



Request for Proposals

Compliance Monitoring for Center for Medicare and Medicaid Services (CMS) Final Rule Regarding HCBS Settings

RFP #3150001460

**Contact: Toni Johnson
MS Department of Mental Health
239 North Lamar St.
Jackson, MS 39201
601-359-6244
toni.johnson@dmh.ms.gov**

**Issue Date: March 6, 2018
Closing Date and Time: March 23, 2018 4:00 p.m.**

SECTION 1

1.1 Proposal Acceptance Period

The original and 2 copies of the proposal, 3 copies total, shall be signed and submitted in a sealed envelope or package to MS Department of Mental Health, 239 North Lamar St. Jackson, MS 39201 no later than the time and date specified for receipt of proposals. Timely submission is the responsibility of the respondent. The envelope or package shall be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt shall be indicated on the envelope or package by the MS Department of Mental Health. Each page of the proposal and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the proposal. The Department of Mental Health reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, DMH may request the respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1. Timeline

RFP Release Dates	Tuesday, March 6, 2018 Tuesday, March 13, 2018
Sealed Proposals Due	Friday, March 23, 2018 by 4:00 p.m. CST
Opening of Proposals	Monday, March 26, 2018 at 10:00 a.m.
Notification of Intent to Award	Friday, April 6, 2018
Presentation to DMH Board	Thursday, May 17, 2018
Presentation to PSCRB for Approval	Wednesday, June 6, 2018
Estimated Start Date	July 1, 2018

1.1.2 Rejection of Proposals

Proposals which do not conform to the requirements set forth in this Request for Proposals may be rejected by the Department of Mental Health. Proposals may be rejected for reason which include, but are not limited to, the following:

- 1) The proposal contains unauthorized amendments to the requirements of the Request for Proposals.
- 2) The proposal is conditional.
- 3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- 4) The proposal is received late.
- 5) The proposal is not signed by an authorized representative of the party.
- 6) The proposal contains false or misleading statements or references.
- 7) The proposal does not offer to provide all services required by the Request for Proposal.

1.2 Expenses Incurred in Preparing Offers

The Department of Mental Health accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the respondent.

1.3 Proprietary Information

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

1.4 Registration with Mississippi Secretary of State

By submitting a proposal, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.5 Debarment

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

1.6 Competitive Proposals

Discussions may be conducted with respondents who submit proposals determined to be reasonably susceptible of being selected for award, but proposals may be accepted without such discussions. Likewise, the Mississippi Department of Mental Health also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of proposed terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 Additional Information

Questions about the contract portions of the procurement document must be submitted in writing to Toni Johnson at the MS Department of Mental Health, 239 North Lamar St. Jackson, MS 39201, toni.johnson@dmh.ms.gov.

Questions concerning the technical portions of the procurement document should be directed to the above named as well. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.7.1

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MS Department of Mental Health by the time and at the place specified for receipt of bids.

1.8 Type of Contract

DMH seeks to contract with one vendor as an independent contractor to complete interviews with people receiving ID/DD Waiver and IDD Community Support Program services as well as observations and assessments of the environments in which services are provided.

1.9 Written Proposals

All proposals shall be in writing.

SECTION 2

2.1 Purpose

The MS Department of Mental Health (DMH) seeks to contract with one vendor as an independent contractor to serve as interviewers to determine ID/DD Waiver and IDD Community Support Program provider compliance with the Centers for Medicare and Medicaid Services (CMS) issued regulations (Final Rule). The CMS regulations issued in March, 2014, were designed to ensure people receiving long-term services and supports through home and community based services (HCBS) programs have full access to the benefits of community living and the opportunity to receive services in the most integrated setting.

The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of people's experiences. The requirements mandate the following:

- HCBS settings facilitate supporting people receiving services to be integrated in and have full access to the greater community to the same degree as people not receiving HCBS
- HCBS optimize a person's autonomy and independence in making life choices, including control of personal resources
- HCBS settings are chosen by the person from among residential and day options, including non-disability specific settings
- HCBS settings ensure the right to privacy, dignity, respect and freedom from coercion and restraint for people receiving services

- HCBS provide opportunities to seek competitive employment
- HCBS settings facilitate choice of services for each person as well as who provides the services
- The use of a detailed person centered planning process to develop outcomes based on what is important to a person as well as what is important for them.

The Final Rule includes a provision requiring states offering HCBS to develop Statewide Transition Plans (STP) to ensure that all HCBS provided in residential and day settings will meet the Final Rule's requirements. States must evaluate the settings and, if there are settings that do not meet the final regulation's home and community-based settings requirements, develop a plan to bring their program into compliance.

At a minimum, states are expected to conduct site-specific assessments to determine if providers are or are not in compliance with the federal settings requirements. States may use a variety of methods to conduct site-specific assessments including: provider self-assessments; site visits; and policy and record reviews. Additionally, DMH is seeking input from people receiving services about their experiences receiving residential and day services through the ID/DD Waiver and IDD Community Support Program. States are also encouraged to engage advocacy groups in the required Statewide Transition Plan (STP) development.

After site specific assessments and interviews with people receiving services and their staff take place, data is to be aggregated and providers will be assigned to one of the four (4) categories designated by CMS: 1) the provider is in compliance with the Final Rule; the provider is not in compliance but could come into compliance with modifications; the provider is not in compliance but could be determined in compliance through the Heightened Scrutiny process; or 4) the provider does not and cannot meet the requirements of the Final Rule.

The state must then require remedial action from providers who do not meet the Final Rule, but can with modifications and those who will be evaluated under the Heightened Scrutiny provision of the regulations.

States must also provide the methods by which they will ensure providers remain in compliance with the Final Rule.

The anticipated begin date of the contract is July 1, 2018. The anticipated date of completion of all observations and interviews is 10/31/18.

All data will be aggregated by 12/31/18 and a Report Card with each provider's level of compliance will be placed on the DMH Website. Providers will be notified, in writing, of their level of compliance.

The state will use a "staggered" approach to ensuring providers are in compliance with the Final Rule. A percentage of providers will receive their Final Rule Compliance Report (FRCR) each month between 1/1/19 and 8/1/19. Providers will be given thirty (30) days from the date of their Final Rule Compliance Report to develop a Final Rule Plan of Compliance (FRPOC).

DMH is utilizing a Competitive Request for Proposals (RFP) process to request and obtain proposals from interested parties. It is understood that any contract resulting from RFP #3150001460 requires review by the Board of Mental Health and approval by the Office of Personal Service Contract Review. If any contract resulting from RFP #3150001460 is not approved by the Office of Personal Service Contract Review, it is void and no payment shall be made.

2.2 Scope of Services

The successful offeror must submit a plan that addresses assisting DMH in determining if certified providers are in compliance with the Final Rule requirements. The following services will be provided:

- Work with DMH staff to review/revise instruments to be used in assessing sites and people's experiences to determine compliance with the Final Rule. Also, included in this will be the development of a survey to use with staff providing services. The instruments must be based on the Exploratory Questions issued by CMS.
- Recruit field staff
- Train field staff, in conjunction with DMH staff, on the requirements of the Final Rule and in conducting interviews with people with disabilities

- Provide overview training for DMH staff and provider agencies as requested.
- Assist the state in pulling a valid sample, per provider, of people to interview
- Develop HIPAA compliant methods of collecting, transmitting, and storing data
- Schedule on-site visits with providers/people to be interviewed
- Assist with review and development of any and all written materials as they relate to determining provider compliance with the requirements of the Final Rule.
- Conduct site-specific assessments of 100% of the DMH certified sites providing HCBS using the instrument(s) developed by the DMH and contractor. Residential programs must be assessed after people return from their day program or on the weekend, while people are present. There are approximately 200 group homes and 75 day programs.
- Conduct approximately 1100 interviews with people receiving services in both day and/or residential programs.
- Conduct approximately 275 interviews with staff in day and residential programs (at least one staff person per site).
- Aggregate the data and assist the DMH is assigning providers to one (1) of the four (4) categories required by CMS.
- Provide the DMH information from site-specific assessments and interviews that can be used to write a Final Rule Compliance Report for each provider.
- Develop a template for Final Rule Compliance Reports.
- Perform phone consultation, as needed, throughout the term of the contract.

- Have Mississippi specific staff supervising the reviews of sites and conducting of interviews.

2.3 Term

The anticipated terms of the initial contract are from approximately July 1, 2018 through June 30, 2019. The anticipated date of completion of all observations and interviews is October 31, 2018. DMH expects the planning services to be initiated upon execution of an approved and signed contract. The contract is subject to the approval of both the MS Board of Mental Health and the Personal Service Contract Review Board prior to execution.

The term of the contract shall be for a period of one year. Upon written agreement of both parties at least 30 days prior to each contract anniversary date, the contract may be renewed by the Mississippi Department of Mental Health for a period of 3 successive one-year period(s) under the same prices, terms, and conditions as in the original contract subject to approval by PSCRB. The total number of renewal years permitted shall not exceed 3.

2.3.1 Multi-Term Contracts

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

2.3.1.1 Requirements

- a) The services required for the proposed contact period should be inclusive of planning, implementation, onboarding , and training necessary to complete the required deliverables.
- b) A unit price shall be given for each service, and that unit price shall be the same throughout the contact.
- c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
- d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
- e) A multi-term contract may be awarded to continue providing training opportunities contingent upon the amount of funds that remain available.

SECTION 3

3.1 Insurance

The successful vendor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance with minimum limits of \$500,000 per case. The Mississippi Department of Mental Health reserved the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor shall be prepared to provide evidence of required insurance upon request by DMH at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 4

4.1 Written Proposals Shall contain the Following Minimum Information

- 1) The name of the respondent, the location of the respondent's Principle place of business and, if different, the place of performance of the proposed contract;
- 2) The age of the respondent's business and average number of employee over a previous period of time (3 years from date of submission of proposal);
- 3) The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services; and,
- 4) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within the last 3 years from the dare of submission of proposal; and
- 5) A plan giving as many details as is practical explaining how the services will be performed.

4.2 Evaluation Procedure

4.2.1 Step One:

Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

4.2.1.1 Responsive Respondent

Respondent must submit a proposal which conforms in all material respects to this Request for Proposals, RFP# 3150001460 as determined by the MS Department of Mental Health

4.2.1.2 Responsible Respondent

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by the Department of Mental Health.

4.2.2 Step Two:

Proposals that satisfactorily complete Step One will be reviewed and analyzed to determine if the proposal adequately meets the needs of the

Mississippi Department of Mental Health. Factors to be considered are as follows:

- 1) The plan for performing the required services: 25%
- 2) Ability to perform the services, fulfill requirements, achieve objectives as reflected by general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; 25%
- 3) The personnel, trainers, evaluators, and technology to perform the services currently available or demonstrated to be made available at the time of contracting; 10%
- 4) A record of past performance of similar work; and, 15%
- 5) Price must be submitted with the sealed proposal in the form of a yearly fixed price: 25%

4.2.3 Step Three:

The Mississippi Department of Mental Health's Executive Director or his/her designee will contact the respondent with the proposal which best meets the Mississippi Department of Mental Health's needs (based on factor evaluated in Step Two) and attempt to negotiate an agreement that is deemed acceptable to both parties.

4.3 The Following Response Format Shall Be Used for All Submitted Proposals:

- 1) **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
- 2) **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks.
- 3) **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.
- 4) **Personnel:** Attach resumes' of all those who will be involved in the delivery of service (from principals to field technicians) that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
- 5) **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or

those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and tele phone number of a responsible contact person.

- 6) Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed.

4.4 Nonconforming Terms and Conditions

A proposal response that includes terms and conditions that do not conform to the terms and conditions in the proposal document is subject to rejection as non-responsive. The Department of Mental Health reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its proposal response prior to a determination by the Department of Mental Health of non-responsiveness based on the submission of nonconforming terms and conditions.

4.5 Conditioning Proposal Upon Other Awards

Any proposal which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.6 Award

Award shall be made to the responsible respondent whose proposal is determined in writing, within 5 days, to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation.

4.6.1 Notification

All participating vendors will be notified of the Department of Mental Health's intent to award a contract. In addition, the Department of Mental Health will identify the selected vendor. Notice of award is also made available to the public.

SECTION 5

5.1 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of the Department of Mental Health within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Director of the Department of Mental Health in writing and identify its attorney by name, address, and telephone number. The Department of Mental Health will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07. Post-Award Vendor Debriefing, of the *Personal Service Contract Review Board's Rules and Regulations*.

5.2 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Proposals may file a protest with the Proposal Coordinator, Toni Johnson, Director of the Bureau of Human Resources. The protest shall be submitted on or before (April 13, 2018, 4:00 p.m.), in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent, and contain a statement of the reason(s) for protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Proposal Coordinator, Toni Johnson, Director of the Bureau of Human Resources, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after (April 13, 2018, 4:00 p.m.), will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment B** and those required by the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.4 Optional Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent may have, at the discretion of the Contracting Agency, the optional clauses found in Attachment C and those within the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.5 Mississippi Contract/Procurement Opportunity Search Portal

This Request for Proposals, and the questions and answers concerning this Request for Proposals, are posted on the Contract/Procurement Opportunity Search Portal.

5.6 Attachments

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

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

1. That he/she has thoroughly read and understands this Request for Proposals, RFP # 3150001460, and the attachments herein;
2. That the company meets all requirements and acknowledged all certification contained in this Request for Proposals, RFP #3150001460, and the attachment herein;
3. That the company agrees to all provisions of this Request for Proposals, RFP # 3150001460 , and the attachments herein;
4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Proposals.

Printed Name: _____

Signature/Date: _____

ATTACHMENT A

Certifications and Assurances

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

1. REPRESENTATION REGARDING CONTINGENT FEES

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

2. REPRESENTATION REGARDING GRATUITES

The Respondent or Contractor represents that it **has/has not** violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Persona Service Contract Review Board Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The respondent certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a proposal, or the methods or factor used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

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

Name/Title: _____

Signature/Date: _____

*Note: Please be sure to **circle the applicable word or words** provided above. Failure to circle the applicable word or words and/or sign the proposal form may result in the proposal being rejected as nonresponsive. **Modification or additions to any portion of this proposal document may be cause for rejection of the proposal.***

ATTACHMENT B

Required Clauses for Service Contracts Resulting from the Request for Proposals

1. **Applicable Law.** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. **Availability of Funds.** It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the [State] of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. **Compliance with Laws.** Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
4. **E-Payment.** Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.
5. **E-Verification.** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance.

Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
 - (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 cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.
6. **Paymode.** Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
7. **Procurement Regulations.** The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
8. **Representation Regarding Contingent Fees.** Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
9. **Representation Regarding Gratuities.** The offeror, 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 Review Board Rules and Regulations*.
10. **Stop Work Order**
- a. **Order to Stop Work:** The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period

of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either

- (i) cancel the stop work order; or,
- (ii) terminate the work covered by such order as provided in the Termination for Default clause-or the Termination for Convenience clause of this contract.

b. Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (i) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
- (ii) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the 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.

11. Termination for Convenience.

(a) *Termination.* The DMH Executive Director 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 DMH Executive Director 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 DMH Executive Director or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

12. **Termination for Default.**

(a) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the DMH Executive Director 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 DMH Executive Director 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 DMH Executive Director or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the DMH Executive Director 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 procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(c) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the DMH Executive Director 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 DMH Executive Director or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the DMH Executive Director 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

“Termination for Convenience” in fixed price contracts and “Termination” in cost-reimbursement contracts.

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

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

13. **Termination Upon Bankruptcy.** This contract may be terminated in whole or in part by DMH upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
14. **Trade Secrets, Commercial and Financial Information.** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
15. **Transparency.** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.*, and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

ATTACHMENT C

Optional Clauses for Use in Service Contracts Resulting from this Request for Proposals

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. Subcontractors shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorney's Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all cost 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 cost of legal action to Contractor.
4. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
5. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information. Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that DMH is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to DNH pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, DMH shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing of information required by court order or required by law.
7. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.
8. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:
 - a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
 - b. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
 - c. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - e. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.
9. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:
 - a. is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
 - b. is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
 - c. is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - d. is independently developed by the recipient without any reliance on confidential information;
 - e. is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
 - f. is disclosed with the disclosing party’s prior written consent
11. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.
12. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.
13. Failure to Enforce. Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.
14. Final Payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State’s claims against Contractor under this contract.
15. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the

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

16. HIPAA Compliance. Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
17. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.
18. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or

state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

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

20. Modification or 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.

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

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

For the Agency:	For Contractor:
Toni Johnson, Director of the Bureau of Human Resources	
MS Department of Mental Health	
239 North Lamar Street	
Jackson, MS 39201	

23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
24. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.
25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.
26. Priority. The contract consists of this agreement with exhibits, the procurement Request for Proposals # (hereinafter referred to as RFP and attached as Schedule []), and the response dated [date] by [CONTRACTOR NAME] (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 with exhibits 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.
27. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
28. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are

closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three-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-year period, whichever is later.

29. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.
30. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
31. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.
32. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
33. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.
34. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.
35. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service

or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

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

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

Attachment D
DMH Contract Sample

DEPARTMENT OF MENTAL HEALTH
PERSONAL SERVICE CONTRACT
INDEPENDENT CONTRACTOR

This Personal Service Contract (“Contract”) is made by and between the Mississippi Department of Mental Health (“DMH”) whose address is 239 North Lamar Street, Suite 1101, Robert E. Lee Building, Jackson, Mississippi 39201 and XXXXXX (“Contractor”), whose address is XXXXXX on the XXXX day of XXXXXX, 2017 under the following terms and conditions:

1. **Scope of Services** The Contractor will provide (See Attachment E)
2. **Contract Term** The period of performance of services under this Contract shall begin on July 1, 2018 and shall end no later than June 30, 2019.
3. **Consideration** As consideration for the performance of this Contract, Contractor shall be paid a fee not to exceed XXXXX in accordance with the terms of this Contract. Contractor shall submit an invoice for approval by the DMH within ten (10) days of completion of each phase of the project. The invoice shall include: (a) a reference to this Contract (b) Contractor’s tax payer identification number (c) any other details as the DMH may reasonably request. It is agreed that, in no event, the total compensation paid to Contractor will exceed the specified amount contained in this paragraph.
4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Department of Finance and Administration (DFA) agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-305, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) and shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

6. **Availability of Funds** It is expressly understood and agreed that the obligation of the DMH 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 DMH, the DMH 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 DMH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). DMH shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.
7. **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.
8. **Representation Regarding Gratuities** The offeror, 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 Review Board Rules and Regulations*.
9. **Record Retention and Access to Records** The Contractor agrees that the DMH or any of its duly authorized representatives at any time during the term of this Agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and records of the Contractor related to the Contractor's charges and performance under this Agreement. In addition, such records, including, but not limited to, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract shall be maintained and made available to DMH, any state agency authorized to audit DMH, the federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives. The Contractor agrees to refund to the DMH any overpayment disclosed by any such audit arising out of or related in any way to this contract. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed, unless the DMH authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration 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.

10. **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.
11. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of the DMH. Any attempted assignment or transfer without said consent shall be void and of no effect.
12. **Compliance with Laws** The Contractor understands that the DMH is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all DMH policies and procedures and all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
13. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
14. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

15. **Employee Status Verification System** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp. 2008), 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. The Contractor agrees to maintain records of such compliance, and upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws.

The Contractor understands and agrees that any breach of these warranties may subject the Contractor to the following: (a) 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, or (b) the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, the Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

16. **Independent Contractor** The Contractor shall perform all services as an Independent Contractor and shall at no time act as an agent for the DMH. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the DMH. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DMH; and the DMH shall no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. It is expressly understood and agreed that DMH enters into this Contract with Contractor based on the procurement of professional services and not based on an employer-employee relationship. For all purposes under this Contract, it is understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by DMH for any purpose from said Contract sum. Contractor accepts exclusive responsibility for the payment of Federal Income Tax, State tax, Social Security, and any other withholdings that may be required.

Contractor represents that it is qualified to perform the duties to be performed under this Contract and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DMH. Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. DMH may, however, direct Contractor to replace any of its employees under this Contract. Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises if any DMH location. Any employee or subcontractor of Contractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All employees and subcontractors of Contractor who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy. Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor its employees are entitled to state retirement or leave benefits.

At no time during the performance of the contract shall the contractor have the authority to obligate DMH for payment of any goods or services over and above the awarded contract. If the need arises for goods or services over and above the awarded contract for this project, contractor shall cease and contract DMH contract administrator for approval prior to proceeding.

17. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the DMH revisions of any applicable laws or regulations make changes in this Contract necessary.
18. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Office of Personal Service Contract Review , a copy of which is available at 501 North West Street, Suite 700, Jackson, MS, 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.
19. **Ownership of Documents and Work Papers** The DMH shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with the Project which is the subject of this Contract, 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 the DMH upon termination or completion of the Contract. 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 the DMH and subject to any copyright protections.

20. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the DMH, its 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 attorneys' fees, and claims for damage 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 Contract.

21. **Third Party Action Notification** The Contractor shall notify DMH in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or DMH by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractors performance under this Contract. Failure of the Contractor to provide such written notice to DMH shall be considered a material breach of this Contract and the DMH may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.

22. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or overnight courier with the signed receipt, 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:

XXXXXXXXXX

For DMH:

Toni Johnson, Director, Bureau of Human Resources
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

23. **Severability** If any term or provision of this Contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
24. **Change in Scope of Work** The Mississippi Department of Mental Health may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No services may be changed, no changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Mississippi Department of Mental Health and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Mississippi Department of Mental Health in writing of this belief. If the Mississippi Department of Mental Health believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

25. **Failure to Enforce** Failure by the DMH, 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 DMH to enforce any provision at any time in accordance with its terms.
26. **Conflict of Interest** Contractor shall notify the DMH of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the DMH's satisfaction, the DMH reserves the right to terminate this Contract.
27. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.
28. **Confidential Information** Contractor shall treat all DMH data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of DMH. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the DMH and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force

and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.

29. **Network Security** Contractor agrees that any access to the state network must follow all the guidelines set forth by MS ITS security policy and be responsible for cost for implementation and or any changes or updates of such policy unless agreed upon by both parties including ITS.

30. **Stop Work Order**

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

(a) 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,

(b) 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 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.

31. **Termination** The DMH may terminate this Contract with or without cause upon ten (10) days written notice to the Contractor. The Contractor may terminate this Contract with cause upon thirty (30) days written notice to the DMH.

32. **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.

33. **Attorney's Fees and Expenses** Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under the 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 the enforcing of 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.

34. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by DMH and XXXXXXXX hereto as of the day and year first above written.

XXXXXXXXXX, Contractor

Date

Renee Brett, Director, Bureau of IDD

Date

Kelly Breland, Director of the Bureau of Administration
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

Date

Attachment E
Scope of Services

- Work with DMH staff to review/revise instruments to be used in assessing sites and people's experiences to determine compliance with the Final Rule. Also, included in this will be the development of a survey to use with staff providing services. The instruments must be based on the Exploratory Questions issued by CMS.
- Recruit field staff
- Train field staff, in conjunction with DMH staff, on the requirements of the Final Rule and in conducting interviews with people with disabilities
- Provide overview training for DMH staff and provider agencies as requested.
- Assist the state in pulling a valid sample, per provider, of people to interview
- Develop HIPAA compliant methods of collecting, transmitting, and storing data
- Schedule on-site visits with providers/people to be interviewed
- Assist with review and development of any and all written materials as they relate to determining provider compliance with the requirements of the Final Rule.
- Conduct site-specific assessments of 100% of the DMH certified sites providing HCBS using the instrument(s) developed by the DMH and contractor. Residential programs must be assessed after people return from their day program or on the weekend, while people are present. There are approximately 200 group homes and 75 day programs.
- Conduct approximately 1100 interviews with people receiving services in both day and/or residential programs.
- Conduct approximately 275 interviews with staff in day and residential programs (at least one staff person per site).
- Aggregate the data and assist the DMH in assigning providers to one (1) of the four (4) categories required by CMS.
- Provide the DMH information from site-specific assessments and interviews that can be used to write a Final Rule Compliance Report for each provider.
- Develop a template for Final Rule Compliance Reports.

- Perform phone consultation, as needed, throughout the term of the contract.
- Have Mississippi specific staff supervising the reviews of sites and conducting of interviews.