

**THE  
AGENCY PROCUREMENT  
FILE**

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

**RFx No.:** \_\_\_\_\_

**Contract No.:** \_\_\_\_\_

**Supplier Name:** \_\_\_\_\_

**SMALL PURCHASE CONTRACT: NOT EXCEEDING \$50,000.00**

## **PURVIEW DETERMINATION**

*Communication with DFA and/or ITS regarding purview of the procurement*

**N/A**

## **PPRB DISCRETIONARY AUTHORITY**

*Any requests for exceptions to regulatory or statutory requirements*

**N/A**

## **COMPLIANCE REVIEW**

*Documentation regarding any compliance review(s) previously conducted by OPSCR*

**N/A**

## **FUNDING SOURCE CONFLICT**

*Written determination of conflict with funding source procurement rules and action taken*

**N/A**

## **COMPETITION, FAIRNESS, AND TRANSPARENCY**

*Legitimate business reason(s) for decisions impacting competition, fairness, or transparency of procurement*

**N/A**

## **PRESERVATION OF PROCUREMENT**

*A memorandum explaining any decisions made to preserve procurement*

**N/A**

**AUTHORIZED TO DO BUSINESS IN THE STATE**

*Contractor's registration with the Mississippi Secretary of State, currently in good standing*



**Michael Watson**  
SECRETARY OF STATE

Office of the Secretary of State  
Jackson, Mississippi

## Certificate of Good Standing

I, MICHAEL WATSON, Secretary of State of the State of Mississippi, and as such, the legal custodian of the records as required by The Mississippi Registration of Foreign Limited Liabilities Company Act to be filed in my office do hereby certify:

### **NEELY BEHAVIORAL HEALTH, PLLC**

Registered the 13th day of January, 2026

A Texas LIMITED LIABILITY COMPANY has filed the necessary documents in this office and has obtained a certificate of registration to do business in this state, under the provisions of The Mississippi Registration of Foreign Limited Liability Companies Act as shown by the records in this office.

I further certify that said Limited Liability Company has filed in this office an appointment of registration for service of process, with written acceptance endorsed thereon, and/or power of attorney, designating its agent and/or attorney for service of process in this State as:

Djuanita Garvin  
221 South Tims  
Boyle, MS 38730

I further certify that said Limited Liability Company has paid the fees for filing the above papers required by law as shown by the records of this office, and that said Limited Liability Company is in good standing to do business in Mississippi at this time.

Given under my hand and seal of office  
the 14th day of January, 2026

A handwritten signature in black ink that reads "Michael Watson".

Certificate Number: CN26230288

Verify this certificate online at <http://corp.sos.ms.gov/corpcnv/verifycertificate.aspx>

## **PUBLIC RECORDS REQUEST**

*All public records request(s) regarding the procurement and a memorandum of the current status of those requests*

**N/A**

## **REQUEST FOR INFORMATION**

*Content of RFI, proof of publication, all responses received, and the required written determination*

**N/A**

# **CONTRACT**



**A. INTRODUCTION**

The contract between the Mississippi Department of Education (hereinafter referred to as the “MDE”) and Neely Behavioral Health, PLLC dba, Neely EAP, PLLC (hereinafter referred to as the “Contractor or Neely EAP, PLLC”) is for the purpose of employee assistance program services. The term of the contract is when all parties sign through June 30, 2030.

The MDE will pay Contractor an amount not to exceed \$38,653.75 through June 30, 2030, of the contract:

FY26 - \$3,973.75  
 FY27 - \$8,670.00  
 FY28- \$8,670.00  
 FY29- \$8,670.00  
 FY30- \$8,670.00

The contract will be awarded for up to four (4) years and five (5) months and shall be contingent upon successful completion of the services in the preceding years contract and a performance-based evaluation.

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: Employee Assistance Program Services
- Attachment 2: Cost Proposal submitted by Neely Behavioral Health, dba Neely EAP, PLLC, January 5, 2026

**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: Horatio Neely, 12030 Bandera Road #108, Helotes, TX, 78023, 210-414-8949  
 For the Agency: Carol Hodge, 359 N. West Street, Jackson, MS, 39205, 601-359-3511

**D. PRIORITY**

The contract consists of the original agreement, the MS Department of Education’s Request for Quotes for Employee Assistance Program Services (hereinafter referred to as “RFQ” and/or “Attachment 1”), and the response quote by Neely Behavioral Health, dba, Neely EAP (hereinafter referred to as “Quote” and/or “Attachment 2”). Any ambiguities, conflicts or questions of interpretations of this contract shall be resolved by first by reference to this agreement and its’ modifications in order of effective date and, if still unresolved, by reference to RFQ and, if still

unresolved, by reference to the Quote. Omission of any term or obligation from this agreement, modifications, or incorporated attachments 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 laws, provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi.

### **4. APPROVAL**

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

### **5. ATTORNEY’S FEES AND EXPENSES**

In the event Contractor defaults on any obligations under this Agreement, Contractor shall pay to the MDE all costs and expenses, without limitation, incurred by the MDE in enforcing this Agreement or reasonably related to enforcing this Agreement. This includes but is not limited to investigative fees, court costs, and attorneys’ fees. Under no circumstances shall the MDE be obligated to pay attorneys’ fees or legal costs to Contractor.

### **6. AUTHORITY OF SIGNATORY**

Contractor acknowledges that the individual executing the contract on behalf of the MDE is doing so in his or her official capacity only. To the extent any provision contained in the contract exceeds the signatory’s authority, Contractor agrees that it will not look to that individual in his or her personal capacity or otherwise seek to hold him or her individually liable for exceeding such authority.

### **7. AUTHORITY TO CONTRACT**

Contractor warrants: (1) that it is a validly organized business with valid authority to enter into this agreement; (2) that it is qualified to do business and in good standing in the State of Mississippi; (3) 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, (4) 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.

### **8. 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 appropriated funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, regardless of the source of funding, the MDE shall the right upon 10 business days written notice to Contractor, to terminate this agreement without damage, penalty, cost, or expense to the MDE of any kind whatsoever. The effective date of the termination shall be as specified in the notice of termination.

## **9. 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 of 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.

## **10. 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.

## **11. 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.

## **12. COMPLIANCE WITH EQUAL OPPORTUNITY IN EMPLOYMENT POLICY**

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.

## **13. COMPLIANCE WITH LAWS**

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

## **14. CONFIDENTIALITY**

The MDE is a public agency of the State of Mississippi and is subject to the *Mississippi Public Records Act of 1983*. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the MDE by Contractor, the MDE shall follow provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information – unless Contractor

has previously indicated the information is not trade secret or confidential commercial and financial information. The MDE shall not be liable to the Contractor for disclosure of information required by court order or required by law.

#### **15. CONTRACT ASSIGNMENT AND SUBCONTRACTING**

Contractor acknowledges that it was selected by the MDE 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 MDE, which may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of Contractor's obligations hereunder without consent of the MDE shall be null and void.

Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the MDE may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

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 Program Project Manager.

#### **16. CONTRACT RIGHTS**

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

#### **17. CONTRACTOR PERSONNEL**

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 shall 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.

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.

#### **18. 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.

#### **19. 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 qualification, 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 qualification, 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 paragraph two (2) and (3) of this certification; and,
- (5) has not, within a three year period preceding this qualification, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **20. DISCLOSURE OF CONFIDENTIAL INFORMATION**

In the event that either party to this agreement receives notice that a third-party has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the other party's data or other confidential or otherwise protected information, the party subject to the subpoena or other legal process shall promptly inform the other party at the earliest reasonable opportunity, unless prohibited by law from doing so. Thereafter, the party subject to the legal process shall respond 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.*

#### **21. 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.*

#### **22. E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the *Mississippi Employment Protection Act* and will register and participate in the status verification system for all newly hired employees. Mississippi Code Ann. §§ 71-11-1 and 71-11-3. Contractor agrees to provide a copy of each verification upon request of the MDE subject to approval by any agencies of the United States Government. 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 and exclusion pursuant to Chapter 15 of the Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations;
- (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi; or,
- (3) both.

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

### **23. ENTIRE AGREEMENT**

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 MDE 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 MDE or Contractor on the basis of draftsmanship or preparation hereof.

### **24. 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 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.

### **25. FAILURE TO DELIVER**

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

#### **26. FAILURE TO ENFORCE DOES NOT CONSTITUTE WAIVER**

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

#### **27. 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. All parties shall make reasonable efforts to minimize the impact of the force majeure event on contract performance. The MDE may exercise any rights it has under the contract which are available when neither party is in default. 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.

#### **28. 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.

#### **29. 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 MDE. Nothing contained herein shall be deemed or construed by the MDE, 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 MDE and Contractor. Neither the method of computation of

fees or other charges, nor any other provision contained herein, nor any acts of the MDE or Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the MDE and Contractor.

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

The MDE 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 MDE shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the MDE for its employees.

### **30. INFORMATION DESIGNATED BY AGENCY AS CONFIDENTIAL**

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

### **31. 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.

### **32. INFRINGEMENT INDEMNIFICATION**

Contractor warrants that the materials and deliverables provided to the MDE under this agreement, and their use by the MDE, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the MDE the right to continue using such items without additional cost to the Agency. Should Contractor fail to obtain for the MDE the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense.

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

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

In the MDE's sole discretion, upon approval of the Office of the Mississippi Attorney General and the MDE, 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 and the MDE. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDE shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the MDE, which shall not be unreasonably withheld.

### **33. 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.

### **34. MODIFICATION OR RENEGOTIATION**

The parties agree to renegotiate the agreement in good faith if federal and/or state revisions to any applicable laws or regulations make changes in this agreement necessary. This agreement may be modified only by written agreement signed by the parties hereto and approval by the SBE and Public Procurement Review Board, if required.

### **35. 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.

### **36. 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 shall be made in writing by the MDE, agreed to by Contractor and approved by the SBE and Public Procurement Review Board, if required.

### **37. PAYMODE**

Payments by the MDE using the state's accounting system shall be made and remittance information provided electronically as directed by the state and deposited into the bank account of Contractor's choice. The MDE 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 Agency is exempt from the payment of Mississippi taxes. All payments shall be in United States currency.

### **38. 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. must be stated in the solicitation describing the method in which any price adjustment will be calculated, the triggering event which makes the price adjustment clause to be enacted.
  - b. by agreement on a fixed price adjustment before commencement of the Additional performance;
  - c. by unit prices specified in the contract;
  - d. 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,
  - e. by the price escalation clause.
- (2) **Submission of Cost or Pricing Data.** Contractor shall provide cost or pricing data for any price adjustments.

### **39. PROCUREMENT REGULATIONS**

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

### **40. PROPERTY RIGHTS**

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

### **41. RECOVERY OF MONEY**

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the MDE, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the MDE. The rights of the MDE are in addition

and without prejudice to any other right the MDE may have to claim the amount of any loss or damage suffered by the MDE on account of the acts or omissions of Contractor.

#### **42. RENEWAL OF CONTRACT**

The contract may be renewed at the discretion of the MDE for the term specified in the solicitation under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed the term specified in the solicitation.

#### **43. REPRESENTATION REGARDING GRATUITIES**

Contractor represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of the MDE a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. Contractor further represents that no employee or former employee of the MDE has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by contractor. Contractor further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.

#### **44. REQUIRED PUBLIC RECORDS AND TRANSPARENCY**

Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on [www.transparency.ms.gov](http://www.transparency.ms.gov) and shall be available for at the Agency for examination, inspection, or reproduction by the public. The contractor acknowledges and agrees that the MDE and this contract are subject to the Mississippi Public Records Act of 1983 codified at Mississippi Code Annotated §§ 25-61-1, et seq. and its exceptions, Mississippi Code Annotated § 79-23-1, and the *Mississippi Accountability and Transparency Act of 2008*, codified at Mississippi Code Annotated §§ 27-104-151, et seq.

#### **45. 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.

#### **46. 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.

#### **47. 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 event, 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.

#### **48. 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.

#### **49. STOP WORK ORDER**

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

#### **50. TERMINATION**

**Termination for Convenience.** The MDE may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The MDE shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

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

#### **51. 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.

#### **52. THIRD PARTY ACTION NOTIFICATION**

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

### **53. 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.

### **54. 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 **\$38,653.75** from **when all parties sign through June 30, 2030**. The Contractor shall:

1. Submit all invoices for services rendered or goods delivered during the preceding month **no later than the eighth (8th) calendar day of the subsequent month.**
2. Any invoice received after this date shall be deemed untimely.
3. **The Agency reserves the right to defer payment of untimely invoices to the next billing cycle.**
4. The Agency shall bear no responsibility for payment delays resulting from the Contractor's failure to comply with the prescribed submission deadline.
5. 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.
6. 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 **Neely Behavioral Health, PLLC, dba, Neely EAP, PLLC** an amount not to exceed **\$38,653.75** for the purpose of employee assistance program services.

## **CONTRACT MODIFICATIONS**

**N/A**

## **REGULATORY BOARD APPROVAL**

*Board minutes or letter from board chair confirming approval*

**N/A**

**AGENCY HEAD DESIGNEE FOR CONTRACT EXECUTION**

*Written delegation by the Agency Head of authority of a person other than the Agency Head  
to execute contracts*

**N/A**

## **EXCEPTION TO REQUIRED CLAUSES**

**N/A**

**AGENCY HEAD AND CHIEF FINANCIAL OFFICER MEMO:  
MULTIPLE SMALL PURCHASE CONTRACTS WITH SAME  
VENDOR**

**N/A**

# **AGENCY STANDARD OPERATING PROCEDURE**

*Documentation demonstrating compliance with Agency standard operating procedure*

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: CONTRACTS
EMPLOYEE PROCEDURES MANUAL	SECTION 17.0 PAGE 3 OF 51
	EFFECTIVE DATE: MAY 1, 2000
	REVISION #8: July 1, 2023

The following methods shall be utilized in procuring contractual services:

**Commodities, Equipment, Furniture, Printing, Construction, Fleet and Personal and Real Property:**

Thresholds:

- Up to \$5,000
- \$5,000.01 - \$50,000
- \$50,000.01 - \$75,000
- Over \$75,000

Procurement Methods:

- One (1) Quote
- Two (2) written quotations
- Three (3) written quotations
- Invitation for Bid
- Reverse Auction

**Personal and Professional Services**

Independent Contractor Thresholds:

- Up to \$10,000
- \$10,000.01 - \$49,999
- \$50,000 - \$75,000
- Over \$75,000

Procurement Methods:

- Two (2) written quotations (RFQuote)  
Contract, if required by vendor
- Three (3) written quotations (RFQuote)
- Invitation for Bids
- Request for Proposals
- Request for Qualifications
- PPRB Preapproved Vendor Lists
- Invitation for Bids
- Request for Proposals
- Request for Qualifications
- PPRB Preapproved Vendor Lists
- Invitation for Bids
- Request for Proposals
- Request for Qualifications
- PPRB Preapproved Vendor Lists

# **NOTICE OF CONTRACT AWARD**

*(after contracting)*

**OFFICE OF HUMAN RESOURCES**  
**Mississippi Department of Education**  
**NOTICE OF CONTRACT AWARD**

**NEW AWARD SUMMARY**

**Name of Solicitation:** Employee Assistance Program

**Awarded Vendor:** Neely Behavioral Health, PLLC, dba, Neely EAP, PLLC  
**City and State:** Helotes, TX

**Scope of Project:** The purpose of this award is for services to fulfill the following: Employee Assistance Program

The awarded vendor will provide the following services to include but not be limited to the following:

- The Contractor will provide implementation and administration of the Comprehensive Employee Assistance Program.

**Scope of Contract:**

- Term of Contract: When all parties sign-June 30, 2030
- Amount to be Awarded: \$38,653.75
- Method of Award: Request for Quote

**Funding Source:** State