

REQUEST FOR QUALIFICATIONS ("RFQ")

RFQ Number: RFX3140003630 MDEQ-RFQ12012023

To Provide: Professional Services for the complete removal and delivery of abandoned or improperly dumped waste tires from selected site(s) across the State of Mississippi to an authorized waste tire management facilities for disposal or recycling.

Issue Date: Friday, December 1, 2023

CLOSING LOCATION

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

MDEQ RFQ COORDINATOR

Ms. Aveleka Moore, Contracts Division Director

E-mail: amoore@mdeq.ms.gov

CLOSING DATE AND TIME

SOQ must be received by 3:30 p.m., Monday, January 8, 2024

SECTION 1

1.1 Qualifications Acceptance Period

Applicants should submit one (1) signed original Statement of Qualifications (“SOQ”), along with one (1) digital copy in Portable Document Format (“PDF”) on a Universal Serial Bus (“USB”) flash drive with all of the attachments. The signed original SOQ and USB flash drive should be submitted in a sealed envelope or package as stated below no later than the time and date specified in Section 1.1.1 for submission deadline of the SOQ package. The electronic files shall not be password protected and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel. Timely submission of the SOQ is the responsibility of the Applicant. Any SOQ received after the specified time shall be rejected and maintained in the procurement file. The envelope or package shall be labeled with the RFx Number: RFx3140003630 MDEQ-RFQ12012023. The time and date of receipt shall be indicated on the envelope or package by the Mississippi Department of Environmental Quality (“MDEQ”). The SOQ and all attachments shall be identified with the name of the Applicant where applicable. Modifications or additions to any portion of the procurement document may be cause for rejection of the SOQ. MDEQ reserves the right to decide, on a case-by-case basis, whether to reject a SOQ with modifications or additions as non-responsive. As a precondition to SOQ acceptance, MDEQ may request the Applicant to withdraw or modify those portions of the SOQ deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

Submissions must be clearly labeled as follows on the **exterior** of the package:

Mississippi Department of Environmental Quality
SEALED QUALIFICATION – DO NOT OPEN
RFx3140003630 MDEQ-RFQ12012023
Attention: Ms. Aveleka Moore
515 East Amite Street
Jackson, MS 39201

The Mississippi Department of Environmental Quality (“MDEQ”) will receive SOQ from Applicants having specific experience and qualifications in the area(s) identified in this solicitation. For consideration, the SOQ for the project must contain evidence of the Applicant’s experience and abilities in the specified area(s) and other disciplines directly related to the proposed service. Other information required by MDEQ is included herein. Unless otherwise stated, all Applicants shall provide profiles and resumes of the primary staff to be assigned to the project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the Applicant’s expertise in the area(s) of this solicitation.

The SOQ shall be specific and sufficiently detailed to satisfy the requirements set forth in this solicitation. MDEQ will make awards to the Applicants whose SOQ, in the opinion of MDEQ, best conforms to this solicitation and is most advantageous to the State of Mississippi and MDEQ.

1.1.1. Timeline

- **Request for Qualifications (RFQ) Issue Date: Friday, December 1, 2023**
- **Questions/Clarification Requests to MDEQ Deadline: Friday, December 15, 2023, at 8:30 a.m.**
- **Anticipated Posting of Responses to Questions/Clarification Requests: Friday, December 22, 2023**
- **SOQ Submission Deadline: Monday, January 8, 2024, at 3:30 p.m.**
- **SOQ Package Opening: Wednesday, January 10, 2024**
- **Anticipated Notice of Intent to Award: Tuesday, January 30, 2024**
- **Anticipated Post-Award Debriefing Request Date: Friday, February 2, 2024, at 8:30 a.m.**
- **Post-Award Debriefing Held by Date: Wednesday, February 7, 2024**
- **Protest Deadline Date: Tuesday, February 6, 2024, at 8:30 a.m.**

All times and deadlines provided in this RFQ are in Central Standard Time (“CST”).

1.1.2. Late Submissions

All SOQ must be received by MDEQ no later than the time and date specified in Section 1.1.1 for the SOQ Package submission deadline. A SOQ received at the place designated in the solicitation for receipt after the exact time specified for receipt will not be considered unless it is the only SOQ received. SOQ submitted via facsimile (fax) machine **will not** be accepted. It is suggested that if a SOQ is mailed to MDEQ, it should be posted in certified mail with a return receipt requested. MDEQ will not be responsible for mail delays or lost mail. All risk of late arrival due to unanticipated delay – whether delivered by hand, U.S. Postal Service, courier or other delivery service or method – is entirely on the Applicant. All Applicants are urged to take the possibility of delay into account when submitting a SOQ.

Timely submission of the SOQ package is the responsibility of the Applicant. A SOQ received after the specified time will be rejected and maintained unopened in the procurement file. A SOQ received at the place designated in the solicitation for receipt of the SOQ after the exact time specified for receipt will not be considered unless it has been determined by MDEQ that the late receipt was due solely to mishandling by MDEQ after receipt at the specified address.

The time and date of receipt will be indicated on the sealed SOQ envelope or package by MDEQ staff. The only acceptable evidence to establish the time of receipt at MDEQ identified for SOQ opening is the time and date stamp of MDEQ on the SOQ wrapper or other documentary evidence of receipt used by MDEQ.

1.2 Expenses Incurred in Preparing SOQ

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

1.3 Propriety Information

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

1.3.1 Applicant Certification

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

1.4 Registration with Mississippi Secretary of State

By submitting a SOQ, 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.

1.5 Debarment

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

1.6 Competitive Qualifications

Discussions may be conducted with Applicants who submit SOQ determined to be reasonably susceptible of being selected for award. Likewise, MDEQ also reserves the right to accept any SOQ as submitted for contract award, without substantive negotiation of proposed terms, services, or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 Contact and Questions/Requests for Clarification

Applicants must carefully review this solicitation and all attachments for defects, questionable, or objectionable material. Following review, Applicants may have questions to clarify or interpret the RFQ in order to submit the best SOQ possible. To accommodate the questions and requests for clarifications, Applicants shall submit any such question(s) via email by the deadline specified in Section 1.1.1. At no time shall any Applicant or its personnel contact, or attempt to contact, any MDEQ staff regarding this RFQ except the RFQ Coordinator as set forth and, in the manner, prescribed in Section 1.7.

All Applicant communication, questions, and requests for clarification regarding this RFQ must be submitted in writing to MDEQ's RFQ Coordinator, Ms. Aveleka Moore at amoore@mdeq.ms.gov by the deadline specified in Section 1.1.1. Unauthorized contact regarding the RFQ with other employees of MDEQ may result in the Applicant being disqualified, and the Applicant may also be suspended or disbarred from the State. No negotiations, decisions, or actions shall be initiated by any Applicant as a result of any verbal discussion with any State or MDEQ representative.

MDEQ will not be bound by any verbal or written information that is not contained within this RFQ unless formally noticed and issued by the RFQ Coordinator as an RFQ amendment. Applicants are cautioned that any statements made by contact persons that cause a material change to any portion of the RFQ document shall not be relied upon unless subsequently ratified by a formal written amendment to the RFQ document.

All questions and requests for clarification must be submitted by the deadline specified in Section 1.1.1 and made in writing. Questions and requests for clarification submitted after this date will not be considered. Official responses will be provided only for questions submitted and only to clarify information already included in the RFQ. Applicants shall provide an email address for MDEQ to direct the consolidated “question and answer” document, which will be issued as an Amendment. The identity of the organization submitting the question(s) or request(s) for clarification will not be revealed.

Should MDEQ issue any amendments, they will be provided in writing and transmitted via email to all prospective Applicants who are known to have requested a copy of the RFQ package and will also be published on MDEQ’s website and on the Mississippi Contract/Procurement Opportunity Search portal website. Only amendments transmitted in this manner will be considered official and valid by MDEQ.

1.8 Acknowledgement of Amendments

Applicants shall acknowledge receipt of any amendment issued to the RFQ by signing and returning the amendment with the SOQ package. The acknowledgement must be received by MDEQ by the deadline specified in Section 1.1.1 for receipt of SOQ. It is the Applicant’s sole responsibility to monitor the websites for any updates or amendments to the RFQ.

1.9 Pre-RFQ Conference, Tour, or Site Visit

No Pre-RFQ Conference, Tour, or Site Visit will be held for this RFQ.

1.10 Type of Contract

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

1.11 Written Statement of Qualifications

All Statements of Qualifications shall be in writing.

SECTION 2

2.1 Compensation for Services

The compensation for services requested under this RFQ will be in the form of a firm fixed-price agreement. Selected Applicant(s) shall provide to MDEQ the services in this RFQ set out in one or more Work Orders to be issued by MDEQ and accepted by the Contractor(s) . Each Work Order shall provide a scope of work, specifications regarding the particular waste tire abatement site(s), including the approximate number of waste tires contained at the particular abatement site, deliverables, a schedule, and a budget. Work Orders shall be deemed issued and accepted only if signed by an authorized representative of the Contractor(s) and the Executive Director of MDEQ, or his designee.

There is no guaranteed amount of work under this RFQ or any resulting Contracts. The cumulative amount of the Work Orders issued under the Contract shall not exceed the Contract ceiling amount. Reimbursement of abatement costs to Contractors for tires and tires derived materials removed will be as follows:

- \$250.00 per ton for collecting and delivering to an authorized waste tire management facility for disposal
- \$275.00 per ton for collecting and delivering to an authorized waste tire management facility for recycling

2.2 Purpose

The Mississippi Department of Environmental Quality (“MDEQ”) hereby solicits written Statements of Qualifications, subject to the conditions stated herein and attached hereto, from qualified organizations, companies, or individuals to provide professional services for the complete removal and delivery of abandoned or improperly dumped waste tires from selected site(s) across the State of Mississippi to authorized waste tire management facilities. The Applicants who best meet the requirements of this Request for Qualifications (“RFQ”) will be selected as qualified Contractors to perform waste tire abatement services for MDEQ. Being selected as qualified Contractors in no way guarantees that such Applicants/Contractors will be selected to perform a specified amount of work under this RFQ and any resulting contracts. It is understood that any contracts resulting from RFx3140003630 MDEQ-RFQ12012023 require approval by the Public Procurement Review Board (“PPRB”). If any contracts resulting from RFx3140003630 MDEQ-RFQ12012023 are not approved by the PPRB, they are void and no payment shall be made.

2.3 Scope of Services

MDEQ is seeking qualified organizations, companies, or individuals with abilities, qualifications and experience in the areas detailed in this section.

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 – Mississippi Code Annotated §17-17-419 *et seq.*, 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.
- 4) Perform other related tasks as directed by MDEQ.

2.4 Term

The term of the contract shall be for a period of three (3) years with two (2) one (1) year optional renewals, upon written agreement of both parties, and under the same prices, terms, and conditions as in the original contract subject to approval by the Public Procurement Review Board (“PPRB”) and/or the MS Department of Finance and Administration Office of Personal Service Contract Review (“OPSCR”). The total contract term, including any renewals, shall not exceed a maximum total of five (5) years.

2.4.1 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 (2) one (1) year optional renewals, 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.

2.4.1.1 Requirements

- a) Three (3) years of service with two (2) one (1) year optional renewals.
- b) The per ton of tires rates are given for the services listed in RFx3140003630 MDEQ-RFQ12012023 and those rates shall be the same throughout the Contract.
- 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(s) 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

Prior to Contract performance, the Applicant shall provide and maintain sufficient insurance coverage during the period of performance of the Contract, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, as required by applicable state and federal law related to the work of the Contract and in connection with the Contract. This may include, but is not limited to the following:

- 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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00).
- 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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00).
- c) Auto Liability Insurance. This insurance shall be in the amount of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) 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 in performance of the work.

MDEQ, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi and its elected and appointed officers, employees and agents shall be named as additional insureds on such policies. The successful Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The successful Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the successful Contractor's coverage. Endorsements so stating shall be provided to MDEQ by the successful Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy. While the successful 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 Contract, 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 contractual provisions addressing the indemnity of MDEQ by the successful Contractor.

Upon execution of the Contract, Contractor shall promptly furnish MDEQ with a certificate of insurance showing the Contractor compliance with the insurance provisions of this paragraph. While Contractor shall provide MDEQ with a certificate of insurance as set forth in this paragraph, the failure to do so, or the failure of the 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.

3.1.1 Subcontractor Insurance

The Contractor is responsible for ensuring that any Subcontractors provide adequate insurance and/or bond coverage for the activities arising out of subcontracts.

SECTION 4

4.1 Written Statement of Qualifications Must Contain the Following Minimum Information

- A. Company Information: Applicants must provide the following information in the following manner and order:
- 1) Applicant's company name;
 - 2) The name of the Applicant, the location of the Applicant's principal place of business and, if different, the place of performance of the proposed contract;
 - 3) The age of the Applicant's business and average number of employees over the past three (3) years;
 - 4) The qualifications, including licenses, certifications, education, skills, and experience of all primary staff who would be assigned to provide the required services;

- 5) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Qualifications;
 - 6) Confirmation of the Applicant's waste tire processing facility permit, mobile waste tire processing facility authorization, or waste tire collection site authorization and a copy of the permit or letter of authorization. Applicants not in possession of a permit or authorization should provide written commitment that a permitted or authorized waste tire management facility will accept abated waste tires from the Applicant;
 - 7) Applicant's Waste Tire Hauler Identification Number and a copy of the current, valid hauler certificate or provide written commitment that one will be obtained prior to Contract performance; and,
 - 8) **Attachment A** and **Attachment B** must be completed, signed, and included as part of the SOQ. These pages are not included in the 30 (thirty) page limit of the SOQ.
- B. The Applicant must provide a list of primary staff and their respective backgrounds, job classification, and experience in waste tire abatement operations.
- C. The Applicant must provide a list of equipment that is owned that may be used to perform the waste tire abatement operations. This list should include, but is not limited to the following:
- 1) Trucks, trailers, heavy machinery, shredders, and other processing or removal equipment. Indicate the processing capacity of each waste tire processing unit or overall processing system if applicable.
 - 2) If the Applicant intends to secure certain equipment to perform the abatement project(s), please describe the type and contractual source of the equipment that you have the ability to acquire.
- D. Certifications Required:
- 1) The Applicant must certify, in writing, that it can provide services in this RFQ as the need arises on 365 days a year basis. The Applicant must have a physically monitored telephone number for the purposes of notification. Paging and answering machines are not acceptable.
 - 2) The Applicant must certify, in writing, that it possesses the experience and equipment to accomplish the activities described in Section 2.3. Scope of Services. This includes, at a minimum, the experience and equipment listed below:
 - The Applicant owns or has access to ample transportation vehicles to efficiently abate Waste tire dumps.
 - The Applicant holds or must obtain and maintain a valid waste tire hauler certificate issued by MDEQ.

- The Applicant must hold a current waste tire management facility permit/authorization from MDEQ or demonstrate an arrangement or plans to obtain an arrangement with a waste tire management facility which has been authorized or permitted by MDEQ and/or a comparable agency in another state to accept and manage the waste tires.
- E. Applicant must list the name(s) of authorized waste tire management facilities that it utilizes on a regular basis and provide the telephone numbers and addresses for those facilities.
- F. Applicant must certify in writing, that it will manage the collected waste tires in accordance with the regulations for the transportation and management of waste tires.
- G. In order to demonstrate direct experience in waste tire abatement activities, the Applicant shall submit, in writing, a summary reflecting that it was the Contractor on at least two (2) separate and verifiable projects, which have been completed within the last five (5) years. Information should be provided in written summary/report form for review including timelines and budgets.
- H. Applicants without direct experience in waste tire abatement activities shall similarly demonstrate any direct experience in related activities such as environmental site remediation, construction and demolition, earthwork, or other related work that may qualify Applicant for selection.
- I. The Applicant must show proof of financial stability and good business practices for the past two (2) years through the submission of a letter of reference from its primary bank or lending institution.
- J. The Applicant must show proof of reliability with MDEQ or other agencies or organizations demonstrating responsiveness and the ability to complete work in a timely manner or otherwise within established parameters such as budget.
- K. If an Applicant is a non-resident contractor, the Applicant must provide a copy of the Applicant's current state Applicant preference law pertaining to that state's treatment of non-resident contractors pursuant to Mississippi Code Annotated § 31-7-47 or a statement on letterhead signed by an officer or manager of the Applicant stating that no preference laws exist in that state. The state of residency of a contractor shall be the same as the corporate office reported by the Applicant to the Mississippi Secretary of State. Any documentation submitted in response to this requirement will not be included in the thirty (30) page limit of the SOQ.
- L. The Applicant must provide an official Certificate of Good Standing issued within sixty (60) days prior to the submission deadline from the Office of the Secretary of State of the State of Mississippi demonstrating that Applicant is in good standing to do business in Mississippi, which will not be included in the thirty (30) page limit of the SOQ.
- M. The Applicant shall acknowledge receipt of any amendment to this RFQ by signing and returning the amendment with its SOQ. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of SOQ. Any documentation in response to this requirement will not be included in the thirty (30) page limit of the SOQ.

- N. The Applicant shall acknowledge receipt of any Response to Inquiries issued in regard to this RFQ by signing and returning the Response to Inquiries with its SOQ. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of SOQ. Any documentation submitted in response to this requirement will not be included in the thirty (30) page limit of the SOQ.

4.1.1 Nonconforming Terms and Conditions

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

4.1.2 Conditioning SOQ Upon Other Awards

Any SOQ 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.

4.2 Minimum Qualifications

Applicants will be evaluated based on requirements set forth in RFX3140003630 MDEQ-RFQ12012023. Those criteria that will affect the SOQ and be considered in evaluation for award shall be objectively measurable where possible. This RFQ sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set in this RFQ. Only respondents who are found responsive and responsible will have their SOQ considered.

MDEQ will receive SOQs from Applicants having specific experience and qualifications in the area identified in this solicitation. For consideration, SOQ for the project must contain evidence of the Applicant's experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by MDEQ is included herein. Unless otherwise stated, all Applicants shall provide profiles and resumes of the primary staff to be assigned to the project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the Applicant's expertise in the area of this solicitation.

The SOQ shall be specific and sufficiently detailed to satisfy the requirements set forth in this solicitation. A selection committee shall review and evaluate the SOQ.

4.2.1 Responsive Applicant

The Applicant must submit a SOQ, which conforms in all material respect to this Request for Qualifications, RFX3140003630 MDEQ-RFQ12012023, as determined by MDEQ.

4.2.2 Responsible Applicant

The 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.

4.3 SOQ Opening

The SOQ opening will be on the date listed in Section 1.1.1, but it is not open to the public.

4.4 Evaluation Procedure

4.4.1 Evaluation Factors

***Technical factors:** *Factors scored without knowledge of the identity of the Applicant (blind). These factors aid in determining the Applicant's technical ability to perform the service. – 15%*

1. Does the Applicant's SOQ demonstrate a clear understanding of the scope of work and related objectives? **10%**
2. Does the Applicant's SOQ use innovative technology and techniques? **5%**

***Cost factors:** 35%

MDEQ is setting the price. All Applicants will receive **35%**

***Management factors:** *Factors scored with knowledge of the identity of the Applicant. These factors aid in determining the Applicant's past performance of the service. – 50%*

1. Project management:
 - a) How well does the proposed scheduling timeline meet the needs of MDEQ? **5%**
2. History and experience in performing the work:
 - a) Does the Applicant document industry or program experience? **5%**
 - b) Does the Applicant have a record of good business ethics? **5%**
 - c) Is the Applicant's SOQ complete and responsive to the specific RFQ requirements? **10%**
 - d) Has the past performance of the Applicant's proposed methodology been documented? **10%**
3. Availability of personnel, facilities, equipment, and other resources:
 - a) Does the Applicant sufficiently document the availability of in-house resources and/or contracted resources? **5%**
4. Qualification and experience of personnel:
 - a) Evaluation of documentation of experience in performing similar work by employees and when appropriate, subcontractors? **5%**
 - b) Does the Applicant address how they demonstrate cultural sensitivity in hiring and training staff? **5%**

4.4.2 Submission Format

The SOQ shall be limited to no more than a total of thirty (30) typed pages including contents pages, supporting appendices, etc. (the page count includes every printed page except for the front and back cover, the transmittal letter, and any other exemption stated herein). Any information contained on pages that exceed the page limit may not be evaluated. Paper size shall be 8 1/2" x 11". Text shall not be smaller than a font size of 12. Applicants shall submit one (1) signed original complete copy of the SOQ, along with one (1) digital copy of the SOQ in PDF format on a USB flash drive, in a sealed envelope or package to MDEQ on or before the date and time specified. The original must be signed by an authorized representative of the Applicant.

Applicants must NOT identify the business/company name on any of the Statement of Qualification documents except on the following documentation:

- Cover Page
- Section 4.1, A. Company Information
- Section 4.1, B.
- Proof of financial stability
- Non-resident contractor
- Certificate of Good Standing from the Mississippi Secretary of State

Any information provided from the above list should be submitted in a separate, sealed envelope clearly marked **"Company Information"**.

All submission packages must be clearly labeled as follows on the **exterior** of the package:

**Mississippi Department of Environmental Quality
SEALED QUALIFICATION – DO NOT OPEN
RFx3140003630 MDEQ-RFQ12012023
Attention: Ms. Aveloka Moore
515 East Amite Street
Jackson, MS 39201**

4.5 Award

MDEQ intends to award up to five (5) contracts to the highest scoring Applicants whose SOQs meet the requirements and criteria set forth in this RFQ.

4.5.1 Notification

The award(s) for this procurement will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the MDEQ website. All participating Applicants will be notified of MDEQ's intent to award contracts. In addition, MDEQ will identify the selected Applicant(s). The Notice of Intent to award is also made available to the public.

SECTION 5

5.1 Post-Award Vendor Debriefing

An Applicant, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Executive Director of 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 the Applicant prefers to have legal representation present, the Applicant must notify the Executive Director of 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.

Unless good cause exists for delay, the debriefing should occur within three (3) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the agency. The Chief Procurement Officer or designee should chair the meeting, and where practicable, include other staff with direct knowledge of the procurement.

At a minimum, the debriefing information shall include the following:

- (1) MDEQ's evaluation of significant weaknesses or deficiencies in the Applicant's SOQ, proposal, or qualifications, if applicable;
- (2) The overall evaluated cost or price, and technical rating, if applicable, of the successful Applicant(s) and the debriefed Applicant;
- (3) The overall ranking of all Applicants, when any ranking was developed by the MDEQ during the selection process;
- (4) A summary of the rationale for award; and,
- (5) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

The debriefing shall not include point-by-point comparisons of the debriefed Applicant's SOQ, proposal, or qualification with those of other offering vendors. Any written request by an Applicant for nondisclosure of trade secrets and other proprietary data is subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 and §§ 75-26-1 through 75-26-19.

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 Protest of Award

Any actual or prospective Applicant or Contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Qualifications may file a protest with the MDEQ RFQ Coordinator, Ms. Aveleka Moore, Contracts Division Director. The protest shall be submitted, in writing within seven (7) calendar days of the Notice of Intent to Award. All protests must be in writing, dated, signed by the Applicant or an individual authorized to sign contracts on behalf of the protesting Applicant, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting Applicant must provide facts and evidence to support the protest. A protest is considered filed when received by the MDEQ RFQ Coordinator, Aveleka Moore, Contracts Division Director, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after the seven (7) calendar days will not be considered.

5.3 Standard Contract Terms and Conditions

Any Contract entered into between MDEQ, and an Applicant shall include the clauses found in **Attachment C** and those required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* as updated.

5.4 Mississippi Contract/Procurement Opportunity Search Portal

This SOQ, any Amendments, and the Notice of Intent to Award will be posted on the MDEQ website and on the Mississippi Contract/Procurement Opportunity Search Portal website.

5.5 Attachments

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

Attachment A – Applicant Information Sheet

Attachment B – Certifications and Assurances

Attachment C – Standard Contract Terms and Conditions

Attachment A

Applicant Information Sheet

As part of the Applicant's SOQ, this Attachment must be completed and signed by the company's authorized representative.

Applicant's Company Name:	
Unique Entity ID ("UEI"):	
Principal point of contact:	
Contact's Email Address:	
Contact's Telephone Number:	
Address of Applicant's Principal Place of Business:	
Age of the Company:	
Average number of employees over the last three (3) years:	

The Applicant must maintain a list of other clients for review by MDEQ and identify any potential conflicts of interest due to previous work or that may arise during the contract duration. Applicants must provide a list of current or previous clients upon request.

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 the Request for Qualifications, RFx3140003630 MDEQ-RFQ12012023, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Qualifications, RFx3140003630 MDEQ-RFQ12012023, and attachments herein;
3. That the company agrees to all provisions of this Request for Qualifications, RFx3140003630 MDEQ-RFQ12012023, and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Qualifications.

Printed Name:

Signature:

Title:

Date:

Attachment B

Certifications and Assurances

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

1. **NON-DEBARMENT:** By submitting a SOQ, the Applicant certifies that it is not currently debarred from submitting SOQ for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting SOQ for contracts issued by any political subdivision or agency of the State of Mississippi.
2. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES:** The Applicant represents as a part of such SOQ that such Applicant *has/has not* retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
3. **REPRESENTATION REGARDING CONTINGENT FEES:** The 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, except as disclosed in the Applicant's SOQ.
4. **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.

Applicant Name: _____

Printed Name of Representative: _____

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 form may result in the SOQ being rejected as non-responsive. **Modifications or additions to any portion of this document may be cause for rejection of the SOQ.**

Attachment C

Standard Contract Terms and Condition

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. The 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

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

4. Acknowledgment of Amendments

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

5. Compliance with Laws

The Contractor understands that the Agency 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 the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

6. E-Payment

The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

7. E-Verification

If applicable, the 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. The 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, the Contractor agrees to provide a copy of each such verification. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject the 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 the 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, the 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. 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 the Contractor's choice. The State may, at its sole discretion, require the Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

9. Procurement Regulations

The Contract shall be governed by the applicable provisions of the *Mississippi Public Procurement 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>.

10. Representation Regarding Contingent Fees

The 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 the Contractor's SOQ.

11. 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*.

12. Stop Work Order

- a) Order to Stop Work: The Chief Procurement Officer, 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 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, the Chief Procurement Officer shall either:
 - i. cancel the stop work order; or,
 - ii. 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 the Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - i. 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,
 - ii. The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

- 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.

13. 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 the Contractor specifying the part of the contract terminated and when termination becomes effective.
- b) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The 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 the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

14. Termination for Default

- a) Default. If the 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 the 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 the 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. The 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, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the 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 to the 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, the 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 the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the 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, the 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 the Contractor to meet the contract requirements. Upon request of the 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 (1) or more of the excusable causes, and that, but for the excusable cause, the 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 the 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.
- 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.

15. Termination Upon Bankruptcy

This Contract may be terminated in whole or in part by MDEQ upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the 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.

16. Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

17. 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 the 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.

18. Anti-assignment/Subcontracting

The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor’s special skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

19. Antitrust

By entering into this Contract, the 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.

20. Attorney’s Fees and Expenses

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

21. Authority to Contract

The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other

provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

22. 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 the Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to the 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 the Contractor.

If the 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 the Contractor, the 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, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the services within the Contract.

23. Claims based on Chief 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 the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

- (1) The 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 the Contractor knows of the occurrence of such action or omission;
 - (ii) within 30 days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or,
 - (iii) within such further time as may be allowed by the Chief Procurement Officer in writing.

This notice required shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time; and the 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;

- (2) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and,
- (3) The 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 the Contractor from compliance with any rules of law precluding state officers and the 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.

24. Confidential Information

"Confidential Information" shall mean: (a) those materials, documents, data, and other information, which the Contractor has designated in writing as proprietary and confidential; and (b) all data and information, which the 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 the Contractor, or its subcontractor shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this Contract.

25. Confidentiality

A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which the Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

- 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. Mississippi Code Annotated §§ 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 Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to the 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 the Contractor or its subcontractor shall rest with the Contractor. Disclosure of any Confidential Information by the 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.* The 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; or
 - (7) Otherwise required to be disclosed by law.

26. Conflict of Interest

The 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 U.S. Department of the Treasury, RESTORE Council, MDEQ, or the Project that would impinge on the 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. The 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.

27. Contractor Personnel

The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the Agency reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor.

28. 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.

29. Debarment and Suspension

The Contractor certifies to the best of its knowledge and belief, that it:

- A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. has not, within a three-year period preceding this SOQ, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- C. has not, within a three-year period preceding this SOQ, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraphs two (B) and (C) of this certification; and,
- E. has not, within a three-year period preceding this SOQ, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

30. Disputes

Before pleading to any judicial system at any level, the Contractor must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the Contractor. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35 (Rev. 2012), with appeals from the Commission's decision following procedures as outlined in Mississippi Code Annotated Section 49-17-41 (Rev. 2012).

31. Failure to Deliver

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

32. Failure to Enforce

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

33. 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, the Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by the 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 the Contractor under this contract.

34. 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, the Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

35. Headings

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

36. HIPAA Compliance

The 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.

37. Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State’s sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.

38. Independent Contractor Status

The Contractor shall, at all times, be regarded as, 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, the 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 the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the State and the Contractor. The Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the

Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Agency shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

39. Infringement Indemnification

The 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, the Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should the Contractor fail to obtain for the customer the right to use such items, the Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at the Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, the 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 the Contractor in writing of any alleged infringement claim of which it has knowledge, the 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.

40. Insurance

Prior to Contract performance, Contractor shall provide and maintain sufficient insurance coverage during the period of performance of the Contract, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, as required by applicable state and federal law related to the work of the Contract and in connection with the Contract. This may include, but is not limited to the following:

- 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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

- 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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) aggregate.
- c) Auto Liability Insurance. This insurance shall be in the amount of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) 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 in performance of the work.

MDEQ, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi and its elected and appointed officers, employees and agents shall be named as additional insureds on such policies. The successful Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The successful Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the successful Contractor's coverage. Endorsements so stating shall be provided to MDEQ by the successful Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy. While the successful 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 Contract, 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 contractual provisions addressing the indemnity of MDEQ by the successful Contractor.

Upon execution of the Contract, the Contractor shall promptly furnish MDEQ with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While the 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 the Contractor.

41. Integrated Agreement/Merger

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

42. Modification or Renegotiation

This Contract may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

43. No Limitation of Liability

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

44. Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

For the Agency (Contractual related items):	For Contractor:
Aveleka Moore, Contracts Division Director	[Name, Title]
MDEQ	[Contractor Name]
515 East Amite Street	[Address]
Jackson, MS 39201	[City, State, Zip]

45. Non-solicitation of Employees

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

46. Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the contract must be made in writing by the MDEQ and agreed to by the Contractor.

47. 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 the project, which is the subject of this agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of the agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from MDEQ and subject to any copyright protections.

48. Priority

The Contract consists of this agreement with exhibits, the Request for Qualifications RFx3140003630 MDEQ-RFQ12012023 (hereinafter referred to as "RFQ", and attached as Exhibit []), and the Applicant's SOQ dated [date] by [CONTRACTOR NAME] (hereinafter referred to as "SOQ" and attached as Exhibit []). Any ambiguities, conflicts or questions interpretation of this Contract shall be resolved by first, reference to this agreement/contract with exhibits and, if still unresolved, by reference to the RFQ and, if still unresolved, by reference to the RFQ. Omission of any term or obligation from this agreement or attached Exhibits [] or [] shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

49. Prospective Contractor's Representation Regarding Contingent Fees

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

50. Record Retention and Access to Records

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of the 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 the Contractor for a minimum of three (3) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

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

- A. The Contractor has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the three (3) 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 the Contractor provides the records and corresponding certification to MDEQ, in which case, the Contractor shall retain the records until all issues arising out of the action are finally resolved; and
- C. The Contractor provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

51. Recovery of Money

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

52. Right to Audit

The Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. These records shall be made available during the term of the contract and the subsequent retention period, as applicable under the "Record Retention and Access to Record" provision of this Contract for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

53. Right to Inspect Facility

The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor, which is related to the performance of any contract awarded by the State.

54. Severability

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

55. State Property

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

56. Third Party Action Notification

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

57. Unsatisfactory Work

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

58. Venue

The Venue for the resolution of any dispute, according to Disputes Clause of this Contract, and any subsequent litigation shall be in Jackson, Hinds County, Mississippi.

59. Waiver

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