

**INVITATION FOR BID**  
IFB RFx Number: 3160007081  
Perimeter Fence Construction  
Issued: January 8, 2025



**CLOSING TIME AND DATE**

Bids must be received by:  
February 25, 2025, 1:00 PM CST

**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](mailto:ssones@mema.ms.gov)

## SECTION 1

### 1.1 Purpose

The Mississippi Emergency Management Agency (hereinafter “MEMA”) has issued this solicitation for the purpose of soliciting sealed bids from qualified providers to construct a perimeter fence at the State Emergency Logistics Operations Center (“SELOC”) in Byram, Mississippi. The Contractor will perform all tasks and make all assurances outlined in Section 4 of this IFB entitled Scope of Work.

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](mailto:ssones@mema.ms.gov).

## SECTION 2

### 2.1 Timeline

<b>Invitation to Bid (IFB) Issue Date:</b>	<b>January 8, 2025</b>
<b>Solicitation Questions Due:</b>	<b>February 3, 2025, 3:00 PM CST</b>
<b>Mandatory Site Visit</b>	<b>February 4, 2025, 1:00 PM CST</b>
<b>MEMA Publish Q&amp;A Deadline:</b>	<b>February 7, 2025, 11:00 AM CST</b>
<b>Bid Package Opening:</b>	<b>February 25, 2025, 1:00 PM CST</b>
<b>Notice of Intent to Award:</b>	<b>February 28, 2025, 10:00 AM CST</b>
<b>Post-Award Debriefing Request Date:</b>	<b>March 5, 2025, 1:00 PM CST</b>

## SECTION 3

### Contact and Questions/Requests for Clarification

**3.1** Bidding vendors must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. Following review, vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the questions and requests for clarifications, vendors shall submit any such question via email by the deadline reflected in Section 2. All questions and requests for clarifications must be directed by email to:

Sallie Sones, Contracts Officer  
E-mail: [ssones@mema.ms.gov](mailto:ssones@mema.ms.gov)

**3.2** Vendors should enter “IFB RFx Number 3160007081 - Questions” as the subject of the email. Question submittals should include a reference to the applicable IFB section and be submitted in the format shown below:

	<b>IFB Section, Page Number</b>	<b>Vendor Question/Request for Clarification</b>
1.		

- 3.3** Official responses will be provided only for questions submitted as described above and only to clarify information already included in the IFB. The identity of the organization submitting the question(s) will not be revealed. All questions and answers will be published on the Mississippi Contract/Procurement Opportunity Search Portal website and MEMA's website as an amendment to the IFB by the date and time reflected in Section 2.
- 3.4** MEMA will not be bound by any verbal or written information that is not contained within this IFB unless formally noticed and issued by the contact person as an IFB amendment. Vendors are cautioned that any statements made by MEMA personnel that materially change any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.
- 3.5** All vendor communications regarding this IFB must be directed to the Bid Coordinator. Unauthorized contact regarding the IFB with other MEMA employees may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the State.
- 3.6 Mandatory Site Visit:** A mandatory site visit will be held at 1:00 PM CST on February 4, 2025, at the address provided in section 4.1 of this IFB. All interested parties are required to attend. The purpose of the site visit is to allow potential bidding vendors to perform their required measurements for the fence during this site visit. Because MEMA considers the visit to be critical to understanding the scope of work, attendance is mandatory in order for a vendor to qualify as a bidder. Late arrivals may not be allowed to perform their measurements, and their bid may be considered unresponsive.

Should the date and time of the mandatory site visit have to be changed due to an activation of MEMA or Force Majeure, an amendment will be made to this IFB in the same manner as all other amendments.

- 3.7 Acknowledgement of Amendments:** Should an amendment to the IFB be issued, it will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and MEMA's website in a manner that all bidders will be able to view. Further, bidders must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid package, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment should be received by MEMA by the time, date, and at the place specified for receipt of bids. It is the bidder's sole responsibility to monitor the websites for any updates or amendments to the IFB.
- 3.8** Bidder must provide a signed Acknowledgment(s) of IFB Amendment(s), Questions and Answer document(s), and/or Summary of Site Visit if any were issued/posted on the Mississippi Contract/Procurement Opportunity Search Portal website and MEMA's website.

**3.9** The IFB is comprised of the base IFB document, any attachments, any amendments issued prior to the submission deadline, and any other documents released before the contract award.

## **SECTION 4**

### **Scope of Work**

The winning vendor (“contractor”) shall provide in a timely and satisfactory manner all services and otherwise do all things necessary for or incidental to the performance of work as set forth below:

#### **4.1 Deliverables**

##### **4.1.1 Detailed Minimum Specifications**

Install 650 (+/-) linear feet of 6-foot height iron fence equivalent to Centurion Spartan Ornamental Iron Fence shown in Attachment A. The commercial ornamental iron fence across the front of the property connects to the Duro-last fence as well as the SELOC warehouse corner. Included will be (2) 28-foot cantilever slide gates or equivalent, (1) 30-foot cantilever slide gate, and (1) 3-foot personnel gate. Install (2) gate automation as follows: equivalent to a MAX 2200 Slide operator with mount fire Box, (2) photo eyes for safety (opening and rear of gate), saw cut loops, and detectors (safety and free exit).

Access Control and power will not be part of the project.

The site for this project is the SELOC located at 1055 Mendell Davis Drive, Byram, MS. The location is on State property and all restrictions and regulations related to state property are applicable.

#### **4.2 Operational Requirements**

**4.2.1 Contractor Liability for Personal Injury and/or Property Damage.** The contractor assumes responsibility for all damage or injury to person(s) or property associated with the use, maintenance, and operation of the contractor’s vehicles and other equipment, the actions of the contractor, and the contractor’s employees and agents. MEMA shall in no event be liable or responsible for damage or injury to any person(s) or property associated with the use, maintenance, or operation of any vehicle or other equipment, MEMA shall further never be liable or responsible for the actions of the contractor or the contractor’s employees and agents in performing under this contract. The State of Mississippi shall be indemnified and saved harmless against claims for damage or injury in such cases.

**4.2.2 Safety.** The contractor shall comply with all federal, state, and local authorities having jurisdiction and with safety and fire regulations promulgated by the Department of Labor (OSHA) under Title 29, Section 1910 of the Code of Federal Regulations. The

contractor is solely responsible for compliance and cost of compliance with federal, state, and local laws and regulations pertaining to environmental protection, occupational health, and safety, transportation, storage, and disposal of hazardous materials and waste.

In the event the contractor violates Environmental Protection Agency (EPA) or Occupational Safety and Health Administration (OSHA) regulations, the contractor shall be held responsible and shall hold the State of Mississippi harmless from any and all administrative and financial involvement. The contractor shall perform and is responsible for all necessary cleanup and treatment costs.

**4.2.3 Permits and Licenses.** The contractor shall determine specific permitting and license requirements where the contract work is to be performed and provide for the effects, if any, that these requirements may have on the offer or contract performance. Failure of the contractor to ascertain these requirements beforehand will not excuse noncompliance nor will it be the basis for modifying the contract after award to compensate for adherence requirements.

**4.2.4 Quality Assurance:** MEMA's Chief Logistics Officer, or his designated assignee, will monitor the project's progress and ensure that the contractor is meeting all of its obligations under this contract.

**4.3 In addition to the duties and deliverables specified within Section 4.2, Contractor shall make the following assurances and adhere to the following regulations:**

**4.3.1** Assign a Contractor Account Representative to work directly with the MEMA Representative.

**4.3.2** Ensure all Contractor personnel are well-groomed and in uniform or have visible identification at all times. Uniforms and/or dress code shall be inclusive of, but not limited to, neat and clean company uniforms with visible company logo appropriately and easily identifiable. Contractor identification badges as well as personal identification of the individual employee shall be worn and clearly visible while on state property. Contractor personnel may be required to provide photographic identification for inspection upon entering state facilities.

**4.3.3** All state facilities are non-smoking; the contractor and its personnel must adhere to this requirement. The use of tobacco products, including vaping, is prohibited, except within designated smoking areas.

**4.3.4** It is illegal to have in one's possession or be under the influence of any illegal drug or alcoholic beverage while on state property.

- 4.3.5** The contractor's employees should refrain from using foul, abusive, or profane language on state property.
- 4.3.6** MEMA reserves the right to inspect and search all Contractor personnel and/or vehicles at any time while on facility grounds.
- 4.3.7** The contractor shall be responsible for all damages and shall be held responsible for replacing or repairing any damage due to negligence on the part of the Contractor or Contractor personnel to any person(s) and/or property. The Contractor shall replace and repair any damage to any building or property, including but not limited to the replacement of any cracked or broken concrete (sidewalks, curbs, etc.) caused by on-site activities. MEMA may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property.
- 4.3.8** At all times, the contractor and its personnel shall exercise precautions for the protection of persons (including employees) and property. The Contractor shall make such investigations to enable them to fully understand the facilities, difficulties, and restrictions attending the execution of the work on-site. At all times, the project shall be properly supervised and adequately manned by an experienced crew of appropriate size. All work shall be accomplished by skilled workers familiar with and trained to do this type of work. Workers shall be qualified to operate and/or use the equipment necessary to accomplish this work. The Contractor shall be responsible for the supervision and direction of the work performed by its personnel. The Contractor shall be responsible for instructing its personnel in all safety measures. All equipment used by the Contractor shall be maintained in safe operating condition at all times and be free from defects or wear that may in any way constitute a hazard to any person or persons on state property. All incidents involving MEMA property or personnel shall be reported to the designated agency contact immediately upon occurrence.
- 4.3.9** The contractor shall abide by all State and/or MEMA policies, procedures, ordinances, and/or laws pertaining to MEMA's operation at all times, including but not limited to the items listed above. Deviations from these policies by the contractor or its personnel will not be tolerated and will be considered grounds for contract termination.
- 4.3.10** The contractor shall perform all services provided in the contract between the Contractor and the MEMA in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents. The Contractor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within this IFB shall negate compliance with

any applicable governing regulation. The absence of detailed specifications or the omission of detailed descriptions shall be recognized as meaning that only the best commercial practices are to prevail and that only first-quality materials and workmanship are to be used.

**4.4 Contractor shall also:**

- 4.4.1** Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal, and local laws such as social security and withholding taxes for their business and employees
- 4.4.2** Make all unemployment compensation contributions as required by federal and state law(s) and process claims as required for their business and employees
- 4.4.3** Perform a background check and/or drug screening prior to placement if requested by MEMA and verify and/or provide the results; and,
- 4.4.4** Replace immediately, at no additional expense to MEMA, any employee not performing satisfactorily.
- 4.4.5** Maintain sufficient worker's compensation insurance to cover all potential injuries sustained by its employees. All injuries to the contractor's personnel are the sole responsibility of the contractor.

**SECTION 5  
Basis for Award**

- 5.1** All bids will be reviewed first to determine whether a vendor is responsive, responsible, and/or acceptable. Requirements are not assigned a point percentage and/or score but are instead simply recorded as PASS or FAIL. Bids with errors that do not alter the substance of the bid can be accepted, and the Agency Chief Procurement Officer may allow the bidder to correct the problem prior to review as long as the irregularities are insignificant mistakes that can be waived or corrected without prejudice to other bidders.
- 5.2** MEMA has the right to waive minor defects or variations of a bid from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder with the bid for MEMA to properly evaluate the bid, MEMA has the right to require such additional information as it may deem necessary after the time set for receipt of bids, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

**5.3** All bids that 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.

**5.4** MEMA intends to award one contract to provide the services described in this IFB to the lowest responsible and responsive bidder.

## **Section 6 Minimum Bidder Qualifications**

To win the bid and be awarded the contract, the vendor must have:

**6.1 Prior Experience:** Vendor must have been in business and provided services similar in requirements and scale to those described in this IFB for a minimum of 5 years.

**6.2 Required Certification, Accreditation, and/or Licenses:** Vendor shall provide notarized copies of all valid licenses and certificates required for the performance of the work. The notarized copies shall be delivered to MEMA no later than ten days after Vendor receives the Notice of Intent to Award from MEMA. Current notarized copies of licenses and certificates shall be provided to MEMA within twenty-four hours of demand at any time during the contract term. Contractor must possess and maintain the minimum certifications, accreditations, and/or licensures described in this IFB, by way of illustration and not limitation, the following:

- i. A business license valid in Mississippi.
- ii. A professional license or certificate as required by industry standards.

Bids from vendors who do not possess these certifications and/or licenses will be rejected.

**6.4 Budget:** Bids in excess of \$100,000 will be considered non-responsive and will not be evaluated.

**6.5** A minimum score of six (6) on the Reference Score Sheet (Attachment E) from reference interviews by agency staff with two (2) bidder references (for a total minimum scoring requirement of twelve (12) points), as well as all other requirements of this IFB.

**6.6** The bidder may be required before the award of any contract to show to the complete satisfaction of MEMA that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The bidder may also be required to give a past history and references in order to satisfy the agency in regard to the bidder's qualifications. MEMA may make reasonable investigations deemed necessary and



proper to determine the ability of the bidder to perform the work, and the bidder shall furnish to the agency all information for this purpose that may be requested. MEMA reserves the right to reject any bid if the evidence submitted by, or investigation of, the bidder fails to satisfy the agency that the bidder is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the bidder's qualifications shall include:

1. the ability, capacity, skill, and financial resources to perform the work or provide the service required;
2. the ability of the bidder to perform the work or provide the service promptly or within the time specified, without delay or interference;
3. the character, integrity, reputation, judgment, experience, and efficiency of the bidder; and,
4. the quality of performance of previous contracts or services.

## **Section 7 Duration**

The estimated period of performance of any contract resulting from this IFB is tentatively scheduled to begin on or about one month after the execution of the contract by both parties and to end one year from contract execution. MEMA reserves the right to renew or extend the contract in 3-month periods, at the sole discretion of MEMA until the work is completed to MEMA's satisfaction.

## **Section 8 Bid Submission Requirements**

### **8.1 Submission Format**

**8.1.1 Letter of Interest** Vendors interested in receiving any notices related to this IFB are invited to contact the Bid Coordinator with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the Letter of Interest is to provide MEMA with a contact person to receive any notices related to this IFB. Submission of a letter of interest is not a requirement for submitting a bid.

### **8.1.2 Bid Cover Sheet (Attachment B)**

**8.1.3 Bid Form (Attachment C)** - all pricing must be submitted on the bid form. Failure to complete and/or sign the bid form may result in the bidder being determined nonresponsive.

**8.1.4 References (Attachment D)** - each bidder must furnish a listing of **at least** three (3) trade references along with the contact person, address, and phone number for each. These references must be familiar with the bidder's abilities in the areas

involved with this solicitation. MEMA staff will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. MEMA staff will not track down references. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. **Agency staff must be able to reach two (2) references for a bidder within two (2) business days of bid opening to be considered responsive. Further, the bidder must score a minimum of six (6) points on each Reference Score Sheet which will be used by MEMA staff when interviewing the two (2) references (for a total minimum scoring requirement of twelve (12) points) to be considered responsive and/or responsible.** (See **Section 6.5** and **Attachments D and E.**) Only bidders who are found responsive and/or responsible will have their bids considered. Bidder may submit as many references as desired. MEMA staff will begin contacting references at the top of the list and will continue down the list until they have completed Reference Score Sheets for two (2) references. After two (2) score sheets are completed, the reference check process will end.

## **8.2 Submission Requirements**

**8.2.1** The signed original bid package, 4 copies of the signed original bid package, and 4 electronic copies (on CD, DVD or flash drive) of its bid package submitted in a sealed envelope or package to MEMA no later than the time and date specified for receipt of bids. The electronic files shall not be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel. (Also see, 8.2.2 and 8.2.3)

**8.2.2** The sealed envelope or package shall be marked with the bid opening date and time, and the number of the invitation for bids (1:00 PM CST, February 25, 2025; IFB Number 3160007081). Bids are subject to rejection unless submitted with the information included on the outside the sealed bid envelope or package.

**8.2.3** Sealed bids should be mailed or hand-delivered to and labeled as follows:

IFB for Fence Construction  
IFB RFX Number 3160007081  
Opening Date: 1:00 PM CST, February 25, 2025  
Mississippi Emergency Management Agency  
Attention: Sallie Sones, Contracts Officer  
1 MEMA Drive  
Pearl, Mississippi 39208  
SEALED BID – DO NOT OPEN

**8.2.4** All bid packages must be received by MEMA no later than 1:00 PM CST, February 25, 2025. 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.

- 8.2.5** 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 MEMA that the late receipt was due solely to mishandling by the agency after receipt at the specified address.
- 8.2.6** The time and date of receipt will be indicated on the sealed bid envelope or package by 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.
- 8.2.7** Each page of the bid form and all attachments shall be identified with the name of the bidder.
- 8.2.8** 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.
- 8.2.9** Bidders taking exception to any part or section of the solicitation shall indicate such exceptions on the IFB Exception(s) form, **Attachment G**. Failure to indicate any exception will be interpreted as the bidder's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part. The bidder must accept the contract terms and conditions listed in **Attachment F** of this IFB.
- 8.2.10** A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. MEMA reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the agency of non-responsiveness based on the submission of nonconforming terms and conditions.

**8.2.11** 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.

**8.2.12 Release of Bid as Public Record.** Bidder shall acknowledge which of the following statements is applicable regarding release of its bid as a public record. A bidder may be deemed non-responsive if the bidder does not acknowledge either statement, acknowledges both statements, or fails to comply with the requirements of the statement acknowledged. Choose one:

\_\_\_ Along with a complete copy of its bid, bidder has submitted a second copy of the bid in which all information bidder deems to be confidential commercial and financial information and/or trade secrets is redacted in black. Bidder acknowledges that it may be subject to exclusion pursuant to Chapter 15 of the PPRB OPSCR Rules and Regulations if MEMA or the Public Procurement Review Board determine redactions were made in bad faith in order to prohibit public access to portions of the bid which are not subject to Miss. Code Ann. §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. Bidder acknowledges and agrees that MEMA may release the redacted copy of the bid at any time as a public record without further notice to bidder. A bidder who selects this option but fails to submit a redacted copy of its bid may be deemed non-responsive.

\_\_\_ Bidder hereby certifies that the complete unredacted copy of its bid may be released as a public record by MEMA at any time without notice to bidder. The bid contains no information bidder deems to be confidential commercial and financial information and/or trade secrets in accordance with Miss. Code Ann. §§ 25-61-9, 75-26-1 through 75-26-19, and/or 79-23-1. *Bidder explicitly waives any right to receive notice of a request to inspect, examine, copy, or reproduce its bid as provided in Miss. Code Ann. § 25-61-9(1)(a).* A bidder who selects this option but submits a redacted copy of its bid may be deemed non-responsive.

## **Section 9 Bidder Certification**

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

## **Section 10 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.

## **Section 11 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 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 MEMA that it has been selected for contract award.

## **Section 12 Insurance, Bonds, or Other Sureties**

**12.1** Each successful bidder shall, at its own expense, obtain and maintain insurance, bond, or other surety which shall include the following types and coverage limits:

**12.1.1 Insurance** As required by Mississippi law, the Contractor represents that it will maintain workers' compensation insurance which shall insure to the benefit of all Contractor's personnel provided hereunder and provide coverage for all states that apply to the performance of the scope of work. The Contractor shall also maintain comprehensive general liability, or professional liability insurance with minimum limits of \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$1,000,000.00. All comprehensive general liability, professional liability, and fidelity bond insurance 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. Contractor 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.

**12.1.2** The contractor is responsible for ensuring that any subcontractors provide adequate insurance and/or bond coverage for the activities arising out of subcontracts.

**12.2** Additionally:

**12.2.1** In no event shall the requirement for an insurance certificate or bond be waived.

- 12.2.2** All insurance policies will list the State of Mississippi as an additional insured.
- 12.2.3** All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
- 12.2.4** Contractor shall submit to MEMA within 10 days of notification of intent to award, a certificate of insurance and/or bond which outlines the coverage and limits defined in the procurement and contract. There are no provisions for exceptions to this requirement. Failure to provide the certificates of insurance within the 10 day period may be cause for your bid to be declared non-responsive or for your contract to be cancelled.
- 12.2.5** Contractor shall obtain at Contractor's expense the insurance and/or bond requirements specified in the procurement and contract prior to performing under this Contract, and Contractor shall maintain the required insurance and/or bond coverage throughout the duration of this Contract and all warranty periods. There are no provisions for exceptions to this requirement.
- 12.2.6** Contractor shall not commence work under this contract until it obtains all insurance and/or bond required under this provision and furnishes a certificate or other form showing proof of current coverage to the State. After work commences, the Contractor will keep in force all required insurance and/or bond until the contract is terminated or expires.
- 12.2.7** Contractor shall submit renewal certificates as appropriate during the term of the contract.
- 12.2.8** Contractor shall instruct the insurers to provide MEMA 30 days advance notice of any insurance cancellation.
- 12.2.9** Contractor shall ensure that should any of the above-described policies be cancelled before the expiration date thereof, or if there is a material change, potential exhaustion of aggregate limits or intent not to renew insurance and/or bond coverage(s), that written notice will be delivered to the Agency Chief Procurement Officer.
- 12.2.10** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance and/or bond coverage(s) to MEMA. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of contract and shall be grounds for immediate termination of this contract by MEMA.

## **Section 13 Bid Opening**

Bid opening will be open to the public; however, this will include opening, reading, and listing the name of each bidder and the bid price of 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.

## **Section 14 Award Notification**

The award for this procurement will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the agency website at <http://www.msema.org>. Bidders will be notified via e-mail of the awards. Additionally, a letter will be sent to all bidders.

## **Section 15 Procurement Methodology**

### **15.1 Restrictions on Communications with Agency and Agency Staff**

At no time shall any bidder or its personnel contact, or attempt to contact, any MEMA staff regarding this IFB except the contact person as set forth and in the manner prescribed in Section 3.

### **15.2 Bidder Investigations**

Before submitting a bid, each bidder shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by MEMA upon which the bidder will rely. If the bidder receives an award as a result of its bid submission, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

### **15.3 Expenses Incurred in Preparing Bid**

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

### **15.4 Independent Price Determination**

By submitting a bid, the bidder certifies that the prices 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 those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid. The prices quoted shall be inclusive of all associated costs outlined in Attachment C. All pricing should include all associated costs with no additional or hidden fees.

### **15.5 Rejection of Bids**

A bid response that includes terms and conditions that do not conform to the terms and conditions in the IFB document is subject to rejection as non-responsive. Further, submission of a bid form that is not complete and/or signed is subject to rejection as non-responsive. The agency reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the agency staff of non-responsiveness based on the submission of nonconforming terms and conditions. Furthermore, if a bidder's price is substantially higher than those of other bidders, meaning those in excess of a twenty-five percent (25%) differential, the bidder's price will be deemed non-responsive.

### **15.6 Withdrawal of Bids**

If the price bid is substantially lower than those of other bidders, a mistake may have been made. A bidder may withdraw its bid from consideration if certain conditions are met:

- (1)** The bid is submitted in good faith;
- (2)** The price bid is substantially lower than those of other bidders because of a mistake;
- (3)** The mistake is a clerical error, not an error of judgment; and,
- (4)** Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to MEMA of claim of right to withdraw a bid. Within two (2) business days after the bid opening, the bidder requesting withdrawal must provide to MEMA all original work papers, documents, and other materials used in the preparation of the bid.

A bidder may also withdraw a bid, prior to the time set for the opening of bids, by simply making a request in writing to the agency. No explanation is required.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the contract is awarded, or otherwise benefit from the contract.



No partial withdrawals of a bid are permitted after the time and date set for the bid opening; only complete withdrawals are permitted.

### **15.7 Post-Award Vendor Debriefing**

A bidder, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by MEMA's Bid Coordinator within three (3) business days of notification of the contract award. A post-award vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify MEMA's Bid Coordinator in writing and identify its attorney by name, address, and telephone number. The agency 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 Vendor Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post-Award Vendor Debriefing, of the *PPRB OPSCR Rules and Regulations* as updated and replaced by PPRB.

### **15.8 Requests for Reconsideration**

#### **15.8.1 Reconsideration for the Terms of the Solicitation**

Any potential bidder may request that MEMA reconsider the terms of this solicitation. Such a request shall be filed with MEMA's Bid Coordinator and the Director of OPSCR with three (3) business days following the date of public notice. It is the sole responsibility of the requesting vendor to ensure the request is timely received by all required parties. Failure to timely request reconsideration in compliance with this section and Section 5.6.3 of the OPSCR Rules and Regulations results in a waiver of any claim a bidder may have as to MEMA's decision regarding the terms of the solicitation.

#### **15.8.2 Reconsideration of the Intent to Award**

A bidder who responds to this IFB may request that MEMA reconsider its intent to award the contract to a specific bidder or bidders. Such a request shall be filed with MEMA's Bid Coordinator and the Director of OPSCR within three (3) business days following the issuance of the Notice of Intent to Award and posting of the Agency Procurement File. It is the sole responsibility of the requesting bidder to ensure the request is timely received by all required parties. Failure to timely request reconsideration in compliance with this section and Section 5.6.3 of the OPSCR Rules and Regulations results in a waiver of any claim a bidder may have as to MEMA's decision to award the contract.

## **Section 16**

## **Draft Agreement**

Any contract entered into with MEMA pursuant to this IFB shall only be the contract provided by MEMA in Attachment F to this IFB. MEMA will not accept exceptions from the draft agreement, nor will it accept an agreement drafted by the bidder. Should the bidder require an exception to or changes made to the agreement, it may cause a bid to be rejected as non-responsive. Bids that condition the bid based upon the State accepting other terms and conditions not found in the IFB, draft agreement, or which take exception to the State's terms and conditions, may be found non-responsive, and no further consideration of the bid will be given.

The only areas subject to change are those areas highlighted in yellow, which indicate areas that require vendor-specific or solicitation-specific information.

## **Section 18 Agency Website**

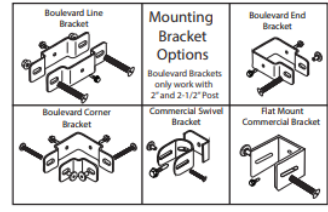
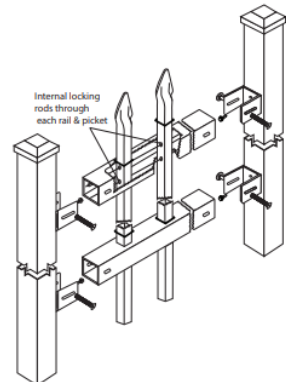
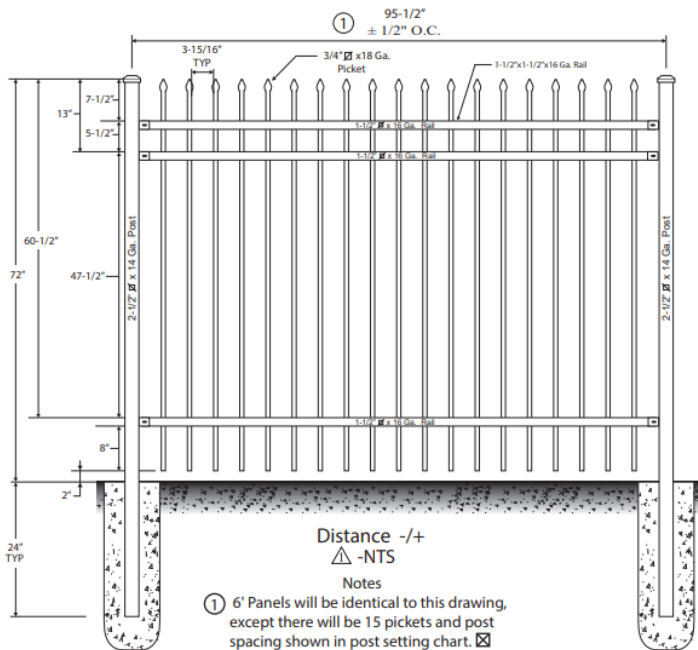
This IFB, questions and answers concerning this IFB, and the Notice of Intent to Award will be posted on the agency website at <http://www.msema.org> and on the Mississippi Contract/Procurement Opportunity Search Portal website.

## **Section 19 Attachments**

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

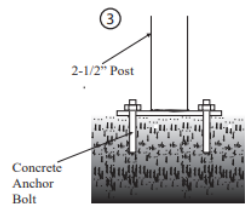
Attachment A





- Notes
- ① 6' Panels will be identical to this drawing, except there will be 15 pickets and post spacing shown in post setting chart. ☒
  - ② Rings are optional.
  - ③ Plated post optional. All post will be mounted to center of plate unless offset is needed for installation

② Ornament Options



☒ Post Setting Chart

POST SIZE	2" POSTS		2-1/2" POSTS		3" POSTS		4" POSTS		6" POSTS	
	6'	8'	6'	8'	6'	8'	6'	8'	6'	8'
POST SETTINGS ± 1/2" O.C.	76-1/4"	95"	76-3/4"	95-1/2"	77-1/4"	96"	78-1/4"	97"	80-1/4"	99"



Project: SPS Centurion 1 Panel :  
6' Spartan 3-Rail

Approved By Date: \_\_\_\_\_ Drawing NO. \_\_\_\_\_  
Robert Curry \_\_\_\_\_ C1-P-SPA-6'-3R-2.5"P

**Attachment B**

**BID COVER SHEET**

Bids must be submitted as listed below on or before 1:00 PM CST, February 25, 2025.

PLEASE MARK YOUR ENVELOPE:

IFB for Fence Construction  
IFB RfX Number 3160007081  
Opening Date: 1:00 PM CST, February 25, 2025  
Mississippi Emergency Management Agency  
Attention: Sallie Sones, Contracts 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 and phone number 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. \_\_\_\_\_

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If your company is not physically located within the vicinity, how will you supply the necessary equipment and personnel to complete the fence construction at MEMA?

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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. \_\_\_\_\_

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Is your company licensed and/or certified to construct fencing 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. \_\_\_\_\_

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For how many customers has your company provided fence construction or related work in the past five years?

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What is the largest customer your company has provided fence construction or related work for in the past five years?

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

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**Attachment C**

**BID FORM**

<b>Company</b>	<b>Contact Person</b>	<b>Telephone Number</b>

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

1. All required equipment/material;
2. All required insurance, bond, or other surety;
3. All required overhead;
4. All required profit;
5. All required vehicles;
6. All required fuel and mileage;
7. All required labor and supervision;
8. All required business and professional certifications, licenses, permits, or fees; and,
9. Any and all other costs.

All pricing for Fence Construction should include all associated costs for the items with no additional or hidden fees.

<b>Unit Description</b>	<b>Unit Price</b>

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 including, but not limited to, the clauses provided in the draft contract (Attachment F).
4. That the company will perform 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 Contractor represents that its workers are licensed, certified, and possess the requisite credentials to construct the fencing; and,
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 prices 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 those 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 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*.

**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 D**

**REFERENCES**

Bidder may submit as many references as desired by submitting as many additional copies of Attachment D, References, as deemed necessary. References will be contacted in the order listed until two references have been interviewed and Reference Score Sheets completed for each of the two references. No further references will be contacted; however, bidders are encouraged to submit additional references to ensure that at least two references are available for interview. Agency staff must be able to contact two references within two (2) business days of bid opening to be considered responsive or no later than February 27, 2025.

**REFERENCE 1**

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

**Dates of Service:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

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

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

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

**Cell Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Alternative Contact Person (optional):** \_\_\_\_\_

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

**Cell Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**REFERENCE 2**

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

**Dates of Service:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

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

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

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

**Cell Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Alternative Contact Person (optional):** \_\_\_\_\_

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

**Cell Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**REFERENCE 3**

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

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 4**

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

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 5**

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

Dates of Service: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Alternative Contact Person (optional): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Attachment E**

**References Score Sheet**

**IFB 3160007081**

**IFB for Perimeter Fence Construction**

**TO BE COMPLETED BY MEMA STAFF ONLY**

**Company Name:**

\_\_\_\_\_

**Reference Name:**

\_\_\_\_\_

**Person Contacted, Title/Position:**

\_\_\_\_\_

**Date/Time Contacted:**

\_\_\_\_\_

**Service From/To Dates:**

\_\_\_\_\_

Able to provide fence construction services when you called?	Yes	No
Satisfied with the services provided and final product? If no, please explain.	Yes	No
Vendor easy to work with in scheduling services?	Yes	No
Was the project 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

Bidder must have a minimum of 6 "yes" answers on the questions above from two references (total of 12 "yes" answers) to be considered responsible and for its bid to be considered.

**Score:** Pass/Fail

Do you have any business, professional or personal interest in the vendor's organization? If yes, please explain.	Yes	No
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A “yes” to the above question may result in an automatic disqualification of the provided reference; therefore, resulting in a score of zero as responses to previous questions become null and void.

**Notes:**

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**Called by:** \_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## Attachment F

### MEMA DRAFT CONTRACT

*(The contract terms below may only be modified to reflect contractor-specific information, bid price, and any necessary changes to the invoicing requirements based on the nature of the contract)*

## **CONTRACT TO CONSTRUCT A PERIMETER FENCE BETWEEN THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY AND (CONTRACTOR)**

This document is a contract between the parties listed in Paragraph 1.0, entitled “Parties” to provide services or goods as specified in Paragraph 2.0 entitled “Scope of Work.”

### **1.0 PARTIES**

The parties to this contract are the MISSISSIPPI EMERGENCY MANAGEMENT AGENCY, hereinafter referred to as “MEMA” and generally as “State” and **CONTRACTOR NAME** hereinafter referred to as “\_\_\_\_\_” and generally as “Contractor.”

### **2.0 SCOPE OF WORK**

#### **(A) Contract Goal**

The general objective of this project is to construct a perimeter fence at the State Emergency Logistics Operations Center (“SELOC”) in Byram, Mississippi.

#### **(B) Procurement Documents**

Contractor shall provide the services within **RFx 3160007081**. All services listed in this statement are to be performed by Contractor unless otherwise noted.

#### **(C) Services to be Provided**

Install 650 (+/-) linear feet of 6-foot height iron fence equivalent to Centurion Spartan Ornamental Iron Fence shown in Attachment A and incorporated herein. The commercial ornamental iron fence across the front of the property connects to the Duro-last fence as well as the SELOC warehouse corner. Included will be (2) 28-foot cantilever slide gates or equivalent, (1) 30-foot double slide gate, and (1) 3-foot personnel gate. Install (2) gate automation as follows: equivalent to a MAX 2200 Slide operator with mount fire Box, (2) photo eyes for safety (opening and rear of gate), saw cut loops, and detectors (safety and free exit).

Access Control and power will not be part of the project.

The site for this project is the SELOC located at 1055 Mendell Davis Drive, Byram, MS. The location is on State property and all restrictions and regulations related to state property are applicable.

## **2.1 Period of Performance**

The estimated period of performance for this contract may begin on or about one month after the execution of the contract by both parties and to end upon the completion of the fence. MEMA reserves the right to renew or extend the contract in 3-month periods at the sole discretion of MEMA until the work is deemed satisfactory by MEMA.

## **2.2 Change in Scope of Work**

MEMA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by MEMA and Contractor. If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify MEMA in writing of this belief. If MEMA believes that the particular work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

## **3.0 CONSIDERATION AND PAYMENT**

### **3.1 Amount**

[Insert after Contract Award]

### **3.2 Invoicing**

Pursuant to Mississippi's Constitution, MEMA is barred from paying for unjustified costs. Meaning all invoices submitted by Contractor must provide detailed support for the benefit provided. For this contract, MEMA requires the invoices to be detailed as follows:

[Insert invoice specifics]

Contractor will invoice MEMA by the 15<sup>th</sup> day of every month until all valid invoices are closed.

### **3.3 E-Payment**

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

### **3.4 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.

### **3.5 Overhead and Expenses**

MEMA will not reimburse Contractor for the purchase of office equipment or indirect costs, including administrative costs or costs related to the business operations of the Contractor. MEMA will only pay for the performance of the Scope of Work according to the payment schedule provided in Sections 3.1 and 3.2 of this contract.

### **3.6 Payments to Authorized Subcontractors**

No authorized subcontractor shall submit its invoices directly to MEMA. Contractor shall include these expenses in its request for payment submitted to MEMA. The time and resources spent on this project by any authorized subcontractor shall be reimbursed through Contractor and not MEMA.

### **3.7 Price Adjustments**

1. *Price Adjustment Methods.* Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:
  - a. by agreement on a fixed price adjustment before the commencement of the additional performance.
  - b. by unit prices specified in the contract.
  - c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit, or fee, all as specified in the contract; or,
  - d. by the price escalation clause.
2. *Submission of Cost or Pricing Data.* Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of Section 3-403 (Cost of Pricing

Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

### **3.8 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.

### **4.0 PERSONNEL**

Contractor, and any assistant it employs, shall perform all the services required by this agreement. All personnel engaged in the work shall be fully qualified to the satisfaction of MEMA and shall be authorized as permitted under federal, state, and local law to perform such services.

#### **4.1 Internal Management**

Contractor shall have the right to internally manage its staffing. MEMA shall be informed of all staffing issues.

#### **4.2 Compliance with Laws**

Contractor understands that MEMA is an equal opportunity employer and therefore maintains a policy that 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.

#### **4.3 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. *See* Miss. Code Ann. §§ 71-11-1 *et seq.* The term "employee" as used herein means any person 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 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 the contractor to the following:

- i. termination of this contract for services and ineligibility for any state of public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- ii. 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
- iii. both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

#### **4.4 Contractor Personnel**

MEMA 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 MEMA reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to MEMA in a timely manner and at no additional cost to MEMA. The day-to-day supervision and control of Contractor's employees and subcontractors are the sole responsibility of Contractor.

#### **5.0 INSURANCE**

Contractor represents that it will maintain workers' compensation insurance which shall insure to the benefit of all Contractor's personnel provided hereunder and provide coverage for all states that apply to the performance of the scope of work. The Contractor shall also maintain comprehensive general liability, or professional liability insurance with minimum limits of \$1,000,000.00 per occurrence and fidelity bond insurance with minimum limits of \$1,000,000.00. All comprehensive general liability, professional liability, and fidelity bond insurance 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. Contractor 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.

## **6.0 TERMS AND CONDITIONS APPLICABLE TO CONTRACTS WITH THE STATE OF MISSISSIPPI**

This contract is subject to and incorporates the following terms and conditions governing a contract between MEMA and Contractor for professional services.

### **6.1 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.

### **6.2 Approval**

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

### **6.3 Availability of Funds**

It is expressly understood and agreed that the obligation of MEMA 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 of material alteration of the program under which funds were provided or if funds are not otherwise available to MEMA, MEMA shall have the right upon ten (10) working days written notice to Contractor to terminate this agreement without damage, penalty, cost, or expenses to MEMA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **6.4 Procurement Regulations**

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

### **6.5 Trade Secrets, Commercial, and Financial Information**

It is expressly understood that Mississippi law requires that the provisions of this contract which contains 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.

## **6.6 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 ninety (90) days after the order is delivered to Contractor unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, 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 of 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 thirty (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:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with Section 3.7 Price Adjustment clause of this contract.

## **6.7 Transparency**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. *See* Miss. Code Ann. § 25-61-1 *et. seq.* and Miss. Code Ann. § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. *See* Miss. Code Ann. § 27-104-151 *et. seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the 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 that is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

## **6.8 Claims Based on Chief Procurement Officer’s Actions or Omissions**

### **(A) Notice of Claim**

If any action or omission on the part of the Chief Procurement Officer or designee of such officer requiring performance changes within the scope of the contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- i.** Contractor shall have given written notice to the Chief Procurement Officer or designee of such officer:
  - (i)** prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission.
  - (ii)** within thirty (30) days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or
  - (iii)** within such further time as may be allowed by the Chief Procurement Officer in writing.

This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The Chief Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Chief Procurement Officer or designee of such officer.

- ii. the notice required by subparagraph (A) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
- iii. Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

#### **(B) Limitation of Clause**

Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and contractors from acting in collusion or bad faith in issuing or performing changed orders which are clearly not within the scope of the contract.

#### **(C) Adjustment of Price.**

Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with Section 3.7 Price Adjustment clause of this contract.

### **6.9 Confidentiality**

Notwithstanding any provision to the contrary contained herein, it is recognized that MEMA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act (Miss. Code Ann. § 25-61-1 *et. seq.*). If a public records request is made for any information provided to MEMA pursuant to the agreement and designated by Contractor in writing as trade secrets or other proprietary confidential information, MEMA shall follow the provisions of the Mississippi Code Annotated § 25-61-9 and 79-23-1 before disclosing such information. MEMA shall not be liable to Contractor for disclosure of information required by court order or required by law.

### **6.10 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 nor 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 MEMA, and MEMA shall be at no time legally responsible for any negligence or other wrongdoing by

Contractor, its servants, agents, or employees. MEMA 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, MEMA shall not provide to Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the State for its employees.

#### **6.11 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 MEMA and agreed to by Contractor.

#### **6.12 Ownership of Documents and Work Papers**

MEMA 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 MEMA 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 MEMA and subject to any copyright protections.

#### **6.13 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.

#### **6.14 Right to Audit**

Contractor shall maintain such financial records and other records as may be prescribed by MEMA 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 MEMA, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three (3) year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees or other authorized bodies.

## **6.15 Right to Inspect Facility**

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

## **6.16 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 MEMA.

## **7.0 CONTRACTOR ASSURANCES**

To contract with the State of Mississippi providing professional services, Contractor makes the following assurances to MEMA.

### **7.1 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. Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing the Department of Homeland Security and FEMA access to records, accounts, documents, information, facilities, and staff.

### **7.2 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.

### **7.3 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, (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, (e) that Contractor is not banned from contracting with MEMA, and (f) that Contractor is at least eighteen (18) years old.

### **7.4 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.

### **7.5 Representation Regarding Gratuities**

The bidder, offeror, or 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 Services Contract Review Rules and Regulations*.

### **7.6 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 (3) 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 (3) 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 (B) and (C) of this certification; and,



(E) has not, within a three (3) year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **7.7 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 the 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.*

#### **7.8 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.

#### **7.9 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 Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of MEMA shall result in the immediate termination of this agreement.

#### **7.10 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.

#### **7.11 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.

#### **7.12 Antitrust**

By entering into a contract, Contractor conveys, sells, assigns, and transfers to MEMA all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State that relate to the particular goods or services purchased or acquired by MEMA under said contract.

#### **7.13 Patents and Royalties**

Contractor covenants to save, defend, keep harmless, and indemnify MEMA and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost--including court costs and attorney's fees, charges, liability, and exposure, however caused--for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by MEMA. If Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work.

#### **7.14 Authority of Signatory**

Contractor acknowledges that the individual executing the contract on behalf of MEMA is doing so in his or her official capacity only. To the extent any provision contained in the contract exceeds the signatory's authority, Contractor agrees that it will not look to that

individual in his or her personal capacity or otherwise seek to hold him or her individually liable for exceeding such authority.

#### **7.14 Domestic Preference for Procurements**

The Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

### **8.0 CONTRACT TERMINATION AND PARTY DISPUTES**

#### **8.1 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.

#### **8.2 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 properly 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 fifteen (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". (As used in this paragraph of this clause, the term "Subcontractor" means subcontractor at any tier.)

**(E) Liquidated Damages**

When Contractor is given notice of delay or nonperformance as specified in Paragraph 8.2(A) and fails to cure in the time specified, Contractor shall be liable for damages for the

delay in the amount of \$100 per calendar day from the date set for cure until either MEMA reasonably obtains similar services if Contractor is terminated for default, or until Contractor provides the services if Contractor is not terminated for default. To the extent that Contractor's delay or nonperformance is excused under Paragraph 8.2(D), liquidated damages shall not be due to MEMA. Contractor remains liable for damages caused other than by delay.

#### **(F) 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 Contractor 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 a termination for convenience.

#### **(G) 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.

### **8.3 Termination Upon Bankruptcy**

This contract may be terminated in whole or in part by MEMA 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.

### **8.4 Unsatisfactory Work**

If, at any time during the contract term, the service performed, or work done by Contractor is considered by MEMA 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 MEMA, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MEMA shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

### **8.5 Failure to Deliver**

In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, MEMA, after due oral or written notice, and ten (10) days opportunity to cure, 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 MEMA may have.

## **8.6 Failure to Enforce**

Failure by MEMA 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 MEMA to enforce any provision at any time in accordance with its terms.

## **8.7 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.

## **8.8 Indemnification**

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MEMA, 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 the 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 concurrence, which shall not be unreasonably withheld.

## **8.9 Infringement Indemnification**

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

*Scope of Indemnification:* Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, at its own expense, the State against, and pay all costs, damages, and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

## **8.10 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.

## **8.11 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 revision of any applicable laws or regulations make changes in this agreement necessary.

## **8.12 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.

### **8.13 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 contractor:**

For the agency:           Morgan Middleton, General Counsel  
Mississippi Emergency Management Agency  
#1 MEMA Drive  
Pearl, MS 39208

### **8.14 Priority**

The contract consists of this agreement, the Invitation for **Bids RFX 3160007081** and the response submission by Contractor. Any ambiguities, conflicts, or questions of interpretation of this contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract. If there is a conflict between this agreement and the proposal, this agreement is controlling.

### **8.15 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.

### **8.16 Third-Party Notification**

Contractor shall give MEMA 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.



## **8.17 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.

## **8.18 Sovereign Immunity**

By entering into this agreement with Contractor, MEMA does in no way waive its sovereign immunities or defenses as provided by law.

## **8.19 Recovery of Money**

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to MEMA, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and MEMA. The rights of MEMA 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 MEMA on account of the acts or omissions of Contractor.

## **9.0 APPLICABLE FEDERAL PROCUREMENT CLAUSES AS THIS CONTRACT MAY BE FUNDED BY FEDERAL FUNDS**

### **9.1 Byrd Anti-Lobbying Amendment**

Contractors shall file the required certification within Appendix A of this contract through which it certifies 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. Contractor and all authorized subcontractors shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency (MEMA).

### **9.2 Clean Air and Water Acts Compliance**

(1) 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) 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, the applicable federal agency, and the appropriate Environmental Protection Agency Regional Office as applicable to this contract.
- (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance if applicable.

### **9.3 Procurement of Recovered Materials**

- (1) In the performance of this contract, 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 requirement; 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, <http://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (3) Contractor also agrees to comply with all other applicable requirements for Section 6002 of the Solid Waste Disposal Act.

### **9.4 Debarment and Suspension**

- (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 Contractor is required to verify that none of 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) 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 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.

## 9.5 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.

## 9.6 Program Fraud and False or Fraudulent Statements or Related Acts

Contractor acknowledges that 31 U.S.C Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to the contract.

## 9.7 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 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 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** Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (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.

## **9.8 Socioeconomic Affirmative Steps**

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible.

## **9.9 Equal Employment Opportunity**

During the performance of this contract, Contractor agrees as follows:

- 1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or

applicants as a part of such employee's essential job functions discloses the compensation of such employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action., including an investigation conducted by the employer, or is consistent with contractor's legal duty to furnish information.

- 4) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives or Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and by rules, regulations, or orders of the Secretary of Labor.
- 6) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, or orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation or ascertain compliance with such rules, regulations, and orders.
- 7) In the event Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **9.15 Davis Bacon Act**

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. 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. Contractor is 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. Additionally, Contractor is required to pay wages not less than once a week.

#### **9.16 Compliance with the Copeland Anti-Kickback Act**

**a. Contractor.** Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

**b. Subcontracts.** Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal law may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

**c. Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **9.17 Buy Clean**

Contractor is encouraged to use environmentally friendly construction practices in the performance of this contract. In particular, MEMA encourages that performance of this contract include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

### **10.0 APPLICABLE FEDERAL PROCUREMENT CLAUSES IF THIS CONTRACT IS ELIGIBLE FOR REIMBURSEMENT SPECIFICALLY WITH FEMA FUNDING**

#### **10.1 Access to and Retention of Records**

- 1) Contractor agrees to provide MEMA, the subgrantees (counties and communities), FEMA, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of Contractor, which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 2) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3) Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

- 4) In compliance with the Disaster Recovery Act of 2018, MEMA and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- 5) Contractor agrees to retain all records associated with this contract for three (3) years after MEMA or the subgrantees (counties and communities) make final payment and all other pending matters are closed.

**10.2 DHS Seal, Logo, and Flags**

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.

**10.3 Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgment that should FEMA financial assistance be used to fund all or a portion of the contract. Contractor will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

This contract for perimeter fence construction represents the entire contract. It constitutes the final expression of the parties’ agreement and is a complete and exclusive statement of the terms of that agreement.

\_\_\_\_\_  
STEPHEN C. McCRANEY, EXECUTIVE DIRECTOR      DATE  
MS EMERGENCY MANAGEMENT AGENCY

\_\_\_\_\_  
CONTRACTOR SIGNATURE      DATE

**APPENDIX A  
44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering



into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Contractor's Authorized Official's Signature

\_\_\_\_\_  
Date

**Attachment G**

**IFB Number 3160007081**

**Invitation for Bids for Perimeter Fence Construction  
IFB Exception(s)**

Bidder taking exception to any part or section of the solicitation shall indicate such exceptions on the table below. If no exceptions are taken, then the Bidder shall state in this section "No Exceptions Taken." Failure to indicate any exception will be interpreted as the Bidder's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part.

<b>Procurement Section and Page Number</b>	<b>Original Language</b>	<b>Requested Change/Exception</b>	<b>Agency Decision</b>
1.			
2.			
3.			
4.			
5.			