EMERGENCY REQUEST FOR PROPOSALS

E-RFP Number: 002

Statewide COVID-19
School Screening Testing

ISSUE DATE
June 25, 2021

CLOSING TIME AND DATE
Proposals must be received by:
10:00 AM CST, July 9, 2021

PROPOSAL COORDINATOR

Jennifer Dotson,
Chief Procurement Officer
E-mail: Jennifer.Dotson@msdh.ms.gov
1. INTRODUCTION
COVID-19 testing in Mississippi is key to the identification of COVID-19 cases and addressing health disparities resulting from the pandemic. Mississippi is working to increase equitable access to testing for all residents with a focus on those most impacted by COVID-19. The Mississippi State Department of Health (MSDH) is soliciting proposals from responsible vendors to provide voluntary asymptomatic screening testing for COVID-19 in kindergarten through grade 12 (K-12) school settings for students and staff. The goal of this program is to slow the spread of COVID-19 in these settings and maintain in-person education through implementation of frequent serial testing of teachers/staff and students.

If selected for contract award, Offerors shall be prepared to perform services as soon as within one (1) week from the date of contract award.

It is our intent to follow the schedule below in the execution of this request for proposal; however, MSDH reserves the right to amend and/or change the below schedule of events, as it deems necessary. You will be notified by email if any amendments to this schedule are required.

2. IMPORTANT DATES AND DEADLINES
A. RFP Issue Date: June 25, 2021
B. Pre-Proposal Conference: June 30, 2021; 10:00 AM CST
   Via Zoom (See Below)
C. Intent to Submit Proposal and Vendor Questions Due: July 1, 2021
D. Answers Anticipated Posted: July 6, 2021
E. Packet Submission Deadline: July 9, 2021; 10:00 AM CST
F. Anticipated Award Notification: July 19, 2021
G. Anticipated Start Date: As agreed upon contract execution, preferably no later than July 21, 2021.

3. COMMUNICATIONS, NOTICE OF INTENT AND RFP QUESTIONS
Any questions and/or communication regarding this Request should be submitted to Jennifer Dotson, Chief Procurement Officer, at Jennifer.Dotson@msdh.ms.gov. Please include a reference to RFP #ER002 Emergency Request for Proposals Statewide COVID-19 Screening Testing in Schools (K-12) in the subject line when submitting communications regarding this
solicitation.

Vendors should acknowledge their intent to submit a Proposal in response to this Request by submitting an email, providing the following information to Jennifer Dotson, Chief Procurement Officer, at Jennifer.Dotson@msdh.ms.gov by 5:00 on July 1, 2021:

1. Company Name
2. Stating the intent to respond
3. The company contact for this RFP including, name, title, email address, telephone number.

Any remaining questions regarding this RFP must be submitted by email to Jennifer Dotson, by July 1, 2021, by 5:00 PM.

Vendors should enter “ERFP Number 0002 - Questions” as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

<table>
<thead>
<tr>
<th>RFP Section, Page Number</th>
<th>Vendor Question/Request for Clarification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
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</tbody>
</table>

Written responses, any amendments or communications for all vendors will be posted on the MSDH website. It is the vendor’s responsibility to periodically check the website for any amendments, responses, updates, or communications.

The MSDH will not be bound by any verbal or written information that is not contained within this RFP unless formally noticed and issued by the contact person as an ERFP amendment. Vendors are cautioned that any statements made by MSDH personnel that materially change any portion of the proposal document shall not be relied upon unless subsequently ratified by a formal written amendment to the proposal document.

4. PRE-PROPOSAL CONFERENCE
A Pre-Proposal Conference will be held for interested Vendors on June 30, 2021, via Zoom 10:00 AM CST. A link will be posted on the specified date on the MSDH website on MSDH Calendar of Events Page [https://msdh.ms.gov/msdhsite/_static/23,1121,137.html](https://msdh.ms.gov/msdhsite/_static/23,1121,137.html) The Pre-Bid Conference will be recorded and remain available until package submission deadline.

5. SUBMISSION OF PROPOSALS
Any Proposal along with any other required documents in accordance with this RFP and references should be received by the Chief Procurement Officer by email at Jennifer.Dotson@msdh.ms.gov, by the date and time established in the Important Dates section above.

6. CONTRACT INFORMATION
The term of the emergency contract shall be for a period of up to one (1) year from the date of
execution of the agreement or until the services are no longer required. This is an emergency contract and will not be renewed. The winning vendor should be prepared to begin work within one week of contract execution. A copy of the proposed draft contract is attached as Appendix D for your review and consideration. Statement of work will be finalized upon award.

7. **BACKGROUND**
To support MSDH’s school screening testing objectives, MSDH has defined three specific regions covering the entire state. See Appendix A. Perspective vendors may respond to provide screening testing services for one region, two regions, or all three regions.

Within each defined region, there are no mandated participation requirements for school districts, schools, or parents/guardians providing consent. Furthermore, though all screening testing must adhere to the MSDH Testing Algorithm in Section 10, schools may choose to only test segments of their population (e.g., staff only, or students only, etc.). School districts will be notified of the awarded vendor for their region. Vendors will be responsible for coordinating with each school district to determine individual school participation within their region.

MSDH seeks a vendor (or vendors) to coordinate, implement, and manage end-to-end (ordering, registration, collection, performance, resulting, etc.) testing of Mississippi school’s students and staff. The asymptomatic testing vendor(s) should have the operational flexibility to adapt to multiple testing contexts, populations, and advancements in science and technology.

Awarded vendors will be provided a list of school districts/schools (to include private schools) within their region of responsibility. Vendors will be responsible for coordinating with each school district to determine participation within their region. For school districts that do participate in the screening testing program, vendors will coordinate first with the district to determine the school district’s plan, then with individual schools to determine and complete the school’s School Testing Plan (on-going testing schedule, testing setup, test performance and reporting, hazardous waste disposal, etc.) with each individual school (refer to the Scope of Work for more details re: vendor coordination with the school).

Awarded vendor(s) are required to report all testing schedules (what schools have agreed to participate, when testing starts, how on-going testing will be conducted, etc.) to the MSDH.

All awarded vendors must abide by the stated testing algorithm as defined in Section 10.

8. **Data Collection, Resulting, Reporting**
- Awarded vendors should use their own systems to schedule, collect data, and report results to MSDH.
- Awarded vendors will be responsible for reporting to MSDH both aggregate data for the school district and individual test results.
- Aggregate data must be reported weekly and at the school district level. Aggregate data will be reported using this site: [https://www.surveymonkey.com/r/5DH67CP](https://www.surveymonkey.com/r/5DH67CP)
- Individual test results (to include positive and all non-positive results) must be reported to MSDH within 48 hours of specimen collection and must adhere to HHS COVID-19
Electronic Lab Reporting (ELR) reporting specifications. MSDH ELR reporting requirements are found here: [https://msdh.ms.gov/msdhsite/_static/resources/11590.pdf](https://msdh.ms.gov/msdhsite/_static/resources/11590.pdf)

- Summary and dashboard data reporting as defined in the Scope of Work.

9. **Other On-Site Logistics and Supplies**

The Vendor shall manage all aspects of a comprehensive, on-site student and staff asymptomatic testing program for COVID-19, ensure that the solutions are operationally-integrated, provide testing turnaround times that are between 24-48 hours, manage reporting needs and requests, and be the MSDH’s single point of contact for all testing issues under the scope of work.

The Vendor must be able to manage multiple, concurrent collection locations (schools) in each region. The volume may increase / decrease as MSDH guidance changes or due to other external factors such as CDC guidance changes, COVID-19 outbreaks, etc.

10. **Testing Algorithm**

This screening program is not designed for symptomatic individuals. Any symptomatic student or teacher/staff should continue to be excluded from the school/school district and be evaluated by their primary medical provider. Interested school districts will offer voluntary testing (performed by the vendor) of asymptomatic teachers, employees and students as follows:

a. All asymptomatic teachers, employees, and students weekly.
b. Weekly screening of students (and teachers/coaches) participating in school-sponsored extracurricular activities of any type, including sports, as a condition of participation (school district decision).
c. Screening tests can also be utilized as follows:
   i. Contacts to cases (15 minutes of cumulative contact over a 24-hour period at <6 feet): Unvaccinated students who are contacts to cases as described will not require exclusion from school for quarantine if they receive testing every two days and remain asymptomatic. At the end of 7 days, they will no longer require testing.
   ii. Screening tests may be utilized for asymptomatic students/teachers/staff participating in school-sponsored summer programs or other school-sponsored activities as a condition of participation.
d. Additional Considerations:
   i. Fully vaccinated students and teachers/staff (2 weeks after completion of one-dose or two-dose COVID-19 vaccine series) do not require weekly asymptomatic screening.
   ii. Fully vaccinated students and teachers/staff do not require quarantine or testing after contact to an infected person.
e. Screening Test Types:
   i. All COVID-19 tests used by the Vendor for school screening testing must have an FDA EUA.
   ii. The Vendor may use either of the two options for screening testing:
      1. The Vendor may use Molecular or PCR tests (with an EUA) for all
asymptomatic screening testing discussed in this contract.

2. The Vendor may use initial screening rapid Antigen tests (with an EUA) for asymptomatic screening of students, teachers, and staff.
   a. If antigen tests are used for initial screening, the Vendor must perform Molecular or PCR testing on all positives identified on initial screening.
   b. The follow up molecular/PCR testing should have a turnaround time of less than 24-48 hours.

A single vendor could be awarded responsibility for more than one region. Vendors can submit pricing for one or multiple regions as provided on Appendix C. Vendors may engage subcontractors to perform part or all of the proposal; however, awards will only be made to vendors that can fulfill all the services requested, and partial awards will not be considered. If subcontractors are to be engaged, the vendor must include a complete list of all subcontractors, their addresses, and a description of their proposed work in the proposal. Subcontractors will be held to the same standards and requirements as the awarded vendor. All costs of your subcontractor(s) must be included in the vendors pricing. No payments will be made directly to subcontractors.

11. Proposal Requirements

The vendor must provide all necessary equipment, including personal protective equipment (PPE), devices for data collection and internet connectivity, equipment necessary for site operations, and signage. The vendor(s) must also hire employees that have passed a state-required background check as required by the school. Background checks are at the vendor’s expense. The vendor must also comply with each school district’s on-site participation documentation requirements. Any equipment acquired by the vendor to be used during the contract term by the vendor will not become property of the State. The proposal must also include vendor’s current insurance coverage plan applicable to the proposed operations and continuing operational management of all proposed deliverables during the contract period. Such insurance coverage must meet the State’s standard contract terms.

The proposal must provide for the employment of or contract with a supervising physician or appropriate licensed professional to oversee the clinical operations of the vendor. The awarded vendor(s) must also maintain the appropriate CLIA Certificate (or Certificate of Waiver). Personnel engaged in the performance of the contract, including specimen collection and testing, will be supervised by the vendor, not the MSDH, and the MSDH will not issue any standing orders or prescriptions for tests.

12. Response Elements / Directions

For the sake of efficiency, vendor-developed proposals must be submitted along with pricing. However, the pricing portion of the proposals must be submitted as a separate, clearly marked attachment, so that the pricing portion may be evaluated separately from the evaluation of all vendor-developed operational proposals. Proposals should include:

- Name of vendor, vendor’s address, and contact person, including work phone, cellphone, and e-mail address;
• Operational Plan (not to exceed five pages total) that describes the vendor’s proposal for each of the functions as described in the Scope of Work to be performed within the Mississippi school district regions for which the vendor is bidding;

• Timeline that includes: date for initiating contact with school districts in the awarded region(s), date for submitting School Testing Plans, and date for all aspects of the proposal to be fully operational;

• Plan for data collection, tracking, and daily submission of necessary data to the MSDH;

• Plan for obtaining and training staff on proper use of personal protective equipment, specimen collection supplies and proper handling of test specimens (to include either on site testing or packaging for transport to off site laboratory);

• Description of COVID-19 test types that will be utilized along with rapid test platforms (if testing to be performed on site) or test platforms and laboratory name (if testing to be performed off site);

• Plan for provision of language access services;

• Communication plan to include the vendor’s plan for coordinating with each public school district, private school and MSDH;

• Plan for obtaining background checks on all employees to ensure safety for school aged patients;

• References which shall include the names, title, email addresses, telephone number and any additional contact information for at least three entities to whom the vendor has provided the services described in the proposal or similar services within the last two years; (MSDH must be able to contact 3 references within 2 days of submission to evaluate proposals. Vendors may submit additional references to ensure MSDH can reach at least 3 within 2 days.)

• Proposed pricing (Appendix C) must be submitted in as a separate, clearly labeled attachment from the rest of proposal. Vendor’s pricing must include these elements:

  a. One-time setup fee for each school that agrees to participate.
  b. Fully loaded rate for each individual test to include ALL vendor costs (such as but not limited to: PPE, staffing, travel, etc.).
  c. Completed Regional Table with acknowledgment of responding to perform services in a specific region. (Appendix C).

NOTE: No other expenses will be reimbursed other than the one-time setup fee and the fully loaded established test rate.

13. Emergency Procurement
As a result of the COVID-19 pandemic, MSDH has determined that an emergency exists, so that delay incident to undertaking a normal procurement process would threaten the health and safety of the citizens of the State of Mississippi. Any contract(s) resulting from this solicitation will be deemed an emergency contract and will not exceed one (1) year.

14. Cost of Quote Preparation
All costs incurred by the Offeror in preparing and developing its response to this Request shall be borne exclusively at the Offeror’s expense.
15. Registration with Mississippi Secretary of State
   By submitting a response to this Request, the Offeror certifies that it is registered to do business
   in the state of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of
   State or, if not already registered, that it will do so within seven (7) business days of being
   notified by MSDH.

16. Debarment
   By submitting a response to this Request, the Offeror certifies that it is not currently debarred
   from submitting proposals for contracts issued by any political subdivision or agency of state
   of Mississippi or Federal government and that it is not an agent of a person or entity that is
   currently debarred from submitting proposals for contracts issued by any political subdivision
   or agency of the state of Mississippi.

17. Incorporation into Contract
   This Request, Proposal, and other documentation provided in response thereto, which result in
   a contract, are incorporated into the resulting contract. Contractor will be responsible for all
   requirements as stated herein whether or not specifically stated in the Scope of Services or
   Contract.

18. Cancellation of Solicitation
   MSDH reserves the right to cancel this Solicitation and/or reject all Responses submitted in
   response to this Emergency Request for Proposals.

19. Discussions
   MSHD reserves the right to have discussions with responsible offerors who submit proposals
determined to be reasonably susceptible to being selected for award of the proposed emergency
contract. Offerors may be requested to submit additional information and or a best and final
offer and award rendered in the best interest of the State.

20. Best Interest Award
   MSDH reserves the right to make an award which is determined to be in the best interest of
   the Mississippi State Department of Health

21. Multiple Awards
   MSDH reserves the right to award multiple contracts for this service.

22. Right to Proceed
   Because of the emergency nature of this request, MSDH reserves the right to proceed with a
   contract at any time and is not required to wait any specific period of time nor is MSDH
   required to have any specific number of quotes or responses to this emergency solicitation.

23. Termination for Convenience Clause
   MSDH may, when the interests of the State so require, terminate this contract in whole or in
   part, for the convenience of the State. MSDH shall give written notice of the termination to
   the Contractor specifying the part of the contract terminated and when termination becomes
   effective.
APPENDIX A

Regional Map

Regional Table

<table>
<thead>
<tr>
<th>School information (Information provided is approximate)</th>
<th>Northern Public Health Region</th>
<th>Central Public Health Region</th>
<th>Southern Public Health Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>54 Public School Districts</td>
<td>50 Public School Districts</td>
<td>43 Public School Districts</td>
<td></td>
</tr>
<tr>
<td>142,654 Public School Students</td>
<td>158,558 Public School Students</td>
<td>140,911 Public School Students</td>
<td></td>
</tr>
<tr>
<td>21,972 Public School Staff</td>
<td>24,756 Public School Staff</td>
<td>23,009 Public School Staff</td>
<td></td>
</tr>
<tr>
<td>22 Private Schools</td>
<td>47 Private Schools</td>
<td>26 Private Schools</td>
<td></td>
</tr>
<tr>
<td>5,961 Private School Staff</td>
<td>17,906 Private School Staff</td>
<td>7,411 Private School Staff</td>
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</tr>
</tbody>
</table>
Appendix B
Proposal Cover Sheet

The Mississippi State Department of Health (MSDH) is seeking to establish an emergency contract for COVID-19 School Screening and Testing (K-12).

Proposals must be received by **10:00 AM CST on July 9, 2021.** Please submit your proposal by email to:

Jennifer Dotson, Chief Procurement Officer,
Jennifer.Dotson@msdh.ms.gov.

Name of Company: _______________________________________________________

Quoted By: ___________________________________________________________________

Signature: ___________________________________________________________________

Address: ___________________________________________________________________

City/State/Zip Code: ___________________________________________________________

Company Representative: _______________________________________________________

Telephone: ___________________________________________________________________

Fax: _________________________________________________________________________

E-Mail: _____________________________________________________________________

FEI/FIN # (if company, corporation, or partnership): _____________________________

SS# (if individual): ____________________________________________
In addition to providing the above contact information, please answer the following questions regarding your company:

1. What month and year was your company started/established?

2. How many years has your company been in the business of performing the services called for in this RFP?

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

4. If your company is not physically located within the vicinity, how will you supply the services required in this RFP to the MSDH?

5. Is your company licensed and/or certified to provide the services required in this RFP and as required by any and all applicable Federal and State law(s)?

6. List all licenses or permits your company possesses that are applicable to performing the services required in this RFP.

7. For how many customers has your company provided the equivalent or similar services in requirements and scale to those services described in this RFP for in the past four (4) years?

8. What is the largest customer your company has provided the equivalent or similar services in requirements and scale to those services described in this RFP for in the past four (4) years?

9. Provide a brief description of any outside vendors or subcontractors that will be involved in providing key services detailed within your proposal. Please include the term of your current contract with each vendor or subcontractor. Describe the nature of the relationship with the subcontractor, including any ownership interest.

10. Has your company ever been involved in a lawsuit involving any area covered by this RFP? If yes, provide details including dates and outcomes.

11. During the past four (4) years, has your company, related entities, principals, or officers ever been a party in any material criminal litigation, whether directly related to this RFP or not? If yes, provide details including dates and outcomes.

12. Has your company been cited or threatened with citation within the last four (4) years by federal or state regulators for violations of any federal, state, or local law or federal, state or local regulation? If yes, please describe the circumstances in detail.

13. Has your company had any HIPAA breaches or incidents determined to be reportable to the U.S. Department of Health and Human Services (DHHS) within the last four (4) years? If yes, please describe the circumstances and the corrective action in detail.
14. Confirm that your company is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency, or by any political subdivision or agency of the State of Mississippi.

15. State if the proposed account executive, any officers, or principals and/or their immediate families are, or have been within the preceding twelve months, employees of the State of Mississippi.

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

17. List up to three clients for whom your company has provided the equivalent or similar services in requirements and scale to those services described in this RFP. For each client, specify the type of testing services provided by your company, the number of COVID tests performed in the client’s group, and the period of time retained as a client. For each client, the list must specify:

   a. Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
   b. The type of work your company provided to the client,
   c. The number of covered lives in the client’s group,
   d. Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client.

18. List up to three governmental clients for whom your company has provided the services requested in this RFP. If possible, please list three additional clients besides any previously listed references. For each client, specify the type of work performed by your company, the number of COVID tests performed in the client’s group, and the period of time retained as a client. For each client, the list must specify:

   a. Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
   b. The type of work your company provided to the client,
   c. The number of COVID tests performed and timeframe for the client,
   d. Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client.

19. List all clients that have discontinued use of your services in the past four years and your understanding of their discontinued use of your services. For each client, the list must specify:

   a. Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
   b. The type of work your company provided to the client,
   c. The number of COVID tests performed and timeframe for the client,
   d. Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client.
   e. Reason discontinued.
APPENDIX C

Mississippi State Department of Health
COVID-19 School Screening and Testing Emergency Request for Proposal

The pricing quoted must be all inclusive, which includes, but is not limited to the following:

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

The pricing must include ALL associated costs with no additional or hidden fees. Please provide costs as requested below. Use the Regional Map and Regional School Information Table provided in this RFP when considering your cost response.

<table>
<thead>
<tr>
<th>Company</th>
<th>Company Representative</th>
<th>Telephone</th>
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<table>
<thead>
<tr>
<th>Northern Public Health Region</th>
<th>Central Public Health Region</th>
<th>Southern Public Health Region</th>
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<tbody>
<tr>
<td>One Time Initial School Setup Fee</td>
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<table>
<thead>
<tr>
<th>Test Rates</th>
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Test Rates submitted are a Fully Loaded Rate for each test.

<table>
<thead>
<tr>
<th>Rapid Antigen:</th>
<th>Rapid Antigen:</th>
<th>Rapid Antigen:</th>
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<tr>
<th>Molecular:</th>
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<td>$_____________</td>
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<table>
<thead>
<tr>
<th>Company will perform services in the Region</th>
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<tbody>
<tr>
<td>YES ________</td>
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</tbody>
</table>

| NO ________ | NO ________ | NO ________ |

(Circle or place a check next to YES, if you are responding to perform services in that region or NO, if you are not responding to perform services in that region.)
APPENDIX D
MISSISSIPPI STATE
DEPARTMENT OF HEALTH
EMERGENCY CONTRACT
FOR PROFESSIONAL SERVICES

1. Parties. This contractual agreement is entered into by and between the Mississippi State Department of Health (hereinafter “MSDH” or “Agency”) and [Company Name] (hereinafter “Contractor”).

2. Purpose. The purpose of this contract is for MSDH to engage Contractor to provide certain professional services.

3. Period of Performance. This contract will become effective for the period beginning [Month Day, 20XX] and ending on [Month Day, 20XX], upon the approval and signature of the parties hereto.

4. General Terms and Conditions. This contract is hereby made subject to the terms and conditions included in Attachment A, captioned “General Terms and Conditions”, attached hereto and incorporated herein.

5. Acknowledgements and Special Terms. This contract is hereby made subject to the terms and conditions included in Attachment B, captioned “Federal Procurement Compliance”, and Attachment C, captioned “Acknowledgements and Special Terms”, attached hereto and incorporated herein.

6. Scope of Services. Contractor will perform and complete in a timely and satisfactory manner the services described in Attachment D, captioned “Services and Compensation”, and Attachment E, captioned “Statement of Work”, attached hereto and incorporated herein.

7. Consideration. As consideration for the performance of the services referenced above, MSDH agrees to compensate Contractor as provided in Attachment D and E.

8. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For MSDH: Thomas Dobbs, MD, MPH, State Health Officer
Mississippi State Department of Health
Post Office Box 1700
Jackson, Mississippi 39215-1700

[with Copy to Rebecca Henley, HR Policy and Compliance Director]

For the Contractor: [Name of Authorized Signer], [Title]
[Company Name]
[Mailing Address]
[City], Mississippi [Zip Code]
[Email Address]
[Phone Number]
Any other correspondence concerning this agreement (invoices, technical/programmatic matters, etc.) shall be directed as follows:

For MSDH: [Name of MSDH Employee], [Title]
Mississippi State Department of Health
[Mailing Address]
[City], [State] [Zip Code]
[Email Address]@msdh.ms.gov

9. Entire Agreement. This document and all incorporated attachments constitute the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

___________________________________ By: ________________________________________________
DATE Thomas Dobbs, MD, MPH
State Health Officer
Mississippi State Department of Health

___________________________________ By: [Name of Authorized Signer], [Title]
[Company Name]
DATE
ATTACHMENT A: GENERAL TERMS AND CONDITIONS

1. Assignment and Receipt of Amounts Payable. This section applies only to a Contractor which serves as a clinical or healthcare provider for the Department, as follows:

   a. The Contractor authorizes the Department to accept assignment and receive any amounts payable under Part B of Title XVII and Title XIX of the Social Security Act and/or any monies collected for service rendered by the Contractor under the terms of this contract, including but not limited to private insurance, third-party arrangements, or such other payment or reimbursement mechanisms as may be applicable or available. The Contractor agrees that the Department shall be the payor or financial reimbursement mechanism of last resort when other sources are mandated or are available.

   b. The Contractor agrees that no additional charges will be made to patients/clients to whom services are provided under the terms of this contract.

2. Anti-assignment/subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. 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.

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

4. Approval Clause. 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.

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

6. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified 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.

7. Availability of Funds. It is expressly understood and agreed that the obligation of the Mississippi State
Department of Health (MSDH) 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 MSDH, MSDH shall have the right upon ten (10) working
days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to
MSDH of any kind whatsoever. The effective date of termination shall be as specified in the notice of
termination.

8. Compliance with Laws. Contractor understands that the Mississippi State Department of Health (MSDH)
is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination
based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or
any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful
and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in
its employment practices and provision of services. Contractor shall comply with, and all activities under
this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations,
as now existing and as may be amended or modified.

9. Confidential Information. Confidential Information shall be defined as (1) those materials, documents, data,
and other information which the Contractor has designated in writing as proprietary and confidential; and
(2) all materials, documents, data and information which the Contractor acquires as a result of its contact
with and efforts on behalf of MSDH, and any other information designated in writing as confidential by
MSDH or the State of Mississippi.

Each party to this contract agrees to protect all Confidential Information provided by one party to the
other, to treat all such Confidential Information as confidential to the extent that confidential treatment
is allowed under State and/or Federal law, and, 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 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 Subcontractors shall rest with the Contractor. Disclosure of any confidential
information by the Contractor or its Subcontractors without the express written approval of MSDH shall
result in the immediate termination of this contract.

10. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that
MSDH 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 MSDH pursuant to the agreement and designated by the Contractor in writing as trade secrets
or other proprietary confidential information, MSDH shall follow the provisions of Mississippi Code
Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MSDH shall not be liable to the
Contractor for disclosure of information required by court order or required by law.
11. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and supersedes by Mississippi Code Annotated §§ 25-61-1 et seq.

12. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:

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

   (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer; is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

   (3) is independently developed by the recipient without any reliance on confidential information;

   (4) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,

   (5) is disclosed with the disclosing party’s prior written consent.

13. Disputes. Any dispute concerning a question of fact arising under this Contract shall be disposed of by good faith negotiation between duly authorized representative of MSDH and the Contractor. Disputes that cannot be resolved in this manner shall be determined by a court of competent jurisdiction in Hinds County, Mississippi. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of its obligation in this agreement.

14. E-Payment. 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.

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

a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,

c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

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

17. Failure to Enforce. Failure by MSDH 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 MSDH to enforce any provision at any time in accordance with its terms.

18. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how 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.

19. HIPAA Compliance. 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.

20. Indemnification.

a. If Contractor is another agency or entity of the State of Mississippi, the following shall apply:

  Contractor’s tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 et seq., including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.
b. For all other Contractors, the following shall apply:

To the fullest extent allowed by law, 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 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, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. 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. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.

21. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MSDH, and MSDH shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MSDH shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, MSDH shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

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

23. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

24. Non-Discrimination for HIV/AIDS. As a recipient of Federal funds, directly or indirectly through payments from the Department, the Contractor agrees that no person(s) who are otherwise qualified shall be denied employment, funds, education, or care in the program(s) funded in whole or in part by the Department on account of affliction with Acquired Immune Deficiency Syndrome (AIDS)-related conditions, or on the basis of their infection with the Human Immunodeficiency Virus (HIV). This non-discrimination agreement and policy shall likewise apply to those individuals or groups who may be perceived as having AIDS or the aforementioned AIDS-related conditions, or who are perceived as being infected with HIV.
25. **Ownership of Documents and Work Papers.** MSDH 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 Contractor’s internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to MSDH upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MSDH and subject to any copyright protections.

Additionally, Contractor assures that any and all information regarding clients of MSDH will be kept strictly confidential and will become the property of MSDH. Contractor assures that MSDH shall have full access to all information collected. The Contractor is prohibited from use of the above described information and/or materials without the express written approval of MSDH.

Paper documents and electronic devices and media containing Personally Identifiable Information must be returned or, if approved by MSDH, destroyed in a preapproved manner. Contractor agrees to contact MSDH for further guidance on approved methods on destroying electronic devices and related media.

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

27. **Personally Identifiable Information.** Contractor will not disclose or release any Personally Identifiable Information (PII) to which the Contractor has access except as required to do so to authorized employees and officials within the scope of the Contractor’s duties under this contract. Furthermore, Contractor acknowledges that any unauthorized disclosure of the information provided under this contract may violate Federal and/or State laws and subject the Contractor to penalties.

28. **Procurement Regulations.** The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at [www.dfa.ms.gov](http://www.dfa.ms.gov).

29. **Record Retention and Access to Records.** Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor’s books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. Unless mandated by federal or state law for a longer retention period, all records related to this agreement that contain, or are associated with, protected health information (PHI) shall be retained by Contractor for at least six (6) years after final payment is made under this agreement and all pending matters.
are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the six (6) 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 six (6) year period, whichever is later.

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

31. **Reimbursement.** MSDH agrees to provide reimbursement for the contract period. For contracts that include the use of Federal funds, MSDH agrees to provide reimbursement for the contract period in accordance with the requirements set forth in OMB Circular A-87. Such reimbursement will be made upon receipt of the necessary billing listing salaries, Social Security, retirement, and other items provided in this contract, including copies of payroll requisitions and invoice copies for materials, equipment, or supplies. Any final billings shall be submitted to MSDH no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated timeframe for this contract may be grounds for MSDH to reject such reimbursements. It is agreed by both parties that the following items will be made only when approved by both parties:

   a. Reimbursement in excess of the amount budgeted for any item; or
   b. Reimbursement of items not included in the budget; or
   c. The transfer of monies between items within the budget.

It is agreed by both parties that no reimbursement will be made by MSDH until this contract has been signed by the appropriate personnel of both parties and until a budget for expenditures pursuant to the contract has been approved by MSDH.

32. **Requirements Contract.** During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that MSDH shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of MSDH for the period of the contract. The amount is only an estimate and Contractor understands and agrees that MSDH is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that MSDH may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

33. **Right to Audit.** Contractor shall maintain such financial records and other records as may be prescribed by MSDH or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by MSDH, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor’s Office, its designees, or other authorized bodies. Unless mandated by federal or state law for a longer retention period, Contractor
shall retain these records for a period of six (6) years after final payment if such records contain, or are associated with, PHI. These records shall be made available during the term of the contract and the subsequent six (6) year period for examination, transcription, and audit by the Mississippi State Auditor’s Office, its designees, or other authorized bodies.

34. **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.

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

36. **Stop Work Order.**

a. **Order to Stop Work:** The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, 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, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

   i. the stop work order results in an increase in the time required for, or in Contractor’s cost properly allocable to, the performance of any part of this contract; and,
   ii. 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.
d. Adjustments of Price: If permissible, any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

37. Termination for Convenience.

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

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

38. Termination for Default.

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

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

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

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

e. **Erroneous Termination for Default.** If, after notice of termination of Contractor’s right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of 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.

39. **Termination upon Bankruptcy.** This contract may be terminated in whole or in part by the Mississippi State Department of Health upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

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

41. **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.

42. **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 Department of Finance and Administration’s independent agency contract website for public access at [http://www.transparency.mississippi.gov](http://www.transparency.mississippi.gov).
Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

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

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

As this contract may be eligible for reimbursement from the Federal Emergency Management Agency, the following clauses are applicable where MSDH will seek reimbursement for funds spent carrying out the purpose of this agreement.

ACCESS. SDH, the subgrantees (counties and communities), FEMA, the Comptroller General of the United States, and any other duly authorized representatives to any of these bodies shall have access to any and all books, documents, papers, and records of the Contractor which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

BYRD ANTI-LOBBYING AMENDMENT. Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contract shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Contractor shall require all subcontractors to submit these same certifications. Contractor shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

CLEAN AIR AND WATER ACTS COMPLIANCE.
1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2) The Contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

ENERGY EFFICIENCY. Contractor shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

PROCUREMENT OF RECOVERED MATERIALS.
1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
   (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
   (ii) Meeting contract performance requirements; or
   (iii) At a reasonable price.
2) Information about this requirement, along with the list of EPA designate items, is available at EPA's Comprehensive Procurement Guidelines website, https://www.epa.gov/smm/comprehensiveprocurementguideline-cpg-program.
SUSPENSION AND DEBARMEMENT.

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. 180.995), or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. 180.935).

2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by MSDH. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to MSDH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

RETENTION OF RECORDS. Contractor shall retain all records associated with this contract for three (3) years after MSDH or the subgrantees (the counties and communities) make final payments and all other pending matters are closed.

DHS SEAL, LOGO, AND FLAGS. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. This is an acknowledgement that FEMA financial assistance will be used to fund the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

   2) Violation: Liability For Unpaid Wages and Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of
the clause set forth in paragraph (l) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (l) of this section.

3) Withholding for unpaid wages and liquidated damages. The Mississippi State Department of Health shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and, also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**COMPLIANCE WITH THE DAVIS-BACON ACT.**

1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

3) Additionally, contractors are required to pay wages not less than once a week.
The following acknowledgements and conditions shall be made a part of this agreement:

**CONFLICT OF INTEREST.** To the best of his or her knowledge, Contractor certifies that no MSDH employee, or spouse, parent or child of an MSDH employee, serves as a member of its governing body, project staff or has an ownership or pecuniary interest in the Contractor. Contractor agrees that should this condition change during the period of this contract, Contractor shall notify MSDH within 30 days. Notification should be sent by certified mail to the following:

Mississippi State Department of Health  
Attention: MSDH Legal Department  
Post Office Box 1700  
Jackson, Mississippi 39215-1700

Furthermore, Contractor represents, to the best of his or her knowledge and belief, that this contract does not present the Contractor with a conflict of interest with respect to any past, current, or potential contract or employment such that the Contractor would be unable to perform impartially and without bias.

**DEBARMENT AND SUSPENSION.** Contractor certifies to the best of its knowledge and belief, that it:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
2. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
3. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
5. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

**COVID-19 PANDEMIC PROCUREMENT.** Contractor recognizes and acknowledges that State is entering into this Agreement during the COVID-19 pandemic crisis. Contractor further acknowledges that during this crisis the
State must necessarily move with deliberate haste in order to protect the public health and welfare. Contractor acknowledges that State may be at a disadvantage in negotiating terms and conditions with Contractor. Therefore, Contractor acknowledges that State is entering into this Agreement only to the extent authorized by Mississippi law, including opinions of the Mississippi Attorney General. Any provision of the Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid and unenforceable.
SCOPE OF SERVICES

In fulfillment of the purposes of this Agreement, the Contractor shall provide MSDH with COVID-19 Specimen Collection and Rapid Testing services in accordance with the requirements set forth in RFP No. [########## or “…set forth in the Invitation for Bids issued by the Mississippi Department of Health on June 25, 2021”]. As detailed below and further described in Attachment E, services shall include, but not be limited to, the following:

COMPENSATION

In furtherance of the performance of the services referenced above, MSDH agrees to compensate the Contractor at the rates and amounts submitted in response to RFP No. [########## or “…set forth in the Emergency Request for Proposal issued by the Mississippi Department of Health on June 25, 2021”]. Rates and purchases under this Agreement shall be subject to any limitations contained in Attachment E. Contractor agrees to ensure the funds subject to this Agreement are used in accordance with applicable conditions, requirements and restrictions of federal, state and local laws. It is expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the specified amount of XXXXX Dollars and XXXX Cents ($XX,XXX.XX).

The Contractor shall invoice MSDH monthly as needed. The final invoice to MSDH shall be sent within thirty (30) days after the Agreement ending date. The invoice should have appropriate documentation substantiating actual expenses. MSDH will pay all invoices within forty-five (45) days following the approval of the same. All invoices should be submitted to the following:

[Name], [Title]
Mississippi State Department of Health
[Post Office Box XXXX]
[City], Mississippi [Zip Code]
[email@MSDH.ms.gov]

It is expressly understood and agreed that, while the amount noted above is based on an estimated budget and may be subject to change, in no event will the total compensation to be paid hereunder exceed the specified amount of $XX,XXX.XX.
ATTACHMENT E: STATEMENT OF WORK

Contractor’s services shall be in accordance with the attached documentation submitted to MSDH as a proposal or quote in response to RFP No. [########### or “…to the Emergency Request for Proposals issued by the Mississippi Department of Health on June 25, 2021”]. A reasonable allowance for contingencies shall be included for market conditions at the time of the written quote and for unanticipated changes required in the work of this project.

[Attach a copy of Contractor’s RFP Proposal.]

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