

**OFFICE OF CHIEF OF OPERATIONS**  
**Summary of State Board of Education Agenda Items**  
**July 16, 2020**

**OFFICE OF CHILD NUTRITION**

06.C. Action: Contract with Warner, Inc. DBA ServiceMaster OneCall to provide initial and weekly sanitizing/deep cleaning and daily cleaning of the MDE Office of Child Nutrition [Goal 1, 2, 3, 4, 5, and 6 – MBE Strategic Plan]

Awarded Vendor: Warner Inc, Inc. DBA ServiceMaster OneCall  
Flowood, Mississippi

Scope of Project: The purpose of this contract is to retain the services of Warner, Inc. DBA ServiceMaster OneCall to perform initial and weekly sanitizing/deep cleaning and daily cleaning of the MDE Office of Child Nutrition due to COVID-19 pandemic.

Personnel associated with this contract are not former Department employees or related to any Department employees.

Scope of Contract:

- Term of Contract: July 1, 2020 - June 30, 2021
- Total Amount to be Awarded: \$62,914.00
- Method of Award: Exempt from Competitive Requirements

Funding Source: Federal (USDA State Administrative Expense)

This item references Goal 1, 2, 3, 4, 5, and 6 of the *Mississippi Board of Education 2018-2022 Strategic Plan*.

Recommendation: Approval

Back-up material attached



## **A. INTRODUCTION**

The contract between the Mississippi Department of Education (hereinafter referred to as the "MDE") and **Warner, Inc. DBA ServiceMaster OneCall** (hereinafter referred to as the "Contractor or **Warner, Inc. DBA ServiceMaster OneCall**") is for the purpose of initial and weekly sanitizing/deep cleaning and daily cleaning of the MDE Office of Child Nutrition. The term of this initial contract is July 1, 2020 through June 30, 2021.

The MDE will pay Contractor an amount not to exceed \$62,914.00.

Based upon the Internal Revenue Service Code, Contractor has been classified as an independent contractor and will not be subject to withholding.

## **B. STATEMENT OF WORK**

Contractor will fulfill all terms and conditions as outlined in the documents listed below.

- Attachment 1: Request for Quote for Janitorial Services
- Attachment 2: Cost Proposal submitted by Warner, Inc. DBA ServiceMaster OneCall (Janitorial Services June 22, 2020)

Specifically, Contractor agrees to perform the following tasks:

- Initial full-service deep cleaning to sanitize and effectively clean the Mississippi Department of Education's Child Nutrition 16,536 sq. ft. building located in downtown Jackson, MS;
- Friday of each week provide full-service deep cleaning and sanitizing of 16,536 sq. ft. building (after 5 pm); and
- During regular work hours (8 a.m. – 5 p.m.) provide full-service sanitation every hour to six (6) bathrooms. Also, wipe down any touchable surface throughout the building consistently (inclusive of two entrances).

## **C. 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 Contractor: Jay Hobson  
1179 Old Brandon Rd  
Flowood, MS 39232  
(601) 936-8188

For the agency: Gwennyth O'Quine  
500 Greymont Ave, Suite F  
Jackson, MS 39205  
(601) 576-4992

## **D. PRIORITY**

The contract consists of this original agreement, the MS Department of Education's Request for Quotes for Janitorial Services, (hereinafter "RFQuotes" and Attachment 1), the Quotes submitted (hereinafter "Quotes" and Attachment 2). Any ambiguities, conflicts, or questions of interpretation of this contract shall be resolved by first, reference to this original agreement, if still unresolved, by reference by reference to the RFQuotes, if still unresolved by reference to the response quote. Omission of any term or obligation from this original agreement or Attachments 1 or 2 shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

## **E. DATA SHARING AGREEMENT**

The execution of a Data Sharing Agreement shall be required prior to the release of any student level data by the Mississippi Department of Education. Failure to adhere to the provisions of the Data Sharing Agreement may result in termination of the contract and/or may result in denial of subsequent renewal requests.

## **F. ETHICS**

In compliance with State law, Contractor who is employed by a public entity agrees to arrange with his/her employer to take the appropriate leave (annual, professional, compensatory, etc.) during the period of service covered by this contract. Contractor also agrees not to utilize resources of the public employer to perform the services pursuant to this contract. Prior to execution of this contract, Contractor must submit to the MDE a Certification (on the MDE form) executed from his/her employer whereby the public employer acknowledges that it is aware of its employee working for the MDE.

Additionally, if applicable Contractor agrees to comply with Miss. Code Ann. § 25-4-105 and may be subject to civil and criminal penalties if found violating the conflict of interest provisions of State law.

## **G. STANDARD TERMS AND CONDITIONS**

Certain terms and conditions are required for contracting. Therefore, the Contractor shall assure agreement and compliance with the following standard terms and conditions.

### **1. ACCESS TO RECORDS**

Contractor agrees that the MDE, or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Such records shall be kept by Contractor for a period of three (3) years after final payment under this agreement, unless the MDE authorizes their earlier disposition. Contractor agrees to refund to the MDE any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

### **2. 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.

### **3. APPLICABLE LAW**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law, 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.

### **4. 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.

## **5. 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.

## **6. 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.

## **7. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the MDE 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 time 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 MDE, the MDE 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 MDE of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## **8. BACKGROUND CHECKS**

Contractor and/or its employees represents neither has ever been convicted or pled guilty or entered a plea of nolo contendere to a felony in any court of the state of Mississippi, another state, or in federal court in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of any office or employment or money coming into its hands by virtue of any office or employment. Contractor and/or its employees agrees to an initial criminal background check to be performed as well as subsequent criminal background checks that may be necessary and all charges associated with these criminal background checks will be the responsibility of Contractor, if applicable. Any disqualifying information received from the criminal background check will render this agreement null and void.

## **9. BOARD APPROVAL**

It is understood that if this contract requires approval by the Mississippi State Board of Education, and this contract is not approved by the Mississippi State Board of Education, it is void and no payment shall be made hereunder.

## **10. CHANGES IN SCOPE OF WORK**

The MDE may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDE and Contractor.

If Contractor believes that any work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the MDE in writing of this belief.

If the MDE believes that the work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changes and at the cost stated for the work within the contract.

#### **11. COMPLIANCE WITH LAWS**

Contractor understands that the MDE 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.

#### **12. CONFIDENTIALITY**

Notwithstanding any provision to the contrary contained herein, it is recognized that MDE is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDE pursuant to this agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the MDE shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. The MDE shall not be liable to the Contractor for disclosure of information required by court order or required by law.

#### **13. CONTRACTOR PERSONNEL**

Contractor agrees that, at all times, the employees of contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

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

MDE reserves the right to request changes in personnel assigned to the project. The MDE Project Manager must pre-approve any changes in key personnel through the contract term. Substitutions are not permitted without written approval of the MDE Project Manager.

#### **14. COPYRIGHTS**

Contractor agrees the MDE shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Further, Contractor hereby grants to the MDE a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of Contractor's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in Contractor's opinion be likely to become, the subject of any infringement claim or suit, Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.

## **15. 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.

## **16. 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 Miss. Code Ann. §§ 25-61-1 *et seq.*

## **17. 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 Ann. § 31-7-301 *et seq.*

## **18. 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 Ann. §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

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

## **19. EXCEPTIONS TO CONFIDENTIAL INFORMATION**

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

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

## **20. 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 cause 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 MDE 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 MDE determines it to be in its best interest to terminate this agreement

## **21. INDEMNIFICATION**

**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 upon approval of the Office of the Mississippi Attorney General, 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 Office of the Mississippi Attorney General. 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 concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

## **22. INDEPENDENT CONTRACTOR**

Contractor shall perform all services as an independent contractor and shall at no time act as an agent for the State. No act performed, or representation made, whether oral or written, by Contractor with respect to third parties shall be binding on the MDE.

## **23. INDEPENDENT PRICE DETERMINATION**

Contractor certifies that the price submitted was independently arrived at without collusion.

## **24. 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 MDE shall result in the immediate termination of this agreement.

## **25. LEGAL AND TECHNICAL SUPPORT**

Contractor shall utilize its knowledge and understanding of applicable legal standards and comply with recognized professional standards and generally accepted measurement principles applicable to assessments and uses of the type described in this contract, including but not limited to standards relating to validity and reliability. Contractor shall consult with the MDE concerning its implementation of the requirements of this section. In the event of a challenge in which the validity or reliability of the use of an assessment developed under this contract is an issue (other than a challenge based on infringement of copyright or other proprietary rights of a third party), Contractor shall cooperate with the MDE and/or the State of Mississippi in the defense of the assessment and shall provide reasonable technical and legal support with regard to Contractor's activities under this contract without additional charges to the MDE or the State.

## **26. MODIFICATION OR RENEGOTIATION**

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

## **27. 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.

## 28. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specification stated in this contract.

## 29. 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.

## 30. 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*.

## 31. 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, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

## 32. 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.

## 33. 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

## 34. RIGHT TO AUDIT

Contractor shall maintain such financial records and other records as may be prescribed by the MDE 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 MDE, 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.

### **35. RIGHT TO INSPECT FACILITY**

The MDE 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 MDE.

### **36. SEVERABILITY**

If any part of this agreement is declared 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 even, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provision in compliance with applicable law.

### **37. STOP WORK ORDER**

- (1) **Order to Stop Work:** The Chief 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 Chief Procurement Officer shall either:
  - a. cancel the stop work order; or,
  - b. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- (2) **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
  - a. The stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
  - b. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) **Adjustments of Price:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

### **38. TERMINATION FOR CONVENIENCE**

- (1) **Termination.** The Chief Procurement Officer may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. Chief Procurement

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

- (2) **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 subcontractors and orders connected with the terminated work. The Chief Procurement Officer 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.

### 39. TERMINATION FOR DEFAULT

- (1) **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 Chief Procurement Officer may notify Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Chief Procurement Officer 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 Chief Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Chief Procurement Officer. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the MDE has an interest.
- (3) **Compensation.** Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Chief Procurement Officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the MDE for the excess costs incurred in procuring similar goods and services.
- (4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, 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 Chief Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to 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 Chief Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). "Termination for Convenience." (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- (5) **Erroneous Termination for Default.** If, after notice of termination of 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 MDE, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **40. TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by the MDE 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.

#### **41. 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.

#### **42. 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 Ann. §§ 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 Mississippi 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.

#### **43. 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.

#### **H. COMPENSATION AND FINANCIAL REPORTS**

This contract is based upon a fixed amount of \$62,914.00 from July 1, 2020 through June 30, 2021. Payment of the fixed amount of the contract shall be made upon successful completion of all work specified in the contract and upon receipt of an invoice by the 8th working day of the month following the completion of the work. Failure to provide the work may result in the withholding of total payment or may result in partial payment until

contractor completes tasks as specified.

**I. BUDGET NARRATIVE**

The Mississippi Department of Education will pay **Warner, Inc. DBA ServiceMaster OneCall** an amount not to exceed \$62,914.00 for the purpose of initial and weekly sanitizing/deep cleaning and daily cleaning of the MDE Office of Child Nutrition.