



ANALYSIS OF PERSONAL OR PROFESSIONAL SERVICES CONTRACTS

RFP# 20190312 SWD

Solid Waste Disposal Services

As identified in Executive Order 1362, each agency awarding, renewing, or amending any professional or personal services contract reported online pursuant to the Mississippi Accountability and Transparency Act of 2008 must also submit by online report an analysis describing the reasons for awarding, renewing, or amending the contract. Furthermore, House Bill 1109, Section 12(2), effective January 1, 2016, requires additional information for notice of award and is included as part of this analysis.

PLEASE SELECT APPROPRIATE ACTION:

Awarding Renewing Amending

Vendor Name:	Waste Management of Mississippi, Inc.
Vendor Contact:	Paul Thimmes, Sales Manager
Vendor Address:	1450 Country Club Drive, Jackson, MS 39209
Vendor Phone Number:	(601) 922-9647

ANALYSIS DESCRIBING AWARD, RENEWAL OR AMENDMENT OF CONTRACT:

MDHS issued RFP No. 20190312 SWD (RFx Numbers 3180000667 and 3120001662) for Solid Waste Disposal Services on March 12, 2019. MDHS received two (2) responses from the following: Republic Services and Waste Management of Mississippi, Inc. Waste Management of Mississippi, Inc. scored the highest for the evaluation; therefore, MDHS awarded Waste Management of Mississippi, Inc. the contract in the amount of \$29,130.00. The initial term of this Contract is for one (1) year, beginning July 1, 2019, and ending June 30, 2020, with MDHS having the option to renew for two (2) successive two year periods, subject to Public Procurement Review Board (PPRB) approval.

DocuSigned by:

 Chief Procurement Officer/Staff Attorney

4/30/2019
 Date

The contract is on file and available for public inspection in the office of the Chief Procurement Officer. Please contact the Mississippi Department of Human Services at (601) 359-4500 for more information.



EVALUATION REPORT OF PERSONAL OR PROFESSIONAL SERVICES CONTRACTS

RFP# 20190312 SWD

Solid Waste Disposal Services

MDHS received two (2) responses to the above referenced Request For Proposals (RFP) issued on March 12, 2019. Ranking of the responses is provided below in order of evaluation:

Respondent	Score
Waste Management of MS, Inc.	86.38
Republic Services	48.97

MDHS recommends to award the contract to Waste Management of Mississippi, Inc., due to the vendor receiving the highest score. The total contract cost is \$29,130.00 for the initial term of the contract (one year) to begin July 1, 2019 and end June 30, 2020, with MDHS having the option to renew for two (2) successive two year periods, subject to Public Procurement Review Board (PPRB) approval.

Included as Attachment 1 to this Award Report is a copy of the contract template to be used for this contract that includes the terms, conditions, fees, and scope of services for the agreement.

Evaluation Committee Members for RFP# 20190312 SWD:

- 1) Stephanie Singleton – MDHS Fire Safety Inspector III
- 2) Joseph Jiles – MDHS Maintenance Manager
- 3) Victor Jackson – MDHS Assistant Director of Administrative Services
- 4) Harold Broome – MDHS Special Projects Officer

ATTACHMENT 1

STATE OF MISSISSIPPI MISSISSIPPI DEPARTMENT OF HUMAN SERVICES CONTRACT FOR PERSONAL OR PROFESSIONAL SERVICES

1. **Parties.** This Contract is made and entered into by and between the Mississippi Department of Human Services, hereinafter referred to as "MDHS," and [CONTRACTOR], hereinafter referred to as "Contractor."

2. **Purpose.** MDHS hereby engages the Contractor and the Contractor hereby agrees to render certain professional services described in Paragraph 3, "Scope of Services."

3. **Scope of Services.** The Contractor shall perform and render the following services:

3.1 Collect all solid waste from the Mississippi Department of Human Services (MDHS) designated locations identified below and dispose of it in a landfill, recycle facility or other waste disposal site. Contractor must provide and place at MDHS designated locations the receptacles described below, into which persons may deposit solid waste.

3.2 Contractor must retrieve such receptacles when notified by MDHS, haul them to a landfill, recycle facility or waste disposal site, empty the contents and then return the empty receptacles to MDHS designated locations. Contractor must retrieve, haul and empty said receptacles when requested by MDHS, except as stated below. If MDHS requests a pickup before 2:00 P.M., Contractor will make that haul the same day; if the request is made after 2:00 P.M., Contractor will make the haul by noon the following day.

3.3 In the event MDHS requires additional receptacles beyond the scope provided herein, MDHS will provide Contractor at least 24 hours' notice to provide one (1) 30 cubic yard roll-off dumpster or any other size receptacle to requested MDHS location within 24 hours of MDHS request.

3.4 MDHS will not deposit any hazardous or toxic materials into said trash receptacles and Contractor shall have no responsibility to collect, or dispose of, such materials.

3.5 Contractor shall dispose of all waste materials only at a duly licensed and permitted landfill, recycle facility or waste disposal site that meets or exceeds all applicable local, state, and federal laws, ordinances, rules and regulations.

3.6 Contractor will retrieve and empty the contents of the trash receptacles at each respective MDHS location and at the frequency for each location as identified and described in Section 12. In the event of a collection date falling on a holiday, scheduled waste collections must be provided on either the day prior to or a day succeeding the established scheduled collection day.

3.7 Contractor shall maintain the area around the receptacles at each MDHS designated location by collecting over flowing materials.

3.8 Contractor shall conduct regular maintenance of receptacles at each MDHS designated location to ensure that receptacles are clean and in serviceable condition at all times during the entire term of the contract. Contractor shall steam clean receptacles when appropriate or as requested by MDHS. Contractor shall repair or replace damaged receptacles within three (3) days of MDHS notifying Contractor of damaged or malfunctioning receptacles. MDHS Staff will examine receptacles and evaluate service performance to ensure services are properly rendered.

3.9 Contractor is responsible for any permits, licenses, or fees required to perform the services described herein.

3.10 Contractor shall place identifying numbers on each Contractor owned receptacle placed at each MDHS designated location. Contractor shall prepare an inventory of receptacles placed at each MDHS designated location and provide a copy of that inventory to MDHS. Contractor shall prepare and maintain a log as a record for each separate MDHS designated location that reflects the solid waste collected and disposed of from each receptacle located at each MDHS designated location. The log will contain information such as the date of each pull, dumpster number, tonnage, disposal site, nature of waste (garbage or other) and other appropriate information. Each load of waste shall be weighed by a licensed weigh scale operator, and the scale tickets shall be maintained in the Contractor's records. The Contractor shall deliver to MDHS a copy of the Contractor's log entries and scale tickets for each month's activity at each MDHS designated location no later than the 15th day of the following month. MDHS shall have the right to enter Contractor's offices during regular business hours without a search warrant or other legal process, and examine and copy Contractor's books and records relative to this contract.

3.11 Contractor must own or otherwise provide receptacles at the following MDHS locations:

- a) MDHS - 750 North State Street, Jackson, Mississippi 39202;
- b) MDHS Oakley Training School – 2375 Oakley Road, Raymond, Mississippi 39154; and
- c) *MDHS State Office - 200 South Lamar Street, Jackson, Mississippi 39201.

*MDHS currently does not have any scheduled solid waste collection needs at this location, but may require Contractor to provide a receptacle and subsequent collection and disposal of waste on an as needed basis.

NOTE: MDHS reserves the right to add additional locations for collection of solid waste as needs arise.

3.12 Contractor must provide receptacle pick-ups and associated services at the frequencies identified for each receptacle type at each MDHS location according to the following:

MDHS 750 North State Street

Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency
Self-Contained Compactor (deodorized)	30 cu.yd.	1	As Needed*
Open-Top Roll-Off Dumpster	30 cu. yd.	1	As Needed**

**As Needed” – average of three (3) times per month.

***As Needed” – average of three (3) times per year.

For “Self-Contained Compactor” at this location, Contractor must provide monthly servicing and repair of compactor.

MDHS Oakley Training School

Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency
Frontload Dumpsters	8 cu. yd.	6	2 times per week
Open-Top Roll-Off Dumpster	30 cu. yd.	1	As Needed*

**As Needed” – average of three (3) times per year.

MDHS 200 South Lamar Street

Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency
Open-Top Roll-Off Dumpster	30 cu. yd.	1	As Needed*

**As Needed” – average of three (3) times per year.

Contractor shall maintain in its fleet such trucks in sufficient numbers to perform its obligations herein, and which have the capacity to pick up and empty said roll-off dumpsters. The Contractor shall be responsible for the upkeep, maintenance, repair and replacement of all vehicles and equipment used in its operations. Contractor must maintain such items in a clean and serviceable condition during the term of the contract.

For any pick-up frequency listed above that does not provide a specific weekday, MDHS will coordinate with the contractor upon award of contract to determine a specific weekday for each pick-up.

MDHS reserves the right to adjust the pick-up frequency as needed. MDHS will coordinate with Contractor to schedule these adjustments in advance.

- 3.13 The Contractor must, with respect to all solid waste disposal employees providing services at MDHS designated locations:
- 3.13.1 Maintain a pool of employees sufficient to meet MDHS needs within 24 hours;
 - 3.13.2 Accurately describe the job duties required to the waste disposal employees;
 - 3.13.3 Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes;
 - 3.13.4 Abide by all ordinances and laws pertaining to MDHS’ operation and secure all required licenses and permits, including those required by the

- Environmental Protection Agency, Mississippi Department of Environmental Quality and the State Health Department;
- 3.13.5 Make all unemployment compensation contributions as required by federal and state law and process claims as required;
 - 3.13.6 Ensure all waste disposal services are provided during the hours specified by MDHS;
 - 3.13.7 Replace, at no additional expense to MDHS and without any interruption of service, any employee not performing satisfactorily prior to next service requirement;
 - 3.13.8 Perform all services provided in the contract in accordance with customary and reasonable industry standards; and
 - 3.13.9 Perform a criminal background check or drug screening of a waste disposal worker as requested by MDHS.

4. Period of Performance. The period of performance of services under this Contract shall begin on July 1, 2019, and end on June 30, 2020. The contract may be renewed at the discretion of MDHS upon written notice to Contractor at least thirty (30) 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. The total number of renewal years permitted shall not exceed four (4).

5. Consideration and Method of Payment.

a. As consideration of all services and performances under this Contract, Contractor shall be paid a fee not to exceed [AMOUNT]. It is expressly understood and agreed that in no event will the total compensation paid hereunder exceed the specified amount of [AMOUNT]. See Attachment A, Pricing Charts.

b. The Contractor will bill MDHS for its services. Following the satisfactory completion of its services, as determined by MDHS, the State requires the Contractor to submit invoices electronically throughout the term of the agreement. Invoices shall be submitted to MDHS using the processes and procedures identified by the State. The appropriate documentation shall be submitted on the last working day of the month, with the final invoice to be submitted within five (5) working days after the contract ending date.

6. 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.

7. Approval Clause. 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.

8. Availability of Funds. It is expressly understood and agreed that the obligation of the

MDHS 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 MDHS, the MDHS 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 MDHS of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

9. Compliance with Laws. Contractor understands that the MDHS 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.

10. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDHS 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 MDHS within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

11. 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; or
- 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.

12. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDHS, 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 and MDHS' sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. only upon consultation with and approval of the State and MDHS. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State and MDHS. 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 and MDHS' concurrence, which the State and MDHS shall not unreasonably withhold.

13. 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 general liability and professional liability insurance will provide coverage to MDHS as an additional insured. 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. Contractor will furnish MDHS a certificate of insurance providing the aforesaid coverage, prior to the commencement of performance under this Agreement and upon request by MDHS at any time during the contract period. Such certificate shall contain provisions that coverage afforded under the policies shall not be cancelled, terminated, or materially altered until at least thirty (30) days prior notice has been given to the MDHS. Cancellation of the above mentioned referenced insurance and bond coverage shall be grounds for termination of this contract. Failure on the part of the Contractor to procure or maintain the required insurance and bond coverages and provide proof thereof to MDHS shall constitute a material breach of the contract upon which the MDHS may immediately terminate this Contract.

14. 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.

15. 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) in writing, including but not limited to, written 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 modification, 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 for by written amendment to this Contract signed by both parties.

16. 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 701 E, Jackson, MS 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.

17. 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 proposal.

18. 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*.

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

20. Termination for Convenience.

a. Termination. The MDHS Executive Director or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The MDHS Executive Director or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

b. Contractor's Obligations. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims

arising out of the termination of subcontracts and orders connected with the terminated work. The MDHS Executive Director or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

21. 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 MDHS Executive Director or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the MDHS Executive Director or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the MDHS Executive Director or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the MDHS Executive Director or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

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

c. Compensation. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the MDHS Executive Director or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

d. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the MDHS Executive Director or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the MDHS Executive Director or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised

accordingly, subject to the rights of the State under the clause entitled 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.

22. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by MDHS upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

23. 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.

24. 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.

25. 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 MDHS be obligated to pay any attorney's fees or costs of legal action to Contractor.

26. 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.

27. 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 MDHS shall result in the immediate termination of this agreement.

28. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that MDHS 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 MDHS pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDHS shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MDHS shall not be liable to the Contractor for disclosure of information required by court order or required by law.

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

30. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:

(1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

(2) has not, within a three-year period preceding this proposal, been convicted of or had 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;

(3) 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;

(4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

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

31. 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.*

32. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:

(1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;

(2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the MDHS;

(3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

(4) is independently developed by the recipient without any reliance on confidential information;

(5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,

(6) is disclosed with the disclosing party’s prior written consent.

33. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the MDHS, 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

MDHS may have.

34. Failure to Enforce. Failure by the MDHS 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 MDHS to enforce any provision at any time in accordance with its terms.

35. 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 MDHS 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.

36. 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.

37. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.

38. 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 MDHS, and the MDHS shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The MDHS 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 MDHS shall not provide to Contractor any insurance coverage or other benefits,

including Worker's Compensation, normally provided by the State for its employees.

39. 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.

40. 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.

41. 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.

42. 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 MDHS:	For Contractor:
John Davis, Executive Director	[NAME, TITLE]
Mississippi Department of Human Services	[CONTRACTOR]
Post Office Box 352	[ADDRESS]
Jackson, Mississippi 39205	[CITY, STATE, ZIP]

43. 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.

44. 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 MDHS and agreed to by Contractor.

45. Ownership of Documents and Work Papers. MDHS 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 MDHS 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 MDHS and subject to any copyright protections.

46. Priority. The contract consists of this agreement with exhibits, the procurement Request for Proposals No. 20190312 SWD (hereinafter referred to as RFP), and the response dated [DATE], by [CONTRACTOR] (hereinafter referred to as Proposal). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the Proposal. Omission of any term or obligation from this agreement or RFP or Proposal shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

47. 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 MDHS.

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

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

50. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the MDHS or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the MDHS, 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.

51. 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.

52. 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.

53. 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.

54. Third Party Action Notification. Contractor shall give the MDHS 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.

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

56. 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.

57. 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 MDHS 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 MDHS for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the MDHS 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 MDHS 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.

58. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

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

For the faithful performance of the terms of this Contract, the parties hereto have caused this Contract to be executed by their undersigned authorized representatives.

**Mississippi Department of Human
Services**

[CONTRACTOR]

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: Executive Director

Title:

Date:

Date:

Attachment A Pricing Charts

NOTE: "Unit Price Per Pick-Up" MUST include any additional fees

MDHS 750 North State Street					
				Waste Management	
Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency	Unit Price Per Pick-Up	Yearly Price
Self-Contained Compactor (Deodorized)	30 cu. yd.	1	As Needed*	275 rental	3300.00
				225 per haul	8100.00
				30.00 per ton	3240.00
Open Top Roll-Off Dumpster	30 cu. yd.	1	As Needed**	175 per haul	525.00
				30.00 per ton	270.00
TOTAL:					\$15,435.00

*"As Needed" – average of three (3) times per month.

**"As Needed" – average of three (3) times per year.

MDHS Oakley Training School					
				Waste Management	
Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency	Unit Price Per Pick-Up	Yearly Price
Frontload Dumpsters	8 cu. yd.	6	2 times per week	990	11880
Open Top Roll-Off Dumpster	30 cu. yd.	1	As Needed*	250 per haul	750
				30.00 per ton	270
TOTAL:					\$12,900.00

*"As Needed" – average of three (3) times per year.

MDHS 200 South Lamar					
				Waste Management	
Receptacle Type	Receptacle Size	Quantity	Pick-Up Frequency	Unit Price Per Pick-Up	Yearly Price
Open Top Roll-Off Dumpster	30 cu. yd.	1	As Needed*	175 per haul 30.00 per ton	525.00 270.00
TOTAL:					\$795.00

*"As Needed" – average of three (3) times per year.

BASE TOTAL: **WM
\$29,130.00**

Additional unit pricing:

Waste Management - Dumpster Fees				
Container Size	Collection Cost Per Pick-Up Per Week			
	1	2	3	4
2 cu. yd.	\$42.36	\$86.60	\$129.90	\$173.20
4 cu. yd.	\$69.28	\$138.56	\$207.84	\$277.12
6 cu. yd.	\$77.94	\$155.88	\$233.82	\$311.76
8 cy. yd.	\$83.14	\$166.27	\$249.41	\$332.54

Waste Management - Recycling Fees				
Container Size	Collection Cost Per Pick-Up Per Week			
	1	2	3	4
2 cu. yd.				
4 cu. yd.				
6 cu. yd.				
8 cy. yd.	83.14	* only service recycling one day per week		

Waste Management - Roll-Off Container Fees	
Roll-Off Container Size	Cost Per Collection¹
20 cu. yd.	
30 cu. yd.	
40 cu. yd.	

1 Collection rate shall include collection of Roll-Off container and return of Roll-Off container.

Compactor Size	Cost Per Collection
20 cu. yd.	
30 cu. yd. (only size)	*225 /haul; 275/mo.rental; 30.00
35 cu. Yd.	
40 cu. yd.	
42 cu. yd.	