

## **INVITATION FOR BIDS**

IFB Number: 3160004154

To Provide: Invasive Species Survey and Management Services

Issue Date: Friday, February 12, 2021

## **CLOSING LOCATION**

Mississippi Department of Environmental Quality

515 East Amite Street

Jackson, MS 39201

Or Electronically in MAGIC

## **BID COORDINATOR**

Melanie Green, Accounting Chief, Restoration

Telephone: (601) 961-5270

Fax: (601) 961-5715

E-mail: [mgreen@mdeq.ms.gov](mailto:mgreen@mdeq.ms.gov)

## **CLOSING DATE AND TIME**

Bids must be received by 3:00 p.m. CST

Friday, February 26, 2021

## SECTION 1

### 1.1 Bid Acceptance Period

The original and two (2) copies of the bid form, three (3) total, shall be signed and submitted in a sealed envelope or package to 515 East Amite Street, Jackson, MS 39201, or submitted electronically to Mississippi's Accountability System for Government Information and Collaboration (MAGIC RFX# 3160004154), no later than the time and date specified for receipt of bids. Timely submission of the bid form is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened. The envelope or package shall be marked with the bid opening date and time, and the IFB number. The time and date of receipt shall be indicated on the envelope or package by the Mississippi Department of Environmental Quality ("MDEQ"). Each page of the bid form and all attachments shall be identified with the name of the bidder. Failure to submit a bid on the bid form provided shall be considered just cause for rejection of the bid. Modifications or additions to any portion of the bid document may be cause for rejection of the bid. MDEQ reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, MDEQ may request the bidder to withdraw or modify those portions of the bid deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

#### 1.1.1. Timeline

- **Invitation for Bid (IFB) Issue Date: Friday, February 12, 2021**
- **Questions to MDEQ Deadline: Monday, February 22, 2021**
- **Anticipated Posting of Response to Inquiries: Tuesday, February 23, 2021**
- **Bid Package Submission Deadline: Friday, February 26, 2021 at 3:00 p.m. CST**
- **Bid Package Opening: Friday, February 26, 2021 at 3:15 p.m. CST via Webinar**
- **Anticipated Notice of Intent to Award: Friday, March 5, 2021**
- **Anticipated Post-Award Debriefing Request Date: Friday, March 5, 2021**
- **Post-Award Debriefing Held by Date: Monday, March 15, 2021**

#### 1.1.2. Late Submissions

Bids received after the specified time shall be rejected. The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office. **MDEQ will not be responsible for delayed or lost mail received after the deadline.**

### 1.2 Expenses Incurred in Preparing Bid

MDEQ accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

### 1.3 Bid Form

All pricing must be submitted on the bid form (**Attachment B**). Failure to complete and/or sign the bid form may result in the bidder being determined nonresponsive.

#### 1.3.1 Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

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

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

#### **1.5 Debarment**

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

#### **1.6 Additional Information**

Questions about the contract portions or technical portions of the procurement document must be submitted in writing no later than the date and time specified for Questions to MDEQ to Melanie Green at [mgreen@mdeq.ms.gov](mailto:mgreen@mdeq.ms.gov). Bidders are cautioned that any statements made by any person shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

#### **1.7 Acknowledgement of Amendments**

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

#### **1.8 Type of Contract**

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

#### **1.9 Written Bids**

All bids shall be in writing.

### **SECTION 2**

#### **2.1 Purpose**

This project is being administered by MDEQ as part of the National Fish and Wildlife Foundation (NFWF) Gulf Environmental Benefit Fund (GEBF) Agreement #66164, Invasive Species Management on Coastal State Lands-Phase II. The purpose of the project is to improve management on coastal wetland ecosystems to enhance the ecological integrity and function of wetland coastal habitats in Mississippi through invasive species management, specifically the Amazonian Apple Snail (*Pomacea maculate*). A relatively new invasive species to coastal Mississippi, the Amazonian Apple Snail (hereafter apple snail) is an aquatic, invasive gastropod native to South America. The first documented sighting in a public waterway in Mississippi was in Robinson Bayou in the Pascagoula estuary system in 2014. Since then, the species has spread to adjacent areas and increased in abundance significantly. This species has an extremely high reproductive rate, with egg masses (~2,000 eggs) produced every two weeks, and feeds extensively on several species of emergent, vascular plants found in Southeast U.S. wetlands. This project will implement invasive species management activities to control the invasive apple snail in the lower Pascagoula system while documenting the distribution of the infestation. Efforts will include surveying

and the removal of egg masses and live snails. The control and management of the invasive apple snail includes three primary strategies. The strategies include 1) comprehensive surveys to locate and monitor the distribution and abundance of apple snails in the wetland system, 2) the removal of egg masses from vegetation and other structures in the wetlands, and 3) the removal of apple snails through capture.

### *Project Area*

The project area is located in the lower Pascagoula River Basin (Figure 1). The lower Pascagoula River Basin consists of forested and scrub/shrub wetlands and emergent marsh, which is associated with the mouth of the Pascagoula River Basin. The brackish, coastal marsh has numerous species of plants that are known to occur, but needle rush (*Juncus roemerianus*) is the dominant species. The central and northern extent of the marsh includes oligohaline marsh that is co-dominated by olneyi bulrush (*Scirpus olneyi*) and spike-rush (*Eleocharis cellulosa*). The emergent marsh transitions to forested wetlands, comprised of bald cypress and black gum swamp with a narrow (1-2 meters wide) fringe of marsh composed of a variety of freshwater species. Arrow arum (*Peltandra virginica*), duck-potato (*Sagittaria latifolia*), and pickerelweed (*Pontederia cordata*) are common along with sawgrass (*Cladium jamaicense*). Current apple snail infestation areas are located in forested wetland areas with fringing freshwater marsh as described above (see Figure 1).

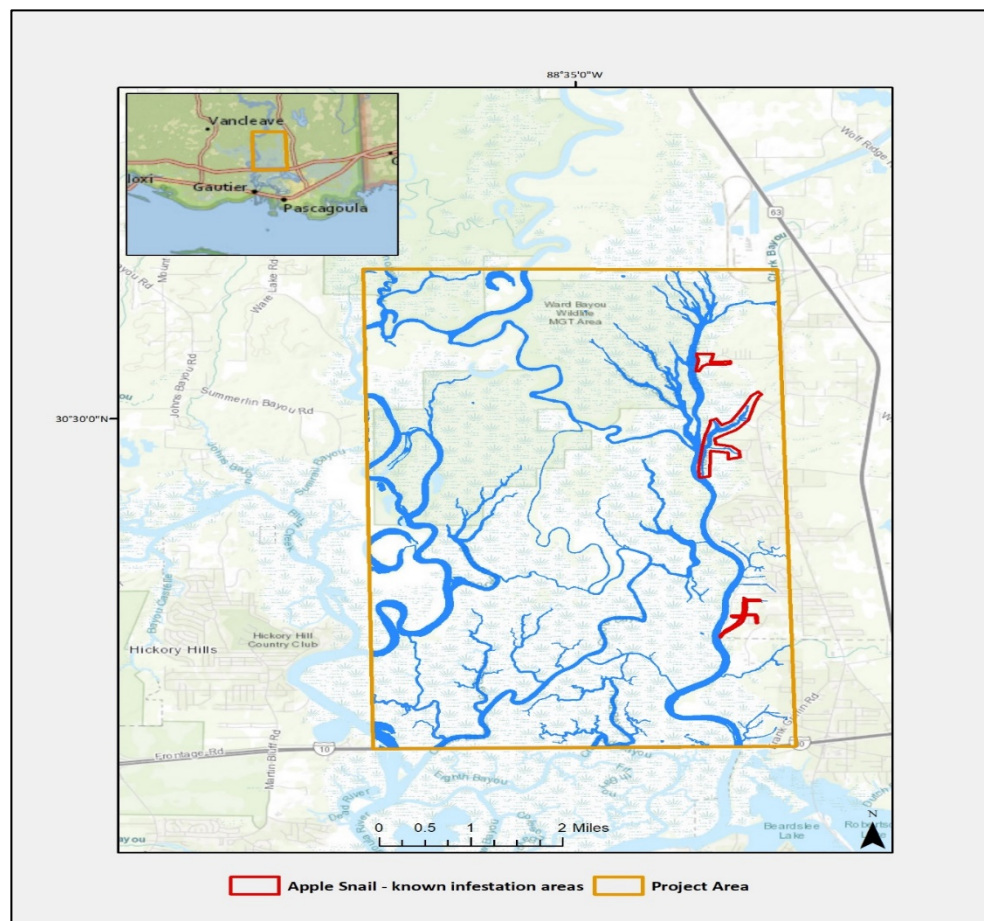


Figure 1. Project boundary and areas of known infestation.

## 2.2 Scope of Services

MDEQ is requesting bids for the survey, mapping, and management of apple snails and invasive species management in the project area. Bidders should outline costs for data collection and management using shallow draft vessels. Efforts will initiate in areas of known infestation and expand into surrounding management units (Figure 2). The bidder will coordinate with MDEQ and the Mississippi Department of Marine Resources (MDMR) on a frequent basis to track mapping and management activities. Specific tasks include the following:

### 1) Assessment of population distribution and abundance

- *Document location of apple snails and egg masses:* Surveys will initiate in areas previously documented by MDMR as infested. The surveys will then use the management units around infested areas to document any population spread of the species. Surveys are anticipated to take place by two boats each containing a two-person crew in the 200-acre management units (Figure 2). These units will allow the survey teams to track progress in real time utilizing GIS/GPS technologies (i.e. ArcGIS Field Maps) on cell phones or tablets with cell signal capability. Survey results for each unit will automatically upload to a cloud-based system managed by MDMR. Additionally, the waterways and their accessibility will be updated through GIS as the survey team attempts to navigate within this area. Apple snail egg masses will also be documented utilizing the GIS/GPS system in the management units to understand presence and distribution of the species. During the survey and mapping effort, if apple snails are encountered either as egg masses or adult apple snails that can be removed expeditiously, then a management action will occur immediately (see Task 2). A backup GPS unit will be required in the event that cloud-based mapper is not functioning.
- *Timing, Frequency, and Duration:* Surveys will take place throughout the year each year of the contract. Surveys in the winter months (Nov-Feb) will occur at a lower frequency (e.g. 2-3 surveys/month). Summer survey (Mar-Oct) frequency will increase with the expected increase in apple snail egg production and occur approximately 8-10 times/month. However, survey timing, frequency, and duration may change to adapt to conditions in the field. For example, if most of the apple snail production is occurring in just a few locations then resources may be focused on the areas with higher population abundance.

### 2) Apple snail management

- *Egg mass destruction and snail removal:* Management will initiate in areas previously documented by MDMR as infested. Crews will then use the management units around infested areas to control apple snails and egg masses identified by the survey effort. All snails will be collected from crews, removed from the environment, and placed in a receptacle for transfer to MDMR staff for disposal. Egg masses will be destroyed on site by crushing in place and scraping into the water. Egg masses must be placed under the water surface to inhibit

hatching. Traps may be used for management, although they are much less effective than active management. A greater emphasis will be placed on active management activities than on passive trapping; however, traps could be deployed in areas that are difficult to reach by boat, but are accessible by foot, thereby increasing the range of control efforts. If heavy infestations are encountered, then the location(s) of the egg mass(es), as well the snail(s), will be recorded.

- *Timing, Frequency, and Duration:* Management is anticipated to take place throughout the year for two years. An additional three years of management is contingent on the effectiveness of the methods employed in years 1 and 2. Surveys in the winter months (Nov-Feb) will occur at a lower frequency (e.g. 2-3 surveys/month). Summer management (Mar-Oct) frequency will increase with the expected increase in apple snail egg production and occur approximately 8-10 times/month. However, survey timing, frequency, and duration may change to adapt to conditions in the field. For example, if most of the apple snail production is occurring in just a few locations then resources may be focused on the areas with higher population abundance to maximize management and efficiency.

### **3) Water temperature and salinity data collection**

- *Collection of water temperature and salinity:* Water temperature and salinity will be collected using a handheld unit where snails and egg masses are found and removed/destroyed. Data will be logged using ArcGIS Field Maps in a template form so that the water temperature and salinity information corresponds to the location of the apple snail that is removed and the date and time of collection. The contractor is responsible for providing the handheld unit.
- *Timing, Frequency, and Duration:* Surveys will take place throughout the year and coincide with Tasks 1 and 2.

Expected deliverables include daily reports on tasks completed, including number of egg masses destroyed and snails removed; apple snails delivered to MDMR staff.



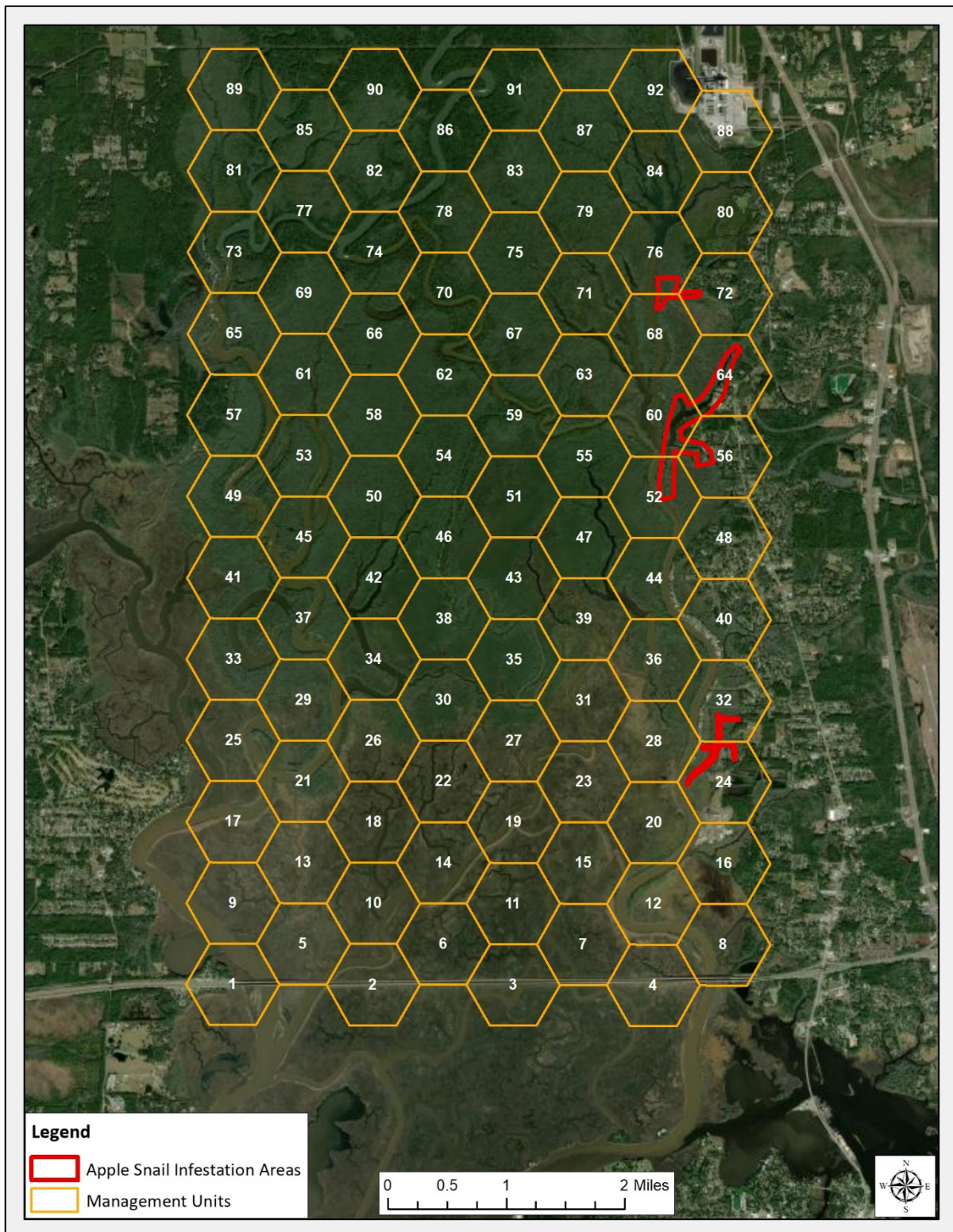


Figure 2. Management units for apple snail surveying and management.

## **2.3 Term**

The term of the contract shall be for a period of one (1) year with an option to renew, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract subject to approval by the PPRB. The total contract term, including any renewals, shall not exceed a maximum total of five (5) years.

### **2.3.1 Multi-Term Contracts**

Unless otherwise provided by law, a contract for services may be entered into for a period of time of one (1) year with an option to renew, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

#### **2.3.1.1 Requirements**

- a) One (1) year of service.
- b) A total hourly rate shall be given for a boat with two-person crew.
- c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
- d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.

## **SECTION 3**

### **3.1 Insurance**

Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, 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 Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- (C) 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.
- (D) Errors and 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 or claim-based. If the Contractor has a claim-based policy for this liability coverage, the Contractor shall carry and maintain such policy for an additional six years after the expiration or termination date of this Contract.

For all of the insurance coverage required in (A)-(C) of this Paragraph, NFWF, MDEQ, 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. 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 NFWF and that any insurance covering NFWF or MDEQ shall be excess coverage over Contractor's coverage. 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.

## SECTION 4

### 4.1 Bid Evaluation

This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

#### 4.1.1 Responsive Bidder

Bidder must submit bid which conforms in all material respect to this Invitation for Bids, as determined by MDEQ.

#### 4.1.2 Minimum Score

These minimum qualifications are in addition to minimum scoring of forty (40) points on the Reference Score Sheet (**Attachment E**) from reference interviews by MDEQ with two (2) bidder/contractor references (for a total minimum score of 80 points), as well as all other requirements of this Invitation for Bids. (See **Attachments C and E**)

#### 4.1.3 Nonconforming Terms and Conditions

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

#### 4.1.4 Conditioning Bid Upon Other Awards

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

#### 4.1.5 Bid Submission Format

The bid package must be sealed and must contain the following:

- Bid Cover Sheet (**Attachment A**)
- Bid Form (**Attachment B**)
- References (**Attachment C**)
- Certifications and Assurances (**Attachment D**)

#### 4.1.6 Responsible Bidder

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

#### 4.1.7 Minimum Qualifications to be Deemed Responsible

- Bidder is capable or qualified to perform the service

- Bidder has the right equipment
- Bidder has minimum experience required
- Bidder has good performance in the past (references)

#### **4.1.8 References**

Each bidder must furnish a listing of **at least three (3)** trade references along with the contact person, address, and phone number for each. These references must be familiar with the bidder's abilities in the areas involved with this solicitation. MDEQ will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. The bidder may submit as many references as desired. MDEQ will begin contacting references at the top of the list and will continue down the list until at least two (2) contacts have been reached.

References must be listed on **Attachment C**.

#### **4.2 Bid Opening**

Bid opening will be opened publically at the time specified in this Invitation for Bid, via the following online webinar/meeting:

**Please join my meeting from your computer, tablet or smartphone.**

<https://global.gotomeeting.com/join/940357165>

**You can also dial in using your phone.**

United States: [+1 \(408\) 650-3123](tel:+14086503123)

**Access Code:** 940-357-165

This will include opening, reading aloud, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made, either stated or implied at the bid opening.

#### **4.3 Award**

The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids within ninety (90) days. 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).

##### **4.3.1 Notification**

All participating vendors will be notified of MDEQ's intent to award a contract. In addition, MDEQ will identify the selected vendor. Notice of award is also made available to the public.

#### **4.3.2 Contract Management**

If the Contractor fails to adhere to the schedule, or if the Contractor fails to satisfactorily provide the prescribed service to all or any service area, the Contracting Agency will inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the MDEQ may terminate the contract without further obligation to the Contractor. MDEQ will use the form included as **Attachment H**, Contract Discrepancy Report.

### **SECTION 5**

#### **5.1 Post-Award Vendor Debriefing**

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission to Melanie Green at [mgreen@mdeq.ms.gov](mailto:mgreen@mdeq.ms.gov). The written request must be received by MDEQ within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing must occur within three (3) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify MDEQ in writing and identify its attorney by name, address, and telephone number. MDEQ will schedule and/or suspend and reschedule the meeting at a time when legal counsel can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post-Award Vendor Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

#### **5.2 Required Contract Terms and Conditions**

Any contract entered into between MDEQ and a vendor/bidder shall include the required clauses found in **Attachment F** or those required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* as updated.

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

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

#### **5.4 Attachments**

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

## **Attachment A**

### **Bid Cover Sheet**

MDEQ is seeking to establish a contract to provide Invasive Species Survey and Management Services.

Bids are to be submitted as listed below, on or before 3:00 p.m CST., Friday, February 26, 2021.

#### **PLEASE MARK YOUR ENVELOPE:**

**MDEQ-IFB# 3160004154  
Invasive Species Survey and Management Services  
Deadline Date: 3:00 p.m. CST  
Friday, February 26, 2021  
MDEQ  
Attention: Melanie Green  
515 East Amite Street  
Jackson, MS 39201**

**SEALD BID – DO NOT OPEN**

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

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

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

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

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

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

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

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

**E-Mail:** \_\_\_\_\_



<b>FEI/FIN # (if company, corporation, or</b>	
<b>SS# (if individual):</b>	

**In addition to providing the above contact information, please answer the following questions regarding your company:**

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

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

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

\_\_\_\_\_

If your company is not physically located in the region, how will you supply services to MDEQ in the project area? \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

For how many customers has your company provided invasive species survey and management services in the past two (2) years? Please include the dates and the size of the areas serviced. \_\_\_\_\_

\_\_\_\_\_

What is the largest customer your company has provided invasive species survey and management services for in the past two (2) years? \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

List all the equipment that your company has available or that is intended to be used to perform the services required in this Invitation for Bids. \_\_\_\_\_

OWNED EQUIPMENT					
Year	Make	Model	ID#	Capacity	Description

RENTED/LEASED EQUIPMENT					
Year	Make	Model	ID#	Capacity	Description

## Attachment B

### Bid Form for Invasive Species Survey and Management Services

Company	Company Representative	Telephone

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

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any)
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

- Hourly rate for vessel and two-person crew: \_\_\_\_\_

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

1. That he/she has thoroughly read and understands this Invitation for Bids and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids and the attachments herein;
4. That the company will perform, without delay, the services required at the prices quoted in this **Attachment B**;
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date; and
6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.
7. That the price submitted in response to this Invitation for Bids has been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices offered.

**Printed Name:** \_\_\_\_\_

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

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

## Attachment C

### References

#### **Reference 1**

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Project Description: \_\_\_\_\_

#### **Reference 2**

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Project Description: \_\_\_\_\_

#### **Reference 3**

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Project Description: \_\_\_\_\_

The bidder may submit as many references as desired by submitting as many additional copies of this Attachment C, References, as needed. MDEQ will begin contacting references at the top of the list and will continue down the list until two (2) contacts have been reached. See Section 4.1.8 of this Invitation for Bids.

## Attachment D

### Certifications and Assurances

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

**1. REPRESENTATION REGARDING CONTINGENT FEES**

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

**2. REPRESENTATION REGARDING GRATUITIES**

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

**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

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

**4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES**

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

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

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

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

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

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



## Attachment E

### Reference Score Sheet

#### TO BE COMPLETED BY MDEQ ONLY

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

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

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

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

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

Able to provide services when you called?	Yes	No
Satisfied with the services provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling services?	Yes	No
Were the services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here.) <input type="checkbox"/>	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is 10 (10) points; each “no” is zero (0) points. Bidder must have a minimum score of forty (40) from two (2) references (total of eighty (80) points) to be considered responsible and for its bids to be considered.

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

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

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

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## Attachment F

1. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. All Parties expressly understand and agree that the obligation of the Mississippi Department of Environmental Quality ("MDEQ") to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of funds from state, federal, and/or other funding sources. 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 Contractor to terminate this Contract 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.
3. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a State Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
4. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
5. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>. For any sub-contracts under this Contract, the Contractor shall comply with applicable federal law, rules, and regulations and, in particular, 2 C.F.R. §§ 200.323, Procurement of Recovered Materials, and 200.327, Contract Provisions. The Contractor shall also ensure that every purchase order or contract includes any clauses required by 2 C.F.R. §200.326 Contract provisions, as identified in Appendix II to 2 C.F.R. Part 200.
6. 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.
7. Compliance with Laws. Contractor understands that MDEQ/the State is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful, and Contractor agrees during the term of the Contract that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
8. Stop Work Order
  - A. *Order to Stop Work.* MDEQ may, by written order to Contractor at any time and without notice to any surety, require Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, MDEQ shall either:

(1) Cancel the stop work order; or,

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

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

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

(2) Contractor asserts a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

D. *Adjustments of Price.* Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.

9. 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. Miss. Code Ann. § 31-7-301 *et seq.*

10. 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.

11. Transparency. This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. *See* Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to 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.gov>. Information identified by Contractor as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

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

13. 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 the Request for Proposals, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Contractor must notify MDEQ in writing and submit a Request to Subcontract in the form provided by MDEQ prior to assigning or subcontracting any portion of this Contract. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any subcontract shall 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. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

14. 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.

15. Approval. It is understood that this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review, and if this contract is not approved by PPRB and/or OSPSCR, it is void and no payment shall be made hereunder.

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

17. 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.

18. Change in Scope of Work. 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.

19. Claims Based on a Procurement Officer's Actions or Omissions.

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

- (1) Contractor shall have given written notice to the chief procurement officer or designee of such officer:
  - (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
  - (ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
  - (iii) within such further time as may be allowed by the chief procurement officer in writing; and
- (2) The notice required by subparagraph (1) of this paragraph shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time; and the chief procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the chief procurement officer or designee of such officer;
- (3) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
- (4) Contractor maintains and, upon request, makes available to the chief procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

20. Confidential Information.

"Confidential Information" shall mean: (a) those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential; and, (b) all data and information which Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the State. Each party to this Contract agrees to the following:

- (1) to protect all confidential information provided by one party to the other;



(2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under state and/or federal law; and,

(3) except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission; and

(4) to do so by using those methods and procedures normally used to protect the party's own confidential 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.

21. Confidentiality.

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, any unit prices contained within the Contract, the overall 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.

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 follow 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. *Wrongful Disclosure of Confidential 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 may result in the immediate termination of this Contract.

E. *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:

(1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;

(2) Generally known or easily ascertainable by nonparties to this Contract;

- (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) Independently developed by the recipient without any reliance on confidential information;
- (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
- (6) Disclosed with the Disclosing Party's prior written consent.

22. 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. Upon Contract Award, the Contractor shall provide the DUNS number of every subcontractor it will have to perform work under the Contract. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

23. 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.

24. 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.

25. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the Contract terms and conditions, MDEQ, 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 MDEQ may have.

26. Failure to Enforce. Failure by MDEQ, at any time, to enforce the provisions of this Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Contract or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

27. Final Payment. Upon satisfactory completion of the work performed under this Contract, as a condition before final payment under this Contract, or as a termination settlement under this Contract, Contractor shall execute and deliver to MDEQ a release of all claims against the State arising under, or by virtue of, the Contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this Contract, by state law, or otherwise expressly agreed to by the parties in this Contract, final payment under the Contract or settlement upon termination of this Contract shall not constitute waiver of the State's claims against Contractor under this Contract.

28. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("Force Majeure Events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how the Force Majeure event affects its performance, and the anticipated duration of the inability to perform. In the event of delays in delivery or in meeting completion dates due to Force Majeure Events, MDEQ will extend such dates for a period not to exceed the duration of the delay caused by such events, unless the State determines that termination of the Contract is in the State's best interest.

29. Insurance Requirements. Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, 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 Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- C. 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.
- D. Errors and 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 or claim-based. If the Contractor has a claim-based policy for this liability coverage, the Contractor shall carry and maintain such policy for an additional six years after the expiration or termination date of this Contract.

For all of the insurance coverage required in (A)-(C) of this Paragraph, NFWF, MDEQ, 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. 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 NFWF and that any insurance covering NFWF or MDEQ shall be excess coverage over Contractor's coverage. 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. HIPAA Compliance. If requested by MDEQ, Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this Contract.

31. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages (including punitive damages), losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, costs of discovery and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this Contract. 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.

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

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate, at its own expense, MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi, against and pay all costs, including discovery costs, damages (including punitive damages) and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this Contract.

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

relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of 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 the State for its employees.

34. 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.

35. Ownership of Documents and Work Papers. MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with this 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. Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of this Contract. 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.

36. 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 the 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 clause, 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 clause of this Contract.

37. Price Adjustment Clause. Any adjustments in Contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways: (1) by agreement on a fixed price adjustment before commencement of the additional performance; or, if applicable, (2) by unit prices specified in the contract; (3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Contract; or (4) by the price escalation clause. Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, as applicable.

38. 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. Except as provided below, all records related to this Contract shall be retained by Contractor for a minimum of ten (10) 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 ten (10) 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 ten (10) year period, whichever is later.

Contractor is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

A. Contractor has provided all of the documents described above and in the “Right to Audit” provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before Contractor provides the records and corresponding certification to MDEQ, in which case, Contractor shall retain the records until all issues arising out of the action are finally resolved; and

D. Contractor provides MDEQ a minimum of thirty (30) days’ written notice before providing the above-mentioned records and corresponding certification.

39. 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.

40. Right to Inspect. The State of Mississippi, acting by and through MDEQ or any other authorized subdivision of the State, may at reasonable times, inspect the place of business of a Contractor or any subcontractors which is related to the performance of this Contract.

41. 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. These records shall be made available during the term of the Contract and at a minimum, the subsequent ten-year period for examination, transcription, and audit by the Mississippi State Auditor’s Office, its designees, or other authorized bodies.

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

43. 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 Contract 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 Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

44. Termination for Convenience.

A. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this Contract in whole or in part for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the Contract terminated and when termination becomes effective.

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

45. Termination for Default.

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

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

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

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

E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the **Contract was not in default under the provisions of this clause**, or that **the delay was excusable** under the provisions of subparagraph D (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, **be the same as if the notice of termination had been** issued pursuant to a Termination for Convenience.

F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

46. Termination upon Bankruptcy. This 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 shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

47. Third Party Action Notification. Contractor shall give MDEQ prompt notice in writing of any action or suit filed and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.

48. Unsatisfactory Work. If, at any time during the Contract term, the service performed or work done by Contractor 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, Contractor shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate Contract or with its own resources at the expense of Contractor.

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

50. Acknowledgment of Amendments. In accordance with the requirements of the solicitation for this Project, Contractor acknowledges receipt of any amendment to this Contract by signing and returning the amendment with its proposal form, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter.

51. Integrated Agreement/Merger. This Contract, 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 Contract 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 Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

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

53. Modification or Renegotiation. All modifications to the Contract must be made in writing by the MDEQ and agreed to by Contractor. The parties agree to renegotiate the Contract if federal and/or state revisions of any applicable laws or regulations, including the availability of funding, make changes in this Contract necessary, which determination of necessity solely rests with MDEQ.

54. 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.

For Contractor: *name, title, contractor, address*

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

55. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.



**Attachment H**  
**Contract Discrepancy Report**

**Location:** \_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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