



John Davis
Executive Director

INVITATIONS FOR BIDS (IFB)

Employee Assistance Program
IFB No. 3160002257
Issue Date: May 25, 2018

CLOSING LOCATION

Mississippi Department of Human Services
750 North State Street
Jackson, Mississippi 39202

CONTACT

Name: Bridgette Bell
Chief Financial Officer
E-Mail: Bridgette.Bell@mdhs.ms.gov

CLOSING DATE AND TIME

Bids must be received by June 26, 2018, at 9:00 AM (Central Time)

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GENERAL INSTRUCTIONS

Section 1 – Purpose

The Mississippi Department of Human Services (MDHS) is seeking to establish a contract (or contracts if sufficient coverage for the State of Mississippi is not through a sole contract) with a vendor to provide Employee Assistance Program Services. It is understood that any contract resulting from Invitation for Bids (IFB) No. 3160002257 requires approval by the Mississippi Department of Finance and Administration (DFA), Office of Personal Service Contract Review (OPSCR). If any contract resulting from IFB No. 3160002257 is not approved by the Public Procurement Review Board (PPRB) and/or OPSCR, it is void and no payment shall be made.

Section 2 – Timeline

Invitation for Bid Issue Date:	May 25, 2018
Questions and Requests for Clarification to MDHS Deadline:	June 13, 2018, 5:00 PM CT
Anticipated Posting of Written Answers to Questions:	June 15, 2018, 5:00 PM CT
Bid Package Submission Deadline:	June 26, 2018, 9:00 AM CT
Bid Opening:	June 26, 2018, 10:00 AM CT
Anticipated Date of the Notice of Intent to Award:	June 29, 2018, 5:00 PM CT
Anticipated Post-Award Debriefing Request Due Date:	July 5, 2018, 5:00 PM CT
Anticipated Post-Award Debriefing Held By Date:	July 11, 2018, 5:00 PM CT
Anticipated Protest Deadline Date:	July 12, 2018, 1:00 PM CT

Note: MDHS reserves the right to adjust this schedule as it deems necessary. MDHS also has the right to reject any and all bids during any step of the procurement or awarding process (even after negotiations have begun).

Section 3 – MDHS Contact and Questions/Requests for Clarification

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

Bridgette Bell, CFO

Email: Bridgette.Bell@mdhs.ms.gov

3.2 Questions and requests for clarification must be submitted via email by the deadline reflected in Section 2.

3.3 All questions, requests for clarification, and answers will be published on the Mississippi Department of Human Services (hereinafter “MDHS”) website (<http://www.mdhs.ms.gov>) in a manner that all bidders will be able to view by the date and time reflected in Section 2.

3.4 MDHS will not be bound by any verbal or written information that is not contained within this IFB unless formally noticed and issued by the contact person.

3.5 **Acknowledgement of Amendments:** Should an amendment to the IFB be issued, it will be posted on the MDHS website (<http://www.mdhs.ms.gov>) in a manner that all bidders will be able to view. Further, bidders must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid package, by identifying the amendment

number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment should be received by the MDHS by the time and at the place specified for receipt of bids as reflected in Section 2. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

Section 4 - Scope of Services

4.1 Scope of Services

The Mississippi Department of Human Services (MDHS) is requesting implementation of a comprehensive Employee Assistance Program (EAP) which will address the emotional and personal problems of all MDHS employees (approx. 3,500) and their covered family members (spouse, children or step-children under the age of 26). MDHS employees within a 75-mile radius will be served by the central location in Jackson. Offices outside of Jackson will receive counseling from a therapist within a 75-mile radius. All services will be provided as follows:

- 4.1.1 Confidential assistance for issues including but not limited to, marital or family problems, substance abuse, grief, anxiety, depression, stress, etc.
- 4.1.2 Training sessions for managers and supervisors in the orientation of identifying personal and emotional problems which may affect workplace performance. Training in procedures related to documentation and appropriate referral of employees to the EAP.
- 4.1.3 Educational seminars and workshops regarding mental health issues, alcohol and drug abuse and healthy lifestyle solutions offered to groups of employees twelve (12) times per year at various MDHS locations.
- 4.1.4 A toll free confidential Employee Assistance line with 24 hour access for MDHS employees and their covered family members. After hours face to face meetings with a counselor in the case of an emergency. An emergency is defined as homicidal, suicidal, or actively psychotic.
- 4.1.5 Employee brochures, posters, and EAP user guides for MDHS employees.
- 4.1.6 Monthly EAP utilization reports will be prepared and submitted to the Director of Human Resources to include the number of EAP calls, types of referral, number of admissions to out-patient therapy and number of counseling sessions. (These reports will not contain identity of employees nor covered family members, but will simply be statistical summaries).
- 4.1.7 Referral for treatment (when appropriate) will be made in accordance with the preferred provider network of MDHS.
- 4.1.8 Unlimited on-site critical incident stress debriefings (CISDS), available within 24 hours following an in-house crisis or a community crisis involving MDHS employees.
- 4.1.9 Unlimited counseling sessions per employee and/or covered family member within the contract period. Sessions will be provided by licensed professionals with a

minimum of a Master's degree in social work, counseling, marriage and family, or psychology. The counseling sessions will occur at the office(s) of the respective therapist.

- 4.1.10 A representative of the company will handle the reporting of any employee concerns to insure the quality and confidentiality of the EAP.
- 4.1.11 The Director of the Division of Human Resources or his/her designee will provide evaluation of services and ongoing consultation with the company concerning the administration of the EAP.

Upon execution of a contract, the vendor shall also provide the following in regards to the Employee Assistance Program:

- 4.1.12 Contractor must ensure privacy and confidentiality of information associated with the Employee Assistance Program to the extent required by all Federal and State law(s).
- 4.1.13 Contractor shall ensure all confidential information and materials remain secured. Contractor must ensure no violation of any state, federal, or local law, including HIPPA guidelines; ensure that there are appropriate safe guards to prevent use or disclosure of all confidential information and materials (except as provided by law); ensure that all personnel are aware not to use or disclose confidential information and/or materials; and immediately inform the MDHS of any use or disclosure of confidential information and/or materials.
- 4.1.14 Contractor shall ensure that Contractor personnel fully comply with the policies and procedures of the MDHS, the applicable standards of care, Joint Commission standards, and all applicable regulations as now existing or as may be modified.
- 4.1.15 Contractor shall accurately describe the job duties required to its personnel.
- 4.1.16 Contractor shall perform all services provided in the contract between the Contractor and the MDHS in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies. No statement within this Invitation For Bids (IFB) shall negate compliance with any applicable governing regulation. The absence of detailed specifications or the omission of a detailed description shall be recognized as meaning that only the best commercial practices are to prevail.
- 4.1.17 Contractor will provide prompt and courteous attention to the needs of MDHS and its employees, including assistance with questions that arise.
- 4.1.18 Contractor must submit a monthly invoice for payment itemizing each service performed, and the charge for each supported by the fee computation. Following satisfactory completion of its monthly services, as determined by MDHS, the Contractor shall submit invoices electronically to invoices@mdhs.ms.gov, with the appropriate documentation. No charges will be submitted for payment unless actual

services were rendered. A final invoice must be submitted to MDHS within five (5) working days after the contract ending date.

4.1.19 Contractor shall comply with all laws, regulations, policies and procedures of the United States of America, the State of Mississippi, and the policies and procedures set forth by the Mississippi Department of Human Services. The Contractor shall be an equal opportunity employer. All Contractor personnel shall strictly abide by all state policies and procedures at all times. Deviations from these policies by the Contractor or its personnel will not be tolerated and will be considered grounds for contract termination.

4.1.20 Contractor shall assign a Contractor Account Representative to work directly with the MDHS.

4.1.21 The Contractor shall agree to supply reports as requested from the MDHS at no additional charge.

Section 5 – Term

The anticipated term of the contract shall be for a period of one (1) year, beginning on August 6, 2018, and ending on August 5, 2019. The contract may be renewed at the discretion of the agency upon written notice to Contractor at least sixty (60) days prior to each contract anniversary date for a period of two (2) successive two-year periods under the same prices, terms, and conditions as in the original contract, and subject to approval by the PPRB. The total number of renewal years permitted shall not exceed four (4).

Renewal years are subject to the needs of the MDHS, as well as the availability and appropriation of funds. The Procurement Officer shall notify the contractor, on a timely basis, that funds are or are not available for the continuation of the contract for each succeeding fiscal period. 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 rights or the contractor's rights under any termination clause in the contract.

Compensation for services will be in the form of a Fixed Price with Price Adjustment. A unit price shall be given for each service, and that unit price shall be the same throughout the contract.

Section 6–Bid Submission Requirements

6.1 Submission format

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

6.1.1 Bid Cover Sheet (Attachment A).

6.1.2 Bid Form (Attachment B) – all pricing must be submitted on the bid form. Bidders may bid on one, two or all three categories. Failure to complete and/or sign the bid form may result in bidder being determined non-responsive.

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

with this solicitation. MDHS staff will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. MDHS staff will not track down references. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. **MDHS staff must be able to reach two (2) references for a bidder within two (2) business days of bid opening to be considered responsive. Further, the bidder must score a minimum of six (6) points on each Reference Score Sheet which will be used by the MDHS staff when interviewing the two (2) references (for a total minimum scoring requirement of twelve (12) points) to be considered responsive and/or responsible.** (See Section 12.2.3 and Attachments C and D.) Only bidders who are found responsive and responsible will have their bids considered. Bidder may submit as many references as desired. The MDHS will begin contacting references at the top of the list and will continue down the list until they have completed Reference Score Sheets for two (2) references. After two (2) score sheets are completed, the reference check process will end.

6.2 Submission requirements

- 6.2.1 The original and one copy of the bid package shall be signed and submitted (mailed or hand-delivered) in a sealed envelope or package to 750 North State Street, Jackson, MS 39202 no later than **9:00 AM CT, Friday, June 26, 2018.** (Also see, **6.2.3.** and **6.2.11.**)
- 6.2.2 Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time will be rejected and shall remain unopened in the procurement file.
- 6.2.3 The envelope or package shall be marked with the bid opening date and time, and the number of the IFB (**10:00 AM CT, Friday, June 26, 2018; IFB No. 3160002257**).
- 6.2.4 The time and date of receipt will be indicated on the envelope or package by the MDHS staff.
- 6.2.5 Each page of the bid form and all attachments shall be identified with the name of the bidder.
- 6.2.6 Failure to submit a bid on the bid form provided will be considered cause for rejection of the bid. **Modifications or additions to any portion of the bid document may be cause for rejection of the bid.**
- 6.2.7 The MDHS reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive.
- 6.2.8 As a precondition to bid acceptance, the MDHS may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.
- 6.2.9 Any bidder claiming that its response contains information exempt from the Mississippi Public Records Act (Mississippi Code Annotated §§ 25-61-1, *et. seq.*,

and 79-23-1), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. The bidder shall submit a completed Proprietary Information Form, attached to this IFB as **Attachment E**.

6.2.10 All bid packages must be received by MDHS no later than **9:00 AM CT, Friday, June 26, 2018**. Bids submitted via facsimile (faxes) **will not** be accepted. It is suggested that if a bid is mailed to MDHS, it should be posted in certified mail with a return receipt requested. The only acceptable evidence to establish the date of mailing is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper. MDHS will not be responsible for mail delays or lost mail.

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

**Employee Assistance Program Services
IFB No. 3160002257
Opening Date: 10:00 AM CT, Friday, June 26, 2018
Mississippi Department of Human Services
Division of Budgets and Accounting
Attention: Bridgette Bell
750 North State Street
Jackson, Mississippi 39202
SEALED BID – DO NOT OPEN**

6.2.12 All bids shall be in writing.

Section 7 – Bidder Certification

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

Section 8 – Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government. The bidder shall submit a completed MDHS Debarment Verification Form, attached to this IFB as Attachment F. Attachment F shall be received by MDHS, in the bid packet submitted by the bidder, no later than 9:00 AM CT, on June 26, 2018. MDHS reserves the right to deem any bid packet not containing an executed MDHS Debarment Verification Form as non-responsive to the IFB.

Section 9 – Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within three (3) business days of being offered an award.

Section 10 – Insurance

The successful bidder shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence. All worker' compensation, comprehensive general liability, and professional liability will provide coverage to the MDHS as certificate holder. The MDHS reserves 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 the MDHS at any point during the contract period and should consult with legal counsel regarding its obligations.

Section 11 – Bid Opening

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

Section 12 – Bid Evaluation

Bids will be evaluated based on the requirements set forth in IFB No. 3160002257, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

12.1 Responsive Bidder

Bidder must submit bid which conforms in all material respects to this Invitation for Bids, IFB No. 3160002257, as determined by MDHS.

12.2 Minimum Bidder Qualifications to be Deemed Responsible

12.2.1 Bidder must have been in business and provided Employee Assistance Program Services similar in requirements and scale to those described in this IFB for a minimum of two (2) years.

12.2.2 Bidder must maintain an office in each region bid, or if bidder does not have an office in the region, bidder must explain how it will service the region bid on the

Bid Cover Sheet and must provide all the required information for each region bid, for verification purposes.

- 12.2.3** These minimum qualifications are in addition to a minimum score of six (6) on the Reference Score Sheet (**Attachment D**) from reference interviews by MDHS staff with **two (2)** bidder references (for a total minimum scoring requirement of twelve (12) points), as well as all other requirements of this IFB. (*See Section 6.1.3 and Attachments C and D.*)

Section 13 - Award

The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this IFB on date specified as reflected in Section 2. Any bids received may be rejected in whole or in part when in the best interest of the State.

Section 14 – Notification

All participating bidders will be notified of the MDHS' intent to award a contract. Notice of award is made available to the public. The winning bidder will be notified via e-mail of the award. Additionally, a letter will be sent to all bidders.

Section 15 - Contract Management

If the Contractor fails to satisfactorily provide the prescribed service to all or any service area, the MDHS will inform the Contractor, and the Contractor shall complete corrective action within twenty-four (24) hours. No payment shall be made to the Contractor until all deficiencies have been corrected. If the Contractor exhibits a pattern of non-performance as shown by repeated deficiencies, the MDHS may terminate the contract without further obligation to the Contractor.

Section 16 – Procurement Methodology

16.1 Restrictions on Communication with MDHS Staff

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

16.2 Cost of Preparing Bid

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

16.3 Independent Price Determination

By submitting a bid, the bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid. The prices quoted shall be inclusive of, but not limited to, the following: all required

equipment/material; all required insurance; all required overhead; all required profit; all required vehicles; all required fuel; and, all required licenses, certifications, fees, or permits.

16.4 Rejection of Bids

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

16.5 Withdrawal of Bid

16.5.1 If a bid is substantially lower than those of other bidders, a mistake may have been made.

16.5.2 A bidder may withdraw its bid from consideration if certain conditions are met:

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

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

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

16.6 Informalities and Irregularities

The MDHS has the right to waive minor defects or variations of a bid from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder with the bid for the MDHS to properly evaluate the bid, the MDHS has the right to bids, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

16.7 Post-Award Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Chief Procurement Officer of MDHS 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 three (3) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Chief Procurement Officer of MDHS in writing and identify its attorney by name, address, and telephone number. The MDHS 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 *Mississippi Office of Personal Service Contract Review Rules and Regulations* as updated and replaced by PPRB.

16.8 Protest of Award

Any actual or prospective bidder who is aggrieved in connection with this solicitation or the outcome of this IFB may file a protest with the Chief Procurement Officer of MDHS. The protest shall be submitted, on or before **Thursday, July 12, 2018, 1:00 PM CT**, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) and regulation(s) or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Chief Procurement Officer of MDHS via either U.S. mail, postage prepaid, or by personal delivery. Protests filed after **Thursday, July 12, 2018, 1:00 PM CT**, will not be considered.

Section 17 – Required Contract Terms and Conditions

Any contract entered into with MDHS shall have the required clauses found in Attachment G and those required by the *Mississippi Office of Personal Service Contract Review Rules and Regulations*, as updated and replaced by PPRB.

Section 18 – Optional Contract Terms and Conditions

Any contract entered into with MDHS may have, at the discretion of the MDHS, the optional clauses found in Attachment H and those within the *Mississippi Office of Personal Service Contract Review Rules and Regulations*, as updated and replaced by PPRB.

Section 19 – MDHS Website and Contract/Procurement Opportunity Search Portal

This IFB, as well as questions and answers concerning this IFB, will be posted on the MDHS website at <http://www.mdhs.ms.gov> and on the Contract/Procurement Opportunity Search Portal.

Section 20 – Attachments

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

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**ATTACHMENT A
BID COVER SHEET**

The Mississippi Department of Human Services (hereinafter "MDHS," "Agency," or "State") is soliciting bids from qualified bidders to provide Employee Assistance Program Services for MDHS. The vendor will perform services as outlined in IFB No. 3160002257.

Bids are to be submitted to the address as listed in Section 6.2.11 of this IFB, on or before June 26, 2018, 9:00 AM, CT.

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

Name and phone number of Company Representative to be contacted for services pursuant to this IFB:

FEI/FIN # (if company, corporation, or partnership) or SS# (if individual):
--

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

What year was your company started? _____

How many years and/or months has your company been in the business of performing the services called for in this IFB? _____

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

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. _____

For how many customers has your company performed Employee Assistance Program Services in the past two (2) years? _____

Is your company licensed and/or certified to perform Employee Assistance Program Services as required by any and all applicable federal and state law(s)? _____

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

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

If your company is not physically located in multiple locations throughout the state, how will you supply the services outlined in the IFB? _____

ATTACHMENT B

BID FORM FOR EMPLOYEE ASSISTANCE SERVICES

**Services to be provided in _____
(city, county, region or statewide)**

Company	Company Representative	Telephone

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

1. All required equipment/material;
2. All required insurance;
3. All required overhead;
4. All required profit;
5. All required transportation;
6. All required fuel and mileage;
7. All required labor;
8. All required business and professional licenses, permits, or fees, etc. (if any); and
9. Any and all other costs associated with performing the services.

Pricing Structure: All pricing for Employee Assistance Program Services includes all associated costs with no additional or hidden fees. Compensation for services will be in the form of a Fixed Price with Price Adjustment agreement. A unit price shall be given for each service, and that unit price shall be the same throughout the contract.

Category of Service	Cost
Admin Fee (ex. trainings, toll free phone line, etc.)	\$ _____ per month
Counseling Fee	\$ _____ per hour

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

1. That he/she has thoroughly read and understands the Invitation for Bids and Attachments thereto;
2. That the company meets all requirements and acknowledges all certifications contained in the Invitation for Bids and Attachments thereto;
3. That the company agrees to all provisions of the Invitation for Bids and Attachments thereto including, but not limited to, the Required and Optional Clauses to be included in any contract resulting from this IFB (**Attachments G and H**);
4. That the company will perform the services required at the prices quoted above;
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date;
6. 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 Invitation for Bids; and

7. That the company can and will meet all required laws, regulations, and/or procedures related to Employee Assistance Program Services and represents that it is licensed, certified and possesses the requisite credentials to perform these services. Further, if the company is the successful bidder and the material, equipment, etc., delivered is subsequently found to be deficient pursuant to any federal and state laws and regulations in effect on the date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with aforementioned requirements shall borne solely by the vendor.
8. **NON-DEBARMENT** - By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government.
9. **INDEPENDENT PRICE DETERMINATION** - The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid offered.
10. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES** - The prospective contractor represents as a part of such Contractor's bid or proposal that such Contractor has/has not (*please circle applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
11. **REPRESENTATION REGARDING CONTINGENT FEES** - The Contractor represents that it has/has not (*please circle applicable word or words*) retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or other contingent fee, except as disclosed in the Contractor's bid or proposal.
12. **REPRESENTATION REGARDING GRATUITIES** - The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Office of Personal Service Contract Review Rules and Regulations* as updated and replaced by PPRB.

Company Name: _____

Printed Name of Representative: _____

Date: _____

Signature: _____

Note: Please be sure to **circle the applicable word or words** on numbers 8 (*Prospective Contractor's Representation Regarding Contingent Fees*) and 9 (*Representation Regarding Contingent Fees*) above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as non-responsive. **Modifications or additions to any portion of this bid document may be cause for rejection of the bid.**

ATTACHMENT C
REFERENCES

REFERENCE 1

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional):
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE 2

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional):
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE 3

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional):
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE 4

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional):
Telephone Number: _____
Cell Number: _____
E-mail: _____

REFERENCE 5

Name of Company: _____
Dates of Service: _____
Contact Person: _____
Address: _____
City/State/Zip: _____
Telephone Number: _____
Cell Number: _____
E-mail: _____
Alternative Contact Person (optional):
Telephone Number: _____
Cell Number: _____
E-mail: _____

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

ATTACHMENT D

REFERENCE SCORE SHEET

****TO BE COMPLETED BY MDHS STAFF ONLY****

Name of Bidder: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Contacted By: _____ Position: _____

Services From/To Dates: _____

Questions	Response (Circle One)	
	Yes	No
Able to provide Employee Assistance Program (Services) when requested?	Yes	No
Satisfied with the services provided? If no, please explain.	Yes	No
Vendor easy to work with when scheduling Employee Assistance Program Services?	Yes	No
Were the Employee Assistance Program Services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is one point; each “no” is zero points. Bidder must have a minimum score of “6” from two references (total of “12” points) to be considered responsible and for its bid to be considered.

Score: _____

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

ATTACHMENT E

PROPRIETARY INFORMATION FORM

The Respondent should mark any and all pages of this response considered to contain proprietary information. Such pages may remain confidential in accordance with Mississippi Code Annotated §§25-61-9 and 79-23-1 (1972, as amended). Each page of this response considered, by the Respondent, to contain trade secrets or other confidential commercial/financial information should be marked in the upper right hand corner with the word "CONFIDENTIAL." Any pages not marked accordingly will be subject to review by the general public after the award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures. Failure to clearly identify trade secrets or other confidential commercial/financial information may result in that information being released in a public records request.

For all procurement contracts awarded by state agencies, the provisions of the contract which contain 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.

If applicable, please indicate which parts/pages below that the contractor wishes to designate as proprietary. If this is not applicable, please indicate with "N/A" below.

- 1.
- 2.
- 3.
- 4.
- 5.

By signing below, I understand failure to clearly mark proprietary information as identified above may result in disclosure of such information as it will be subject to review by the general public after the award of the contract.

Signature of Authorized Official/ Title
(No stamped signature)

Date

ATTACHMENT F

DEBARMENT VERIFICATION FORM

Please Print/Type Clearly in Blue Ink

Subgrantee's/Contractor's Name	
Authorized Official's Name	
DUNS Number	
Address	
Phone Number	
Are you currently registered with www.sam.gov (Respond Yes or No)	
Registration Status (Type Active or Inactive)	
Active Exclusions (Type Yes or No)	

Federal Debarment Certification:

By signing below, I hereby certify that _____ is not on the list
(Subgrantee's Name/Contractor's Name)
for federal debarment on www.sam.gov –System for Award Management.

State of Mississippi Debarment Certification:

By signing below, I hereby certify that _____ is not on the list
(Subgrantee's Name/Contractor's Name)
for debarment for doing business within the State of Mississippi or with any Mississippi State Agencies.

Partnership Debarment Certification:

By signing below, I hereby certify that all entities who are in partnership through this contract with MDHS (subcontractors, subrecipients, et al.) are not on the federal debarment list on www.sam.gov – System for Award Management or the State of Mississippi debarment list. Proof of documentation of partnership verification with SAM shall be kept on file and the debarment status shall be checked prior to submission of every contract/subgrant and modification to MDHS.

Signature of Authorized Official
(No stamped signature)

Date

ATTACHMENT G

Required Clauses for Service Contracts Resulting from this IFB

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. Approval. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
3. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
4. 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.
5. 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.
6. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996

that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

7. Insurance. Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder; and comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000.00 per occurrence. All workers' compensation, comprehensive general liability, and professional liability will provide coverage to the State of Mississippi as an additional insured. The Agency reserves 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. Independent Contractor will furnish MDHS a certificate of insurance providing the aforesaid coverage, prior to the commencement of performance under this Agreement. Should the Independent Contractor be unable to obtain coverage for the entire duration of the contract prior to the commencement of the contract, the Independent Contractor should obtain additional coverage prior to any lapses in coverage and provide the certificate of insurance to the State no later than seven (7) days prior to the date on which the coverage ends. Any additional insurance that is obtained should run immediately after the previous coverage ends so as to prevent any lapse in coverage. Any additional insurance obtained by the Independent Contractor should meet the terms of the contract.
8. 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.
9. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E,

Jackson, MS, for inspection, or downloadable at <http://www.dfa.ms.gov>.

10. Renewal of Contract. The contract may be renewed at the discretion of the Agency upon written notice to Contractor at least sixty (60) days prior to each contract anniversary date for a period of two (2) successive two-year periods under the same prices, terms, and conditions as in the original contract and/or subsequent contracts. The total number of renewal years permitted shall not exceed four (4) years or extend past August 5, 2023.
11. 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.
12. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.
13. 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.
14. 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 cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work.* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- d. *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

15. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

16. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance. If the delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract and/or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (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.
17. Termination Upon Bankruptcy: This contract may be terminated in whole or in part by the Agency upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the Contractor shall be entitled to recover just and equitable compensation

for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

18. 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.
19. 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.
20. Price Adjustment.
 - (1) *Price Adjustment Methods.* Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:
 - (a) by agreement on a fixed price adjustment before commencement of the additional performance;
 - (b) by unit prices specified in the contract;
 - (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
 - (d) by the price escalation clause.
 - (2) *Submission of Cost or Pricing Data.* Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-401 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

MDHS may, at any time by written order, make changes in the specifications within the general scope of this Agreement. If any such change causes an increase in the amount due under this Contract or in the time required for performance under this Agreement and if MDHS decides that the change justifies an adjustment to the Contract, an equitable adjustment in the Contract may be made by written modification of this Agreement.

No charge for any extra work or material will be allowed unless the same has been provided by written amendment to this Contract signed by both parties.

ATTACHMENT H

Optional Clauses for Use in Service Contracts Resulting from this IFB

Appendix H includes various service contracting clauses which are available for use. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., [time], [date]). Clarifications of clauses are in parentheses within or at the end of the clause. Inclusion of any of these clauses is at the discretion of the Agency.

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Attorney's Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
3. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; 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.
4. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.

5. 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.
6. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:
 - a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
 - b. has not, within a three-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.
7. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering 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.*
8. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:
 - a. is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
 - b. is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
 - c. is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - d. is independently developed by the recipient without any reliance on confidential information;
 - e. is or later becomes part of the public domain or may be lawfully obtained by the

State or Contractor from any nonparty; or,
f. is disclosed with the disclosing party's prior written consent.

9. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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.

18. 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.

19. 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.
20. 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.
21. 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:
[Name, Title]	[Name, Title]
[Agency Name]	[Contractor Name]
[Address]	[Address]
[City, State, Zip]	[City, State, Zip]

22. 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.
23. 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.
24. 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.
25. Priority. The contract consists of this agreement with exhibits, the procurement IFB 3160002257 (hereinafter referred to as IFB), and the response bid dated [date] by

[CONTRACTOR NAME] (hereinafter referred to as Bid). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the Bid. Omission of any term or obligation from this agreement or IFB or Bid shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

26. 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.
27. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
28. 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.
29. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
30. 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.
31. 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.

32. 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.
33. 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.
34. 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.
35. 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.
36. Disputes. Any dispute concerning a question of fact under this Contract which is not disposed of by agreement shall be decided by the Director of the _____. This decision shall be reduced to writing and a copy thereof mailed or furnished to the Independent Contractor and shall be final and conclusive, unless within thirty (30) days from the date of the decision, Independent Contractor mails or furnishes to the Executive Director of MDHS a written request for review. Pending final decision of the Executive Director of MDHS or designee of a dispute hereunder, the Independent Contractor shall proceed in accordance with the decision of the Director of the Division_____.

In a review before the Executive Director or designee, the Independent Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position on the question and decision under review. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction in Hinds County, State of Mississippi, to have been fraudulent, capricious, so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

ATTACHMENT I
Employee Assistance Program Services Contract Discrepancy Report

Employee Assistance Program Services located at: _____

Date and Time of Service: _____

Report Date: _____

Discrepancy or Problem: (Describe in detail; attach supporting document; include reference to specification requirement; and attach continuation sheet if necessary). _____

Name: _____ Signature: _____ Date: _____

Contractor Response as to Cause, Corrective Action, and/or Actions to Prevent Recurrence: (Cite applicable existing or new Quality Control Program or Procedures; and attach continuation sheet if necessary). _____

Name: _____ Signature: _____ Date: _____

MDHS Evaluation and Action: (Partial or full acceptance, rejection, payment deduction, cure notice, show cause, termination, other; attach continuation sheet if necessary). _____

Name: _____ Signature: _____ Date: _____