



**STATE OF MISSISSIPPI**

Tate Reeves  
Governor

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

Chris Wells, Executive Director

October 9, 2024

**AMENDMENT #1**

RFQ Number: RFx3140003892 MDEQ-RFQ10072024

To Provide: Professional Engineering Services to Support MDEQ Permitting per Regular Session 2024, SB 2649.

This Amendment #1 ("Amendment") hereby amends or modifies the RFQ referenced above, by adding/including Attachments A, B and C as provided below. All other sections and subsections of the RFQ and its attachments, have not changed and remain in full force and effect.

***Offeror shall acknowledge receipt of Amendment #1 by signing Page 22 of this document and returning this Amendment #1 with its Statement of Qualifications.***

CONTRACTS DIVISION

POST OFFICE BOX 2261 • JACKSON, MISSISSIPPI 39225-2261 • Tel: (601) 961-5107 • [www.mdeq.ms.gov](http://www.mdeq.ms.gov)

AN EQUAL OPPORTUNITY EMPLOYER

## Attachment A

### Offeror Information Sheet

As part of the Offeror's SOQ, this Attachment must be completed and signed by the company's authorized representative.

Offeror's Company Name:	
Unique Entity ID ("UEI"):	
Principal point of contact:	
Contact's Email Address:	
Contact's Telephone Number:	
Address of Offeror's Principal Place of Business:	
Age of the Company:	
Average number of employees over the last three (3) years:	

Please indicate, by marking the box next to each Task Area, the Task Areas that the Offeror is submitting qualifications for, and requests to be evaluated under this RFQ. **MDEQ will only evaluate the Task Area(s) and sub-category(s) that have been marked below.**

The Offeror must comprehensively and separately address each of the factors for each Task in their own section labeled using the numbering system listed below and stated in Section 2.3.2, Task Areas in this RFQ.

#### 1. Environmental Water Permitting

- NPDES
- State Operating
- Pretreatment
- Hot Mix Asphalt Coverages (Air/Water)
- Ready Mix Concrete Coverages (Air/Water)
- Wet Deck Log Spray Coverages (Water)
- Small Municipal Separate Storm Sewer System Coverages (Water)
- Industrial Stormwater Coverages (Water)
- Large Construction Stormwater Coverages (Water)
- Dry Litter Poultry Animal Feeding Operation Coverages (Water)

- Concentrated Animal Feeding Operation Coverages (Water)
- Hydrostatic Coverages (Water)
- Underground Storage Tank Remediation Coverages (Water)
- Mining Coverages (Water)

**2. Environmental Air Permitting**

- Prevention of Significant Deterioration Construction
- Title V Operating
- Synthetic Minor Operating
- Air Construction
- Hot Mix Asphalt Coverages (Air/Water)
- Ready Mix Concrete Coverages (Air/Water)
- Oil Production Coverages (Air)

**3. Water Quality Certifications and Assessments**

**4. Sanitary Sewer Expert Review**

**5. Solid Waste Permitting and Other Authorizations**

- Municipal Solid Waste (MSW) Landfill
- Non-MSW or Industrial Waste Landfill
- Class I Rubbish Site
- Class II Rubbish Site
- Transfer Station
- Processing Facility
- Composting Facility
- Land Application Site
- Waste Tire Processing Facility
- Waste Tire Collection Site (Authorization)
- Solid Waste Planning - Comprehensive Update
- Solid Waste Planning - Amendments
- Beneficial Use Determination

**6. Hazardous Waste and/or Underground Injection Control (“UIC”) Well Permitting**

**7. Technical Support for Groundwater Assessment and Remediation**

**8. Office of Land and Water Resources**

**9. Office of Geology**

Selected Offerors must maintain a list of other clients for review by MDEQ and identify any potential conflicts of interest due to previous work or that may arise during the contract duration. Offerors must provide a list of current or previous clients upon request.

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 the Request for Qualifications, RFX3140003892 MDEQ-RFQ10072024, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Request for Qualifications, RFX3140003892 MDEQ-RFQ10072024, and attachments herein;
3. That the company agrees to all provisions of this Request for Qualifications, RFX3140003892 MDEQ-RFQ10072024, 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 Qualifications.

**Printed Name:**

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**Signature:**

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**Title:**

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**Date:**

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## Attachment B

### Certifications and Assurances

I/We make the following certifications and assurances as a required element of the SOQ to which it is attached, of 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. NON-DEBARMENT:** By submitting a SOQ, the Offeror certifies that it is not currently debarred from submitting SOQ for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting SOQ for contracts issued by any political subdivision or agency of the State of Mississippi.
- 2. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES:** The Offeror represents as a part of such SOQ that such Offeror *has/has not* retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
- 3. REPRESENTATION REGARDING CONTINGENT FEES:** The Offeror 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 the Offeror's SOQ.
- 4. REPRESENTATION REGARDING GRATUITIES:** The Offeror 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
- 5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** The Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to those prices, the intention to submit a SOQ, or the methods or factors used to calculate the prices in the SOQ.

**Offeror Name:** \_\_\_\_\_

**Printed Name of Representative:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

## Attachment C

### Standard Contract Terms and Condition

1. Acknowledgment of Amendments

The Offerors shall acknowledge receipt of any amendment to the RFQ in writing. The acknowledgement shall be signed and submitted with the SOQ. The acknowledgement must be received by MDEQ by the time and at the place specified for receipt of SOQ.

2. 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 Mississippi.

3. Approval

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

4. Availability of Funds

It is expressly understood and agreed that the obligation of the MDEQ to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of the funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, regardless of the source, the MDEQ shall have the right upon ten (10) business days written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

5. Certification of Independent Price Determination

By submitting a qualification, the Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication, or agreement with any other Offeror or competitor for the purpose of restricting competition.

6. Compliance with Equal Opportunity in Employment Policy

The Contractor understands that the MDEQ 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.

7. Compliance with Laws

The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

8. Contract Rights

Contract rights do not vest in any party until a contract is legally executed. The MDEQ is under no obligation to award a contract following issuance of this solicitation.

9. 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 agency agrees to make payment in accordance with Mississippi "Timely Payments for Purchases by Public Bodies" laws, which generally provide for payment of undisputed amounts by the Agency within forty-five (45) calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301, *et seq.*

10. E-Verification

If applicable, the Contractor represents and warrants that it will ensure its compliance with the *Mississippi Employment Protection Act* and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 and 71-11-3. The Contractor agrees to provide a copy of each verification upon request of the MDEQ subject to approval by any agencies of the United States Government. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

The breach of this agreement may subject the Contractor to the following:

- (1) termination of this Contract and inclusion pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*;
- (2) 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; or both.
- (3) both. In the event of such termination, the Contractor would also be liable for any additional costs incurred by the Agency due to Contract cancellation or loss of license or permit to do business in the State.

11. Expenses Incurred in the Procurement Process

All parties participating in the procurement process with regard to this solicitation shall bear their own costs of participation, pursuant to Section 1.4.4 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

12. Minor Informalities and Irregularities

The MDEQ has the right to waive minor defects or variations of a qualification from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance of the services being procured and if doing so does not create an unfair advantage for any Offeror. If insufficient information is submitted by a Offeror for the MDEQ to properly evaluate the offer, the MDEQ has the right to require such additional information as it may deem necessary after the submission deadline, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured and such a request does not create an unfair advantage for any Offeror. (*Information requested may include, for example, a copy of business or professional licenses, or a work schedule.*)

13. Paymode

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

14. Procurement Regulations

The Contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available on the Mississippi Department of Finance and Administration's website ([www.dfa.ms.gov](http://www.dfa.ms.gov)). Any Offeror responding to a solicitation for personal and professional services and any contractor doing business with a state Agency is deemed to be on notice of all requirements therein.

15. Property Rights

Property rights do not inure to any Offeror until such time as services have been provided under a legally executed contract. No party responding to this RFQ has a legitimate claim of entitlement to be awarded a contract or to the provision of work thereunder. The MDEQ is under no obligation to award a contract and may terminate a legally executed contract at any time.

16. Representation Regarding Contingent Fees

By responding to the solicitation, the Offeror represents that it has not retained any person or agency on a percentage, commission, or contingent arrangement to secure this contract. If the Offeror cannot make such representation, a full and complete explanation shall be submitted in writing with the Offeror's response.

17. Representation Regarding Gratuities

The Contractor represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of the MDEQ a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. The Contractor further represents that no employee or former



employee of the MDEQ has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by the Contractor. The Contractor further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.

18. Required Public Records and Transparency

Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall 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 pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on [www.transparency.ms.gov](http://www.transparency.ms.gov) and shall be available for at the Agency for examination, inspection, or reproduction by the public. The Contractor acknowledges and agrees that the MDEQ and this contract are subject to the Mississippi Public Records Act of 1983 codified at Mississippi Code Annotated §§ 25-61-1, et seq. and its exceptions, Mississippi Code Annotated § 79-23-1, and the Mississippi Accountability and Transparency Act of 2008, codified at Mississippi Code Annotated §§ 27-104-151, et seq.

19. Stop Work Order

The MDEQ may, by written order to the Contractor at any time, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a period of time specified by the MDEQ. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize any further cost to the MDEQ. Upon expiration of the stop work order, Contractor shall resume providing the services which were subject to the stop work order, unless the MDEQ has terminated that part of the agreement or terminated the agreement in its entirety. The MDEQ is not liable for payment for services which were not rendered due to the stop work order.

20. Termination

*Termination for Convenience.* The MDEQ may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The MDEQ shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. 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 complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

*Termination for Default.* If the MDEQ gives the Contractor a notice that the personal or professional services are being provided in a manner that is deficient, the Contractor shall have 30 days to cure the deficiency. If the Contractor fails to cure the deficiency, the MDEQ may terminate the contract for default and the Contractor will be liable for the additional cost to the MDEQ to procure the personal and professional services from another source. Termination under this paragraph could result in Contractor being excluded from future contract awards pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*. Any termination wrongly labelled termination for default shall be deemed a termination for convenience.

21. 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.

22. Antitrust

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

23. Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. The 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.

24. Authority to Contract

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

25. Change in Scope of Work

MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Contractor that the scope of the Project or of Contractor's services has been changed, requiring 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 MDEQ 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 MDEQ in writing of this belief. If MDEQ 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 services within the Contract.

26. Claims based on Chief Procurement Officer's Actions or Omissions

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

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

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

- (2) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and,
- (3) The Contractor maintains and, upon request, makes available to the Chief Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. *Limitation of Clause.* Nothing contained herein shall excuse the Contractor from compliance with any rules of law precluding state officers and the Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

27. Confidential Information

"Confidential Information" shall mean: (a) those materials, documents, data, and other information, which the Contractor has designated in writing as proprietary and confidential; and (b) all data and information, which the Contractor acquires as a result of its contact with, and efforts on behalf of the

customer and any other information designated in writing as confidential by the State. Each party to this Contract agrees to the following:

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

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

28. Confidentiality

The MDEQ is a public agency of the State of Mississippi and is subject to the *Mississippi Public Records Act of 1983*. Mississippi Code Annotated §§ 25-61-1, *et seq.* If a public records request is made for any information provided to the MDEQ by the Contractor, the MDEQ shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information – unless Contractor has previously indicated the information is not a trade secret or confidential commercial and financial information. The MDEQ shall not be liable to the Contractor for disclosure of information required by court order or required by law.

29. Conflict of Interest

The Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the U.S. Department of the Treasury, RESTORE Council, MDEQ, or the Project that would impinge on the Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. The Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

30. Contract Assignment and Subcontracting

The Contractor acknowledges that it was selected by the MDEQ to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not

assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the MDEQ, which may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of the Contractor's obligations hereunder without consent of the MDEQ shall be null and void. Approval of a subcontract by the MDEQ shall not be deemed to be approval of the incurrence of any additional obligation of the MDEQ. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the MDEQ may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

31. Contractor Personnel

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

32. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

33. Debarment and Suspension

The 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 SOQ, 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 SOQ, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraphs two (B) and (C) of this certification; and,
- E. has not, within a three-year period preceding this SOQ, had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

34. Disputes

Before pleading to any judicial system at any level, the Contractor must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the Contractor. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35 (Rev. 2012), with appeals from the Commission's decision following procedures as outlined in Mississippi Code Annotated Section 49-17-41 (Rev. 2012).

35. Failure to Deliver

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the MDEQ, 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 MDEQ may have.

36. Failure to Enforce does not constitute waiver

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

37. Final Payment

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this Contract, or as a termination settlement under this Contract, the Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against the Contractor under this contract.

38. Force Majeure

Each party shall be temporarily 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 Agency in writing at its earliest reasonable opportunity of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. All parties shall make reasonable efforts to minimize the impact of the force majeure event on contract performance. The MDEQ may exercise any rights it has under the contract which are available when neither party is in default.

39. Headings

The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

40. HIPAA Compliance

The 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.

41. Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDEQ 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 attorneys’ fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement.

In the MDEQ’s sole discretion, upon approval of the Office of the Mississippi Attorney General and the MDEQ, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the MDEQ. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDEQ shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the MDEQ, which shall not be unreasonably withheld.

42. Independent Contractor Status

The Contractor shall, at all times, be regarded as, shall be legally considered an independent contractor, and shall at no time act as an agent for the MDEQ. Nothing contained herein shall be deemed or construed by the MDEQ, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer, and employee, or any similar such relationship between the MDEQ and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDEQ or the Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the MDEQ and the Contractor.

The Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDEQ. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDEQ, and the MDEQ shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees.

The MDEQ shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Agency shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the MDEQ for its employees.

43. Infringement Indemnification

The Contractor warrants that the materials and deliverables provided to MDEQ under this Contract, and their use by the MDEQ, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, the Contractor shall defend the infringement action and/or obtain for the MDEQ the right to continue using such items. Should the Contractor fail to obtain for the MDEQ the right to use such items, the Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at the Contractor's expense.

In the event the above remedial measures cannot possibly be accomplished, and only in that event, the Contractor may require the MDEQ to discontinue using such items, in which case Contractor will refund to the customer the fees previously paid by the MDEQ for the items the customer may no longer use and shall compensate the MDEQ for the lost value of the infringing part to the phase in which it was used up to and including the Contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the MDEQ to discontinue said use.

*Scope of Indemnification:* Provided that the MDEQ promptly notifies the Contractor in writing of any alleged infringement claim of which it has knowledge, the Contractor shall indemnify, defend, save and hold harmless the MDEQ against any such claims, including but not limited to any expenses, costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

In the MDEQ's sole discretion, upon approval of the Office of the Mississippi Attorney General and the MDEQ, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the MDEQ. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDEQ shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the MDEQ, which shall not be unreasonably withheld.

44. Insurance

Prior to Contract performance, Contractor shall provide and maintain sufficient insurance coverage during the period of performance of the Contract, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, as required by applicable state and federal law related to the work of the Contract and in connection with the Contract. This may include, but is not limited to the following:



- a) Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00).
- b) Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) aggregate.
- c) Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks in performance of the work.
- d) Errors and Omissions/Professional Liability Coverage. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

MDEQ, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi and its elected and appointed officers, employees and agents shall be named as additional insureds on such policies. The successful Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The successful Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the successful Contractor's coverage. Endorsements so stating shall be provided to MDEQ by the successful Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy. While the successful Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Contract, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the contractual provisions addressing the indemnity of MDEQ by the successful Contractor.

Upon execution of the Contract, the Contractor shall promptly furnish MDEQ with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While the Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Agreement, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the provisions addressing the indemnity of MDEQ by the Contractor.

45. Integrated Agreement/Merger

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

46. Modification or Renegotiation

This Contract 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.

47. No Limitation of Liability

Nothing in this agreement shall be interpreted as excluding or limiting any liability of the Contractor for harm arising out of the Contractor's or its subcontractors' performance under this agreement.

48. Notices

All notices required or permitted to be given under this agreement shall 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 (Contractual related items):	For Contractor:
Aveleka Moore, Contracts Division Director	[Name, Title]
MDEQ	[Contractor Name }
515 East Amite Street	[Address]
Jackson, MS 39201	[City, State, Zip]

49. 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 one year after this agreement terminates unless mutually agreed to in writing by the MDEQ and the Contractor. Any such employment or solicitation for employment shall be in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121.

50. 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 MDEQ and agreed to by the Contractor.

51. Ownership of Documents and Work Papers

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

52. Priority

The Contract consists of this agreement with exhibits, the Request for Qualifications RFX3140003892 MDEQ-RFQ10072024 (hereinafter referred to as "RFQ", and attached as Exhibit [ ]), and the Offeror's SOQ dated [date] by [CONTRACTOR NAME] (hereinafter referred to as "SOQ" and attached as Exhibit [ ]). Any ambiguities, conflicts or questions interpretation of this Contract shall be resolved by first, reference to this agreement/contract with exhibits and, if still unresolved, by reference to the RFQ and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Exhibits [ ] or [ ] shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

53. Prospective Contractor's Representation Regarding Contingent Fees

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

54. Record Retention and Access to Records

Provided the Contractor is given reasonable advance written notice, and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. Except as provided below, all records related to this Contract shall be retained by the Contractor for a minimum of three (3) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

The Contractor is not required to retain the above-mentioned records for the three-year period prescribed in this Section and the “Right to Audit” provision only if all of the following conditions are satisfied:

- A. The Contractor has provided all of the documents described above and in the “Right to Audit” provision to MDEQ prior to the expiration of the three (3) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before the Contractor provides the records and corresponding certification to MDEQ, in which case, the Contractor shall retain the records until all issues arising out of the action are finally resolved; and
- C. The Contractor provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

55. Recovery of Money

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

56. Requirements Contract

During the period of the contract, the Contractor shall provide all services described in the contract. Contractor understands and agrees that this is a requirements contract and that the MDEQ 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 MDEQ for the period of the contract. The amount is only an estimate, and the Contractor understands and agrees that the MDEQ is under no obligation to the Contractor to utilize any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The Contractor further understands and agrees that the MDEQ 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.

57. Right to Audit

The Contractor shall maintain such financial records and other records as may be prescribed by the MDEQ or by applicable federal and state laws and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the MDEQ, 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 MDEQ, the Mississippi State Auditor’s Office, and/or other entity of the state.

58. Right to Inspect Facility

The MDEQ 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 MDEQ.

59. 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.

60. State Property

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

61. Third Party Action Notification

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

62. Unsatisfactory Work

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

63. Venue

The Venue for the resolution of any dispute, according to Disputes Clause of this Contract, and any subsequent litigation shall be in Jackson, Hinds County, Mississippi.

64. Waiver

MDEQ may waive any provision, in whole or in part, of this Contract not otherwise required by law. Failure by MDEQ, 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 MDEQ to enforce any provision at any time in accordance with its terms.

**Offeror shall acknowledge receipt of Amendment #1 by signing and returning this Amendment #1 with its Statement of Qualifications.**

By signing below, Offeror acknowledges receipt of Amendment #1, and that its SOQ is being offered in compliance therewith.

Offeror's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

By (Print Name): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_