

REQUEST FOR APPLICATIONS

Request Number: **MDEQ-RFA08312021**

To Provide: **Waste Tire Abatement Contract Services**

Issue Date: **Tuesday, August 31, 2021**

CLOSING LOCATION

Mississippi Department of Environmental Quality

515 East Amite Street

Jackson, MS 39201

APPLICATION COORDINATORS

Ryan Case and Charlie Bock

E-mail: rcase@mdeq.ms.gov

cbock@mdeq.ms.gov

CLOSING DATE AND TIME

Applications must be received by
5:00 p.m., Wednesday, September 29, 2021

SECTION 1

1.1 Application Acceptance Period

Interested Applicants should submit one (1) signed original and one (1) copy of the Application for Waste Tire Abatement Contract Services (“Application”) and any supporting documents to the Application. The signed Application and supporting documents should be submitted in a sealed envelope or package as stated below no later than Wednesday, September 29, 2021. Timely submission of the completed Application is the responsibility of the Applicant. Upon delivery, the time and date of receipt will be indicated on the envelope or package by the Mississippi Department of Environmental Quality (“MDEQ”). Failure to submit an Application on the Application forms provided shall be considered just cause for rejection of the Application. Modifications or additions to any portion of the procurement document may be cause for rejection of the Application. MDEQ reserves the right to decide, on a case-by-case basis, whether to reject an Application with modifications or additions as non-responsive. As a precondition to acceptance of an Application, MDEQ may request the Applicant to withdraw or modify those portions of the Application deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

Submissions must be clearly marked with the following information on the **outside** of the envelope or package:

Mississippi Department of Environmental Quality
SEALED APPLICATION– DO NOT OPEN
MDEQ-RFA08312021
Closing Date: 5:00 p.m., Wednesday, September 29, 2021
Attention: Ryan Case
515 East Amite Street
Jackson, MS 39201

1.1.1. Timeline

- **Request for Applications Issue Date: Tues., August 31, 2021**
- **Deadline for Questions to MDEQ: Fri., September 10, 2021, 5:00 p.m.**
- **Anticipated Posting of Responses to Questions: Fri., September 17, 2021**
- **Deadline for Application Package Submission: Wed., September 29, 2021, 5 p.m.**
- **Anticipated Notice of Intent to Award: Fri., October 8, 2021**

1.1.2. Late Submissions

An Application received at the MDEQ address described as the “Closing Location” on the cover sheet after the Closing date and time of 5:00 p.m., Wednesday, September 29, 2021 will not be considered unless it is the only Application received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the Closing date and time. Where applicable, MDEQ will determine whether the late receipt was due solely to mishandling by MDEQ after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late Application is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service (or equivalent public carrier postmark or date of mailing stamp). If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late.

“Postmark” means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service (or equivalent) on the date of mailing. Applicants should request postal clerks to place a hand cancellation postmark (often called a bull’s eye) on both the receipt and the envelope or wrapper.

Upon receipt at MDEQ, the Application package or envelope will be stamped with the time and date of receipt. The MDEQ time and date stamp is the only acceptable documentation of timely submittal of the application.

1.2 Expenses Incurred in Preparing Application

MDEQ accepts no responsibility for any expense incurred by the Applicant in the preparation, presentation, and transmittal of an Application. Such expenses shall be borne exclusively by the Applicant.

1.3 Registration with Mississippi Secretary of State

By submitting an Application, the Applicant 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. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.4 Debarment

By submitting an Application, the Applicant certifies that it is not currently debarred from submitting Applications 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 Applications for contracts issued by any political subdivision or agency of the State of Mississippi.

1.5 Additional Information

Questions about this Request for Applications document must be submitted in writing to MDEQ to Ryan Case at rcase@mdeq.ms.gov by 5:00 p.m., Friday, September 10, 2021. Applicants are cautioned that any statements made by contact persons that cause a material change to any portion of the Application document shall not be relied upon unless subsequently ratified by a formal written amendment to this Request for Applications. The person submitting the question or request for clarification is responsible for its timely delivery. All questions, requests for clarifications, and responses to these questions and requests received by the deadline shall be published as an amendment on the MDEQ webpage at:

<https://www.mdeq.ms.gov/about-mdeq/procurements/>.

It is the responsibility of the Applicant to review the webpage identified above to determine if addendums to the Request for Application have been published and to modify or adjust an Application as the addendum may indicate. MDEQ accepts no responsibility for the failure of an applicant to have proper knowledge of an addendum.

1.6 Type of Contract

Compensation for services will be in the form of an Indefinite Delivery Order contract, with subsequent work orders issued under the contract. The contract will provide for a work order to be issued for an assigned abatement project to include specifications regarding a particular waste tire abatement site(s), including the approximate number of waste tires contained at the particular abatement site and the

amount to be reimbursed to the contractor upon completion of the tasks enumerated in the work order. Reimbursement of abatement costs to a contractor will be at a rate of \$225.00 per ton of tires and tired derived materials removed. MDEQ will consider an incentive payment for an additional \$25.00 per ton if the contractor ensures that waste tires removed from sites covered by the work order are processed for recycling. MDEQ may negotiate payment of additional costs when necessary due to the difficulty in removal of waste tires or other extraordinary expenses to be determined at the discretion of MDEQ. Each contract shall not exceed a ceiling amount of \$74,750.00. The cumulative amount of the work orders issued under the contract shall not exceed the contract ceiling amount.

1.7 Written Applications

All Applications and supporting documentation shall be in writing and submitted in hard copy.

SECTION 2

2.1 Purpose

The Mississippi Department of Environmental Quality is seeking to establish contract(s) to provide complete removal of waste tires (abatement) from selected site(s) where the tires have been abandoned or improperly dumped and delivery of these tires an authorized waste tire management facility or other alternate facility authorized by MDEQ. The information in this section describes the anticipated scope of services if an Applicant is selected for award.

2.2 Scope of Services

Upon the securement of “right of entry” agreements by MDEQ with the landowner or other access rights for the project site(s), the contractor shall perform the following tasks:

- 1) The contractor shall begin the work specified in the work order within ten (10) working days of the execution of the work order by MDEQ, or upon a mutually agreeable alternative date subject to execution of a work order and shall complete the work specified in the work order prior to being considered eligible to participate in the subsequent abatement projects that may be assigned by MDEQ to the Contractor.
- 2) The contractor shall remove the subject waste tires from the selected waste tire abatement site and facilitate their off-site transport for processing, recycling or disposal at an authorized facility in accordance with the Mississippi Waste Tire Law – Miss. Code Ann. Sections 17-17-401, et seq., as amended, the State of Mississippi Waste Tire Transportation and Waste Tire Management Regulations, the terms of the contract, and any special terms or conditions of the work order.
- 3) The contractor shall immediately notify MDEQ in writing upon the completion of a project assigned under a work order.

2.3 Term

The term of a contract shall be for a period of three (3) years with two options to renew for one (1) year, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract. 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 not to exceed three (3) years with two options to renew for one (1) year, 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. The funding of abatement projects and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds and the following conditions:

- 1) A multi-term contract may 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.

- 2) MDEQ 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

A 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 Contractor represents that it will maintain Worker's Compensation Insurance as prescribed by law, which shall inure to the benefit of the CONTRACTOR's personnel, as well as comprehensive General Liability in an amount no less than \$500,000.00 combined single limit and Employee Fidelity Bond Insurance. The CONTRACTOR shall comply with applicable federal, state and local laws and regulations.

For all of the insurance coverage required, 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. 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 that any insurance covering 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

The Applicant shall furnish MDEQ with endorsements showing the contractor's compliance with the insurance provisions of this paragraph as per Section 9 of Attachment A, Form 1 (the application form). MDEQ reserves the right to request updated documentation of this insurance endorsement from selected contractor as may be needed to demonstrate compliance. While a 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 a contractor.

SECTION 4

4.1 Application Evaluation

Applications will be evaluated based on requirements set forth in Request No. MDEQ-RFA08312021, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and sustainability for a particular purpose. Only Applicants who are found responsive and responsible will have their Applications considered.

4.1.1 Responsive Applicant

An Applicant must submit an Application, which conforms in all material respect to this Request for Applications, MDEQ-RFA08312021, as determined by MDEQ.

4.1.2 Nonconforming Terms and Conditions

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

4.1.4 Conditioning Application Upon Other Awards

Any Application 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 Application Submission Format

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

- 1) Attachment A, Forms 1 – 5, with supporting documents
- 2) Attachment B, Acknowledgement Form for Waste Tire Abatement
- 3) Attachment C, Certifications and Assurances

4.1.6 Responsible Applicant

Applicant 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

- 1) An Applicant must either possess or plan to obtain a valid Waste Tire Hauler ID number from MDEQ for the purpose of transporting tires from abatement project sites;
- 2) An Applicant must be capable or qualified to perform the service;
- 3) An Applicant must be knowledgeable, and capable, of operating the various equipment needed to access, collect, and transport tires and must either own or be capable of obtaining equipment applicable to the abatement project site conditions;
- 4) An Applicant must have demonstrated responsiveness to and maintained good communication with MDEQ in the past, where applicable; and
- 5) An Applicant must have no negative performance in the past or must have shown good faith efforts to resolve past performance issues, where applicable.

4.2 Award

Written notice will be provided to the selected Applicant(s) whose Application meets the requirements and criteria set forth in this Request for Applications No. MDEQ-RFA08312021. MDEQ will follow the notice with presentation of formal contract documents.

SECTION 5

5.1 **Standard Contract Terms and Conditions**

Applicants must understand that any contract entered into between the Contracting Agency, MDEQ, and a vendor/Applicant will include the Standard Terms and Conditions found in **Attachment D** and those required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* as updated.

5.2 **Attachments**

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

**ATTACHMENT A
FORM 1**

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE TIRE MANAGEMENT PROGRAM
P.O. BOX 2261
JACKSON, MISSISSIPPI 39225
(601) 961-5171**

**APPLICATION FOR LISTING AS APPROVED
WASTE TIRE ABATEMENT CONTRACTOR**

1. Name of Company or Person Applying: _____

2. Mailing Address
P.O. Box/Street Address: _____
City, State, Zip: _____

3. Physical Address
Street Address: _____
City, State, Zip: _____

4. Telephone/Email
Office Number: _____ Cell Number: _____
Fax Number: _____ Email: _____

5. Name of Principal Officer: _____

6. Name of Contact Person: _____

7. MDEQ Waste Tire processing permit number, if applicable: _____
(Attach copy of waste tire permit or letter of authorization) If using a separate, permitted processing facility, see the documentation required in Attachment A, Form 2.

8. Waste Tire Hauler Identification Number: _____
(Attach copy of current, valid hauler certificate)
9. Attach proof of Applicant's compliance with the insurance provisions in Section 3 of this Request for Applications.

ATTACHMENT A
FORM 2

METHODS DESCRIPTION

Please describe the proposed method(s) of removal, processing, and disposal/recycling that the Applicant intends to employ in the abatement of unauthorized waste tire piles. If the Applicant is not an owner or operator of a permitted or otherwise authorized waste tire management facility, please indicate the name, address, and permit number (if applicable) of the permitted/authorized waste tire management facility or facilities the Applicant intends to use. Attach documentation of any agreements with owners of a receiving facility(ies) to accept tires removed by the Applicant from abatement sites.

ATTACHMENT A
FORM 3

EXPERIENCE

Please provide information detailing your and/or your company's experience with the management of waste tires including any experience related to the collection, transportation, and processing of waste tires and, if applicable, current details regarding the disposal or recycling of the tires by your company. Provide any additional experience pertaining to abatement activities, construction/demolition work, earthwork or other related work that may qualify you or your company for selection as a waste tire abatement contractor.

**ATTACHMENT A
FORM 4**

PERSONNEL ROSTER

Please list below all of your company's full-time employees who will most likely participate in any waste tire abatement project, and designate their present job classification (truck driver, equipment operator, etc.).

You may attach an existing employee list to this Application if that list includes employees' name and job classification or title. If your company intends to utilize contract or part-time workers in the abatement project, please indicate the anticipated number(s) and/or source(s) of the workers you intend to employ or otherwise describe your plans to acquire temporary workers for an assigned, waste tire abatement project.

ATTACHMENT A

FORM 5

EQUIPMENT INVENTORY

Please list and indicate below the types of equipment you or your company own that may be used to perform the abatement projects and services described in this Request for Applications, including but not limited to: trucks, trailers, heavy machinery, shredders, and other processing or removal equipment. Indicate the processing capacity of each waste tire processing unit or the overall processing system if applicable. If your company maintains a current equipment list that provides the same requested information, you may attach a copy to this Application. If your company intends to secure certain equipment contractually to perform the abatement project, please describe the type and contractual source of the equipment that you have the ability to acquire.

ATTACHMENT B

Acknowledgement Form for Waste Tire Abatement

Name of Individual or Company Applying (“Applicant”): _____

Name of Company Representative, if applicable: _____

Telephone #: _____ Email Address: _____

Reimbursement to selected contractors under this Request for Applications will be at a rate of \$225.00 per ton of tires and tire-derived materials removed. MDEQ may consider an incentive payment for an additional \$25.00 per ton if the contractor ensures that waste tires removed from sites covered by the work order are processed for recycling. MDEQ may negotiate payment of additional costs to selected contractors as site conditions dictate, due to the difficulty in removal of waste tires or tire-derived material, the difficulty in disposal of tires based on the conditions of the materials, or other extraordinary expenses to be determined at the discretion of MDEQ.

By signing below, the Applicant or Company Representative on behalf of the Applicant certifies and further acknowledges:

1. That, if Applicant is a company, he/she has authority to bind the company;
2. That the Applicant meets all requirements and acknowledges all certifications contained in this Request for Applications, MDEQ-RFA08312021, and the attachments herein;
3. That the Applicant agrees to all provisions of this Request for Applications, MDEQ-RFA08312021, and the attachments herein;
4. That the Applicant will perform, without delay, the services required at the rate(s) quoted in this **Attachment B**;
5. That the Applicant has, or will secure, at its own expense, appropriate personnel who shall be qualified to perform the duties required to be conducted under this Request for Applications.
6. That the Applicant has thoroughly examined and understands the Request for Applications, MDEQ-RFA08312021, including all attachments herein, and any published amendments to this Request for Applications.

Printed Name: _____

Signature: _____

Date: _____

Attachment C

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the Application 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 *initialing next to the applicable word or words in each paragraph below*:

1. REPRESENTATION REGARDING CONTINGENT FEES

Applicant 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.

2. REPRESENTATION REGARDING GRATUITIES

The Applicant 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. APPLICANT'S REPRESENTATION REGARDING CONTINGENT FEES

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

Name: _____

Signature: _____

Title: _____

Date: _____

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

Attachment D

Contract Standard Terms and Conditions

1. Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. CONTRACTOR shall comply with applicable federal, state, and local laws and regulations.

2. Approval

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

3. Availability of Funds

All Parties expressly understand and agree that the obligation of the MDEQ to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the recipient of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract 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.

4. 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, 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.

5. 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.

6. 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.

7. E-Verification

If applicable, CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, CONTRACTOR agrees to provide a copy of each such verification. CONTRACTOR further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this 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, both.
- C. In the event of such cancellation/termination, CONTRACTOR would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

8. 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 Contract. CONTRACTOR understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

9. Price Adjustment

- A. Price Adjustment Methods. Any adjustments in contract price, pursuant to a clause in this Contract, shall be made in one or more of the following ways:
 - 1) by agreement on a fixed price adjustment before commencement of the additional performance;
 - 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.

B. **Submission of Cost or Pricing Data.** Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-401 (Cost or Pricing Data) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

10. 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>.

11. 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.

12. Representation Regarding Gratuities

The 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.

13. Stop Work Order

A. **Order to Stop Work.** MDEQ, may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the 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 the 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, the 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, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or CONTRACTOR price, or both, and the Contract shall be modified in writing accordingly, if:

- 1) the stop work order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this contract; and
- 2) the CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provide that, if MDEQ decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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.

14. Termination

This Contract may be terminated as follows:

A. *Termination for Convenience*

1. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
2. *Contractor's Obligations.* CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination CONTRACTOR will stop work to the extent specified. CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct CONTRACTOR to assign CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the State. CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

B. *Termination for Default*

1. *Default.* If CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency Head or designee may notify CONTRACTOR in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or

designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. *Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of CONTRACTOR in which the State has an interest.
3. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due CONTRACTOR such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
4. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if CONTRACTOR has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the Contract requirements. Upon request of CONTRACTOR, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
5. *Erroneous Termination for Default.* If, after notice of termination of CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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

C. *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.

15. 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.

16. Transparency

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