



INVITATION FOR BID

IFB RfX Number: 3160005690

Emergency Standby Services for Bottled Water

Issued: March 6, 2023

CLOSING TIME AND DATE

Bids must be received by:

1:00 PM CST, April 26, 2023

CLOSING LOCATION

Mississippi Emergency Management Agency

#1 MEMA Drive

Pearl, Mississippi 39208

BID COORDINATOR

Sallie Sones, Contract Officer

Telephone: (601) 933-6381

E-mail: ssones@mema.ms.gov

SECTION 1

1.1 Purpose

The Mississippi Emergency Management Agency (hereinafter MEMA) is seeking an emergency standby contract for bottled water that is provided by the vendor as requested. Additional information may be obtained by written request to Sallie Sones, MEMA, #1 MEMA Drive, Pearl, MS 39208 or by email to ssones@mema.ms.gov.

1.1.1 Timeline

Invitation to Bid (IFB) Issue Date:	March 6, 2023
Questions to MEMA Deadline:	March 27, 2023, 1:00 PM CST
Questions and Answers Posted to Website:	April 3, 2023, 1:00 PM CST
Bid Package Opening:	April 26, 2023, 1 PM CST
Notice of Intent to Award:	April 27, 2023, 10:00 AM CST
Post-Award Debriefing Request Date:	May 2, 2023, 1:00 PM CST
Protest Deadline Date:	May 8, 2023, 1:00 PM CST

1.2 Read, Review and Comply

It is the offeror's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, that are stated throughout this Invitation for Bid solicitation.

1.3 Expenses Incurred in Preparing Bid

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

1.4 Bid Form

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

Failure to submit a bid on the bid form provided will be considered cause for rejection of the bid. **Modifications or additions to any portion of the bid document may be cause for rejection of the bid.** The agency reserves the right to decide on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive.

1.5 Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made from the submission.

1.6 Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State. **Please make sure that your company's status with the Secretary of State's Office is current**

and up to date before submitting a bid proposal. To check your company's status, please go to <https://www.sos.ms.gov/business-services-regulation>.

1.7 Debarment

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

1.8 Additional Information

Questions about the contract portions and or technical portions of the procurement document must be submitted in writing to Sallie Sones at #1 MEMA Drive, Pearl, MS 39208 or ssones@memas.gov. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document will not be relied upon unless subsequently ratified by a formal written amendment to the bid document. All questions and requests for clarifications must be submitted by the deadline specified in Section 1.1.1 and made in writing. The person submitting the question or request for clarification is responsible for its timely delivery. All questions, request for clarifications and answers received by the deadline will be published as an amendment on the Mississippi contract/procurement opportunity search portal and on the agency website (<http://www.msema.org>) in a manner that all will be able to view by the deadline specified in Section 1.1.1.

1.9 Acknowledgement of Amendments

Bidders must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid by identifying the amendment number and date in the space provided for this purpose of the bid form, or by letter. The acknowledgement must be received by MEMA by the time and at the place specified for receipt of bids as noted in Section 1.1 and Section 1.1.1.

1.10 Compensation for Services

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

1.11 Written Bids

All bids must be in writing.

SECTION 2

2.1 Detailed Minimum Specifications

Any contract awarded from this procurement will be a standby contract for bottled water that MEMA may activate as necessary. The focus of this contract is to ensure that MEMA can supply bottled water as needed in the wake of a natural or manmade disaster. The detailed minimum specifications are as follows:

I. **Bottled Water Specifications**

- A. **Packaging.** Bottled water will be at least 16.9 fluid ounces, but no larger than 20 fluid ounces in 24 (twenty-four) count cases stacked 70 (seventy) to 84 (eighty-four) cases per pallet. Pallets must be designed for pick-up from all four sides. Each pallet is to be doubled wrapped. MEMA will order bottled water in multiples of standard industry truckloads, approximately 18,000 (eighteen thousand) liters per truck.
- B. **Product Best if Used Date.** Upon issuance of a purchase order, the best if used dates will have no less than 24 (twenty-four) months of shelf life.
- C. **Product Standards.** All water must be produced, packaged, labeled, transported, stored, and handled in accordance with Title 21, CFR, Parts 101, 110, 129 and 165 and all other applicable federal, state, and local laws and regulations. Any possible without jeopardizing timely deliveries of quantities of bottled water ordered.
- D. **Primary Container.** The water must be packaged in single-service polyethylene terephthalate (PET) bottles with flat caps. Bottles may be any size from 16.9 ounces to 20 ounces (16.9 ounces preferred), at the contractor's discretion. The contractor will make every effort to standardize to 16.9-ounce bottles as soon as possible without jeopardizing timely deliveries of quantities of bottled water ordered.
- E. **Documentation of Bottled Water Deliveries.** The contractor must assure that every water order is properly presented to MEMA and that MEMA acknowledgement of every delivery is obtained. The contractor will be responsible for assuring that every delivery has all required documentation. Delivery will be considered made when the contractor has obtained acknowledgement of the date and time of the arrival at the delivery site by the onsite MEMA representative.
- F. **FDA Hold Notification.** If the contractor or its subcontractors receive notification from the United States Food and Drug Administration (FDA) that a shipment of bottled water has not been released for distribution, MEMA must be notified immediately. MEMA will not be liable for any expenses or losses incurred by the contractor due to such notifications. Before MEMA will accept such a shipment of bottled water, it will be the responsibility of the contractor to provide and forward a copy of the release notification from the FDA to MEMA.
- G. **Product Certification Documentation.** The contractor must obtain weekly bacteriological analysis of source water and product samples as well as the date of production and the date of expiration of the bottled water supplied under this contract. The contractor must maintain these

records until completion and acceptance by MEMA of all bottled water deliveries. The Contract Officer or Logistics personnel may request the contractor to provide copies of this data, at any time during the performance of the purchase order, from any or all the subcontractors providing bottled water under this contract. When requested, the contractor must provide this data within six (6) hours of such request by facsimile, email, or other means, unless the Contract Officer or logistics personnel authorizes a different time period.

II. Water Certification and Testing Results. The contractor must maintain an inspection system that ensures the quality of bottled water, to be provided under this contract, is suitable for consumption. This requirement must be satisfied by the contractor obtaining copies of applicable certificates, licenses, notifications, permits, appraisals, and inspection reports; annual chemical, physical and radiological analysis of source water; and results of any other testing of source water and bottled water from each bottled water producer from which bottled water is to be purchased under this contract. When requested, the contractor must provide this data within twelve (12) hours of such request by facsimile, email, or other means, unless MEMA authorizes a different time period.

III. Universal Specifications

A. Returns Policy/Remaining Balances. For water ordered, but not used and still in unbroken pallets, and contractor sealed containers, the contractor will accept returned inventory and reimburse or accept a short-paid invoice at the billed rate. MEMA will pay return shipping charges and a restocking fee not to exceed 5% of the billed rate.

B. Product Standards. As applicable, the water will be produced, packaged, labeled, and transported in accordance with Title 21, Code of Federal Regulations, Parts 101, 110, 129 and 165, and water must meet or exceed all other federal, state, and local laws and regulations.

C. Packaging of Shipping Pallets. Bottled water must be packed in cases. Bottled water must be shipped on pallets with pallets fully covered on the top and all four sides with a minimum of a triple layer of shrink wrap all the way down. Pallets must be designed for pickup from all four sides. Due to the many unknown circumstances which can arise during disaster response and recovery, it is possible that the water may be moved several times, may be in all types of weather as well as stored in warehouses. The contractor must ensure that the bottled water containers are packaged to withstand such handling as well as severe climatic conditions. **MEMA will not be responsible for return of pallets.** Unclaimed pallets may be disposed of at MEMA's discretion.

D. Delivery Information That Shall Be Utilized.

- State of Mississippi contract number
- Purchase order number
- Contractor's name
- Itemized list of supplies and quantities
- Names of shipment origination facility (i.e., bottling plant, warehouse, etc.)
- Name of the transportation carrier
- Total quantity of liters (water) per truck per delivery

MEMA reserves the right to utilize a separate contract for transportation of commodities that has been procured separately when MEMA deems necessary.

SECTION 3

3.1 Term

The term of the contract will be for a period of one (1) year. Upon written agreement of both parties, at least sixty (60) days prior to each contract anniversary date, the contract may be renewed by MEMA for a period of four (4) successive one-year period(s) under the same prices, terms, and conditions as in the original contract subject to approval by the Public Procurement Review Board (PPRB) and/or Office of Personal Service Contract Review (OPSCR).

3.2 Multi-Year Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods will be subject to the availability and appropriation of funds.

SECTION 4

4.1 Insurance

The successful vendor must maintain at least the minimum level of workers' compensation insurance, comprehensive general liability, or professional liability insurance with minimum limits of \$1,000,000.00 per occurrence. All workers' compensation, comprehensive general liability, or professional liability will provide coverage to MEMA as an additional insured. MEMA reserves the right to request from carriers, Certificate of Insurance (COI) regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor must be prepared to provide evidence of required insurance upon request by MEMA at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 5

5.1 Bid Submission

The original and two (2) copies, and one (1) redacted copy of the bid form and proposal, four (4) copies total, must be signed and received by the agency no later than 1:00 PM CST, April 26, 2023. The redacted bid proposal submission will be retained in the files of the Contract Officer for Public Records requests pertaining to this RFX. Bids submitted via facsimile (fax) machine **will not** be accepted. It is suggested that if a bid is mailed to the agency, it should be posted in certified mail with a return receipt requested. The agency 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 vendor. All vendors are urged to take the possibility of delay into account when submitting a bid.

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

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

5.2 Bid Submission Format

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

- Attachment A – Bid Cover Sheet
- Attachment B – Bid Form
- Attachment C – Offeror Execution Page
- Attachment D – References

Please include a cost for freight separately from the cost of the bottled water.

Please make sure all signatures are present on required forms and all the company information is current and correct.

Attachments E, F, and G do not have to be submitted with the IFB submission.

5.3 Bid Opening

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

5.4 Bid Evaluation

Bids will be evaluated based on the requirements set forth in RFX 3160005690. All bids which are determined to be responsive, responsible, and/or acceptable will continue on to the price bid or cost evaluation. The lowest cost bid will receive the maximum 100 points allocated to cost. The point allocations for cost on the other bids will be evaluated according to the following formula: Price of the lowest responsive and responsible bid divided by the price of the responsive and responsible bid being rated times the maximum 100 points allocated for cost equal the awarded points.

As a precondition to bid acceptance, the agency may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

5.5 Responsive Bidder

Bidder must submit a bid which conforms in all material respects to this Invitation for Bids RFX 3160005690 as determined by MEMA.

5.6 Responsible Bidder

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

5.7 Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document are subject to rejection as nonresponsive. MEMA reserves the right to permit the bidder to withdraw nonconforming terms and condition from its bid response prior to a determination by MEMA of nonresponsive based on the submission of nonconforming terms and conditions.

5.8 Conditioning Bid Upon Other Awards

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract will be deemed nonresponsive and not acceptable.

5.9 Bidder Information Exemption

Any bidder claiming that its response contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. §§ 25-61-1 *et seq.* and 79-23-1), must segregate and mark the information as confidential and provide the specific statutory authority for the exemption.

5.10 References

Due to past instances in trying to reach out to references provided by the bidder, each bidder must furnish a listing of at least five (5) bidder/contractor references along with the contact person, address, phone number, and email address for each. These references

must be familiar with the bidder's abilities in the areas involved with this solicitation. MEMA will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contract information is correct and current. **Please make sure that you have verified each reference before submitting your bid and the contact person and phone number are correct for each reference. If all the references cannot be reached for questioning, MEMA does have the right to declare the bidder non-responsive.** MEMA will begin contacting references at the top of the list and will continue down the list until three (3) contacts have been reached. (References must be listed on **Attachment C**)

5.10 Method of Award

All qualified bids will be evaluated, and awards will be made based on the qualified bids offering the lowest price that meet the requirements set out herein.

5.11 Notifications

All participating vendors will be notified of the intent via e-mail to award a contract. Bidders will be notified via e-mail of the awards. Additionally, a letter will be sent to all bidders. In addition, MEMA will identify the selected vendor. Notice of award is also made available to the public through the Mississippi Contract/Procurement Opportunity Search Portal and the agency website <http://www.msema.org>.

5.12 Contract Management

If the contractor fails to adhere to the transportation services contract or if the contractor fails to satisfactorily provide the prescribed service to all or any service area, the contracting agency will inform the contractor and the contractor must complete corrective action within twenty-four (24) hours. No payment will be made to the contractor until all deficiencies have been corrected. If the contractor exhibits a pattern of nonperformance as shown by repeated deficiencies, the contracting agency may terminate the contract without further obligation to the contractor.

SECTION 6

6.1 Post-Award Vendor Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. Mail or electronic submission. The written request must be received by the Executive Director of MEMA 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 typically occurs within five (5) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Executive Director of MEMA in writing and identify its attorney by name, address, and telephone number. MEMA will schedule and/or suspend and reschedule the meeting at a time when a representative of the office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information

that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-award Vendor Debriefing, of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

6.2 Protest of Award

Any actual or prospective bidder or contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the Contract officer, Sallie Sones. The protest must be submitted on or before May 8, 2023, 1:00 PM CST, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder 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 must contain an explanation of the specific basis for the protest. **A protest is considered filed when received by the contract officer, Sallie Sones, via either U.S. Mail, postage prepaid or personal delivery. Protest filed after May 8, 2023, 1:00 PM CST will not be considered.**

6.3 Required Contract Terms and Conditions

Any contract entered into between a contracting agency and a vendor/bidder must include the required federal clauses and the state required by the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* found in **Attachment G**.

6.4 Optional Contract Terms and Conditions

Any contract entered into between a contracting agency and a vendor/bidder may have, at the discretion of the contracting agency, the optional state clauses found in **Attachment H** and those within the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

6.5 Mississippi Contract/Procurement Opportunity Search Portal

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

6.6 Attachments

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

ATTACHMENT A
BID COVER SHEET

Bids are to be submitted as listed below, on or before 1:00 PM CST, April 26, 2023.

PLEASE MARK YOUR ENVELOPE:

IFB for Emergency Standby Bottled Water
IFB RFX Number 3160005690
Opening Date: 1:00 PM CST, April 26, 2023
Mississippi Emergency Management Agency
Attention: Sallie Sones, Contract Officer
#1 MEMA Drive
Pearl, Mississippi 39208
SEALED BID – DO NOT OPEN

Name of Company: _____

Quoted by: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

**Name, phone number, and email address of Company Representative to be contacted by
Agencies seeking to contract for services pursuant to this IFB:**

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

What year was your company started? _____

How many years has the firm been in business of performing the services called for in this IFB?

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

If your company is not physically located within the vicinity, how will you supply bottled water to the agency? _____

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. _____

Is your company licensed and/or certified to provide bottled water as required by any and all applicable Federal and State law(s)? _____

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

For how many customers has your company delivered and provided bottled water in the past two years? _____

What is the largest customer your company has delivered and provided bottled water for in the past two years? _____

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

ATTACHMENT B

BID FORM TO PROVIDE BOTTLED WATER

Company	Contact Person	Telephone Number

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

1. All required equipment and materials.
2. All required insurance.
3. All required overhead.
4. All required profit.
5. All required transportation.
6. All required labor.
7. All required business and professional certifications, licenses, permits, or fees; and,
8. Any and all other costs associated with performing the services.

All pricing must include ALL associated costs for the items with no additional or hidden fees.

Unit Description	Unit Price

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

1. That he/she has thoroughly read and understands the Invitation for Bids and Attachments thereto.
2. That the company meets all requirements and acknowledges all certifications contained in the Invitation for Bids and Attachments thereto.
3. That the company agrees to all provisions of the Invitation for Bids and Attachments thereto.

4. That the company will perform, without delay, the services required at the prices quoted above.
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
6. The company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.
7. **NON-DEBARMENT:** By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.
8. **INDEPENDENT PRICE DETERMINATION:** The bidder certifies that the price submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to these prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid/offered.
9. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES:** The prospective contractor represents as a part of such Contractor's bid that such Contractor **has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
10. **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 other contingent fee, except as disclosed in the Contractor's bid.
11. **REPRESENTATION REGARDING GRATUITIES:** Contractor represents that is 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 PPRB OPSCR Rules and Regulations.

Company Name: _____

Printed Name of Representative: _____

Date: _____

Signature: _____

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

ATTACHMENT C

**STAND-BY CONTRACT FOR BOTTLED WATER
RFx 3160005690 INVITATION FOR BIDS
OFFEROR EXECUTION PAGE**

Certification of Independent Price Determination – The offeror certifies that the prices submitted in response to the RFx , have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices in the bid.

Offeror acknowledges the following contact information as true and correct. If at any time during the term of this contract this information changes, offeror will immediately notify the MEMA Contracts Officer.

Company: _____

Contact: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Offeror agrees to supply the products or services at the prices specified on the bid form in accordance with the terms, conditions and specifications contained in the Invitation for Bids Specifications and General Conditions.

Offeror Signature: _____

ATTACHMENT D

REFERENCES

The bidder may submit as many references as desired by submitting as many additional copies of this attachment as needed. MEMA will begin contacting references at the top of the list and will continue down the list until all 3 contacts have been reached. See Section 5.10 of this Invitation to Bid.

REFERENCE 1

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
E-mail: _____

REFERENCE 2

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
E-mail: _____

REFERENCE 3

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
E-mail: _____

REFERENCE 4

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

E-mail: _____

REFERENCE 5

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

E-mail: _____

ATTACHMENT E

REFERENCES SCORE SHEET

**IFB 3160005690
IFB to Provide Bottled Water**

TO BE COMPLETED BY AGENCY STAFF ONLY

Company Name: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Service From/To Dates: _____

Able to provide bottled water when you called?	Yes	No
Satisfied with the services to provide bottled water? If no, please explain.	Yes	No
Vendor easy to work with in scheduling delivery of bottled water?	Yes	No
Was the delivery of bottled water completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is 5 points; each “no” is 0 points. Bidder must have a minimum score of 30 from 35 references (total of 30 points) to be considered responsible and for its bid to be considered.

Score: _____

Do you have any business, professional or personal interest in the vendor’s organization? If yes, please explain.	Yes	No
---	-----	----

Called by: _____

Notes: _____

ATTACHMENT F

REQUIRED CLAUSES FOR SERVICE CONTRACTS RESULTING FROM THIS INVITATION FOR BIDS

1. Applicable Law: The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds: It is expressly understood and agreed that the obligation of the Agency 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 Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws: Contractor understands that the State of Mississippi 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.
4. 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.*
5. 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.

6. 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.
7. Procurement Regulations: The contract shall be governed by the applicable provisions of the *PPRB OPSCR 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>.
8. 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.
9. 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 *PPRB OPSCR Rules and Regulations*.
10. 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. *Adjustment of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

11. 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.

12. 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 (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to 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.

13. Termination Upon Bankruptcy: This contract may be terminated in whole or in part by Agency 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.
14. 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.
15. Transparency: This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
16. 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.

**REQUIRED FEDERAL PROCUREMENT CLAUSES AS THIS CONTRACT IS
ELIGIBLE FOR REIMBURSEMENT FROM THE FEDERAL EMERGENCY
MANAGEMENT AGENCY**

Access

MEMA, 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, excerpt and transcriptions.

Byrd Anti-Lobbying Amendment

The 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. The contract shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. The contractor shall require all subcontractors to submit these same certifications. The 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 MEMA and understands and agrees that MEMA will, in turn, report each violation as required to assure notification to the State of Mississippi, Federal Emergency Management Agency (FEMA), 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 by FEMA.

Energy Efficiency

The 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 rate.
- (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/comprehensiveprocurement-guideline-cpg-program>.

Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 F.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 MEMA. 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 MEMA, 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

The contractor shall retain all records associated with this contract for three (3) years after MEMA or the subgrantees (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. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Davis-Bacon Act

The contractor shall comply the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) in so far as it may apply to this 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 (40) 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 (40) hours in such workweek.
- (2) **Violation: Liability for Unpaid Wages; 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 therefore 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 (1) 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 (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for Unpaid Wages and Liquidated Damages.** The Mississippi Emergency Management Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor 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.

ATTACHMENT G

OPTIONAL CLAUSES FOR USE IN SERVICE CONTRACTS RESULTING FROM THIS INVITATION FOR BIDS

1. 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.
2. Approval: It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorney's Fees and Expenses: Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
4. 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.
5. Information Designated by Contractor as Confidential: Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of The Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential

information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

6. Confidentiality: Notwithstanding any provision to the contrary contained herein, it is recognized that Agency 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 Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.
7. 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 Contractor. If the Agency reasonably rejects staff or subcontractors, 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 Contractor's employees and subcontractors is the sole responsibility of Contractor.
8. Debarment and Suspension: 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 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.
 - c. 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.
 - 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 proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.
9. 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 superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. 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:
 - a. is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements.
 - b. is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer.
 - c. is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction.
 - d. is independently developed by the recipient without any reliance on confidential information.
 - e. is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
 - f. is disclosed with the disclosing party’s prior written consent.

11. Errors in Extension: If the unit price and the extension price are at variance, the unit price shall prevail.

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

13. 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.

14. Final Payment: Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to 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 Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State’s claims against Contractor under this contract.

15. 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.

16. 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.
17. Indemnification: 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 upon approval of the Office of the Mississippi Attorney General, 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 Office of the Mississippi Attorney General. 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 concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.
18. 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 the agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency 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, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.
19. Integrated Agreement/Merger: This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether written or oral. This

agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

20. Modification or Regeneration: 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. Contract modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PSCRB pursuant to Section 7-111 (Modifications) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*. Modifications shall not grant extra compensation, fee or allowance to any Contractor after service is rendered or contract is made, unless contemplate within the contract itself or unless the scope of services is increased.
21. 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.
22. 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 the Agency:	For Contractor:
Sallie Sones, Contract Officer	Name, Title
MS Emergency Management Agency	Contractor Name
#1 MEMA Drive	Address
Pearl, MS 39208	City, State, Zip

23. Non-solicitation of Employees: Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
24. 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 Agency and agreed to by Contractor.
25. Ownership of Documents and Work Papers: Agency 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 Agency 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 Agency and subject to any copyright protections.

26. Priority: The contract consists of this agreement with exhibits, the IFB 3160005690 (hereinafter referred to as "IFB" and included Attachment A), and the bid dated April 26, 2023, by **Contractor Name** (hereinafter referred to as "Bid" and included Attachments A, B, C and D). Any ambiguities, conflicts, or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the Bid. Omission of any term or obligation from this agreement or included Attachments A - D shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
27. Quality Control: Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
28. 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.
29. Recovery of Money: Whenever, under the contract, any sum of money shall be recoverable from or payable by 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 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 Contractor.
30. Right to Audit: 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. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, 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.

31. 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.
32. 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.
33. 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.
34. 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.
35. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by 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, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event 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 Contractor.
36. 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.
37. 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 the Agency 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 the

Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency 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 the Agency 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.