INVITATION FOR BIDS
No. 03-2012
Mississippi

Preapproved List of Vendors for Unarmed Security Services

Personal Service Contract Review Board
Mississippi State Personnel Board
210 East Capitol Street, Suite 800
Jackson, Mississippi 39201

Contact: ***Faye James***
faye.james@mspb.ms.gov
Date: ***February 16, 2012***

Table of Contents

Authority (Section 1) **1**
Purpose (Section 2) **1**
Timeline (Section 3) **1**
PSCRB Contact and Questions/Request for Clarification (Section 4) **1**
Scope of Services (Section 5) **2**
Basis for Award (Section 6) **3**
Contract Deliverables (Section 7) **3**
Minimum Bidder Qualifications to be Deemed Responsible (Section 8) **4**
Duration (Section 9) **5**
Removal from Preapproved List of Vendors of Unarmed Security (Section 10) **5**
Bid Submission Requirements (Section 11) **5**
Submission Format (Section 11.1) 5
Bid Cover Sheet (Section 11.1.1) 5
Bid Form (Section 11.1.2) 5
References (Section 11.1.3) 5
Submission Requirements (Section 11.2) 6
Bidder Certification (Section 12) **7**
Debarment (Section 13) **8**
Registration with Mississippi Secretary of State (Section 14) **8**
Insurance (Section 15) **8**
Bid Opening (Section 16) **8**
Award Notification (Section 17) **8**
Procurement Methodology (Section 18) **8**
Restrictions on communication with PSCRB and MSPB staff (Section 18.1) 8
Cost of preparing bid (Section 18.2) 9
Independent price determination (Section 18.3) 9
Rejection of bids (Section 18.4) 9
Withdrawal of bids (Section 18.5) 9
Protests (Section 18.6) 10

Required Contract Terms and Conditions (Section 19) **10**
Optional Contract Terms and Conditions (Section 20) **10**
Note to Agencies (Section 21) **10**
Attachments (Section 22) **10**
Map of Mississippi Divided into Regions (Attachment A) 12
Illustrative Example of Awarding Placement on Preapproved List and Ranking Bids (Attachment B) 13
Bid Cover Sheet (Attachment C) 15
Bid Form (Attachment D) 17
References (Attachment E) 18
References Score Sheet (Attachment F) 19
Required Clauses for Service Contracts Resulting from this IFB (Attachment G) 20
Optional Clauses for Use in Service Contracts Resulting from this IFB (Attachment) 25
Mississippi State Personnel Board Website (Section 23) **11**

GENERAL INSTRUCTIONS

Section 1 – Authority

Miss. Code Ann. § 25-9-120 established the Personal Service Contract Review Board (PSCRB) in 1997. Pursuant to this statute, the PSCRB "may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board."

Section 2 – Purpose

The PSCRB is seeking to establish a Preapproved List of Vendors for Unarmed Security Services for use by state agencies and entities under the purview of the PSCRB (hereafter "agencies"). The PSCRB is inviting bids from qualified security companies for placement on the list. After the list is established, agencies may select and contract with vendors from the list, avoiding the need for procurement. Contracts over $100,000 must still be approved by the PSCRB.

Section 3 – Timeline

Invitation for Bid (IFB) Issue Date:	**February 16, 2012**
Questions to PSCRB Deadline:	**February 24, 2012, 5:00 PM CST**
Written Answers to Questions Posted:	**February 27, 2012, 5:00 PM CST**
Bid Package Submission Deadline:	**March 6, 2012, 5:00 PM CST**
Bid Opening:	**March 7, 2012, 10:00 AM CST**

Section 4 – PSCRB Contact and Questions/Requests for Clarification

4.1 All questions and requests for clarification must be directed by **email** to:

Faye James, Director
Personal Service Contract Review Board
Email: **faye.james@mspb.ms.gov**

4.2 Questions and requests for clarification must be submitted via email by the deadline reflected in Section 3.

4.3 All questions and answers will be published on the Mississippi State Personnel Board website (www.mspb.ms.gov) in a manner that all bidders will be able to view by the date and time reflected in Section 3.

4.4 The PSCRB 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.

Section 5 - Scope of Services

5.1 Uniformed, unarmed security guard services are to be provided in three categories: (1) one guard during regular business hours (generally 7:00 AM to 7:00 PM) with option for additional guard or guards; (2) one guard during after business hours (generally 7:00 PM to 7:00 AM) with option for additional guard or guards; and, (3) one guard twenty-four hours a day with option for additional guard or guards. Services are generally to be provided Monday through Friday (except State recognized holidays). Agencies may negotiate a different beginning and ending time with the selected vendors, as well as Saturday, Sunday and holiday service. Bidders may bid on one, two or all three categories.

5.2 Services to be provided include safeguarding the agency building and its employees, allowing only authorized persons access to the building, maintaining records of entrance and exit of all visitors to the building, monitoring and investigation of all internal alarm systems (such as fire) and escorting agency employees to conduct agency banking business. Services may also include monitoring the employee parking area which may require guard to be stationed outside. The selected vendors must have a field supervisor on call twenty-four hours a day to deal with any security issues which arise. Additional services may be required by the agency.

5.3 Any guard provided must have a minimum of two years' experience as a security officer, or two years' experience in a branch of law enforcement or other type of protective service;

5.4 The guards must be trained to and capable of handling any and all incidents in a legal and professional manner.

5.5 Any provided guard must have undergone a thorough background check which reveals no criminal history;

5.6 The preapproved list will be region-specific. The services may be provided in eight different regions of the state, including: (1) North Delta; (2) North East; (3) South Delta; (4) East Central; (5) Central; (6) Pine Belt; (7) South West; and, (8) Coastal. There will be a separate preapproved list for each of these regions. (*See* **Attachment A** for a map showing the regions and a listing of counties in each region).Bidders may bid to provide services in one or more regions, or they may bid on all regions. To bid on a region, bidders must complete the Bid Package and certify that they can provide services for the entire region. For each region, the lowest qualified bidders will be added to the preapproved list.

(*See* **6.1** below.) **Being placed on the preapproved list does not guarantee contracts will be issued.**

5.7 Detailed scope and specific requirements of the work required will be provided by the agency when a vendor on the preapproved list is selected for consideration with respect to a specific project or need.

Section 6 – Basis for Award

6.1 The PSCRB will average the bid price per hour of each service category bid with the bid price for providing additional guard(s). (*See* **5.1**.) The PSCRB intends to make awards to the three responsive and responsible lowest bidders per region per averaged service category (for a possible total of nine winning vendors per region). These nine vendors will be placed on the preapproved list for that region under the service category for which they bid. The list will then be divided into the three service categories with the winning bidders' bids ranked according to the lowest, second lowest, and third lowest price for each category. (*See* **Attachment B** for an example of how bids will be averaged, winning bidders chosen for a region, and winning bidders ranked for each service category. This is for illustrative purposes only.)

6.2 Agencies are encouraged to contact the lowest preapproved vendor for the unarmed security service or services needed. If that vendor is unable to supply the service, the agency should contact the next lowest vendor. If that vendor cannot supply the service, the agency may contact the third lowest vendor.

6.3 Bidders bidding on more than one region may bid different rates in different regions for similar positions.

Section 7 – Contract Deliverables

7.1 Upon execution of a contract with an agency, vendors on the preapproved list shall, with respect to all unarmed security guards provided to an agency:

7.1.1 Ensure that the guard(s) are in complete uniform and well-groomed at all times;

7.1.2 Provide uniforms to each guard which are clean, in good repair, and easily recognizable and identify the guard as an employee of the vendor;

7.1.3 Abide by all ordinances and laws pertaining to the agency's operation and secure all required licenses and permits;

7.1.4 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;

7.1.5 Make all unemployment compensation contributions as required by federal and state law and process claims as required;

7.1.6 Ensure that the unarmed security employee reports to work at the time and place specified by the agency;

7.1.7 Replace, at no additional expense to the agency, any security guard not performing satisfactorily within two hours; and,

7.1.8 Perform all services provided in the contract between the bidder/vendor and the agency in accordance with customary and reasonable industry standards.

7.2 Vendors shall also:

7.2.1 Maintain a pool of qualified guards large enough so that if, for any reason, the scheduled guard does not report for duty or must be replaced, the security company can provide a replacement guard within two hours after notification; and,

7.2.2 Arrange for an agency to interview a potential new unarmed security employee, at the bidder/vendor's expense, for a period of up to one hour.

Section 8 - Minimum Bidder Qualifications to be Deemed Responsible

8.1 Bidder must have been in business and providing unarmed security employees for a minimum of three years.

8.2 Bidder must have provided a minimum of 30 unarmed security employees over the past two years.

8.3 Bidder must maintain an office in each region bid (or, if bidder does not have an office in the region, bidder must explain how it will service the region bid on the Bid Cover Sheet, **Attachment C**) and must provide all the required information for each region bid, for verification purposes.

8.4 Bidder must maintain a pool of qualified workers to fill the requests from agencies. Please provide the average number of workers you have that meet the minimum requirements.

8.5 These minimum qualifications are in addition to a minimum score of four on the Reference Score Sheet (**Attachment F**) from reference interviews by the PSCRB with **two** bidder references (for a total minimum score of eight), as well as all other requirements of this IFB. (*See* **Section 11.1.3** and **Attachments E** and **F**.)

Section 9 - Duration

Vendors added to the preapproved list will remain on the list for a two-year period. Prices submitted in response to this IFB will remain firm and valid for the two years, except that a bidder may raise prices to reflect a rise in the federal minimum wage, but only to the extent of the actual minimum wage increase.

Section 10 – Removal from Preapproved List of Vendors of Unarmed security

Vendors added to the preapproved list may be removed from the list for cause by the PSCRB.

Section 11–Bid Submission Requirements

11.1 Submission format

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

11.1.1 Bid Cover Sheet **(Attachment C)**.

11.1.2 Bid Form **(Attachment D)** – all pricing must be submitted on the bid form.

11.1.3 References **(Attachment E)** – each bidder must furnish a listing of **at least** three 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. The PSCRB 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. The PSCRB will not track down references. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. **The PSCRB must be able to reach two references for a bidder to be considered responsive. Further, the bidder must score a minimum of four (4) points on each Reference Score Sheet which will be used by the PSCRB staff when**

interviewing the two references (for a total minimum scoring requirement of eight (8) points) to be considered responsive. (*See* **Section 11.1.3** and **Attachments E and F**.) Only bidders who are found responsive will have their bids considered. Bidder may submit as many references as desired. The PSCRB 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 references. After two score sheets are completed, the staff will stop the reference check process.

11.2 Submission requirements

11.2.1 Bidders bidding on more than one region should submit a complete bid package for each region and mail or deliver in separate sealed envelopes.

11.2.2 The original and one copy of the bid package shall be signed and submitted in a sealed envelope or package to 210 East Capitol Street, Suite 800, Jackson, MS 39201 no later than **5:00 p.m. (CST), Tuesday, March 6, 2012**. (*Also see*, **11.2.4**. and **11.2.12**.)

11.2.3 Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened.

11.2.4 The envelope or package shall be marked with the bid opening date and time, and the number of the invitation for bids (10:00 AM CST, March 7, 2012; No. 01-2012).

11.2.5 The time and date of receipt will be indicated on the envelope or package by the MSPB or PSCRB staff.

11.2.6 Each page of the bid form and all attachments shall be identified with the name of the bidder.

11.2.7 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.

11.2.8 The PSCRB reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as nonresponsive.

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

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

11.2.11 All bid packages must be received by PSCRB no later than **5:00 p.m. (CST), Tuesday, March 6, 2012**. Bids submitted via facsimile (faxes) or electronically **will not** be accepted. It is suggested that if a bid is mailed to PSCRB, it should be posted in certified mail with a return receipt guaranteed. PSCRB will not be responsible for mail delays or lost mail.

11.2.12 Sealed bids should be mailed or hand delivered to and labeled as follows:

Unarmed Security Services Preapproved List
Bid No. 03-2012
Opening Date: 10:00 AM CST, March 7, 2012
Personal Service Contract Review Board
Attention: Faye James
210 East Capitol Street, Suite 800
Jackson, Mississippi 39201
SEALED BID – DO NOT OPEN

Section 12 – 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 13 – 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.

Section 14 – Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business with the Mississippi Secretary of State or, if not already registered, that it will do so within seven business days of being notified by the PSCRB that it has been placed on the preapproved list.

Section 15 – Insurance

Each successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits:

- **Comprehensive General Liability -** $1,000,000 each occurrence, with the State of Mississippi added as an additional insured;

- **Workers Compensation** as required by the State of Mississippi; and,

- **Employee Dishonesty Bond Insurance** with third party liability coverage and with limits of $100,000.

Section 16 – Bid Opening

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

Section 17 – Award Notification

Awards for this procurement will be posted on the Mississippi State Personnel Board website at http://www.mspb.ms.gov. Additionally, a letter will be sent to all bidders notifying them of the awards.

Section 18 – Procurement Methodology

18.1 Restrictions on communication with PSCRB and MSPB staff

At no time shall any bidder contact, or attempt to contact, any PSCRB or Mississippi State Personnel Board (MSPB) staff regarding this IFB except to contact the contact person in Section 4 with questions**.**

18.2 Cost of preparing bid

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

18.3 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 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.

18.4 Rejection of bids

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 nonresponsive. The PSCRB reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the PSCRB of nonresponsiveness based on the submission of nonconforming terms and conditions.

18.5 Withdrawal of bid

18.5.1 If a bidder's price bid is substantially lower than those of other bidders, a mistake may have been made.

18.5.2 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.

18.5.3 To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to the PSCRB of claim of right to withdraw a bid. Within two business days after the bid opening, the bidder requesting withdrawal must provide to the PSCRB 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 PSCRB. No explanation is required.

18.6 Protests

Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with this solicitation or the outcome of this IFB may file a protest with the Director of the PSCRB. The protest shall be submitted in writing within five (5) days after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. A protest is considered filed when received by the Director of the PSCRB. Protests filed after the fifth day will not be considered.

Section 19 – Required Contract Terms and Conditions

Any contract entered into with an agency pursuant to a vendor/bidder being placed on the preapproved list shall have the required clauses found in **Attachment G**. These clauses are required by the Personal Service Contract Review Board's Rules and Regulations.

Section 20 – Optional Contract Terms and Conditions

Any contract entered into with an agency pursuant to a vendor/bidder being placed on the preapproved list may have, at the discretion of the contracting agency, the optional clauses found in **Attachment H**. These clauses are discretionary under the Personal Service Contract Review Board's Rules and Regulations.

Section 21 – Note to Agencies

Agencies are cautioned that this procurement may not comply with guidelines from outside funding sources such as the Federal Government or various grants. It is the agency's responsibility, when using such funding sources, to verify that this IFB meets the procurement requirements of same. **Also, this procurement does not replace agencies' currently active temporary service contracts and agencies will not be asked to terminate their current contracts.** Agencies do not have to contract with the vendors on the preapproved list; however, using vendors from the list will eliminate the need for procurement.

Section 22 – Attachments

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

Section 23 – Mississippi State Personnel Board Website

This IFB, the questions and answers, and the Preapproved List of Vendors for Unarmed Security Services will be posted on the MSPB website at http://www.mspb.ms.gov.

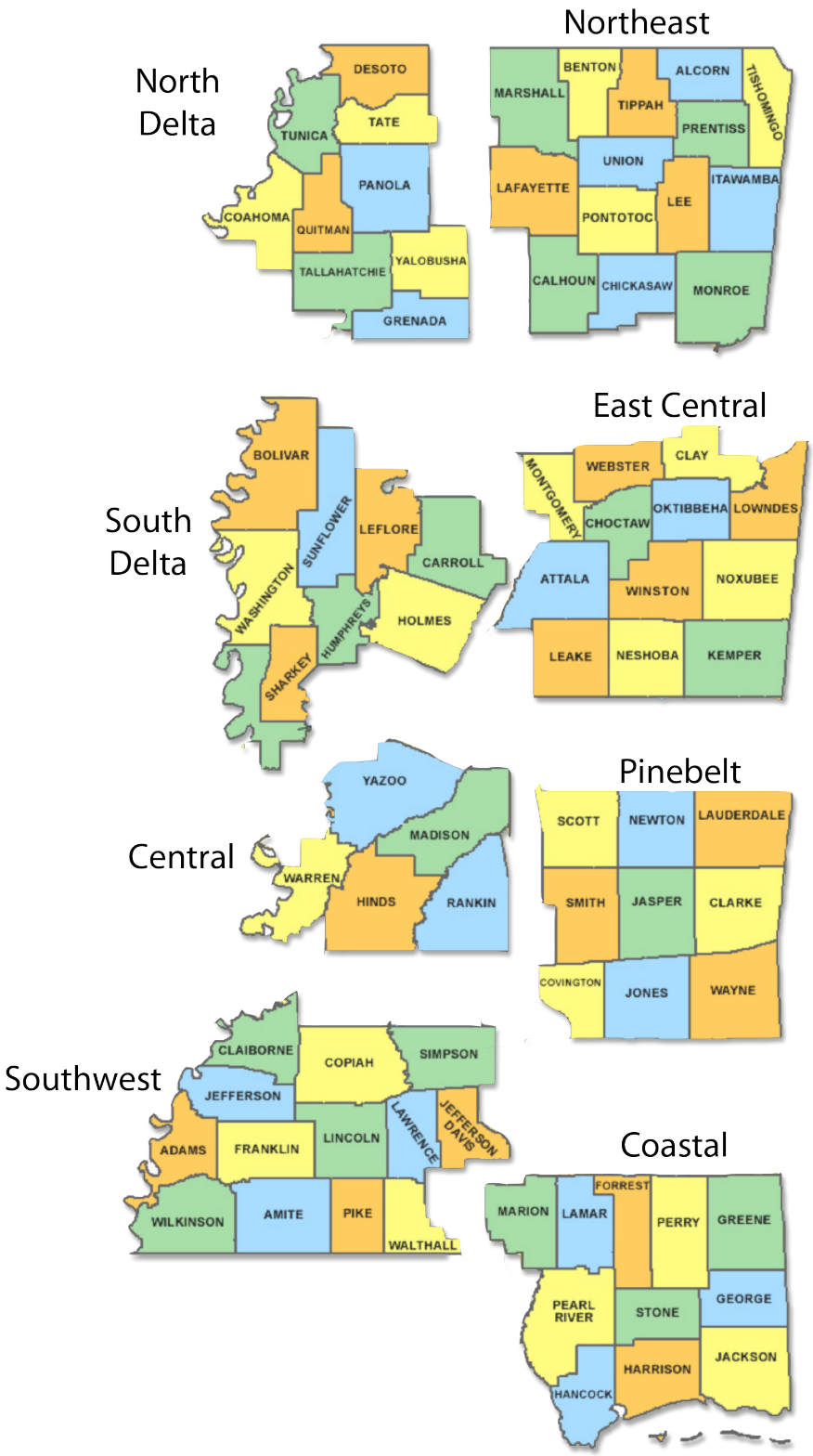
ATTACHMENT A

North Delta
Coahoma
Desoto
Grenada
Panola
Quitman
Tallahatchie
Tate
Tunica
Yalobusha

South Delta
Bolivar
Carroll
Holmes
Humphreys
Issaquena
Leflore
Sharkey
Sunflower
Washington

Central
Hinds
Madison
Rankin
Warren
Yazoo

Southwest
Adams
Amite
Claiborne
Copiah
Franklin
Jefferson
Jefferson Davis
Lawrence
Lincoln
Pike
Simpson
Walthall
Wilkinson



Northeast
Alcorn
Benton
Calhoun
Chickasaw
Itawamba
Lafayette
Lee
Marshall
Monroe
Pontotoc
Prentiss
Tippah
Tishomingo
Union

East Central
Attala
Choctaw
Clay
Kemper
Leake
Lowndes
Montgomery
Neshoba
Noxubee
Oktibbeha
Webster
Winston

Pinebelt
Clarke
Covington
Jasper
Jones
Lauderdale
Newton
Scott
Smith
Wayne

Coastal
Forrest
George
Greene
Hancock
Harrison
Jackson
Lamar
Marion
Pearl River
Perry
Stone

ATTACHMENT B

Illustrative Example of Awarding Placement on Preapproved List and Ranking of Bids

Bids (per hour with markup) for all unarmed security services for Central Region:

Bidder	Business Hours One Guard	Additional Guard*	Average Bid Price
Company A	$10	$10	$10.00
Company B	$13	$9	$11.00
Company C	$20	$17	$18.50
Company D	$14	$11	$12.50
Company E	$15	$8	$11.50
Company F	$16	$12	$14.00

Winning Bidders for Business Hours Guard(s): Company A, Company B, Company E

Winning Bidders ranked **lowest to highest:** Company A, Company B, Company E

An agency needing Business Hours Guard(s) would contact Company A first, then Company B second, and then Company E.

Bidder	After Business Hours One Guard	Additional Guard*	Average Bid Price
Company A	$15	$11	$13.00
Company B	$17	$10	$13.50
Company C	$22	$15	$18.50
Company D	$18	$12	$15.00
Company E	$17	$10	$13.50
Company F	$16	$12	$14.00

Winning Bidders for After Business Hours Guard(s): Company A, Company B, Company E

Winning Bidders ranked **lowest to highest**: Company A, Companies B and E (tie)

An agency needing After Business Hours Guard(s) would contact Company A first, then Company B or E, second and third.

Bidder	Twenty-Four Hours One Guard	Additional Guard*	Average Bid Price
Company A	$35	$20	$27.50
Company B	$25	$10	$17.50
Company C	$22	$15	$18.50
Company D	$24	$14	$19.00
Company E	$24	$12	$18.00
Company F	$20	$18	$19.00

Winning Bidders for Twenty-Four Hours Guard(s): Company B, Company C, Company E

Winning Bidders ranked **lowest to highest**: Company B, Company E, Company C

An agency needing Twenty-Four Hours Guard(s) would contact Company B first, then Company E, then Company C.

***Per additional guard.**

ATTACHMENT C

BID COVER SHEET

The Personal Service Contract Review Board, on behalf of the State of Mississippi, plans to develop a Preapproved List of Providers for Unarmed Security Services, and invites your bid.

Services listed above will be provided by region. *See* map of regions in **Attachment A.**

Bids are to be submitted to Faye James, Director, Personal Service Contract Review Board (PSCRB), 210 East Capital Street, Suite 800, Jackson, MS 39201, on or before 5:00 PM CST, Tuesday, March 6, 2012.

PLEASE MARK YOUR ENVELOPE: BID DATE—March 7, 2012, 10:00 AM CST

NAME OF COMPANY _____

QUOTED BY _____

SIGNATURE _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE _____

FAX NUMBER _____

EMAIL 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 unarmed security employees has your company placed in the past two years? _____

Please provide the physical location and mailing address of your company's office in the region bid._____
_____

If your company is not physically located in the region, how will you supply unarmed security services to agencies in the region? _____
_____
_____

What is the average number of workers you currently have that meet the minimum requirements for each service category?_____

ATTACHMENT D

BID FORM

Services to be provided in Region: _____

Company	Contact Person	Telephone Number

Category of Service	Hourly Rate (with markup) for one guard	Hourly Rate (with markup) for each additional guard
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty Four Hours Security Guard(s)		

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 Required and Optional Clauses to be included in any contract resulting from this IFB (**Attachments G and H**);
4. That the company will perform the services required at the prices quoted above; and,
5. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES-**The prospective contractor represents as a part of such contractor's bid or proposal that such contractor has/has not ***(please circle applicable word or words)***retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Company Name: _____

Printed name of representative: _____

Date: _____

Signature: _____

ATTACHMENT E

REFERENCES

REFERENCE 1

Name of Company:

Contact Person:

Address:

City/State/Zip:

Telephone Number:

REFERENCE 2

Name of Company:

Contact Person:

Address:

City/State/Zip:

Telephone Number:

REFERENCE 3

Name of Company:

Contact Person:

Address:

City/State/Zip:

Telephone Number:

Bidder may submit as many references as desired. References will be contacted in 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. The PSCRB staff must be able to contact two references for a bidder to be found responsible.

ATTACHMENT F

Reference Score Sheet

TO BE COMPLETED BY PSCRB STAFF ONLY

Region: _____

Bidder Name: _____

Reference Name: _____

Spoke to: _____

Score:_____

Able to provide a guard when you called	Yes	No
Satisfied with the guard provided	Yes	No
Vendor easy to work with in scheduling a guard	Yes	No
Vendor listened when you had an issue and readily offered a solution (if never had an issue, please mark here ___)	Yes	No
Would you recommend?	Yes	No

Each "yes" is one point; each "no" is zero points. Bidder must have a minimum score of "4" from two references (total of "8" points) to be considered responsible and for its bid to be considered.

Called by: _____

Date: _____

ATTACHMENT G

Required Clauses for Service Contracts Resulting from this IFB

Note: Words appearing in brackets "[ ]" may be substituted for the appropriate State Agency reference.

APPLICABLE LAW

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

AVAILABILITY OF FUNDS

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

REPRESENTATION REGARDING CONTINGENT FEES

The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor's bid or proposal.

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 Personal Service Contract Rules and Regulations*.

PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi, for inspection, or downloadable at www.mspb.ms.gov.

COMPLIANCE WITH LAWS

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

STOP WORK ORDER

1. *Order to Stop Work:* The procurement officer, may, by written order to the contractor at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either:
   a. cancel the stop work order; or,
   b. terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract.

2. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the contract shall be modified in writing accordingly, if:
   a. the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and,

b. the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the 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.

3. *Termination of Stopped Work:* If a stop work order is not cancelled 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.

4. *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

E-PAYMENT

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

E-VERIFICATION

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§ 71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject Contractor to the following:

1) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
2) 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,

3) 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.

ATTACHMENT H

Optional Clauses for Use in Service Contracts Resulting from this IFB
(At Discretion of Contracting Agency)

Attachment H includes (alphabetically by title) various service contracting clauses which are available for use. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., *[time], [date]).* Clarifications of clauses are in parentheses within or at the end of the clause. These are discretionary and the agency is neither required to use them nor prohibited from using others which are not included in this appendix.

ANTI-ASSIGNMENT/SUBCONTRACTING

The contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the contractor's special skills and expertise. The contractor shallot 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.

APPROVAL

It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

ATTORNEY'S FEES AND EXPENSES

Subject to other terms and conditions of this agreement, in the event the contractor defaults inane obligations under this agreement, the contractor shall pay to the State all costs and expenses(including, without limitation, investigative fees, court costs, and attorney's fees) incurred by testate 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 the contractor.

AUTHORITY TO CONTRACT

Contractor warrants:(a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d)notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

CONFIDENTIAL INFORMATION

"Confidential Information" shall mean: (a) those materials, documents, data, and other information which the contractor has designated in writing as proprietary and confidential; and, (b) all data and information which the contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidentially the State. Each party to this agreement agrees to the following:

1) to protect all confidential information provided by one party to the other;
2) to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and,
3) except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission; and,
4) to do so by using those methods and procedures normally used to protect the party's own confidential information.

Any liability resulting from the wrongful disclosure of confidential information on the part of the contractor or its subcontractor shall rest with contractor. Disclosure of any confidential information by the contractor or its subcontractor without the express written approval of the customer shall result in the immediate termination of this agreement.

CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that *[Agency]* Isa public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated § 25-61-1, *et seq*. If a public records request is made for any information provided to *[Agency]* pursuant to the agreement, *[Agency]* shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

CONTRACTOR PERSONNEL

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

DEBARMENT AND SUSPENSION

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

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

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 subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated § 25-61-1, *et seq*.

EXCEPTIONS TO CONFIDENTIAL INFORMATION

Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
4) is independently developed by the recipient without any reliance on confidential information;
5) is or later becomes part of the public domain or may be lawfully obtained by the State or the contractor from any nonparty; or,
6) is disclosed with the disclosing party's prior written consent.

ERRORS IN EXTENSION

If the unit price and the extension price are at variance, the unit price shall prevail.

FAILURE TO DELIVER

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

FAILURE TO ENFORCE

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

FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, the contractor shall execute and deliver to the *[Agency]* a release of all claims against the State

arising under, or by virtue of, the contract, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against the contractor under this contract.

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, and acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the force majeure events"). When such a cause arises, the contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

HIPAA COMPLIANCE

Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

INDEMNIFICATION

To the fullest extent allowed by law, the contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the Agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by the contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the contractor may be allowed to control the defense of any such claim, suit, etc. In the event the contractor defends said claim, suit, etc., the contractor shall use legal counsel acceptable to the State. The contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said

defense. The contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

INDEPENDENT CONTRACTOR STATUS

The 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, the contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and the contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and the contractor. The contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the contractor nor its employees shall, under any circumstances be considered servants, agents, or employees of the *[agency]* and the *[agency]* shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, agents, or employees. The *[agency]* shall not withhold from the contract payments to the contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the *[agency]* shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

INTEGRATED AGREEMENT/MERGER

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

MODIFICATION OR RENEGOTIATION

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

NO LIMITATION OF LIABILITY

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

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: *name, title, contractor, address*
For the agency: *name, title, agency, address*

NON-SOLICITATION OF EMPLOYEES

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

ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the *[agency]* and agreed to by the contractor.

OWNERSHIP OF DOCUMENTS AND WORK PAPERS

[Agency] shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for the contractor's internal administrative and quality assurance files and internal project correspondence. The contractor shall deliver such documents and work papers to *[agency]* upon termination or completion of the agreement. The foregoing notwithstanding, the contractor shall be entitled to retain a set of such work papers for its files. The contractor shall be entitled to use such work papers only after receiving written permission from *[agency]* and subject to any copyright protections.

PAYMENT

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

PRICE ADJUSTMENT CLAUSE

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 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*. The contractor shall provide cost or pricing data foray price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Personal Service Contract Procurement Regulations*.

PRIORITY

The contract consists of this agreement, the request for proposal *[number]* (hereinafter referred to as RFP and attached as Schedule [ ]), and the response proposal by *[contractor]* dated *[date]* (hereinafter referred to as Proposal and attached as Schedule [ ]). 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 RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Schedules [ ] or [ ] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

QUALITY CONTROL

The 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 the contractor's staff and ensuring that accurate records

are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the *[agency]*.

RECORD RETENTION AND ACCESS TO RECORDS

Provided the contractor is given reasonable advance written notice and such inspection is made during normal business hours of the contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of the contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by the contractor for three 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 year period, the records shall be retained for one year after all issues arising out of the action are finally resolved or until the end of the three year period, whichever is later.

RECOVERY OF MONEY

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

RENEWAL OF CONTRACT

The contract may be renewed at the discretion of the agency upon written notice to the contractor at least [number] days prior to each contract anniversary date for a period of [number] successive one-year periods under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

REQUIREMENTS CONTRACT

During the period of the contract, the contractor shall provide all the service described in the contract. The contractor understands and agrees that this is a requirements contract and that the *[agency]* shall have no obligation to the contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the *[agency]* for the period of the contract. The amount is only an estimate and the contractor understands and agrees that the *[agency]* is under no obligation to the contractor to buy any amount of the services as a result

of having provided this estimate or of having any typical or measurable requirement in the past. The contractor further understands and agrees that the *[agency]* may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

RIGHT TO AUDIT

The contractor shall maintain such financial records and other records as may be prescribed by the *[agency]* or by applicable federal and State laws, rules, and regulations. The contractor shall retain these records for a period of three years after final payment, or until they are audited by the *[agency]*, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

RIGHT TO INSPECT FACILITY

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

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.

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.

TERMINATION FOR CONVENIENCE CLAUSE

1. *Termination*. The procurement officer may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The procurement

officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

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

TERMINATION FOR DEFAULT CLAUSE

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

2. *Contractor's Duties*. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State has an interest.

3. *Compensation*. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the State against loss PSCRB Rules and Regulations (Effective 5/1/2010) 15because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

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

5. *Erroneous Termination for Default*. If, after notice of termination of the contractor’s right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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

TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by *[Agency]* upon written notice to the contractor, if the contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the contractor of an assignment for the benefit of its creditors. In the event of such termination, the contractor shall

be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

THIRD PARTY ACTION NOTIFICATION

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

UNSATISFACTORY WORK

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

VARIATIONS IN ESTIMATED QUANTITIES

Definite Quantity Contracts: The following clause is authorized for use in definite quantity service contracts:

VARIATION IN QUANTITY

Upon the agreement of the parties, the quantity of services specified in this contract may be increased by a maximum of ten percent provided:

1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and,
2) the procurement officer makes a written determination that such an increase will either be more economical than awarding another contract, or that it would not be practical to award another contract.

Indefinite Quantity Contracts: No clause is provided here because, in indefinite quantity contracts, the flexibility as to the State's obligation to order and the contractor's obligation to deliver should be designed to meet using agency needs while making the contract as attractive as possible to potential contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the State of Mississippi; however, in each case, the contract should State:

1) the minimum quantity, if any, the State is obligated to order and the contractor to provide;
2) whether there is a quantity the State expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;
3) any maximum quantity the State may order and the contractor must provide; and,
4) whether the State is obligated to order its actual requirements under the contractor in the case of a multiple award as defined in Section 3-504 (Multiple Source Contracting), that the State will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

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.