



Mississippi Department of Marine Resources

SOLICITATION:

Invitation for Bids

SOLICITATION NUMBER:

3160006370

DESCRIPTION:

Oyster Spat on Cultch

ISSUE DATE:

January 11, 2024

BID CLOSING LOCATION:

Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, Mississippi 39530

BID COORDINATOR:

Janie Ballew
(228) 523-4118
procurement@dmr.ms.gov

CLOSING DATE AND TIME:

February 13, 2024 2:00 PM CST

1. INTRODUCTION

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the Mississippi Advisory Commission on Marine Resources. We are dedicated to enhancing, protecting, and conserving the marine interests of Mississippi for present and future generations. We manage all marine life, public trust wetlands, adjacent uplands, and waterfront areas for the long-term recreational, educational, commercial, and economic benefit of everyone.

2. PURPOSE

The MDMR is seeking bids from qualified and experienced contractors to set up to 2,000 cubic yards of oyster shells or approved cultch material with an average of 75,000 oyster spat per cubic yard with all oyster spat being equal to or greater than 3 millimeters. The Contractor will be required to only use Mississippi Sound brood stock (*Crassostrea virginica*) and the bid amount will include all costs associated with the procuring of oyster shell or approved cultch material, setting of the oyster spat and delivery/deployment of live oysters to deployment sites within the Mississippi Sound. The MDMR will determine the deployment sites based on water quality conditions during time of deployment. . The scope of work to be performed and the deliverables required under the contract are also set forth herein.

3. TIMELINE

Start Date	
• First Date of Advertisement:	January 11, 2024
• Second Date of Advertisement	January 18, 2024
Questions Submission Deadline	January 23, 2024 10:00 AM CST
Answers Posted	January 24, 2024 4:00 PM CST
Bid Submission/Bid Open Deadline	February 13, 2024, 2:00 PM CST
Bid Evaluations	February 13, 2024
Contract Intent to Award	February 14, 2024
Debriefing Request Deadline	February 20, 2024
Protest Deadline	February 21, 2024
Contract Approval	Unexecuted contract will require additional approval from DFA before it is awarded.

4. SCOPE OF SERVICES/DELIVERABLES

The scope of work for the contract will include, but is not limited to, the following:

Setting of up to 2,000 cubic yards of oyster shells or approved cultch material with an average of 75,000 oyster spat per cubic yard. All oyster spat shall be equal to or greater than 3

millimeters at time of deployment. The Contractor will be required to only use Mississippi Sound brood stock (*Crassostrea virginica*) and the bid amount will include all costs associated with the procuring of oyster shell or approved cultch material, setting of the oyster spat and delivery/deployment of live oysters to deployment sites within the Mississippi Sound. The MDMR will determine the deployment sites based on water quality conditions during time of deployment. The Contractor will give the MDMR Project Manager at least forty-eight (48) hours notice of delivery. The MDMR will measure material and live seed oysters on board the barges at final deployment and will calculate the oyster size and total cubic yards of material on each barge, as well as the total number of seed oysters present.

DELIVERABLES

The deliverables are to include:

Up to 2,000 cubic yards of oyster shells or approved cultch material with an average of 75,000 oyster spat per cubic yard with all oyster spat being equal to or greater than 3 millimeters set onto cultch, delivered, and deployed as directed by the MDMR.

5. MINIMUM REQUIRED QUALIFICATIONS

The minimum qualifications for bidding include:

- Bidders must be able to obtain the appropriate/approved cultch material.
- Bidders must have the ability to grow out and set approved spat on cultch.
- Bidders must have the ability to deliver and deploy spat on cultch to areas designated by the MDMR.
- Bidders must provide two (2) professional references familiar with the vendor's abilities described in this IFB. See [Attachment A](#). Please provide current contact information as MDMR must be able to contact the references.
- By submitting a bid, you are certifying that you are not currently debarred from bidding by the State, any political subdivision of the State (towns, cities, counties, agencies, etc.), any other state, or the federal government. You also certify that you are not submitting a bid as an agent of someone so debarred.
- Bidders are required to be electronically registered in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) before submitting their bid. Instructions for registering in MAGIC can be found below in Section 9.

The minimum qualifications for contracting include:

- Vendors which are domestic corporations, limited liability companies, or limited partnerships must be in good standing with the Mississippi Secretary of State.

- Vendors which are foreign corporations, limited liability companies, or limited partnerships may be required to register with the Mississippi Secretary of State to transact business in Mississippi. See Miss. Code Ann § 79-4-15.01.

6. BASIS FOR AWARD

The MDMR will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the Public Procurement Review Board, if necessary. The MDMR reserves the right to reject any and/or all bids and waive minor informalities which do not affect quality, quantity, price or delivery.

7. INSURANCE REQUIREMENTS

In order to enter into a contract, you must meet minimum insurance protection requirements. **You must provide evidence of your policies within ten (10) calendar days of a fully executed contract.**

All insurance policies must be issued by companies licensed or holding a Certificate of Authority from the Mississippi Department of Insurance. All liability insurance policies must provide coverage to the MDMR as an additional insured.

You must hold the following insurance throughout the term of the contract:

Coverage Type	Amount
Workers' Compensation (as required by Mississippi law)	
Accident (Per Occurrence)	\$100,000
Disease-Policy Limit	\$500,000
Disease-Per Employee	\$100,000
General Liability	
Aggregate	\$1,000,000
Personal Injury/Bodily Injury and Property Damage (Per Occurrence)	\$500,000
Fire Damage (Per Fire)	\$50,000
Medical Expense (Per Person)	\$5,000

8. BOND REQUIREMENTS

No bonds required.

9. BID SUBMISSION INSTRUCTIONS

You are required to electronically register in Mississippi's Accountability System for Government Information and Collaboration (MAGIC), and you may submit your bid electronically through MAGIC, or you may submit your bid by paper submission via mail or hand delivery to MDMR as outlined below:

Vendor Electronic Registration in MAGIC:

- It shall be the responsibility of each bidder to ensure that its vendor profile is current in the MAGIC system. The website to register as a vendor with the State of Mississippi is: <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>.

- For online learning instructions on submitting your bid electronically, select “Supplier Training” from the link listed above. Select the LOG820 Supplier Self-Service Course link and then click “Launch Course.”
- If you have problems getting on the website, please contact the Mash Helpdesk at (601) 359-1343 or mash@dfa.ms.gov. You must receive a User ID and Password to access the MAGIC portal. **This process could take up to 72 hours to complete.**

MAGIC Submission and Technical Requirements

- The bid submission must be submitted in MAGIC no later than **2:00 PM CST, February 13, 2024.**
- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and the unopened bid will be made a part of the procurement file. **It is suggested that you allow 72 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user.**

Paper Bid Submission Requirements

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to MDMR Procurement Department, 6th Floor, at 1141 Bayview Avenue, Biloxi MS 39530 no later than **2:00 PM CST, February 13, 2024.**
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and the unopened bid will be made a part of the procurement file.
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- Submissions via facsimile (faxes) or email will not be accepted. It is suggested that if a submission is mailed to MDMR, it should be posted in certified mail with a return receipt requested. MDMR will not be responsible for mail delays or lost mail.
- All Bids submitted by hand delivery or mail will become the property of the MDMR.
 - Bids should be mailed, or hand delivered and must be labeled as follows:

“Oyster Spat on Cultch”

RFx No. 3160006370

Smart No. 1450-24-R-IFBD-00005

Opening Date: 2:00 PM CST, February 13, 2024

Attention: MDMR Procurement Department 6th Floor
1141 Bayview Avenue
Biloxi, MS 39530

SEALED BID – DO NOT OPEN

The **deadline** for receiving Bids is **February 13, 2024 at 2:00 p.m.**

Late submissions will not be accepted.

10. AMENDMENTS TO THIS IFB

Should an amendment or amendments to this IFB be issued by MDMR, it will be posted on the MDMR website dmr.ms.gov and on the Mississippi Contract Procurement Opportunity Search Board (Procurement Portal) website ms.gov/dfa/contract_bid_search/Bid in a manner that all bidders will be able to view. **Furthermore, bidders must acknowledge receipt of any amendment to this IFB by signing and returning the amendment with the bid submission by identifying the amendment number and date in the space provided for this purpose on the Bid Form-Attachment B, or by letter.** The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of Bids. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

12. QUESTIONS/REQUESTS FOR CLARIFICATION

All questions and requests for clarification must be submitted by email to: procurement@dmr.ms.gov. All questions/requests for clarification must be received no later than **January 23, 2024 at 10:00 a.m. CST.**

All questions/requests for clarification and the answers thereto will be published on the MDMR website, dmr.ms.gov, and the MAGIC Portal <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/> in a manner that all bidders will be able to view by **January 24, 2024 at 4:00 p.m. CST.**

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

13. TERM OF CONTRACT

The start date for the contract is the date the contract is signed by the selected bidder and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date, however, the Contractor must transport and deploy reef material within a maximum of nine (9) to twelve (12) months as specified in **Section 4. Scope of Service/Deliverables**. The contract may be extended subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the Contractor. Any contract renewal or extension shall be under the same pricing, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

14. REQUIRED DOCUMENTS FOR BIDDING

All bids must include the following:

- [Attachment A](#)-Bid Cover Form completed and signed;
- [Attachment B](#)-Bid Form completed and signed; and,
- [Attachment E](#)-Bidder's Checklist completed and signed.

Use the bid form to identify your best price. **You must identify your company's name on each page of the bid form, and each of the attachments. Complete all of the blanks and sign the form.**

You *must* use the bid form. Submissions without a bid form will be rejected as nonresponsive. Do not amend or add to the bid form. We may reject modified bid forms as nonresponsive on a case-by-case basis.

You are responsible for the costs of preparing your bid. We do not accept liability for such expenses.

Any bidder claiming that its bid contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. § 25-61-1, *et seq.*), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. The bidder must submit all attachments. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

15. CONDITIONS OF SOLICITATION

When you submit a bid, then you promise that you will accept an award if offered. You also certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price. You can read more about your certifications on the Bid Form, [Attachment B](#).

The MDMR reserves the right to reject any and/or all bids and waive any minor informality.

16. BID PROTESTS

Pursuant to *Office of Personal Service Contract Review Rules and Regulations* Section 7-112.01, if you are an actual or prospective bidder and feel aggrieved by this solicitation or award of a contract, then you may file a protest with the Chief Procurement Officer of the MDMR with a copy to the Department of Finance Administration (DFA) Office of Personal Service Contract Review (OPSCR). The protest must be in writing and explain the specific reasons that you are protesting. The protest must be filed within seven (7) calendar days of the award or seven (7) calendar days of the solicitation posting if the protest is based on this solicitation. Late protests shall not be considered.

Alternatively, an aggrieved party may file a protest directly to the PPRB OPSCR within seven (7) calendar days after the party knew or should have known of the facts and circumstances upon which the protest is based, but in no event later than within seven (7) days of the solicitation posting or award.

17. POST AWARD VENDOR DEBRIEFING

Pursuant to *Office of Personal Service Contract Review Rules and Regulations* Section 7-113, the vendor may request a post-award debriefing, in writing, by U. S. mail or electronic submission. The request must be made within three (3) business days of notification of the contract award. A debriefing is a meeting and not a hearing. Therefore, legal representation is not required. Should the vendor prefer to have legal representation present, the vendor must notify the MDMR and identify the attorney. The MDMR shall be allowed to schedule and/or suspend and reschedule the debriefing at a time when a representative from the Office of the Mississippi Attorney General can be present.

For additional information regarding the process and procedure for Protests and Vendor Debriefing, please refer to the *Office of Personal Service Contract Review Rules and Regulations* that may be found at <http://www.dfa.ms.gov/media/6559/4-6-18-final-opscr-rules-sos-apa.pdf>.

18. NOTIFICATION OF INTENT TO AWARD

Notification will be sent to all bidders by mail and/or email of the selection of the successful bidder. We will also post the selection of the successful bidder on our website at www.dmr.ms.gov.

19. GOVERNING LAW

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Mississippi, excluding its conflict of laws provisions, and any litigation with respect thereto shall be brought in the state courts of Harrison County, Mississippi.

20. RELATIONSHIP OF PARTIES

It is expressly understood and agreed that if MDMR enters into a contract with a bidder, it does so based on the purchase of commodities or services and not based on an employer-employee relationship or a joint venture relationship.

21. CONTRACT ADMINISTRATION

The contract awarded, if any, subsequent to this solicitation shall be administered by the MDMR. All invoices submitted by the Contractor for goods received or services provided pursuant to the contract shall be submitted as follows:

By Mail: Mississippi Department of Marine Resources, Procurement Department, 1141 Bayview Avenue, Biloxi, Mississippi 39530

By Email: Procurement@dmr.ms.gov

The MDMR will provide timely payment in accordance with Section 31-7-301, *et seq.* of the Mississippi Code Annotated, which generally provides for payment by the MDMR within forty-five (45) days of receipt of an approved invoice. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

22. COMPENSATION FOR GOODS AND SERVICES

- **Payment.** The MDMR will pay Contractor upon satisfactory completion of the Scope of Services and Deliverables.

- **Invoice.** The Contractor may submit detailed invoices incrementally as follows:
 1. Upon successful deployment of spat on cultch; and,
 2. Upon successful completion of Scope of Services and Deliverables.
- In order to process payment, the invoice must include the following information and supporting documentation:
 3. Contract Number;
 4. Purchase Order Number; and,
 5. Date(s) of treatment.
- **Payment Processing.** The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for work performed before the execution or after expiration of the contract.

23. EQUAL OPPORTUNITY STATEMENT

MDMR will select the successful bidder without regard to political affiliation, race, color, handicap, genetic information, religion, national origin, sex, religious creed, age, or disability.

24. ATTACHMENTS

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

- [Attachment A](#) — Bid Cover Form
- [Attachment B](#) — Bid Form
- [Attachment C](#) — Contract Clauses
- [Attachment D](#) — Reference Score Sheet
- [Attachment E](#) — Bidder's Checklist

Attachment A

Bid Cover Form

The Mississippi Department of Marine Resources is accepting bids for Oyster Spat on Cultch.
Bids must be submitted by 2:00 p.m. CST on February 13, 2024.

Company Name: _____

Quoted by: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Email Address: _____

Name, title and phone number of company representative to be contacted by MDMR:

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

What year was your company started? _____

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

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

Company Name: _____

Professional References:

Please list two (2) professional references familiar with the vendor's abilities using the methods described in this IFB.

Please provide current contact information as MDMR must be able to contact these references.

Professional Reference:

Customer Name and Title: _____

Telephone: _____

Email: _____

Professional Reference:

Customer Name and Title: _____

Telephone: _____

Email: _____

Attachment B-Bid Form

Company Name: _____

On the lines below, please bid the price per acre as specified in the Scope of Services.

Price per cubic yard \$ _____

By signing below, you certify that you have authority to bind the company, and further acknowledge and certify on behalf of the company:

- That you thoroughly read and understand the Invitation for Bids and its attachments.
- That you meet all requirements and acknowledge all the certifications contained in the IFB.
- That you agree to all provisions of the IFB, including the contract clauses in [Attachment C](#).
- That you will deliver the goods and perform the services required at the price quoted above.
- That, to the best of your knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
- **Non-Debarment:** By submitting a bid, you are certifying that you are not currently debarred from bidding by the State, any political subdivision of the State (towns, cities, counties, agencies, etc.), any other state, or the federal government. You also certify that you are not submitting a bid as an agent of someone so debarred.
- **Independent Price Determination:** You certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price.
- **Contingent Fees:** Have you retained a person to solicit or secure a state contract upon an agreement or understanding for compensation?
 - ☐ Yes
 - ☐ No

If yes, please explain: _____

- **Gratuities:** You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 6-204 of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* which may be found at <http://www.dfa.ms.gov/>.
- **Acknowledgment of Amendments:** You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

Signature

Date

Attachment C-Contract Clauses

Any contract entered into pursuant to this Invitation for Bids will contain these clauses and may contain other clauses. Any reference to “he”, “his” or “himself” also includes “she”, “her” or “herself.”

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 state courts of Harrison County, Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.

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.

AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the MDMR 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 MDMR, the MDMR shall have the right upon ten (10) working days' notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDMR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

REPRESENTATION REGARDING GRATUITIES: The Bidder, Offeror or Contractor represents that it has not violated, is not violating, and promises that he 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*.

REPRESENTATION REGARDING CONTINGENT FEES: The 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.

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>.

COMPLIANCE WITH LAWS

Contractor understands that the MDMR 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 his 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.

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.

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.

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 cost 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.

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated§ 31-7-301 *et seq.*

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 the Contractor's choice. The State may, at its sole discretion, require the Contractor to electronically submit invoices and supporting documentation at any time during the term of the Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

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:

- (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.

TERMINATION FOR CONVENIENCE

- (1) *Termination.* The Agency Head or designee may, when the interest of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- (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 subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

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 Agency Head 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 Agency Head 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 Agency Head or designed may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the

contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- (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 State 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 Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (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 Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (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 State, 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.

TERMINATION UPON BANKRUPTCY

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

ADDITIONAL TERMS AND CLAUSES

ATTORNEYS' FEES AND EXPENSES

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the MDMR all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the MDMR in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the MDMR be obligated to pay any attorneys' fees or costs of legal action to the Contractor.

INDEMNIFICATION

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDMR, 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 the 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, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDMR shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonable withhold.

CONTRACTOR PERSONNEL

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

CHANGE IN SCOPE OF WORK

The MDMR 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 MDMR and Contractor.

If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the MDMR in writing of this belief. If the MDMR believes that the particular work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

FAILURE TO ENFORCE

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

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 MDMR, and the MDMR shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The MDMR 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 MDMR shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

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 Contractor: name, title, Contractor, address

For the MDMR: name, title, agency, address

RECORD RETENTION AND ACCESS TO RECORDS

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

RECOVERY OF MONEY

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

THIRD PARTY ACTION NOTIFICATION

Contractor shall give the MDMR 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 Contract.

UNSATISFACTORY WORK

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

WAIVER

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by the 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 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.

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.

Attachment D
Reference Score Sheet
TO BE COMPLETED BY MDMR STAFF ONLY

Bidder Name: _____

Reference Name: _____

Person Spoken To: _____

Score: _____

Was the Bidder easy to work with in the scheduling and provision of the services rendered?	Yes	No
Were you satisfied with the services provided? If no, please explain.	Yes	No
Was the Bidder responsive to your needs?	Yes	No
Would you recommend the Bidder to others for future projects?	Yes	No

The References will be scored as either “Pass” or “Fail.” The Bidder is responsible for providing relevant references. Each “yes” is one point; each “no” is zero points. Bidder must have a combined minimum score of “7” from two references to be considered responsible and for Bidder’s bid to be considered.

Called By: _____

Signature: _____

Title: _____

Date and Time: _____

Notes: _____

Attachment E-Bidder's Checklist

Two (2) Professional References.	
Registered with MAGIC.	
Amendments to IFB acknowledged, if any.	
Attachment A , Attachment B and Attachment C completed and signed.	

Printed Name: _____

Signature: _____

Date: _____