in Mississippi for MDEQ. A responsible and responsive bidder is one who acknowledges and affirms rates and contract/bid amount established by MDEQ in the attached Bid Form/Rate Sheet by signing the bid form/rate sheet, attached hereto as Attachment A, and meets all the requirements of Section 2.6, Minimum Bid Requirements, and Section 2.10, Standards of Responsibility.

Selection as a MDEQ Oil Emergency Response Contractor in no way guarantees that such Contractor will perform a specified amount of work under this Invitation for Bids (“IFB”) and any resulting Contract. The Project requirements are detailed in this Invitation for Bids. The following is the Statement of Work (“Work”) for the Project:

Provide MDEQ with services, facilities, personnel and materials as specified below as directed by MDEQ:

- A. Effectively and safely respond, in an expeditious manner, to a variety of emergency incidents/circumstances on land and in water which includes, but is not limited to:
 - Provide sufficient personnel and equipment to, at a minimum, contain the spill, recover free Oil, and clean up gross contamination associated with the Oil;
- B. Perform other emergency response and cleanup activities involving Oil as directed by MDEQ.

All obligations regarding the “Work” as defined and referenced throughout this IFB, its attachments, and any resulting Contract(s) shall be interpreted to apply to each and any incident the Contractor(s) are selected to perform.

MDEQ is seeking bidders with qualifications, experience, equipment, and labor for the Work detailed herein. Bidders must demonstrate sufficient experience, knowledge, equipment and personnel to effectively and safely respond to emergency situations involving Oil. Due to the emergency nature associated with responding to incidents involving Oil, it is imperative that any emergency response contractor demonstrate the ability to respond in an expeditious manner. Bidders should possess the ability to respond to a variety of Oil circumstances on land and in water, which includes their ability to provide an adequate and effective response to Oil releases by providing sufficient personnel and equipment to perform the services listed above. These services shall not include Oil responses where Oil is being transported in an Over-the Road (“OTR”) bulk container (i.e. tank truck, tank care, intermodal container, etc.) and the response entails off-loading of the bulk container.

The selected bidder(s) shall complete all Work as specified in accordance with the Contract Documents. The Contract Documents include this Invitation for Bids, which includes all Attachments, together with any

addendum that may be issued through the solicitation process. Following award of the Contract(s), the Contract Documents will also include the Contract, the Contractor's Bid, the Notice of Award, the Notice to Proceed, the bonds required for this Project, the insurance certificates and endorsements required for this Project, and any addenda, Change Orders or modifications that may be issued.

MDEQ reserves the right to accept or reject any or all bids, and to cancel this solicitation if it is within the best interest of the State of Mississippi.

Under the foregoing premise, the contract(s) will be awarded to the responsible and responsive bidder(s) whose bid(s) meets the requirements and criteria set forth in this Invitation for Bids. A responsible and responsive bidder is one who acknowledges and affirms rates and contract/bid amount established by MDEQ in the attached Bid Form/Rate Sheet by signing the bid form/rate sheet, attached hereto as Attachment A, and meets all the requirements of Section 2.6, Minimum Bid Requirements, and Section 2.10, Standards of Responsibility.

The successful contractor(s) shall have the prior experience required in the Invitation for Bids and shall list that experience in Attachment B, List of Prior Experience.

The IFB may be examined at the office of the Mississippi Department of Environmental Quality, 515 E. Amite St., Jackson, MS 39201. To obtain a downloadable copy of the IFB for this Project, please contact Aveleka Moore, Contracts Division Director, at 601.961.5107 or by email at amoore@mdeq.ms.gov.

If the funds anticipated for this Project are, at any time, not forthcoming or insufficient, MDEQ reserves the right to terminate the Project and to not award a contract or to discontinue the Project, without damage, penalty, cost, or expenses to MDEQ of any kind whatsoever.

2.0 SUBMISSION INSTRUCTIONS, REQUIREMENTS, CONDITIONS, DEADLINES AND NOTICES FOR BIDS

2.1 Issuing Office

This Invitation for Bids is issued for the State of Mississippi by MDEQ. MDEQ reserves the right, without qualifications to reject all bids not meeting minimum requirements and to exercise its discretion and apply its judgment with respect to any bid submitted.

2.2 Deadlines

Bids must be submitted with one (1) original and one (1) digital copy in PDF format on a USB flash drive with all attachments; or electronic bids may be submitted to Mississippi's Accountability System for Government Information and Collaboration (**MAGIC: RFx# 3160004395**). **All bids must be received by MDEQ no later than 9:00 a.m., August 24, 2021.** All bids received after the deadline will be returned unopened. If a bid is to be mailed, bidders should use certified mail with a return receipt guaranteed. MDEQ will not be responsible for mail delays or lost mail. All Times and deadlines provided in this IFB are in Central Standard Time ("CST").

- **Invitation for Bid (IFB) Issue Date: Tuesday, July 20, 2021**
- **Pre-bid Conference: Thursday, July 29, 2021 at 10:00 a.m.**
- **Questions to MDEQ Deadline: Thursday, August 5, 2021 at 8:30 a.m.**
- **Anticipated Response to Inquiries/Questions: Thursday, August 12, 2021**
- **IFB Package Submission Deadline: Tuesday, August 24, 2021 at 9:00 a.m.**
- **IFB Package Opening: Tuesday, August 24, 2021 at 10:00 a.m.**
- **Anticipated Notice of Intent to Award: Tuesday, August 31, 2021**

Bids must be labeled as follows on the exterior of the sealed bid envelope/package, if submitting a written bid, or provided as an attachment included in an electronic bid submittal, if submitting an electronic bid:

Emergency Response and Cleanup Activities Involving Oil, Diesel, Kerosene and Non-Hazardous Materials in Inland Areas in Mississippi

**Mississippi Department of Environmental Quality
Attention: Aveleka Moore
515 East Amite Street
Jackson, Mississippi 39201**

Bidder's name: _____

Bidder's legal address: _____

Certificate of Responsibility No. _____

SEALED BID – DO NOT OPEN

Bids will be opened in the presence of two (2) or more procurement officials. All written bids shall be recorded and maintained as a public record. Bids will be opened publicly and read aloud at 10:00 a.m., Tuesday, August 24, 2021, at:

MS Department of Environmental Quality
515 East Amite Street
Jackson, MS 39201

Or you may join the meeting from your computer, tablet or smartphone.

<https://us02web.zoom.us/j/81265282070?pwd=UDIZSjFjenc0eVhoTy9oMDhRa2NNZz09>

Meeting ID: 812 6528 2070

Password: 841902

Or by telephone:

713.353.0212

Conference code: 7557756

Each bid must be accompanied by a Bid Bond, Attachment L, provided by a surety licensed to operate in the State of Mississippi by the Mississippi Department of Insurance in the amount of five percent (5%) of the total bid/bid amount/contract amount, **\$1,500,000.00**, which is listed in Attachment A, as a bid security naming MDEQ as the beneficiary. The Bid Bond shall be duly executed by the bidder, the surety, and a registered agent. Each Bid Bond must be accompanied by an appropriate Power of Attorney. Once a Contract has been executed with a successful bidder, the specified time has elapsed so that bids may be withdrawn, or all bids have been rejected, the Bonds of the unsuccessful bidders will be returned. The Bid Bond of the successful bidder will be retained until the Payment Bond and Performance Bond have been executed and approved, and the Contract has been executed, in accordance with Sections 2.19 and 2.20 of this IFB, after which it will be returned. If the responsible/responsive bidder(s) fails to provide the appropriate Payment Bond, Performance Bond, Tax Bond, insurance certificates, or does not execute the Contract, the Bidder will forfeit his or her Bid Bond.

2.3 Force Majeure Event

If MDEQ is closed for any reason, including but not limited to: Acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations superimposed after the fact, fire, earthquakes, hurricanes, tropical storms, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the delivery of Bids by the advertised deadline, the bid submission deadline shall take place the next business day that MDEQ shall be open and at the previously advertised time. The new date and time of the bid submission deadline, as determined in accordance with this section, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have

agreed to the provisions of this section. Bids shall be received by MDEQ until the new date and time of the bid deadline as set forth herein. **MDEQ shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of MDEQ as a result of a Force Majeure Event.** Each bidder shall be required to ensure the delivery and receipt of its bid by MDEQ prior to the new date and time of the bid submission deadline.

2.4 Nonresident Bidder

In accordance with Miss. Code Ann. § 31-3-21(3), in the letting of public contracts, preference shall be given to resident bidders, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident bidders actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. **In accordance with Miss. Code Ann. Section 31-3-21(3), when a nonresident bidder submits a bid for a public project, he shall attach thereto a copy of his resident state's current law pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident bidder which does not include the nonresident contractor's current state law shall be rejected and not considered for award. If no law exists, the bidder will include with the bid a statement on letterhead and signed by the same person who signs the *Bid Form* stating that no preference laws exist in that state.**

2.5 MAGIC

Effective July 1, 2014, the State of Mississippi requires vendors to register in Mississippi's Accountability System for Government Information and Collaboration ("MAGIC") for the State to execute a contract and/or pay for services/products. See Attachment G.

2.6 Minimum Bid Requirements

Bids shall contain the following minimum information. Failure to provide the information listed below may deem the bid non-responsive and be rejected any time prior to the award of the Contract.

- A. One (1) original and one (1) digital copy in PDF format on a USB flash drive with all attachments shall be submitted; or bids may be submitted electronically to MAGIC: RFX# 3160004395, in accordance with Section 2.2, Deadlines.
- B. Fully completed and/or executed copies of Attachments, attached hereto.
- C. The written information for a responsibility determination in accordance with Section 2.10, Standards of Responsibility, in this Invitation for Bids.
- D. A copy of bidder's current Certificate of Responsibility issued by the State of Mississippi for the type of work to be performed under this Invitation for Bids, pursuant to Miss Code Ann. § 31-3-21(1). ***The Certificate of Responsibility number must be provided on the exterior of the sealed bid envelope/package, if submitting a written bid, or, provided as an attachment included in an electronic bid submittal, if submitting an electronic bid.*** The Bidder must hold/possess, for at least 60 days prior to the submission deadline, a valid Certificate of Responsibility issued by the State of Mississippi Contracting Board in Excavation and Grading AND one of the following specialty classifications:
 - Hazardous Material Abatement, Clean Up, Removal or Remediation
 - Hazardous Materials Abatement and Remediation
 - Hazardous Material
 - Hazardous Waste Cleanup
 - Hazardous Waste Removal and Control

AND

- Excavation and Grading

- E. If the bidder is a non-resident contractor, a copy of bidder's **current** state bidder preference law pertaining to that State's treatment of non-resident contractors, pursuant to Miss. Code Ann. § 31-3-21(3) or a statement on letterhead and signed by the same person who signs the Bid Form/Rate Sheet, Attachment A, stating that no preference laws exist in that state. The state of residency of a contractor shall be the same as the corporate office as reported by the Mississippi Secretary of State's office, unless any contractor reflecting a foreign corporate office with the Secretary of State provides a sworn affidavit verifying and stating that it, or its affiliate or parent company, has maintained a permanent full-time office in Mississippi, including the address(es) of such office, for at least two (2) full years prior to the bid consistent with the provisions of Mississippi Code § 31-3-21(c), in which case such contractor shall be considered a resident bidder.
- F. A Certificate of Commitment to Comply with the obligation to provide an employment plan pursuant to Miss. Code Ann. § 31-5-37, which is attached hereto as Attachment K. A copy of § 31-5-37 is attached hereto as Attachment I. A copy of the employment plan that must be submitted after Contract award is attached hereto as Attachment J.
- G. A Bid Bond, Attachment L, in the amount of five percent (5%) of the bid/contract amount of **\$1,500,000.00**, naming MDEQ as the beneficiary and meeting the requirements of Section 2.2 of this Invitation for Bids.
- H. It is imperative that a MDEQ Oil Emergency Response Contractor have the ability to safely perform Oil spill cleanup activities, such as pipeline releases, production spills and marine collisions.

The Bidder shall provide a record of projects of similar size and scope completed by the Bidder within the past five (5) years by completing Attachment B, List of Prior Experience. This information shall include, at a minimum, a summary of eight (8) separate and verifiable projects that the Bidder was the Primary Contractor on, which have been completed within the last five (5) years. These project descriptions must include, at a minimum, two (2) successful responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable Substance; and (iv) Reactive Substance. The Bidder should also include at least one (1) commodity transfer operation, involving rail, and/or fixed-facility, and/or highway, for each of the above referenced hazardous material classifications. Information should be provided in written summary/report form for review.

- I. The Bidder must submit the names, addresses and telephone numbers of five (5) customer references familiar with the Bidder's performance on Oil emergency responses. MDEQ may contact these references to verify Bidder's capability. The information should be provided on Attachment C, List of References.
- J. The Bidder must submit a statement listing the abilities, qualifications, and experience of all persons who would be assigned to provide the required services. The Bidder must submit a statement listing the personnel with a minimum of experience in Oil emergency response operations, together with the level of education, training, work experience and a brief description of the responsibilities, as outlined below:
- Supervisor: Four (4) years of experience in Oil emergency response, including 1 year in management.
 - Foreman: Three (3) years of experience in Oil materials emergency response.
- K. The Bidder must submit a list of office locations where responses to emergencies will originate and their physical addresses. Bidder must have a response office located inside the State of Mississippi.
- L. The Bidder must confirm in writing that it can provide services as the need arises on a twenty-four (24) hour, 365-day a year basis. The Bidder must have a physically monitored twenty-four (24) hour telephone number for the purposes of notification. Paging and answering machines are not acceptable.

M. The Bidder must certify and supply the following information for all site personnel, full or part time, involved in Hazardous Material Emergency Response to demonstrate that they are in compliance with OSHA Standard (29 C.F.R § 1910.120):

- HAZWOPER 40 hour training
- HAZWOPER 8 hour refresher, if applicable
- Respirator Fit-Test
- Pre-placement physical
- Annual Physical, if applicable
- Special Physical, if applicable
- Medical Fit-for-Duty Statement, issued by a licensed occupational physician

MDEQ reserves the right to request proof of the physical documentation of these items at any time.

N. The Bidder must confirm, by signing the Certification of Available Equipment, Attachment D, that it possesses, at each service location, its own equipment to accomplish emergency activities described above. This includes, at a minimum, the below-listed equipment at each service location:

- Containment Boom (12" minimum skirt): **8,000 feet**
- Boom Deployment Boat (minimum 25', 180hp): **2**
- Response trailer: **1**
- Mobile skimmer: **5**
- Each service location must routinely stock chemical protective clothing (suits, gloves, booties, etc.); spill control and cleanup supplies; metal, polyethylene and overpack drums; sorbent materials; and safety equipment.

That they physically possess or have the contractual ability to acquire the following items:

- Vacuum trucks
- Bulldozers
- Track Hoes
- Frac Tanks
- Rolloff Containers
- Light Plants

Bidder shall have a program in place for inspecting and documenting the condition of equipment used on the Project and must certify that the equipment is in compliance with applicable state and federal law, including Occupational Safety and Health Administration ("OSHA") and United States Coast Guard inspection requirements, etc.

O. The Bidder must certify that they have a Corporate Health and Safety Program as a requirement for this contract by completing Attachment E, Certification of Corporate Health and Safety Program. MDEQ reserves the right to request physical documentation of this item at any time.

P. The Bidder must supply a written report of all violations of state or federal regulatory programs which have jurisdiction over Emergency Response Activities (OSHA, State & Federal Department of Transportation ("DOT"), Environmental Protection Agency ("EPA"), MDEQ, and other similar state and federal programs which have occurred within the past 12 months. This report should also state the corrective action taken to prevent similar violations.

Q. The Bidder must list laboratory names that it utilizes on a regular basis and provide telephone numbers and addresses for those laboratories that can provide twenty-four hour turn around service for environmental samples, to include priority pollutants, Total Petroleum Hydrocarbons, benzene, toluene, ethylbenzene, and xylene, etc.

R. The Bidder must provide, in writing, proof of knowledge and/or training in packaging requirements in accordance with U.S. Department of Transportation regulations for packaging and transportation of samples and wastes.

S. The Bidder must confirm, in writing, that its employees have knowledge and/or training in EPA environmental sampling protocols/procedures, to include examples of sampling protocols/procedures for sampling priority pollutants, BTEX and TPH in surface water, drums and soils.

2.7 Pre-bid Conference

An optional pre-bid conference, will be held at 10:00 a.m. on Thursday, July 29, 2021 at:

MS Department of Environmental Quality
515 East Amite Street
Jackson, MS 39201.

Or join the meeting from your computer, table or smartphone:

<https://us02web.zoom.us/j/88201907657?pwd=bGJxZ2VhWEU0SUdCZ1lkcEVmQzRFZz09>

Meeting ID: 882 0190 7657

Password: 788240

Or by telephone:

713.353.0212

Conference code: 7557756

All interested parties are urged to attend. The purpose of this pre-bid conference is to allow potential bidders an opportunity to present questions to staff and obtain clarification on the requirements of the bid documents.

2.8 Response to Inquiries

All questions regarding this Invitation for Bids must be submitted in writing to Aveleka Moore via email at amoore@mdeq.ms.gov, or by mail to 515 E. Amite Street, Jackson, Mississippi 39201 and must be received by MDEQ by the date stated in Section 2.2, Deadlines. Questions submitted after this date will not be considered. Bidders shall provide an email address for MDEQ to direct the consolidated “question and answer” document. MDEQ answers will be provided in writing and transmitted via email to all prospective bidders who are known to have requested a copy of the bid package. Only answers transmitted in this manner will be considered official and valid by MDEQ. No negotiations, decisions, or actions shall be initiated by any bidder as a result of any verbal discussion with any State or MDEQ representative

2.9 Proprietary Information/Mississippi Public Records Act

Bids may be made available for public inspection after bid opening. For this reason, confidential or proprietary material should be clearly labeled as such. The classification of an entire bid as proprietary or trade secret is not acceptable and may result in rejection of the bid. Requests to review proprietary information will be handled in accordance with state law and applicable procedures. All disclosures of bid information to interested parties will be made in compliance with MDEQ policies and procedures established in accordance with the Mississippi Public Records Act of 1983, Miss. Code Ann. §§ 25-61-1 et seq., and exceptions found in Miss. Code Ann. §§ 25-61-9 and 79-23-1.

2.10 Standards of Responsibility

In order to be eligible for award of a contract, Bidder must have a rating of SATISFACTORY or better in each of the following categories:

A. Technical Performance

Provide the information requested in Attachments B and C, and any additional relevant information demonstrating the Bidder's experience, history knowledge, and integrity.

1. *Exceptional: Previous project performance indicates successful performance and experience with two (2) responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable*

Substance; and (iv) Reactive Substance. The Bidder also includes multiple successful commodity transfer operations, involving rail, and fixed-facility, and highway, for each of the above referenced hazardous material classifications.

2. *Very Good: Previous project performance indicates successful performance and experience with two (2) responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable Substance; and (iv) Reactive Substance. The Bidder also includes multiple successful commodity transfer operations, involving rail, and/or fixed-facility, and/or highway, for each of the above referenced hazardous material classifications.*
3. *Satisfactory: Previous project performance indicates successful performance and experience with two (2) responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable Substance; and (iv) Reactive Substance. The Bidder also includes at least one (1) successful commodity transfer operation, involving rail, or fixed-facility, or highway, for each of the above referenced hazardous material classifications.*
4. *Marginal: Previous project performance fails to indicate either successful performance and experience of two (2) responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable Substance; and (iv) Reactive Substance or at least one (1) commodity transfer operation, involving rail, and/or fixed-facility, and/or highway, for each of the above referenced hazardous material classifications.*
5. *Poor: Previous project performance fails to indicate successful performance and experience of two (2) responses to each of the following DOT hazardous material classifications: (i) Poison Substance; (ii) Corrosive Substance; (iii) Flammable Substance; and (iv) Reactive Substance and also fails to include at least one (1) commodity transfer operation, involving rail, and/or fixed-facility, and/or highway, for each of the above referenced hazardous material classifications.*

B. Experience and Availability of Personnel

Provide the information requested in Section 2.6 (J) & (M), and any additional documentation adequately demonstrating the qualifications of personnel, and the availability of personnel resources that would be utilized in performance of the Work.

1. *Exceptional: Personnel listed indicates multiple response managers, supervisors, foremen, and equipment operators with the required education, training, and work experience.*
2. *Very Good: Personnel listed indicates response manager(s), supervisor(s), foremen(man), and equipment operator(s) with the required education, training, and work experience.*
3. *Satisfactory: Personnel listed indicates a response manager, supervisor, foreman, and an equipment operator with the required education, training, and work experience.*
4. *Marginal: Personnel listed fails to indicate required personnel experience, training, or education.*
5. *Poor: Personnel listed fails to indicate required personnel experience, training, and education.*

C. Availability of Equipment

Provide the information and certifications requested in Attachment D, and any additional information adequately demonstrating the Bidder's resources (equipment) available in performance of the Work.

1. *Satisfactory: Bidder indicates they possess all equipment listed in Attachment D.*
2. *Unsatisfactory: Bidder does not indicate they possess all equipment listed in Attachment D.*

Bidders should submit a written narrative of ten (10) pages or less to demonstrate their responsibility in all of the above-listed categories (A-C above). The written narrative pages should be numbered in consecutive order. Attachments will not count against the page number of such written narrative. Any bidder receiving lower than a Satisfactory rating on the above Standards of Responsibility will be deemed non-responsible and will be rejected.

2.11 Waiver of Informalities or Rejection of Bids

MDEQ may waive any minor informalities or minor defects, or reject any or all bids not meeting the requirements of the IFB. Any bid may be rejected in whole or in part when such rejection is determined to be in the best interest of MDEQ. Waivers, when granted, shall in no way modify the Invitation for Bids requirements or excuse a party from full compliance with the Invitation for Bids specifications and other requirements if the party is awarded a contract. Reasons for rejecting a bid include, but are not limited to:

- A. Failure to comply with the requirements of the Invitation for Bids and any of its Addenda.
- B. Bidder is in arrears on existing contracts with MDEQ or another governing authority or state agency.
- C. Bidder is, or has been, in the last five (5) years, involved in a dispute related to the Bidder's execution, workmanship, or timely performance of a contract with MDEQ or another state agency, university or community college.
- D. Bidder has defaulted on a previous contract.
- E. The bid contains unauthorized amendments to the requirements of the Invitation for Bids.
- F. The bid is conditional or qualified.
- G. The bid is incomplete or contains irregularities, which make the bid indefinite or ambiguous.
- H. The bid is not signed by an authorized representative of the party.
- I. The bid contains false or misleading statements or references.
- J. The bidder is determined to be non-responsible.
- K. The bid ultimately fails to meet the announced requirements of the State in some material aspect.
- L. The bid price is clearly unreasonable.
- M. The bid is not responsive, i.e., does not conform in all material aspects to the Invitation for Bids.
- N. The work or materials offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternative or other acceptability criteria set forth in the Invitation for Bids.
- O. A decision by MDEQ at its discretion to reject bids for the Project.

2.12 Disposition of Bids

All submitted bids become the property of the State of Mississippi.

2.13 Conditions of Solicitation

The release of this Invitation for Bids does not constitute an acceptance of any offer, nor does such invitation in any way obligate MDEQ to execute a contract with any party. MDEQ reserves the right to accept or reject any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with MDEQ.

Before preparing the bid, all parties should note:

- A. MDEQ accepts no responsibility for any expenses incurred by the bidder in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the bidder.
- B. The award of a contract for any bid is contingent upon the following:
 - 1) Favorable evaluation of the bid;
 - 2) Availability of funds; and
 - 3) Approval of the Public Procurement Review Board, if applicable.
- C. Contracted parties will be required to assume full responsibility for all specified services, materials, labor and equipment, and may subcontract only as specified in Attachment H, Standard Contract Terms and Conditions, herein.

2.14 Withdrawal of Bids

Any bid may be withdrawn prior to the above-scheduled time for the submission of bids or authorized postponement thereof. Further, no bidder may withdraw a bid within ninety (90) days after the actual date of the bid opening.

2.15 Bid Modification Requests

Any requests to modify bids must be submitted in writing by the primary bidder. All requests for modification must be submitted prior to the submission deadline for the receipt of the sealed bids.

2.16 Addenda to Bid Specifications

MDEQ reserves the right to issue addenda to this Invitation for Bids. If an addendum becomes necessary, MDEQ will provide copies of the addendum to all persons known to have requested a copy of the bid package via email or mail.

2.17 Acknowledgement of Addendum

Bidders shall acknowledge receipt of any addendum to the Invitation for Bids by identifying the addendum number and date in the space provided for this purpose on the Bid Form/Rate Sheet attached hereto as Attachment A. The acknowledgement must be received by MDEQ by the time and at the place specified for receipt of sealed bids.

2.18 Information Regarding References

The bidder understands and agrees that MDEQ reserves the right to request information relative to references.

2.19 Performance, Payment, and Tax Bonds

Within seven (7) calendar days after receipt of the Notice of Award and Contract, the successful contractor shall execute and deliver to MDEQ performance and payment bonds, see Attachment L, pursuant to Miss. Code. Ann. § 31-5-51, each in the amount of one hundred percent (100%) of the contract price, payable to the Mississippi Department of Environmental Quality but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the Work under the Contract, with a surety qualified to do business in Mississippi and listed on the United States Treasury Department's list of acceptable sureties and approved by MDEQ, which shall be required for the faithful performance of the Contract. MDEQ shall be named as the indemnitee in the Performance Bond.

A Tax Bond, pursuant to Miss. Code Ann. § 31-5-3, securing the prompt payment of taxes, licenses, assignments, contributions, damages, penalties, and interest thereon incurred in connection with the performance of the Contract shall be provided to MDEQ before commencing Work under the Contract. Attorneys-in-fact who sign Payment Bonds, Performance Bonds, and Tax Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

2.20 Award of Contract

If MDEQ makes any award(s) for the Project, MDEQ will do so within ninety (90) days after opening the bids. Should there be any reason why the Contract cannot be awarded within ninety (90) days after bid opening, the time may be extended by written mutual agreement between MDEQ and the successful bidder(s). The Notice of Award shall be accompanied by the Contract. Actions taken by a bidder prior to final execution of such Contract will be at the bidder's OWN RISK and MDEQ will not be liable for such action. The party to whom the contract(s) are awarded **will be required to provide** the following information/documentation ("Documents"):

- **Contractor's executed version of the Contract**
- **Performance Bond, Payment Bond, and Tax Bond**
- **Written proof from the Office of the Secretary of State of MS demonstrating that the Contractor is in good standing to do business in MS**
- **Completed Employment Plan Form for Public Works Projects, Attachment J**
- **Certificate of Insurance which has the minimum coverage listed below:**
 - **Comprehensive General Liability with limits not less than \$1,000,000 per occurrence**
 - **\$5,000,000 Aggregate General Liability**
 - **\$1,000,000 Automobile Liability**
 - **\$1,000,000 Workers Compensation Limit**
 - **\$1,000,000 Pollution Liability**
 - **\$3,000,000 Aggregate Pollution Liability**
 - **\$1,000,000 Errors and Omissions/Professional Liability Coverage**
 - **\$2,000,000 Aggregate Errors and Omissions/Professional Liability Coverage**
 - **\$5,000,000 Excess Liability on the above (must follow form over underlying coverages)**

Insurance Requirements are further detailed in Section 29 of the Standard Contract Terms and Conditions, Attachment H.

Within thirty (30) days of receipt of acceptable Documents (as required and listed above), MDEQ shall sign the Contract. When the Contract is fully executed, an executed duplicate of the Contract shall be returned to the bidder. Should MDEQ not execute the Contract within thirty (30) days from receipt of an acceptable Performance Bond, an acceptable Payment Bond and the Contract, the bidder may, by Written Notice, withdraw bidder's signed Contract. Such notice of withdrawal shall be effective upon receipt of the notice by MDEQ.

Subject to receipt of an acceptable Tax Bond, suitable weather, and/or other conditions as determined solely by MDEQ, a Notice to Proceed is anticipated to be issued in November 2021.

2.21 Equal Opportunity

Contracts, grants, loans, purchases and all other financial transactions are administered by MDEQ equally to all without regard to race, color, creed, sex, religion, national origin, disability, or age. In addition, the bidder understands that MDEQ is an equal opportunity employer and maintains a policy that prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other unlawful consideration. During the term of the Contract, the contractor must strictly adhere to this policy in its employment practices and provision of services.

2.22 Applicable Laws

The bidder is responsible for complying with all applicable federal, state, and local laws and regulations.

2.23 Governing Law

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Mississippi, and any litigation with respect thereto shall be brought in the appropriate state or federal courts located in Jackson, Hinds County, Mississippi.

2.24 Certification of Independent Price Determination

Bidder shall execute, notarize, and attach the Bidder Statement of Compliance, Attachment F, to its Bid, certifying that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication, or agreement (for the purpose of restricting competition) 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 proposed.

2.25 Procurement Regulations

Any resulting contract shall be governed by the applicable provisions of the Public Procurement Review Board Regulations.

2.26 Contract Documents

The Contract Documents, which comprise the entire Agreement between MDEQ and Contractor concerning the Work, includes the following:

1. Change Orders, Supplemental Agreements and/or other modifications to the Contract;
2. The Executed Contract;
3. Standard Contract Terms and Conditions;
4. Contractor's Bid, including all subparts and documents submitted therewith;
5. Notice of Award;
6. Notice to Proceed;
7. Addenda to the Invitation for Bids;
8. Invitation for Bids;
9. Performance Bond;
10. Payment Bond;
11. Tax Bond;
12. Insurance Certificates and Endorsements; and
13. All permits and environmental conditions pertaining to the Work.

The documents listed above are attached to this Invitation for Bids (except as expressly noted otherwise above). The Contract Documents may only be amended, modified, or supplemented as provided in Sections 20 - 22 of the Standard Contract Terms and Conditions. In the event of a conflict in the provisions of the Contract Documents, the terms of the document listed first above shall control.

3.0 PERIOD OF PERFORMANCE

The period of performance for a contract ("Contract Time") awarded under this solicitation shall be for a total period of five years.

4.0 INSURANCE REQUIREMENTS

The successful contractor shall maintain during the time of the Contract the liability insurance coverage required by Section 29 of the Standard Contract Terms and Conditions, or shall require its subcontractors to maintain said coverage, related to the work of the successful contractor and in connection with the Contract.

5.0 RELATIONSHIP OF PARTIES

All parties expressly understand and agree that MDEQ enters into a contract with a contractor based on the work performed pursuant to the Contract and not based on an employer-employee relationship or a joint venture relationship. For all purposes under this Contract:

A successful contractor shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be an employee of MDEQ. A successful contractor will be an independent contractor.

6.0 CONTRACT ADMINISTRATION

The contract(s) awarded subsequent to this solicitation shall be administered by MDEQ.

7.0 COMPENSATION

Compensation for the Work performed pursuant to the Contract(s) will be in the form of firm fixed price, with price adjustment based on Change Order provisions of the Contract. The Contractor shall be paid in accordance with the rates in the Bid Form/Rate Sheet in Attachment A.

8.0 CONTRACT TERMS AND CONDITIONS

Awarded contract(s) will include, but is not limited to, the Standard Contract Terms and Conditions, a copy of which is attached hereto as Attachment H.

9.0 LIST OF ATTACHMENTS AND FORMS

The following are included as attachments to this Invitation for Bids:

Attachment A – Bid Form/Rate Sheet

Attachment B – List of Prior Experience

Attachment C – List of References

Attachment D – Certification of Available Equipment

Attachment E – Certification of Corporate Health and Safety Program

Attachment F– Bidder Statement of Compliance

Attachment G – Instructions for MAGIC

Attachment H – Standard Contract Terms and Conditions

Attachment I – A copy of Mississippi Code Annotated § 31-5-37, §31-5-33 and §31-7-305

Attachment J – Mississippi First Act – Employment Plan Form for Public Works Projects

Attachment K – Certificate of Commitment to Comply with Mississippi Code Annotated § 31-5-37

Attachment L – Bonds

Attachment M - Contract

Attachment A
Bid Form/Rate Sheet

1. BID RECIPIENT

This Bid is submitted by _____ (hereinafter called "Bidder") doing business as a _____ (insert "a corporation," "an individual" applicable; if a corporation, indicate state of incorporation; or a "joint venture") to:

Mississippi Department of Environmental Quality
Attention: Aveleka Moore
515 E Amite Street
Jackson, Mississippi 39201

The Total Contract Award/Bid Amount: **One Million, Five Hundred Thousand Dollars and zero cents (\$1,500,000.00).**

Bidder agrees to the above total bid amount for the work to be conducted over the period of performance identified in the IFB. Bidder further agrees to bill at the rates established in this bid.

The undersigned Bidder proposes and agrees, to enter into a Contract with Mississippi Department of Environmental Quality (hereinafter called "MDEQ") in the form(s) included in the Invitation for Bids to perform all Work as specified or indicated in the Invitation for Bids for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Invitation for Bids, and affirms this by executing, in the appropriate signature lines on this Bid Form, and returning this Bid Form with its Bid.

The Rate Sheet that shall be used for any Contract with MDEQ is as follows:

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

RATE SCHEDULE FOR INLAND OIL, DIESEL, KEROSENE, AND NON-HAZARDOUS MATERIAL SPILLS

FOR EMERGENCY SERVICES BRANCH

This Rate Schedule is for Equipment and Personnel used for the response to Oil, Diesel, Kerosene, and Non-Hazardous Materials Emergencies, excluding petroleum containers suspected of damage, for the Emergency Services Branch of the Mississippi Department of Environmental Quality (MDEQ).

The rates listed herein represent the maximum allowable charges for services provided by Oil Emergency Response Contractors during emergency incidents. MDEQ will pay Contractors the attached rates for their equipment and services listed, or their usual and customary charges, whichever is less. Contractors may request in writing to the MDEQ, a rate adjustment of up to 2% each Contract year.

This list includes the equipment and personnel normally needed. However, when MDEQ determines that a need exists for equipment, personnel, or other items or services not appearing on this list, a price will be determined based on MSRP, Industry Standard Pricing, Standard Sales Price, or other comparative pricing measure to ensure that MDEQ incurs a reasonable price for the service or goods received.

I. Subcontractors

Subcontractors may be utilized to assist the Oil Emergency Response Contractor. However, the following guidelines will be applicable to all such expenses incurred through the use of subcontractors:

- a. The subcontractor's invoice must be submitted with the Oil Emergency Response Contractor's invoice. The subcontractor's invoice must be detailed, listing specifically the type and quantity of work or service performed, dates that work was performed, and daily charges.
- b. Routine charges by subcontractors for personnel and equipment listed in this rate sheet will be reimbursed in an amount not to exceed the amount listed herein or the subcontractor's actual charge, whichever is less, plus a maximum of 10%.
- c. Charges by subcontractors for goods and services not appearing on this rate sheet, including landfill charges, monitoring well supplies, and fill materials (sand, gravel, fill dirt), will be reimbursed at not more than 10% over reasonable cost to the Hazardous Materials Emergency Response Contractor as shown by an itemized invoice from the subcontracted supplier.

II. Invoicing

A numbered invoice bearing the name of the Oil Emergency Response Contractor and MDEQ Spill I.D. Number should be submitted to the Department of Environmental Quality Emergency Response Section not later than forty-five (45) days after completion of the response, analytical, and disposal portions of the project. MDEQ shall not be liable for any invoices received sixty days (60) after the completion of the project. All invoices shall be processed at the office where the services were rendered to ensure accuracy and timely billing of invoices. Daily personnel and equipment time sheets signed by a MDEQ representative must be completed and attached to the invoice.

III. Travel

Maximum reimbursable travel expenses charged by Oil Emergency Response Contractors will be limited to one of the following, depending on whether or not the Contractor and its employees commute daily to the work site or choose overnight accommodations near the work site. Travel reimbursement will only be paid when the job is in excess of 50 miles from the Contractor's place

of business or the Contractor is directed to stay on site or on standby near the site. Any reimbursement for meals shall include an itemized receipt. Alcoholic beverages are not reimbursable. Total meal tips shall not exceed 20% of the maximum daily meal reimbursement claimed.

a. Overnight Accommodations (charges are per employee)

- Motel (receipt required): Actual cost up to \$150/day.
- For high-cost areas experiencing significant impact from gaming and tourism (Desoto, Forrest, Hancock, Harrison, Lamar, Lafayette, and Oktibbeha Counties) MDEQ will pay actual cost up to \$150.00/day. If motel receipts are not included with the invoice, motel charges will be denied.
- Meals: Actual cost up to \$46.00 to \$51.00/day, depending if in high-cost area.

b. Daily Commute (charges are per employee)

- Motel: No reimbursement
- Meals: \$46.00/day, except in high-cost areas.

IV. Equipment and Personnel

These rates are applicable to equipment and personnel necessary to provide an emergency response. These rates are for equipment in good mechanical condition, complete with required with attachments, including tools, hoses, cables, oilers, bits, blades, buckets, skips, hooks, etc., unless otherwise indicated. Each rate covers all costs associated with the work that each item of equipment is used to provide, including but not limited to depreciation, maintenance, field repairs, fuel, lubricants, tires, insurance, overhead, profit, and administrative costs.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
OIL RESPONSE RATES
FOR EMERGENCY SERVICES BRANCH**

	<u>Maximum Rate</u>	<u>Unit</u>
1. <u>Air Compressor with Hoses</u>		
Air Compressor, Wheel Barrel	\$90.00	Day
Air at 100 psi (to 250 cfm inclusive)	\$194.80	Day
2. <u>Boats</u>		
To 14 ft (without motor)	\$93.50	Day
To 14 ft (with motor)	\$220.00	Day
15 to 18 ft (with motor)	\$379.50	Day
18 to 24 ft (with motor)	\$506.00	Day
25 to 29 ft (with motor)	\$800.00	Day
30 and greater (with motor)	\$1,224.60	Day
Work boats with twin outboards	Add \$126.50	
3. <u>Chain Saw (All)</u>		
	\$60.50	Day
4. <u>Drums</u>		
Drum Cart	\$27.50	Day
15 Gallon	\$49.50	Each
30 to 55 Gallon	\$84.44	Each
Overpacks, poly	\$236.50	Each
Overpacks, metal	\$209.00	Each
Drum Liners, 3 ML	\$2.25	Each
Drum Liners, 10 ML	\$2.89	Each
5. <u>Dump Trucks (driver not included)</u>		
0 to 12 C/Y (rated capacity)	\$82.50	Hour + \$0.83/mi
14 to 20 C/Y (rated capacity)	\$93.50	Hour + \$0.83/mi
<ul style="list-style-type: none"> • Dump trucks utilized as a prime mover for equipment will be billed at 1.5 the normal rate during mobilization and demobilization. • All overweight, over width road fees will be reimbursed, provided copies of receipts are received. • For projects requiring a large number of rental or contract trucks, truck costs will be negotiated and may, at the discretion of MDEQ, be on a (i) per mile basis, (ii) per load basis, or (iii) per volume or weight basis. In any case, the prime contractor will be allowed a 10% markup. Additionally, in no case will MDEQ pay more for trucks than the hourly rates listed above. 		

	<u>Maximum Rate</u>	<u>Unit</u>
6. <u>Heavy Equipment</u>		
a. <u>Backhoes (All)</u>	\$65.54	Hour
b. <u>Bulldozers</u>		
80 HP	\$89.50	Hour
90 to 110 HP	\$93.50	Hour
Over 110 HP	\$126.50	Hour
c. <u>Excavator/Track hoes</u>		
25,000 to 35,000 lbs	\$126.50	Hour
35,000 to 50,000 lbs	\$148.50	Hour
Over 50,000 lbs	\$176.00	Hour
d. <u>Heavy Equipment Mobilization/Demobilization</u>		
Tractor/trailers (18 wheelers) for heavy equipment mobilization/demobilization	\$143.00	Hour + \$1.43/mi
e. Skid Steers (All)	\$100.00	Hour
f. Sweeper, Roller, Grapple, Auger, Forks	\$315.00	Day
g. OTR with Double Hauler Roll Off Frame	\$108.00	Hour

- An eight (8) hour minimum charge will be allowed portal-to-portal.
- Equipment time charges for "down time" due to equipment failure will not be allowed.
- All overweight, over width road fees will be reimbursed, provided copies of receipts are received.

7. Monitoring and Communication Equipment

Bellows Pump/Tubes	\$38.50	Day
CMS Chips	\$187.00	Each
Detector Tubes in Stock	\$27.50	Each
Drager CMS Analyzer	\$126.50	Day
Explosimeter/Oxygen	\$165.00	Day
PID	\$187.00	Day
4-Gas Meter with PID	\$220.00	Day
FID	\$220.00	Day
Fume Hood (Field Use)	\$93.50	Day
pH Meter	\$44.00	Day
pH Strips	\$27.50	Pack
Radiation Survey Meter	\$88.00	Day
Cellular Phone	\$27.50	Day
Satellite Phone	\$192.50	Day
Radio, Hand-Held	\$27.50	Day

8. <u>Personnel</u>	<u>Hourly Rate</u>	<u>Overtime</u>
Recovery Technician	\$46.65	\$70.00
Foreman	\$59.10	\$88.65
Site Supervisor/Safety Supervisor	\$99.43	\$149.15
Transportation and Disposal Coordinator	\$56.50	\$84.75

- Travel time will be charged as per existing US Department of Labor Laws. Regular business hours are 8 a.m. to 5 p.m. weekdays for hourly employees.
- Weekends, off hours and holidays can be billed at company policy overtime rates for personnel but should not exceed double time rate.

9. <u>Personnel Protection Level</u>	<u>Maximum Rate</u>	<u>Unit</u>
Level A Suit (not including breathing air)	\$1,600.00	Each
Level B, 1-hr. air included	\$302.50	Each
Level C, 1 set of cartridges included	\$181.50	Each
Air Purifying Respirator (no protective clothing included)	\$60.50	Each
Extra Bottle of Air	\$18.20	Each
Firefighter Bunker Gear	\$220.00	Each
Gloves, PVC, Nitrile, Neoprene	\$9.00	Each

- Other Personal Protective Equipment (PPE) and other necessary respiratory equipment not listed, will be based on MSRP, Industry Standard Pricing, Standard Sales Price, or other comparative pricing measure.

10. <u>Sorbents</u>		
Sorbent Boom	\$99.00	Each
Bioremediation/Absorbent Material (dry)	\$30.00	Bag
Bioremediation Material (liquid)	\$50.00	Gallon
Sorbent Pads, Standard Size, Petroleum	\$50.00	Bag
Sorbent Pads, Chemical	\$80.35	Bale

11. <u>Generators and Light Plants</u>		
Generator, to 5 kw	\$93.50	Day
Generator, 5.1 to 15 kw	\$146.66	Day
Generator, 15.1 to 25 kw	\$217.40	Day
Generator, 25.1 to 35 kw	\$302.50	Day
Generator, 35.1 to 45 kw	\$330.00	Day
Generator, 45.1 to 60 kw	\$385.00	Day
Floodlights, 300-500 watt	\$32.10	Day
Light Plant	\$159.50	Day

12. <u>Pumps and Hose</u>		
Chemical Transfer Hose, 1"	\$30.00	Per day/per scfn
Chemical Transfer Hose, 2"	\$82.50	Per day/per scfn
Chemical Transfer Hose, 3"	\$104.50	Per day/per scfn

	<u>Maximum Rate</u>	<u>Unit</u>
Petroleum Hose	\$2.10	Per day/per foot
Diaphragm, 2" Aluminum	\$104.50	Day
Diaphragm, 3" Aluminum	\$159.50	Day
Diaphragm, 2" Chemical	\$280.50	Day
Diaphragm, 3" Chemical	\$412.50	Day
Transfer Pump, 1"	\$93.50	Day
Trash Pump, 2"	\$214.50	Day
Trash Pump, 3"	\$236.50	Day
Trash Pump, 4"	\$253.00	Day
Betts Emergency Unloading Valve	\$324.50	Day
Pneumatic Drill Kit for Drilling Tankers	\$82.50	Day

13. Trailers

Air Trailer	\$313.50	Day
Flatbed Trailer, to 18 ft.	\$88.00	Day
Flatbed Trailer, 19 to 22 ft.	\$110.00	Day
Flatbed Trailer Greater than 24 ft.	\$247.50	Day
Response Trailer, less than 13 ft.	\$126.50	Day
Response Trailer, 14 to 19 ft.	\$222.00	Day
Response Trailer, 20 to 24 ft.	\$265.90	Day
Response Trailer, above 24 ft.	\$449.80	Day

14. Transportation

All-Terrain Vehicle (4-Wheeler)	\$323.90	Day
All-Terrain Vehicle (Utility)	\$352.00	Day
Automobile	\$97.10	Day + \$0.55/mi
Dual Wheel Truck, One Ton	\$253.30	Day + \$0.83/mi
Pick-up Truck, 2WD	\$159.50	Day + \$0.83/mi
Pick-up Truck, 4WD	\$212.50	Day + \$0.83/mi
Response Van	\$288.75	Day + \$0.83/mi
Stake Bed, One Ton	\$253.30	Day + \$0.83/mi

15. Vacuum Trucks (including driver)

Guzzler	\$187.00	Hour
King Vac/Super Sucker	\$165.00	Hour
Vacuum Truck, 70 to 80 BBL	\$104.50	Hour
Vacuum Truck, 70 to 80 BBL, Stainless	\$126.50	Hour
Vacuum Trailer, 100 to 120 BBL	\$132.00	Hour
Vacuum Truck Washout, Zero Solids	\$450.00	Each
Mileage Loaded/Empty	\$1.27	Mile

- For projects requiring a large number of rental or contract trucks, truck costs will be negotiated and may, at the discretion of MDEQ, be on a (i) per mile basis, (ii) per load basis, or (iii) per volume or weight basis. In any case, the prime contractor will be allowed a 10% markup. Additionally, in no case will MDEQ pay more for trucks than the hourly rates listed above.

	<u>Maximum Rate</u>	<u>Unit</u>
16. <u>Heavy Trucks</u>		
OTR with Double Hauler Roll Off Frame	\$108.00	Hour
17. <u>Transient Storage</u>		
Roll-Off Box, Environmental	\$20.00	Day
Frac Tank	\$95.00	Day
Tote Tank, 275 – 330 Gallons	\$360.00	Each
18. <u>Capping Kits</u>		
Grounding/Bonding Kit	\$90.00	Day
19. <u>Boom</u>		
4" - 6" Hard Boom	\$0.90	Foot/Day
10" - 12" Hard Boom	\$1.17	Foot/Day
18" - 20" Hard Boom	\$1.49	Foot/Day
24" Hard Boom	\$5.40	Foot/Day
36" Hard Boom	\$7.20	Foot/Day
42" - 48" Hard Boom	\$13.50	Foot/Day
Boom Lights, Chemical	\$8.10	Foot/Day
Boom Lights, Strobe	\$27.00	Foot/Day
Boom Anchor 10-15 Pound	\$67.50	Foot/Day
Boom Anchor 20-30 Pound	\$135.00	Foot/Day
Boom Anchor 35-45 Pound	\$180.00	Foot/Day
Boom Anchor 50-65 Pound	\$315.00	Foot/Day
Anchor Buoy	\$36.00	Foot/Day
20. <u>Traffic Control Equipment</u>		
Directional Arrow Trailer, Flashing	\$247.50	Day
Traffic Barricades, Water-filled	\$27.50	Each
Traffic Control Cones and Barrels	\$11.00	Each
21. <u>Miscellaneous Equipment and Supplies</u>		
Pump-Up Sprayer	\$31.50	Each
Hand Tools, Shovels, Rakes, etc	\$22.50	Each
Weed Eater with Tiller Attachment	\$90.00	Day
Leaf Blower	\$67.50	Day
Hydration	\$9.00	Man/Day
22. <u>Skimmers</u>		
Duck Bill Skimmer	\$27.00	Day
Weir Skimmer, to 24"	\$157.50	Day
Skim Pak Skimmer	\$121.50	Day
Belt Skimmer, 18" with Hydraulic Power Pack	\$2,250.00	Day
Belt Skimmer, 36" with Hydraulic Power Pack	\$3,150.00	Day
Rope Skimmer	\$1,080.00	Day
Brush Skimmer with Hydraulic Power Pack	\$1,350.00	Day
Folex Skimmer with Hydraulic Power Pack	\$6,750.00	Day

	<u>Maximum Rate</u>	<u>Unit</u>
Desmi Skimmer with Hydraulic Power Pack	\$6,750.00	Day
Drum Skimmer, 36" with Power Unit	\$1,080.00	Day
Drum Skimmer, 48" with Power Unit	\$1,350.00	Day
Drum Skimmer, 72" with Power Unit	\$1,620.00	Day

23. For soil excavation projects exceeding \$10,000.00, Contractor may assess a 3.5% surcharge (1.0362694 multiplier) on its invoice to comply with Mississippi State Tax Codes (Mississippi Code Annotated, Section 27-65-21).

2. BIDDER'S ACKNOWLEDGEMENTS

Bidder accepts all of the terms and conditions of the Invitation for Bids, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ninety (90) days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of MDEQ.

3. BIDDER'S REPRESENTATIONS

In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Invitation for Bids and the following addenda, receipt of which is hereby acknowledged:

<u>Addendum</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

- B. Bidder has reviewed the requirements to bid this Project.
- C. Bidder is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
- D. Bidder is aware of the general nature of Work to be performed as indicated in the Invitation for Bids.
- E. Bidder has given MDEQ written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Invitation for Bids, and the written resolution thereof by MDEQ is acceptable to Bidder.
- F. The Invitation for Bids is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

4. BID FORM INSTRUCTIONS

Bidder must fully complete and execute this Bid Form when submitted. Bids shall state the legal name of bidder and be signed by the person or persons legally authorized to bind bidder to a contract. Bids submitted by a corporation shall indicate state of incorporation and bear a corporate seal. Bids submitted

by an agent of a bidder shall have a current power of attorney attached that certifies the agent's authority to bind the bidder.

Contract Award will be made according to the Invitation for Bids.

1. The Bidder agrees that any Work shall be completed within the period of performance as stipulated in the IFB.
2. The following documents are attached to and made a condition of this Bid:
 - a. Bid Security (surety bond, cashier's check, or certified check)
 - b. Power of Attorney (For Surety Bond only)
 - c. Authority to Execute Contract (any corporate employee other than the president or vice-president)
 - d. A list of all subcontractors, surveyors and suppliers associated with this Bid that are anticipated by Bidder to contribute over \$5,000.00 worth of services or supplies to complete the work identified on this Bid Form. MDEQ shall not be responsible for payment for any services or supplies provided by any such subcontractor, surveyor or supplier not identified.

The undersigned, having read and understood the Bid Documents, and hereby offers and agrees to furnish all labor, equipment and materials and to perform all the Work required for the **Project**, as described in this Invitation for Bids in accordance with the Contract Documents and at the prices stated in the preceding Rate Schedule, and for the Total Bid Amount stated above.

This Bid is submitted by:

If Bidder is:

An Individual

Name _____
(typed or printed):

By: _____
(Individual's Signature)

Doing business as: _____

State Contractor License No. _____

A Partnership

Partnership Name: _____
(typed or printed)

By: _____
(Signature of General Partner – attach evidence of authority to sign)

Name: _____
(typed or printed)

State Contractor License No. _____

A Corporation

Corporation Name: _____

(Seal)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____

(Signature, attach evidence of authority to sign)

Name: _____ (typed or printed)

Title: _____

(Corporate Seal)

Attest: _____

Date of Qualification to do business in Mississippi is ___/___/___.

State Contractor License No. _____

A Joint Venture

Name of Joint Venture: _____

First Joint Venture Name: _____

(Seal)

By: _____

(Signature of first Joint Venture Partner, attach evidence of authority to sign)

Name: _____

(typed or printed)

Title: _____

(Each Joint Venture Partner must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Additional Information:

Bidder's Business Address: _____

Phone No. _____ Fax No. _____

Email: _____

Submitted on _____, 20____

State Contractor License No. _____

Attachment B
List of Prior Experience

The Bidder must complete this Attachment to include its prior experience for a minimum of eight (8) separate and verifiable projects in the last five (5) years for the type of work solicited under this Invitation for Bids.

PROJECT #1:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #2:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #3:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #4:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #5:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #6:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #7:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

PROJECT #8:

Name of Project: _____

Address of Project: _____

Scope of Project: _____

Incident Type: _____

Materials Used: _____

Quantity Involved: _____

Brief Summary of Response Actions: _____

Client Name: _____

Client Phone Number: _____

Date Work Performed: _____

Work Performed by Bidder [] or Subcontractor []

If subcontractor, list subcontractor name: _____

Regulatory Agency Involved: _____

Regulatory Agency Contact Name: _____

Regulatory Agency Contact Phone Number: _____

Attachment C
List of References

The Bidder must complete this Attachment to include a minimum of five (5) references (customers, regulatory agencies, suppliers, etc.) familiar with the Bidder's performance for the type of work solicited under this Invitation for Bids. MDEQ may contact these references to verify Bidder's capability.

REFERENCE #1:

Name: _____

Phone Number: _____

Address: _____

REFERENCE #2:

Name: _____

Phone Number: _____

Address: _____

REFERENCE #3:

Name: _____

Phone Number: _____

Address: _____

REFERENCE #4:

Name: _____

Phone Number: _____

Address: _____

REFERENCE #5:

Name: _____

Phone Number: _____

Address: _____

**Attachment D
Certification of Available Equipment**

SECTION A: The Bidder must check the boxes below to confirm that they physically possess, at each service location, its own equipment to accomplish emergency activities described in the Invitation for Bid. This includes, at a minimum, the below listed equipment **at each service location**:

Equipment:	Possess:
Containment Boom (12" minimum skirt): 8,000 feet	<input type="checkbox"/>
Boom Deployment Boat (minimum 25', 180hp): 2	<input type="checkbox"/>
Response trailer: 1	<input type="checkbox"/>
Mobile skimmer: 5	<input type="checkbox"/>

Each service location must routinely stock chemical protective clothing (suits, gloves, booties, etc.); spill control and cleanup supplies; metal, polyethylene and overpack drums; sorbent materials; and safety equipment.

SECTION B: The Bidder must check the boxes below to confirm that they physically possess or have the contractual ability to acquire the following items to accomplish emergency activities described in the Invitation for Bid:

Equipment:	Possess:	Ability to Acquire:
Vacuum trucks	<input type="checkbox"/>	<input type="checkbox"/>
Bulldozers	<input type="checkbox"/>	<input type="checkbox"/>
Track Hoes	<input type="checkbox"/>	<input type="checkbox"/>
Frac Tanks	<input type="checkbox"/>	<input type="checkbox"/>
Rolloff Containers	<input type="checkbox"/>	<input type="checkbox"/>
Light Plants	<input type="checkbox"/>	<input type="checkbox"/>

The Bidder certifies that all of the foregoing is true and correct, and further, certifies for the duration of the Contract that the equipment used on the Project is in compliance with applicable state and federal law, including Occupational Safety and Health Administration (OSHA) and United States Coast Guard inspection requirements, etc. by filling out this form and signing below.

Bidder: _____

Date: _____

Authorized Signature: _____

Name: _____
(Typed/Printed)

Title: _____

SWORN TO AND SUBSCRIBED before me, this the _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

{SEAL}

Attachment E
Certification of Corporate Health and Safety Program

The Bidder certifies that they have a current Corporate Health and Safety Program which includes programs for both new and current employees. MDEQ reserves the right to request physical documentation of this item at any time.

Bidder: _____

Date: _____

Authorized Signature: _____

Name: _____
(Typed/Printed)

Title: _____

SWORN TO AND SUBSCRIBED before me, this the _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

{SEAL}

Attachment F
Bidder Statement of Compliance

State of _____

County of _____

I, _____, individually, and in my capacity as _____ of _____ (Bidder), being first duly sworn, on oath depose and state the following on behalf of the company:

Bidder's Representation Regarding Contingent Fees

The Bidder represents as a part of such Bidder's bid that such Bidder has not retained any person or agency on a percentage, commission, brokerage, or other contingent arrangement to secure this Contract.

Bidder's Non-Collusion Certification

The Bidder, nor any of its officers, partners, owners, agents, representatives, employees, suppliers, subcontractors, or parties in interest have not in any way colluded, conspired, or agreed directly or indirectly with any other Bidder, supplier, subcontractor, firm, or person to:

- a) fix prices or prices in the attached Bid or for other Bidders;
- b) fix or make arrangements to restrict land use availability or lease/rental prices for this Bid or for other Bidders; or
- c) fix any overhead, profit or cost elements for this Bid or for other Bidders

Bidder History, Debarment and Suspension Representations

Bidder certifies that Bidder and its corporate officers, principal owners, managers, auditors, and others in a position of administering governmental funds:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental department or agency;
- b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or Contract under a public transaction;
- c) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in b) and c) above; and

- e) Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Bidder's Representation of No Improper Influence

Bidder further certifies, to the best of its knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions will be completed and submitted.

No Conflict of Interest

Bidder further certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under any contract or task order resulting from this Bid that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Bidder further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the State's satisfaction, such conflict of interest (or apparent conflict of interest). The Bidder further certifies that it has no conflict of interest with respect to MDEQ or the work to be performed (as set forth in the Invitation for Bids and accompanying Bid documents).

By submission of this bid, I have agreed to adhere to **all conditions and requirements**, as set forth in the MDEQ's Invitation for Bids and Contract Documents, including all the terms and conditions in the Contract Documents. I further understand that my failure to comply with all requirements and qualifications will result in disqualification of my bid relative to this procurement action. I have submitted appropriate documentation and completed Contract form(s) as necessary to substantiate this evaluation. If inadequate, my bid will not meet the bid requirements and will be deemed as "Non-responsive."

MDEQ reserves the right to reject any and/or all bids and to waive any minor informalities.

Please accept this as my/our formal bid for the Work in all areas as specified by MDEQ in the IFB and in accordance with the Contract Documents.

All of the foregoing is true and correct:

Bidder: _____

Date: _____

Authorized Signature: _____

Name: _____
Typed/Printed

Title: _____

SWORN TO AND SUBSCRIBED before me, this the _____ day of _____,
20____.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

Attachment G
Instructions for MAGIC



TO: Vendors for the State of Mississippi

FROM: Mississippi Department of Environmental Quality
Office of Administrative Services

SUBJECT: Instructions to register as Supplier

Effective July 1, 2014, the State of Mississippi requires vendors to register in MAGIC for the State to execute a contract and/or pay for services/products.

Please complete the online registration at this address:

https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100#

Should you have any questions concerning the registration process, please call the Department of Finance and Administration at 601-359-3538.

Thank you for your time and attention to this matter.

Mississippi Department of Environmental Quality
Office of Administrative Services

Attachment H
Standard Contract Terms and Conditions

APPLICABLE TO ALL WORK

1. Availability of Funds.

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the receipt of funds from the Mississippi State Legislature for this Project. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

2. Representatives.

For all matters pertaining to the Work, unless otherwise provided, MDEQ will be represented by its Executive Director, or a designated representative(s). When MDEQ is referenced singularly in these Standard Contract Terms and Conditions, it shall be construed to include MDEQ's Executive Director and its designated representatives for the Project.

Before commencement of the Work, Contractor shall notify MDEQ, and, its designee(s) of the name of the person(s) ("Contractor's Representative") who shall be on-site at all times when the Work is being performed, who shall directly superintend the Work and shall be the duly authorized Representative of Contractor empowered to make decisions for, and on behalf of Contractor, and to execute Change Orders on behalf of Contractor, and to whom orders and directions by MDEQ, and its designee(s), to the Contractor may be given.

At all times when any performance of the Work at any site is being conducted by any employee or representative of the Contractor or his subcontractors, the Contractor shall have a Contractor's Representative present at each site who has the capability of receiving instructions in the English language, fluently speak the English language and can explain the Work operations to persons performing the Work in the language that those performing the Work are capable of understanding. MDEQ or its designee(s) shall have the right to determine whether the proposed representative has sufficient technical and bilingual capabilities, and the Contractor shall immediately replace any individual not acceptable to MDEQ or its designee(s).

3. Authority to Contract.

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this Agreement; (b) that it is qualified and registered to do business and is 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, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

4. Employment Status.

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for MDEQ. Nothing contained herein shall be deemed or construed by MDEQ, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between MDEQ and Contractor. Neither the method of computation of fees or other charges nor any other provision contained herein nor any acts of MDEQ or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of MDEQ and Contractor.

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MDEQ, and MDEQ shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDEQ shall not withhold from the Contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, MDEQ shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by MDEQ or the State for its employees.

5. Contractor's Personnel.

MDEQ shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by Contractor. If MDEQ reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to MDEQ in a timely manner and at no additional cost to MDEQ. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor. Contractor must receive pre-approval from MDEQ prior to subcontracting with any company and/or individual not listed as a subcontractor in the bid submittal.

6. Drug-Free Work Force.

A. The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. MDEQ and its designee(s) will not be responsible for implementing, overseeing or enforcing the Contractor's drug-free work force program.

B. Contractor programs shall include the following, or appropriate alternatives:

- i. Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;
- ii. Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;
- iii. Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;
- iv. Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

- a. The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the Work being performed under the Contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.
- b. In addition, the Contractor may establish a program for employee drug testing
 - 1. When there is a reasonable suspicion that an employee uses illegal drugs;
 - 2. When an employees has been involved in an accident or unsafe practice;
 - 3. As part of or as a follow-up to counseling or rehabilitation for illegal drug use; or
 - 4. As part of a voluntary employee drug testing program.
- c. The Contractor may establish a program to test applicants for employment for illegal drug use.

C. Contractor shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractor shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

D. The provisions of this section pertaining to drug testing program shall not apply to the extent that they are inconsistent with state or local law.

7. Notification of Ownership Changes.

Contractor shall make the following notifications in writing:

- A. When Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify MDEQ within 30 days.
- B. Contractor shall also notify MDEQ within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- C. Contractor shall:
 - a. Maintain current, accurate, and complete inventory records of assets and their costs;

- b. Provide MDEQ or its designee(s) ready access to records reasonably related to the performance of the Work performed hereunder upon request;
- c. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of Contractor's ownership changes; and
- d. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

8. Examination of Site, Plans, and Conditions.

It is the sole responsibility of Contractor to visit the site of the Work and to thoroughly examine the Contract Documents and to fully acquaint Contractor with the conditions to be encountered as to the character, quality and quantity of Work to be performed and materials to be furnished. Contractor shall fully understand the facilities, difficulties and restrictions that may be encountered in performing the Work.

By execution of the Contract or implementation of the Work, Contractor represents to MDEQ that Contractor has made the necessary examination referred to in the preceding paragraph and can perform the Work for the Contract Price.

Contractor is advised that any report or other information (hereafter called "Additional Information") given to Contractor by MDEQ or its designee(s) or obtained by Contractor from the records of MDEQ (except for the Contract Documents) is not a part of the Contract unless specifically referenced to be used in conjunction with the Contract and is given solely for the convenience of Contractor for whatever use Contractor may wish to make of it. It is expressly understood and agreed that MDEQ assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the Additional Information or of any interpretations made thereof by any person. Availability or use of such additional information shall not be a waiver of Contractor's duty to examine the site of the Work, and Contractor is cautioned to make such independent investigation as Contractor deems necessary to satisfy Contractor as to the conditions to be encountered in the performance of the Work, including but not limited to: (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power and roads; (3) uncertainties of weather, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) other site conditions that may affect the Work performance.

9. Inspection.

MDEQ, and its designee shall at all times have access to the Work during performance of the Work and shall be furnished with every reasonable facility for obtaining full knowledge respecting the progress, workmanship and character of materials used and employed in the Work.

Any Work done not inspected and approved by MDEQ or its designee(s) may be subject to rejection.

The inspection of the Work shall not relieve Contractor of any of Contractor's obligations to fulfill the Contract as prescribed. Defective Work shall be made good, and unsuitable materials may be

rejected, notwithstanding the fact that such defective Work and unsuitable materials have been previously overlooked by MDEQ, or its designee(s), in inspection and accepted for payment.

10. Public Convenience and Safety.

Contractor shall so conduct its operations and Work as to cause the least possible obstruction and inconvenience to public traffic. Contractor shall furnish, erect, and maintain such fences, barriers, lights, temporary and permanent aids to navigation, notices, warning and directional signs as deemed necessary by MDEQ, and its designee(s), to give adequate warning to the public at all times of implementation of the Work and of any dangerous conditions to be encountered as a result thereof, and Contractor shall also erect and maintain such signs as may be furnished by MDEQ.

All equipment shall be fully equipped with applicable safety equipment as required by applicable state or federal law. Contractor shall have a program in place for inspecting and documenting the condition of equipment used on the Project and certifies that the equipment is in compliance with applicable state and federal law, including Occupational Safety and Health Administration (OSHA) United States Coast Guard inspection requirements, etc.

11. Removal of Defective and Unauthorized Work.

All Work which is defective or deficient in any way of the Work done by Contractor that is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi or MDEQ, shall be remedied, or removed and replaced by Contractor in an acceptable manner, and no compensation will be allowed for such correction.

Any Work done beyond what is approved by MDEQ, or its designee(s), will be considered as unauthorized and Contractor will not be compensated. Such efforts will be entirely at the expense of the Contractor and any fines or penalties will be the responsibility of the Contractor.

Upon failure on the part of Contractor to comply forthwith with any order of MDEQ or its designee(s), if applicable, made under the provisions of this Section or Sections 3 or 21, MDEQ shall have authority to cause the defective Work to be remedied, or removed and replaced, and unauthorized Work to be removed, and to deduct the costs thereof from any moneys due or to become due the Contractor.

12. Contractor's Responsibility for Work.

Until written final acceptance of the Work by MDEQ, Contractor shall use all commercially reasonable means to secure and protect the Work from injury, loss or damage to all or any part thereof by an actual or anticipated Force Majeure Event, as that term is defined in Section 22 of the Standard Contract Terms and Conditions, whether arising from the execution of the Work, mobilization and demobilization or otherwise. Contractor will not be compensated for any costs associated with procuring, utilizing or carrying out commercially reasonable means to secure and protect the Work from an actual or anticipated Force Majeure Event.

In the event the Work or any portion thereof is damaged or destroyed by a Force Majeure Event, Contractor shall rebuild, repair, restore and make good all damage to such Work. Without limiting the foregoing, Contractor shall not be responsible for payment for loss or damage to Work or any portion thereof that is considered "Completed Work" proximately caused by a Force Majeure Event. For purposes of this Section 13, "Completed Work" means Work or any portion thereof that has been approved by MDEQ or its designated representative. Payment for the rebuild, repair or restore of damage to Completed Work shall be made in accordance with the submitted

Attachment A, Bid Form. After all Force Majeure Events, Contractor shall evaluate all "Completed Work" to identify damaged locations, calculate cost to repair damages and determine methods for repair. Contractor must receive MDEQ's approval prior to proceeding with any repair work. All repairs and additional pay materials shall be approved by MDEQ.

Notwithstanding, and prior to final acceptance of the Work by MDEQ, Contractor shall be responsible for and bear the entire expense of rebuilding, repairing, restoring and making good any damage or loss to all Work or any portion thereof that is not considered, in MDEQ's sole discretion, "Completed Work" as defined herein.

13. Responsibility for Damage.

During the progress of the Work, MDEQ, and its designee(s), shall not be liable to Contractor for any loss or damage to the Work or any part thereof, or to any material or equipment used or to be used in performing the Work or for injury or damage to any person (including workers) or damage to property from any cause.

Until final acceptance of the Work, protection of the Work used thereon shall be the sole responsibility of Contractor. Notwithstanding the foregoing, Contractor shall not be responsible for payment for loss or damage to "Completed Work" proximately caused by a Force Majeure Event, as those terms are defined in Sections 13 and 22 of the Standard Contract Terms and Conditions.

14. Ownership of Documents and Work Products.

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract, except for Contractor's internal administrative and quality assurance files and internal documents. After giving thirty (30) days advance written notice to MDEQ, Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of the Contract and shall certify such delivery in writing to MDEQ. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDEQ and subject to any copyright protections.

Except as needed to perform hereunder, the Contractor is prohibited from use of the above described information and/or materials without the express written approval of MDEQ.

15. Copyrights.

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

16. Record Retention and Access to Records.

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have

unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by Contractor for three (3) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this 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.

17. Right to Audit.

Contractor shall maintain such financial records and other records as may be prescribed by MDEQ or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment or until they are audited by MDEQ, 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.

18. Third Party Action Notification.

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

19. Orders (verbal or written).

Whenever it is desirable by MDEQ, or its designee(s), to give Contractor directions concerning the Work, orders will be given in writing, as practicable, to Contractor or Contractor's representative in charge of the particular Work in reference to which the order is given, and such orders shall be binding on Contractor and Contractor shall comply therewith.

Any provision of the Contract notwithstanding, all orders, directions or interpretations of MDEQ or its designee(s) to Contractor shall be in writing, as practicable, and shall be given to Contractor promptly after requested by Contractor.

If Contractor believes that the order issued by MDEQ or its designee(s) entitles Contractor to a change in either the Contract Price or the Contract Time, or both, Contractor shall give MDEQ or its designee(s) written notice of a request for a change order as soon as reasonably practicable after receipt of the order by MDEQ. The written request shall state the requested change in price, or extension of the time for performance of the Work, and shall detail the basis for the request. Upon such a request, Contractor shall not be required to carry out the order of MDEQ or its designee(s) pending the execution of a Change Order unless Contractor is otherwise directed.

20. Change Orders.

- A. Generally, MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDEQ and Contractor. If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately

notify MDEQ in writing of this belief. If MDEQ believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the Work as changed and at the cost stated for the services within the Contract.

B. Procedures. The parties shall initiate a Change Order as follows:

i. Proposed by MDEQ/MDEQ Designee(s).

MDEQ or its designee(s) may initiate changes by submitting a proposed Change Order to Contractor. The request may include:

- a. Detailed description of the change, products, and location of the change in the Project;
- b. Supplementary or revised Drawings, and Specifications, as applicable;
- c. The projected time span for making the change;
- d. A specific period of time during which the requested price will be considered valid; and
- e. Such request is for information only, and is not an instruction to execute the changes or to stop/suspend Work in progress.

ii. Proposed by Contractor.

Contractor may initiate changes by submitting a written notice to MDEQ's or its designee(s) containing:

- a. Description of the proposed changes;
- b. Statement of the reason for making the changes;
- c. Statement of the effect on the price and time to complete applicable Work;
- d. Statement of the effect on the work of separate contractors; and
- e. Documentation supporting any change in price or time to complete applicable Work, as appropriate.

C. Documentation and information supporting Change Order.

- i. The Contractor shall support each quotation for a lump-sum proposal, and for each unit price which has not previously been established, with sufficient substantiating data to allow MDEQ or its designee(s) to evaluate the quotation.

D. Form of Change Order.

- i. The party initiating the request for a Change Order shall prepare the request on a form that meets the requirements of this Section.

- ii. A Change Order will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.
- iii. A Change Order will provide an accounting of the adjustment in the Contract Sum and in the Contract Time.
- iv. MDEQ will sign and date the Change Order as authorization for the Contractor to proceed with the changes.
- v. Contractor will sign and date the Change Order to indicate agreement with the terms therein.
- vi. Changes in price will be based on:
 - a. Unit prices already established in the Bid Form;
 - b. Negotiated unit prices for items not previously established in the Bid Form; or
 - c. Negotiated lump sum prices for items not previously established in the Bid Form.

For negotiated unit or lump sum prices for items not previously established in the Bid Form, the total markup for any subcontractors and/or vendors shall not exceed ten percent (10%).

Changes in time for completion of applicable Work will be justified based on the Extension of Contract Time provision below.

21. Extension of Contract Time.

A. Time Extension

- i. The time within which to complete the Work shall be extended by MDEQ for a period of time, as may be reasonably necessary for Contractor to resume work, upon the occurrence of any of the following events: acts of God; strikes, lockouts, riots, acts of war, epidemics, pandemics, fire, earthquakes, hurricanes, tropical storms, floods, extreme tidal events or other natural disasters (a "Force Majeure Event").
- ii. Notwithstanding the foregoing, subparagraph (i) above, the time within which to complete the Work may be extended by MDEQ upon request.
- iii. Contractor shall notify the MDEQ or its designee(s) as soon as reasonably practicable from the beginning of any such delay period of the cause of the delay and request an extension of the time within which to complete the Contract by reason of the delay and specify the length of such requested extension in accordance with the Change Order provisions above.

- iv. Contractor shall not be entitled to any increase in the Contract Price and waives any claim for damages as a result of any delay, unless otherwise approved by MDEQ.

22. Modification or Amendment.

Modification, changes or amendments to the Contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of the Contract must be in writing and signed by both parties hereto.

23. Final Payment.

Upon satisfactory completion of the Work performed, as a condition before final payment under the Work, Contractor shall execute and deliver to MDEQ a release of all claims against MDEQ arising under, or by virtue of, the Contract by completing the Release of Claims form provided by MDEQ. Unless otherwise provided in the Contract, by state law or otherwise expressly agreed to by the parties in the Contract, final payment for completion of the Work shall not constitute waiver of MDEQ's claims against Contractor or his sureties under the Contract or applicable performance and payment bonds.

24. Conflict of Interest.

Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to MDEQ or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this section, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience section of this Contract.

25. Debarment and Suspension.

Contractor certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors and others in a position of administering governmental funds:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. Have not, within a three year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Contract under a public transaction;
- C. Have not, within a three year period preceding this Contract, been convicted of or had a civil judgment rendered against them for a violation of federal or state antitrust

statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

D. Are 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 subparagraphs B. and C. of this certification; and

E. Has not, within a three year period preceding this Contract, had one or more public transactions (federal, state, or local) terminated for cause or default.

26. Representation Regarding Contingent Fees.

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

27. Representation Regarding Gratuities.

The bidder or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the Mississippi Department of Finance and Administration's Procurement Manual (Public Procurement Review Board Regulations).

28. Tax Bonds.

A Tax Bond securing the prompt payment of taxes, licenses, assignments, contributions, damages, penalties, and interest thereon incurred in connection with the performance of the Contract shall also be provided and approved by MDEQ prior to commencing Work under the Contract.

Attorneys-in-fact who sign Payment Bonds, Performance Bonds, and Tax Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

29. Insurance Requirements.

Contractor shall maintain during the period of performance of the contract the following liability insurance coverage and shall require its subcontractors to maintain said coverage, related to the work of the Contractor and in connection with the contract.

(A) Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Contractor shall supply MDEQ endorsements from its carriers evidencing waiver of subrogation in favor of MDEQ.

(B) Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) aggregate.

- (C) Contractors Pollution Liability Insurance. This insurance shall protect Contractor for claims for bodily injury and property damage stemming from pollution caused by the Contractor's work or equipment. This insurance shall also cover remediation costs stemming from pollution incidents resulting from the Contractor's operations and Work under this Contract. This insurance shall have minimum limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
- (D) Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.
- (E) Errors & Omissions/Professional Liability Coverage. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and not less than Two Million and 00/100 (\$2,000,000.00) in the aggregate.
- (F) Pollution Liability Insurance. This insurance shall be in the amount of One Million and 00/100 (\$1,000,000.00) per occurrence and Three Million and 00/100 (\$3,000,000.00) in the aggregate.
- (G) Excess Liability Insurance. This insurance coverage shall be in the amount of Five Million and 00/100 (\$5,000,000.00) in excess of the insurances and limits required in this Paragraph (A-F).

Depending on the Work performed, the Contractor acknowledges by signing the Contract that additional insurance and associated coverages may be required in addition to the above listed insurances, and further, agrees to obtain and maintain any additional coverages that may be required by MDEQ or applicable state and federal law.

For all of the insurance coverage required in Paragraph 31(A)-(G), MDEQ and MDEQ's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. The Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the Contractor's coverage. Endorsements so stating shall be provided to MDEQ by the Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

Upon execution of the Contract, Contractor shall promptly furnish MDEQ with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Agreement, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance

provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the provisions addressing the indemnity of MDEQ by Contractor.

30. Indemnification.

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify and hold harmless MDEQ, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and/or against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractor's in the performance of or failure to perform this Agreement. In MDEQ's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to MDEQ; Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without MDEQ's concurrence, which MDEQ shall not unreasonably withhold. This indemnity obligation is intended to be, and shall be interpreted to be, a separate and independent contractual obligation from the contractual provisions addressing the requirements and placement of insurance, including, but not limited to, insurance covering MDEQ.

31. No Limitation of Liability.

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

32. Recovery of Money.

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

Any funds that are paid by MDEQ to the Contractor that are deemed ineligible or not necessary for the completion of the tasks in this Contract must be returned to MDEQ within 30 days from receiving MDEQ's written notification for return of funds.

33. Anti-Assignment/Subcontracting.

Contractor acknowledges that it was selected by MDEQ to perform the services required hereunder based, in part upon Contractor's special skills and expertise. Unless subcontractors are otherwise identified and approved in accordance with this Section, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part, without the prior consent of MDEQ, which MDEQ may in its sole discretion, approve or deny without reason.

The failure of Contractor to comply with this Section shall render any subcontract, assignment or transfer of Contractor's obligations null and void. MDEQ shall in no way be responsible for payment for any services or supplies provided by subcontractors not identified and/or approved in accordance with this Section. Approval by MDEQ of any subcontract shall not be deemed in any

way to provide for the incurrence of any obligation of MDEQ in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that MDEQ may deem necessary. Further, MDEQ may assign its obligations under this Contract to another entity, upon such entity's agreement, in accordance with applicable state laws and regulations. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

34. Confidential Information.

- A. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information. Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDEQ shall result in the immediate termination of this Contract.
- B. Public Records. Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDEQ shall following provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to Contractor for disclosure of information required by court order or required by law.
- C. Disclosure of Confidential Information. In the event that either party to this Contract receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information 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 Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*
- D. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("**Disclosing Party**") which is:
- i. Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;
 - ii. Generally known or easily ascertainable by nonparties to this Contract;
 - iii. Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

- iv. Independently developed by the recipient without any reliance on confidential information;
- v. Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
- vi. Disclosed with the Disclosing Party's prior written consent; or
- vii. otherwise required to be disclosed by law.

37. Temporary Suspension of Work.

MDEQ or any other governmental agency with jurisdiction shall have the authority to suspend the Work wholly or in part, for such period as it may deem necessary due to: (1) unsuitable weather, (2) such other conditions as are considered unfavorable for the suitable prosecution of the Work. For these circumstances, the Contractor may be entitled to an adjustment in Contract Times and Contract Price if the delay prohibits the Contractor from completing the Work within the Contract Times. Any such suspension ordered by MDEQ shall be within its sole discretion. Contractor shall immediately cease Work upon such order of MDEQ's Executive Director or representative and shall not resume the Work until ordered by MDEQ

MDEQ, its designee(s), or any other governmental agency with jurisdiction may temporarily suspend work for failure on part of Contractor or any Subcontractor to carry out orders given by MDEQ pursuant to the Contract or to perform any provisions of the Work in the manner prescribed by the Contract. Any such suspension by MDEQ shall be within its sole discretion. Contractor shall immediately cease Work upon such order of MDEQ's Executive Director or representative and shall not resume the Work until ordered by MDEQ. Contractor shall not be entitled to additional time or increase in the Contract Price and waives any claim for damages as a result of any such suspension of work for these reasons.

38. Termination.

The Contract may be terminated as follows:

A. Termination Upon Bankruptcy or Default:

The Contract may be terminated in whole or in part by MDEQ upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor (or Bonding Company) shall be paid an amount for satisfactory work actually performed pursuant to the Contract, but in no case shall said compensation exceed the total Contract price.

B. Termination Due to Non-Performance By Third Party:

The Contract may be terminated in whole or in part by MDEQ upon written notice to Contractor if the purpose, performance or completion of the Work becomes materially altered, frustrated or impossible due to a third party, (public or private entity) outside of the control of MDEQ, not performing or satisfying an activity or operation necessary for the Work to be accomplished. This provision shall not apply to the subcontractors or suppliers of Contractor, which are addressed separately. MDEQ shall specify the effective date of such termination. In the event of a termination under this provision, the Contractor shall be paid an amount for satisfactory work actually performed in connection with the

Contract if a Notice to Proceed has been issued. If a Notice to Proceed has not been issued prior to such termination, the termination will be without damage, penalty, costs or expenses to MDEQ of any kind whatsoever and the Contractor waives any claim for payment or damages as a result.

C. Termination for Convenience:

MDEQ may terminate the Contract, in whole or in part, for any reason after giving written notice to Contractor of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. Contractor shall be paid an amount for satisfactory work actually performed in connection with the Contract, but in no case shall said compensation exceed the total Contract price.

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

D. Termination for Default:

(i) Default. If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof or otherwise fails to timely satisfy the Contract provisions or commits any other substantial breach of this Contract, MDEQ may notify Contractor in writing of the delay or nonperformance. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the MDEQ officer or representative, MDEQ may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by MDEQ. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable to MDEQ for excess costs incurred in procuring similar goods or services.

(ii) Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from MDEQ, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(iii) Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract Price. The State may withhold from amounts due Contractor such sums as MDEQ 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.

(iv) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by

Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified MDEQ as soon as possible after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Contract requirements. Upon request of Contractor, MDEQ shall ascertain the facts and extent of such failure. If MDEQ determines that any failure to perform was occasioned by any one or more of the excusable causes and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule be revised accordingly, subject to the rights of MDEQ under the section entitled "Termination for Convenience." (As used in this paragraph of this section, the term "subcontractor" means subcontractor at any tier.)

(v) Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this section, MDEQ determines for any reason that the Contract was not in default under the provisions of this section or that the delay was excusable under the provisions of subparagraph (iv) (Excuse for Nonperformance or Delayed Performance) of this section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such section.

Notwithstanding any of the foregoing provisions, Contractor shall not be relieved of liability to MDEQ for damages sustained by MDEQ by virtue of any breach of the Contract by Contractor, and MDEQ may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due MDEQ from Contractor are determined. MDEQ may also pursue any remedy available to it in law or in equity.

39. Antitrust.

By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDEQ 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 services purchased or acquired by MDEQ under this Contract.

40. Procurement Regulations.

The Contract shall be governed by the applicable provisions of the Public Procurement Review Board Regulations.

41. Compliance with Miss. Code. Ann. § 31-5-37.

Pursuant to Miss. Code. Ann. § 31-5-37, from the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the Mississippi Department of Employment Security ("MDES"), the Contractor and any subcontractor shall not hire any personnel to fill vacant positions for this project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contractor or subcontractor. During the ten (10) day period, the MDES shall submit qualified individuals to the Contractor to consider for the vacant positions. The Contractor shall review the individuals

submitted by MDES before hiring individuals who are not submitted by MDES. The contract award shall be vacated if the Contractor fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

42. E-Verification.

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

- A. Termination of this Contract for services and ineligibility for any state or public Contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- B. The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. Both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

43. E-Payment.

Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. MDEQ 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.*

44. Pay Mode.

Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor’s choice. The State, may at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

45. Transparency.

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration's independent agency Contract website for public access at <http://www.transparency.mississippi>. Information identified by Contractor as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted. The personal or professional services to be provided, the price to be paid, and the terms of this Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

46. Waiver.

MDEQ may waive any provision, in whole or in part, of this Contract not otherwise required by law. Failure by MDEQ, 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 MDEQ to enforce any provision at any time in accordance with its terms.

47. Governing Law.

The Contract shall be construed and governed in accordance with the laws of the State of Mississippi, without regard to its conflicts of laws, and the laws of the United States of America, and venue for the resolution of any dispute shall be brought in the appropriate state or federal court located in Jackson, Hinds County, Mississippi.

48. Compliance with Laws.

Contractor understands that MDEQ 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, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the Contract that Contractor will strictly adhere to this policy in its employment practices and provision of work performed pursuant to the Contract. Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified. Contractor shall immediately report in writing to MDEQ any discrepancy or inconsistency in the Contract Documents that appear to violate or be contrary to the then existing applicable federal, state and local laws. Contractor shall ensure that any person assigned to perform services hereunder meets the employment eligibility requirements of the immigration and naturalization laws including but not limited to the Immigration Reform and Control Act of 1986.

51. Reference to Statutes.

Whenever reference is made to the provision of any statute or law in the Contract Documents, such reference applies to any amendment or change in such statute or law now existing, but to become operative sometime after the signing of the Contract.

52. Headings.
The captions or headings in the Contract are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of the Contract.

53. Severability.
If any part of this Contract 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.

54. Disputes.
Before pleading to any judicial system at any level, Contractor must exhaust all administrative remedies. A written complaint of any claim or dispute not otherwise resolved by the procedures outlined in the Contract Documents must first be sent to the Executive Director of MDEQ within thirty (30) days of the Contractor being aggrieved by the decision of MDEQ or its representative(s). The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to Contractor. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35, with appeals from the Commission's decision following procedures as outlined in Miss. Code Ann. Section 49-17-41.

For any disputed claim over \$100,000, and as a prerequisite to the claim proceeding through MDEQ's administrative remedies and in court, a registered officer of the Contractor shall provide the following certification to MDEQ upon filing the initial written complaint with the Executive Director:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes MDEQ is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

55. Professional Fees and Expenses.
If MDEQ incurs attorneys' fees, costs or expenses (including, without limitation, court costs, investigative fees, engineering fees, accounting fees, and other professional service fees) in order to enforce any of the terms or conditions of this Contract or because of the breach of this Contract by the Contractor, MDEQ shall be entitled to recover its reasonable attorneys' fees, costs and such expenses from Contractor if MDEQ is the prevailing party (whether by suit, negotiation or settlement).

56. Oral Statements.
No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract, except as otherwise stated herein.

57. Delivery of Contract.

A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

58. Counterparts.

This Contract may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

59. Notices.

All notices required or permitted to be given under this Contract 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. Such communications must be sent to the respective parties at the following addresses:

If to MDEQ: Ms. Aveleka Moore
P.O. Box 2261
Jackson, MS 39225
amoore@mdeq.ms.gov

If to CONTRACTOR: [Contractor's Name,
Point of Contact,
Address
E-mail Address]

60. State Property.

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

61. Requirements Contract.

During the period of the Contract, CONTRACTOR shall provide all the service described in the Contract. CONTRACTOR understands and agrees that this is a requirements Contract and that MDEQ shall have no obligation to CONTRACTOR if no services are required. Any quantities that are included in the scope of work reflect the current expectations of MDEQ for the period of the Contract. The amount is only an estimate and CONTRACTOR understands and agrees that MDEQ is under no obligation to CONTRACTOR to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. CONTRACTOR further understands and agrees that MDEQ 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.

62. Quality Control.

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

63. Non-solicitation of Employees.

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

64. Integrated Agreement/Merger.

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

65. Failure to Deliver.

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

66. Authority to Contract.

CONTRACTOR warrants that (a) it is a validly organized business with valid authority to enter into this Contract; (b) it is qualified to do business and in good standing in the State of Mississippi; (c) entry into and performance under this Contract 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 Contract to the contrary, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

67. Attorney's Fees and Expenses.

Subject to other terms and conditions of this agreement, in the event CONTRACTOR defaults in any obligations under this agreement, CONTRACTOR shall pay to the State all costs and expenses

(including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. CONTRACTOR agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to CONTRACTOR.

68. 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.

Attachment I
Miss. Code Ann. § 31-5-37

§ 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions

(1) All public works projects utilizing funds received by state or local governmental entities resulting from a federally declared disaster or a spill of national significance, including damages, penalties, fines or supplemental projects paid or financed by responsible parties pursuant to a court order, negotiated settlement, or other instrument, including under any law distributing such fines and penalties including the federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.), the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act or similar legislation, shall be subject to the hiring policies established by this section.

(2) Contractors submitting bids for public works projects that involve an expenditure of Five Thousand Dollars (\$ 5,000.00) or more and that are financed, in whole or in part, through the use of funds described in subsection (1) of this section shall submit with their bid a certification that they will comply with the provisions of this section if they are awarded a contract. The contractor shall submit to the agency or governing authority that solicited the bid and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the contract which shall include the following:

- (a) The types of jobs involved in the public works project;
- (b) The skill level of the jobs involved in the project;
- (c) Wage information on the jobs involved in the project;
- (d) The number of vacant positions that the contractor and any subcontractor needs to fill;
- (e) How the contractor and any subcontractor will recruit, low-wage and unemployed individuals for job vacancies;
- (f) Such other information as may be required by the Mississippi Department of Employment Security; and
- (g) Proof of registration with the Mississippi Department of Employment Security for taxation in accordance with the provisions of Title 71.

(3) From the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the Mississippi Department of Employment Security, the contractor and any subcontractor shall not hire any personnel to fill vacant positions necessary for the public works project except residents of the State of Mississippi who are to be verified by the Mississippi Department of Employment Security and/or those qualified individuals who are submitted by the Mississippi Department of Employment Security. For purposes of this subsection, the contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately, and such persons are to be verified by the Mississippi Department of Employment Security after employment by the contractor or subcontractor. During the ten-day period the Mississippi Department of Employment Security shall submit qualified individuals to

the contractor to consider for the vacant positions. The contractor shall review the individuals submitted by the department before hiring individuals who are not submitted by the department. The contract award shall be vacated if the contractor fails to comply with the provisions of this subsection.

HISTORY: SOURCES: Laws, 2012, ch. 505, § 1; Laws, 2013, ch. 479, § 1, eff from and after passage (approved April 1, 2013.)

Miss. Code Ann. § 31-5-33

§ 31-5-33. Amount of retainage which may be withheld; exemptions

(1) In any contract for the construction, repair, alteration or demolition of any building, structure or facility awarded by the State of Mississippi, or any agency, unit or department of the State of Mississippi, or by any political subdivision thereof, which contract provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contract proceeds to be retained by the state agency, unit or department, or by the political subdivision or contractor pending completion of the contract, such retainage shall be five percent (5%), and the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the state, or any agency, unit or department of the state, or by any political subdivision thereof, from the prime contractor.

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$ 250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's and/or engineer's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers. Provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%).

(2) The provisions of this section shall not apply to contracts let by the Mississippi Transportation Commission for the construction, improvement or maintenance of roads and bridges.

HISTORY: SOURCES: Laws, 1979, ch. 454, § 1; Laws, 1984, ch. 406, § 1; Laws, 2002, ch. 519, § 2, eff from and after July 1, 2002.

Miss. Code Ann. § 31-7-305

§ 31-7-305. Recordkeeping and notice requirements; time for mailing check in payment of invoice; time for payment in event of dispute; interest penalties.

(1) All public bodies of the state, including those which issue checks and those which file requisitions for payment with the State Fiscal Management Board, shall keep a record of the date of receipt of the invoice, dates of receipt, inspection and approval of the goods or services, date of issuing the check or date of filing the requisition for payment, as the case may be, and date of mailing or otherwise delivering the warrant or check in payment thereof. In the event that the State Fiscal Management Board mails or otherwise delivers the warrant directly to the claimant, pursuant to Section 7-7-35, Mississippi Code of 1972, the State Fiscal Management Board shall notify the public body of the date thereof. The provisions of this section are supplemental to the requirements of Sections 19-13-29, 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

(2) All public bodies that are authorized to issue checks in payment of goods and services and are not required to issue requisitions for payment to the State Fiscal Management Board shall mail or otherwise deliver such checks no later than forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services; however, in the event of a bona fide dispute, the public body shall pay only the amount not disputed.

(3) If a warrant or check, as the case may be, in payment of an invoice is not mailed or otherwise delivered within forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods and services, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-1/2 %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. The provisions of this paragraph shall apply only to undisputed amounts for which payment has been authorized. In the case of an error on the part of the vendor, the forty-five-day period shall begin to run upon receipt of a corrected invoice by the public body and upon compliance with the other provisions of this section. The various public bodies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. Also, at the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be.

(4) (a) In the event of a bona fide dispute as to an invoice, or any portion thereof, the dispute shall be settled within thirty (30) days after interest penalties could begin to be assessed, if it were not for the dispute.

(b) If a warrant or check, as the case may be, in payment of an invoice, subject to a prior dispute, is not mailed or otherwise delivered within thirty (30) days after settlement of the dispute, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-1/2 %) per month or portion

thereof on the unpaid balance from the expiration of said thirty-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. At the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be. The interest penalty prescribed in this paragraph shall be in lieu of the penalty provided in subsection (3).

END

ATTACHMENT J

Mississippi First Act – Employment Plan Form for Public Works Projects

This form may be digitally downloaded from:

<http://www.mdes.ms.gov/employers/mississippi-first-act-and-public-works-contracts-employment-plans/>

**Mississippi First Act
Employment Plan Form for Public Works Projects***

Project Number:

Bid Date:

Project Title:

Institution / Agency:

Please provide the information requested below regarding the contractor and its subcontractors.

1. List the types of jobs that will be involved in the project:

2. List the skill level of the jobs involved in the project:

3. List the wages for each job involved in the project:

4. List the number of vacant positions that will need to be filled for each job involved in the project:

5. Explain how low wage and unemployed individuals will be recruited for job vacancies:

[Redacted area]

6. Attach proof of registration with the Mississippi Department of Employment Security (MDES) for taxation purposes.

I certify that the information provided above is true and accurate to the best of my knowledge.

Contractor Name and
Authorized Representative:

[Redacted area]

Title:

[Redacted area]

Date:

[Redacted area]

**Note: This form must be submitted if Miss. Code Ann 31-5-37 (Mississippi First Act) applies to the project.*

This law requires a contractor awarded a contract for a public works project utilizing specified funding to submit an employment plan to the public agency or authority that awarded the contract and to MDES.

Please submit a copy of your employment plan to MDES via fax at 601-321-6080
or via email at recoveryjobs@mdes.ms.gov.

Signature:

[Redacted area]

To sign digitally, click and add your digital signature above. You may also print and sign this by hand to fax.

This form may be digitally downloaded from

<http://www.mdes.ms.gov/employers/mississippi-first-act-and-public-works-contracts-employment-plans/>

ATTACHMENT K

Bidder Certificate of Commitment to Comply with Miss. Code Ann. § 31-5-37

State of _____

County of _____

I, _____, individually, and in my capacity as _____ of _____ (Bidder), being first duly sworn, on oath depose and state the following on behalf of the company:

Bidder represents as a part of such Bidder's bid that it will fully comply with the requirements of Miss. Code Ann. § 31-5-37 by submitting to the Mississippi Department of Environmental Quality and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the Contract which shall include all of the information required in Miss. Code Ann. § 31-5-37(2)(a)-(g).

All of the foregoing is true and correct:

Bidder: _____

Date: _____

Authorized Signature: _____

Name: _____

Typed/Printed

Title: _____

SWORN TO AND SUBSCRIBED before me, this the _____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

ATTACHMENT L
BID BOND

KNOWN ALL MEN BY THESE PRESENTS:

That _____

(Name of Contractor)

(Address of Contractor)

A _____ hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

_____ hereinafter called "Surety",
(Name of Surety)

are held and firmly bound unto the **MDEQ**, hereinafter called "**OWNER**" in the penal sum of 5% of Total Bid, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

Signed, this the _____ day of _____, 20____. The Condition of the above obligation is such that whereas the Principal has submitted to the **MDEQ** a certain BID, attached hereto and hereby made a part thereof to enter into a Contract in writing, for the performance of:

"Emergency Response and Cleanup Activities Involving Hazardous Materials" ("Project")

NOW, THEREFORE,

- (a) If said BID shall be rejected, or,
- (b) If said BID shall be accepted and the Principal shall execute and delivery a Contract on the Contract form as attached hereto (properly completed in accordance with said BID) and shall furnish a Payment Bond, a Performance Bond and a Tax Bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impacted or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these present to be signed by their officers, the day and year first set forth above.

Principal

(L.S.)

Surety

By:

By:

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located. This Bid Bond shall be accompanied by a certified and currently dated copy of the Attorney-in-Fact's Power of Attorney.

END OF DOCUMENT

PERFORMANCE BOND

KNOWN ALL MEN BY THESE PRESENTS:

That _____
(Name of Contractor)

(Address of Contractor)

a _____ hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

_____ hereinafter called "Surety",
(Name of Surety)

are held and firmly bound unto the **MDEQ**, hereinafter called "**OWNER**" in the penal sum of _____
Dollars (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the OWNER, dated the _____ day of _____, 20_____, a copy of which is hereto attached and made a part hereof for the performance of:

"Emergency Response and Cleanup Activities Involving Hazardous Materials" ("Project")

NOW, THEREFORE, the Contractor and the Surety, jointly and severally, bond themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference. If the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the Original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all of outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect. PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed hereunder or the CONTRACT DOCUMENTS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the loans of this Contract or to the WORK or to the CONTRACT DOCUMENTS. PROVIDED, FURTHER, that

no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may not yet be satisfied.

The following conditions apply to this Bond:

1. The Performance Bond is for an amount equal to the full amount of said Contract.
2. If any changes are made in the work, or any extensions of time are granted, or any increases in the total dollar amount of the Contract are made, such changes, extensions, increases, or other forbearance on the part of either the Owner or the Principal will not, in any way, release the Principal and Surety, or either of them, from their liability hereunder, or any portion thereof, notice to the Surety of any such change, extension, increase, or forbearance being expressly waived.
3. This Bond is governed by and shall be construed in accordance with Mississippi law. Any inconsistency with this Bond and any provision of Mississippi law shall be remedied by deleting the inconsistent portion of this Bond and leaving the remaining consistent portions in full force and effect.

WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each of which shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

(Principal) Secretary

(Principal)

By: _____

(SEAL)

(Address)

Witness as to Principal

(Address)

ATTEST:
(SEAL)

(Surety)

By

Attorney-in-Fact, MS Resident Agent

Witness as to Surety

(Address)

(Address)

Phone Number (include Area Code)

NOTE:

Date of BOND **must not be prior** to date of CONTRACT.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT:

Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located. This Performance Bond shall be accompanied by a certified and currently dated copy of the Attorney-in-Fact's Power of Attorney

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PAYMENT BOND

KNOWN ALL MEN BY THESE PRESENTS:

That _____
(Name of Contractor)

(Address of Contractor)

a _____ hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

_____ hereinafter called "Surety",
(Name of Surety)

are held and firmly bound unto the MDEQ, hereinafter called "OWNER" in the penal sum of

_____ Dollars (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the OWNER, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the performance of:

"Emergency Response and Cleanup Activities Involving Hazardous Materials" ("Project")

NOW, THEREFORE, the Contractor and the Surety, jointly and severally, bond themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. If the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS and corporations furnishing materials for or performing labor or equipment in the prosecution of the WORK provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR, SUB-SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect. PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed hereunder or the CONTRACT DOCUMENTS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this Contract or to the WORK or to the CONTRACT DOCUMENTS. PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may not yet be satisfied. Furthermore, the Owner shall not be

liable for the payment of any costs or expenses of any suit described in Subsections (2) or (3) of Mississippi Code Annotated Section 31-5-51.

The following conditions apply to this Bond:

1. This Payment Bond is for an amount equal to the full amount of said Contract.
2. If any changes are made in the work, or any extensions of time are granted, or any increases in the total dollar amount of the Contract are made, such changes, extensions, increases, or other forbearance on the part of either the Owner or the Principal will not, in any way, release the Principal and Surety, or either of them, from their liability hereunder, or any portion thereof, notice to the Surety of any such change, extension, increase, or forbearance being expressly waived.
3. This Bond is governed by and shall be construed in accordance with Mississippi law. Any inconsistency with this Bond and any provision of Mississippi law shall be remedied by deleting the inconsistent portion of this Bond and leaving the remaining consistent portions in full force and effect.

WITNESS WHEREOF, this instrument is executed in (3) counterparts, each of which shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

(Principal) Secretary

(Principal)

By: _____

(SEAL)

(Address)

Witness as to Principal

(Address)

ATTEST:
(SEAL)

(Surety)

By _____

Attorney-in-Fact, MS Resident Agent

Witness as to Surety

(Address)

(Address)

Phone Number (include Area Code)

NOTE: Date of BOND **must not be prior** to date of CONTRACT. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located. This Performance Bond shall be accompanied by a certified and currently dated copy of the Attorney-in-Fact's Power of Attorney

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DEPARTMENT OF REVENUE
JACKSON, MISSISSIPPI

Bond Number _____

RIDER
(SALES, USE, INCOME, FRANCHISE, WITHHOLDING, AND
SPECIAL FUEL [DIESEL FUEL] TAX BOND)

This Rider is attached to and becomes a part of a certain performance and/or payment bond executed by _____ as Principal,
(Name and Address)

in favor of _____ as Obligee, (Name and Address)
and covering a contract dated _____, 20_____, for the performance of:

"Emergency Response and Cleanup Activities Involving Oil, Diesel, Kerosene and Non-Hazardous Materials in Inland Areas in Mississippi" ("Project")
(Name Project and Describe)

WHEREAS, under the provisions of Miss Code Ann. § 27-65-21, the said Principal is required to and has furnished the attached bond guaranteeing payment of all taxes, damages, interest and penalties which may accrue to the State of Mississippi under Miss Code Ann. § 27-65-1 et seq, and § 27-67-1 et seq., and § 27-7-1 et seq., and § 27-13-1 et seq., and § 27-7-301 et seq., and § 27-55-313 et seq, and amendments thereto, on account of entering into said contract.

NOW, THEREFORE, in addition to the obligations set forth in the attached bond, there is hereby imposed the additional obligation by this Rider that the Contractor shall promptly make payment when due of all taxes, damages, interest and penalties which may accrue to the State of Mississippi under Miss Code Ann. § 27-65-1 et seq., and § 27-67-1 et seq., and § 27-7-1 et seq., and § 27-13-1 et seq., and § 27-7-301 et seq., and § 27-55-313, and amendments thereto, on account of the execution of the aforesaid contract.

NOTWITHSTANDING any provision in the performance and/or payment bond, the expiration date for the sureties' responsibilities and/or liabilities under this Rider shall be sixty (60) months from the date the final payment for the project described herein is made, except in the existence of fraud there shall be no expiration date for this Rider.

NOTWITHSTANDING the tax information and return confidentiality provisions contained within Miss Code Ann. § 27-65-1 et seq., § 27-67-1 et seq., § 27-7-1 et seq., § 27-13-1 et seq., § 27-7-301 et seq., and § 27-55-301 et seq., and amendments thereto, principal hereby authorizes the Department of Revenue to release to surety any information relating to any claim against said surety made by the Department of Revenue which is covered by this bond.

SIGNED, SEALED AND DELIVERED, This the _____ day of _____, 20_____

Filed and Approved this the _____ day
of _____, 20_____.

Commissioner and Chairman of the DEPARTMENT OF REVENUE

(SEAL)

Principal

Surety

By _____
Attorney in Fact

COUNTERSIGNATURE:

By _____
Licensed Mississippi Agent

(Type or Print Name of Agent)

(Telephone Number)

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ATTACHMENT M

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF MISSISSIPPI
COUNTY OF HINDS

MDEQ CONTRACT NO. _____

CONTRACT

This Contract (the "Contract") is made and entered into by and between the Mississippi Department of Environmental Quality ("MDEQ"), and _____ ("CONTRACTOR"), (together with MDEQ, the "Parties").

1. Purpose

The purpose of this Contract is for the CONTRACTOR to assist MDEQ with effective and safe response to emergency incidents involving oil in inland areas in Mississippi, excluding petroleum containers suspected of damage.

2. Statement of Work

A. Services:

For the consideration referred to in paragraph 4, Consideration and Payment, the CONTRACTOR shall provide MDEQ with services, facilities, personnel and materials as specified below as directed by MDEQ:

B. Tasks:

- i. Effectively and safely respond, in an expeditious manner, to a variety of emergency incidents/circumstances on land and in water which includes, but is not limited to:
 - Provide sufficient personnel and equipment to, at a minimum, contain the spill, recover free Oil, and clean up gross contamination associated with the Oil;
- ii. Perform other emergency response and cleanup activities involving Oil as directed by MDEQ.

3. Contract Time

The period of performance for this Contract shall begin upon execution of this Contract by the Executive Director of MDEQ, and shall continue for a maximum period of five (5) years, unless terminated sooner in accordance with the terms of this Contract (the "Contract Time").

4. Consideration and Payment

A. Consideration:

- 1) As consideration for the performance of this Contract, MDEQ agrees to pay the CONTRACTOR at the rates attached hereto in Attachment A. The total Contract amount for all tasks shall not exceed One Million Five Hundred Thousand and 00/100 Dollars (**\$1,500,000.00**).

B. Payment:

- 1) MDEQ shall pay, or make payments on, the above-mentioned consideration in accordance with the following schedule or procedure:

CONTRACTOR shall submit invoices and supporting documentation of costs incurred. Payment will be made to the CONTRACTOR within 45 days of receipt of the approved invoice submitted in accordance with paragraph 4.B.2.

- 2) All invoices shall be supported by statements of costs incurred in performance of this Contract.
- 3) All invoices for time periods ending June 30 of any year through the course of this Contract shall be submitted no later than July 31 of that same year. Final invoice(s) and final report shall be submitted to MDEQ no later than 45 days after the end date of this Contract.

5. Contract Documents

The Contract Documents, which comprise the entire Agreement between MDEQ and Contractor concerning the Work, includes the following:

1. Change Orders, Supplemental Agreements and/or other modifications to the Contract;
2. This Contract, as executed;
3. Standard Contract Terms and Conditions;
4. Contractor's Bid, including all subparts and documents submitted therewith;
5. Notice of Award;
6. Notice to Proceed;
7. Addenda to the Invitation for Bids;
8. Invitation for Bids;
9. Performance Bond;
10. Payment Bond;
11. Tax Bond;
12. Insurance Certificates and Endorsements; and
13. All permits and environmental conditions pertaining to the Work.

The documents listed above are attached to this Contract (except as expressly noted otherwise above). The Contract Documents may only be amended, modified, or supplemented as provided in Sections 20 - 22 of the Standard Contract Terms and Conditions. In the event of a conflict in the provisions of the Contract Documents, the terms of the document listed first above shall control.

For the faithful performance of the terms of this Contract, the parties hereto have caused this Contract to be executed by their undersigned authorized representatives.

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Chris Wells
Executive Director

Date

{CONTRACTOR'S NAME}

Authorized Signature

Date

Typed/Printed Name

Title