

**Invitation for Bids**  
**RFx No. 3160001670**  
**Smart No. 1450-18-R-IFBD-00001**  
**Furnish and Delivery of Approved Cultch**  
**Material**



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

Contact: Erin Gallagher– [procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

## **Introduction**

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the 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.

MDMR is seeking bids for furnishing and delivery of approved cultch material (sometimes referred to herein as “cultch”) to the Mississippi Department of Marine Resources Marine Fisheries Staging Site located in Gulfport, Mississippi. The scope of work to be performed and the deliverables required under the contract are also set forth herein.

## **Deadlines/Timeline**

<b>IFB Issue Date</b>	September 7, 2017
<b>Sun Herald Advertising Dates</b>	September 7, 2017 & September 14, 2017
<b>Deadline for Questions to MDMR</b>	September 20, 2017 10:00 a.m. CST
<b>Posting of Written Answers to Questions</b>	September 21, 2017 4:00 p.m. CST
<b>IFB Submission Deadline</b>	<b>September 27, 2017 2:00 p.m. CST</b>

## **How to Bid**

Your bid submission must be **received** by MDMR no later than **September 27, 2017 at 2:00 p.m.** You may submit your bid electronically through the State of Mississippi MAGIC portal or you may personally deliver or mail your bid to Erin Gallagher, 1141 Bayview Avenue, Procurement Department 6<sup>th</sup> Floor, Biloxi, Mississippi 39530. Remember, you are responsible for making sure your bid submission is received by the deadline. **Submissions received after the deadline will not be considered and will be placed in the procurement file unopened.** Instructions on how to submit your bid are set forth herein.

## **Scope of Project**

The Contractor will be responsible for furnishing and delivering cultch material by truck or other means to the Mississippi Department of Marine Resources Marine Fisheries Staging Site located in Gulfport, Mississippi (See [Attachment F](#) for directions). The cultch material will be clean and

free from any hazardous substances or excessive dust. Bids should include the unit price per cubic yard of cultch material, total cubic yards of cultch material and overall price (unit price per cubic yard multiplied by total cubic yards) which will include delivery costs. The price of this project will not exceed \$75,000.00.

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

- The contractor will give the MDMR Project Manager at least twenty-four (24) hours' notice of cultch delivery.
- Types of approved cultch material are course aggregate (#4 stone) or oyster shell.
- Cultch will be clean and free of any hazardous substances or excessive dust.
- Bidders proposing any non-domestic or non-traditional cultch material must include a marked 5-gallon representative sample of the cultch material at the time of the bid submittal. This sample will be used to determine the cultch material's suitability for the project purpose.
- The Contractor will guarantee that all cultch is clean and no more than 5% of the cultch material, by volume, may consist of fragments, pieces, fines, or shells smaller than ¾" to 1 ½" (three-fourths inch to one and one half inch) in diameter. For cultch material other than shell, the size should be in accordance with the American Society for Testing and Materials ("ASTM") C33 specifications, size #4 stone or equivalent, with no more than 5% by volume of the cultch material out of the ASTM size #4 stone specification. The MDMR reserves the right to have its representatives inspect all cultch material at the delivery site before cultch material is accepted. All small particles in excess of the allowed 5%, or otherwise outside of the specifications listed above, will be deducted from the total project cost.
- The contractor will be responsible for stacking the approved cultch material to reduce coverage area.
- MDMR employees will be onsite to monitor compliance with the terms of the contract.
- All deliveries must be conducted during the hours of 8:30 a.m. and 3:30 p.m. CST, Monday through Friday. No deliveries may be made on weekends, or during state holidays, unless prior approval is received from MDMR.

### **Deliverables**

The deliverables are to include:

- Furnishing of cultch material; and,

- Delivery and stacking of approved cultch material to the Mississippi Department of Marine Resources Marine Fisheries Staging Site located in Gulfport, Mississippi.  
(See [Attachment F](#) for directions).

### **Required Qualifications for Bidding**

The required qualifications for bidding include:

- Bidders must have prior experience furnishing and delivering cultch materials. Bidders must submit at least one prior project of comparable scope they have successfully completed which demonstrates the required experience, including a description of the work performed and one (1) reference (customer for the project) with contact name, phone number, and email address. Bidders may submit more than one project, but are not required to do so. (See Attachment A); and,
- Bidders must also submit one (1) additional reference from a client for which the bidder has provided comparable goods.

### **Selection Criteria**

- **The contract will be awarded to the contractor who supplies and delivers the maximum amount of oyster shells or other approved cultch material to the Mississippi Department of Marine Resources Marine Fisheries Staging Site located in Gulfport, Mississippi, at the lowest price per cubic yard, not to exceed a total contract price of \$75,000.**

### **Insurance Requirements**

In order to enter into a contract, you must meet minimum insurance protection requirements. You must provide evidence of your insurance 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:

Coverage Type	Amount
<b>Workers' Compensation (as required by law)</b>	
Accident (Per Occurrence)	\$100,000
Disease-Policy Limit	\$500,000
Disease-Per Employee	\$100,000

<b>General Liability</b>	
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

### **Bond Requirements**

No bonds are required for this project.

### **Authority to Do Business with MDMR**

- 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.

### **Term of Contract**

The start date for the contract is the date the contract is signed by the successful bidder and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date. 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 prices, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

### **MDMR Contact and Questions/Requests for Clarification**

All questions and requests for clarification must be submitted by email to:

**Erin Gallagher, Procurement Director**

[procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

All questions/requests for clarification must be received no later than **September 20, 2017 at 10:00 a.m. CST.**

All questions/requests for clarification and the answers thereto will be published on the MDMR website (<http://dmr.ms.gov>) and the MAGIC Portal (<http://www.mmrs.state.ms.us/vendors/index.shtml>) for all bidders to view by **September 21, 2017 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.

### **Amendments to this IFB**

Should an amendment or amendments to this IFB be issued by MDMR, it will be posted on the MDMR website (<http://www.dmr.ms.gov>) and on the Mississippi Contract/Procurement Opportunity Search Board (Procurement Portal) website ([https://www.ms.gov/dfa/contract\\_bid\\_search/Bid](https://www.ms.gov/dfa/contract_bid_search/Bid)) for all potential bidders to view.

**Furthermore, bidders must acknowledge receipt of any amendment to this IFB by identifying the amendment number and date in the space provided for this purpose on the Bid Form ([Attachment B](#)) or, if your bid has already been submitted, 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.

### **How to Submit a Bid**

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:

### **IFB SUBMISSION OPTIONS**

#### **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.mmrs.state.ms.us/vendors/index.shtml>.
- 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](mailto: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 Requirements (option)**

- The bid submission must be submitted in MAGIC no later than 2:00 p.m. CST, September 27, 2017

- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and placed in the procurement file unopened. **It is suggested that you allow 48 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user.**

#### **Paper Submission Requirements (option)**

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to 1141 Bayview Avenue, Procurement Department 6<sup>th</sup> Floor, Biloxi MS 39530 no later than 2:00 p.m. CST, September 27, 2017
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and placed in the procurement file unopened.
- The envelope must be marked with title of the bid, the bid opening date and time, and the number of the IFB (Furnish and Deliver Cultch Materials, September 27, 2017 2:00 p.m. CST; RFx No.3160001670; Smart No. 1450-18-R-IFBD-00001).
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- 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 to MDMR and labeled as follows:

**“FURNISH AND DELIVERY OF APPROVED CULTCH MATERIAL”**

RFx No. 3160001670

Smart No. 1450-18-R-IFBD-00001

Opening Date: 2:00 p.m. CST, September 27, 2017

Mississippi Department of Marine Resources

Procurement Department, 6<sup>th</sup> Floor

Attention: Erin Gallagher

1141 Bayview Avenue

Biloxi MS 39530

**SEALED BID – DO NOT OPEN**

The **deadline** for receiving bids is **September 27, 2017 at 2:00 p.m.** Late submissions will not be accepted.

#### **Requirements for Bidding**

All bids must include the following:

- Bid Cover Sheet ([Attachment A](#)) completed and signed;
- Bid Form ([Attachment B](#)) completed and signed; and,
- Check List ([Attachment E](#)) 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.

### **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.

### **Bid Protests**

If you are an actual bidder, offeror or contractor and feel aggrieved by this IFB or the outcome, then you may file a protest with the Executive Director of the MDMR with a copy to the State Chief Procurement Officer. The protest must be in writing and explain the specific reasons that you are protesting. The protest must be filed within seven days after you know, or should have known, of the facts giving rise to your protest. Late protests will not be considered. *See* Section 6.101 of the Mississippi Procurement Manual available online at [www.dfa.state.ms.us/Purchasing/ProcurementManual.html](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).

### **Notification of Successful Bidder**

Notification will be sent to all bidders by mail and 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](http://www.dmr.ms.gov). Work is expected to begin within 15 calendar days of receipt of a fully executed contract.

### **Governing Law**

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

### **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 goods and services and not based on an employer-employee relationship or a joint venture relationship. For all purposes under any such contract:

- The Contractor shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be an employee of MDMR; and,
- Amounts paid to the Contractor under a contract will be paid as a gross sum with no withholdings or deductions being made by MDMR for any purpose.

### **Contract Administration**

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

Erin Gallagher, Procurement Director  
Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, MS. 39530

The MDMR will provide timely payment for services in accordance with Section 31-7-305 of the Mississippi Code Annotated, which generally provides for payment by the MDMR within forty-five (45) days of receipt of an approved invoice.

### **Compensation for Goods and Services**

Compensation for services will be in the form of a fixed rate. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

### **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.

## **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 Sheet
- [Attachment B](#) – Bid Form
- [Attachment C](#) – Contract Clauses
- [Attachment D](#) – Reference Score Sheet
- [Attachment E](#) – Checklist
- [Attachment F](#) - Directions to Mississippi Department of Marine Resources Marine Fisheries Staging Site

## **Attachment A**

### **BID COVER SHEET**

**Company Name:** \_\_\_\_\_

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for the furnishing and delivery of approved oyster cultch material.

Bids must be submitted by **2:00 p.m. CST on September 27, 2017**

**Sealed envelopes must** read as follows:

**FURNISH AND DELIVERY OF APPROVED OYSTER CULTCH MATERIAL**  
**RFx No. 3160001670**  
**Opening Date: September 27, 2017 at 2:00 p.m. CST**  
**Mississippi Department of Marine Resources**  
**Attention: Erin Gallagher**  
**1141 Bayview Avenue**  
**Procurement Department, 6<sup>th</sup> Floor**  
**Biloxi, MS 39530**  
**SEALED BID – DO NOT OPEN**

Quoted by:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Address:

\_\_\_\_\_

City/State/Zip:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

Fax Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

**Company Name:** \_\_\_\_\_

Name 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.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **Prior Project(s) of Comparable Complexity/References**

List prior experience furnishing and deploying cultch materials using the methods described in this IFB, including a description of the project, location, time-period for completion of the project, the actual completion date, and reference (customer) for the project who can be contacted by MDMR. You must list a minimum of one project, but you may list more. **For each reference, please provide current contact information, including phone number, as MDMR must be able to contact references immediately following the bid opening.**

You may use a supplemental sheet to describe the projects, if necessary.

**Company Name:** \_\_\_\_\_

**Project:**

Date Completed: \_\_\_\_\_

Description of Scope: \_\_\_\_\_

Location: \_\_\_\_\_

Timeframe for Completion: \_\_\_\_\_

**Reference:**

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Job Title: \_\_\_\_\_

**References:**

In addition to the prior project(s) listed above, please list at least one additional professional reference familiar with the vendor's abilities in the areas involved with this solicitation.

Reference:

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Job Title: \_\_\_\_\_

Reference (Optional):

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Job Title: \_\_\_\_\_

Please provide current contact information as MDMR must be able to contact these references immediately following the bid opening. You may provide more than one reference, however, MDMR will call only one reference from this list as well as the reference (customer) listed above under Prior Project(s) of Comparable Scope and Complexity.

## Attachment B

### BID FORM

#### Furnishing and Delivery of Oyster Cultch Material

Company Name: \_\_\_\_\_

Unit price per cubic yard \$ \_\_\_\_\_

Total cubic yards of oyster cultch \_\_\_\_\_

Bid price \$ \_\_\_\_\_ (Total of (A) multiplied by (B))

Specify cultch material to be delivered \_\_\_\_\_

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 prices 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.

Company Name: \_\_\_\_\_

- **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 9.105 of the Mississippi Procurement Manual available online at [www.dfa.state.ms.us/Purchasing/ProcurementManual.html](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).
- **Acknowledgment of Amendments:** You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Attachment C**

### **CONTRACT CLAUSES**

**The following are some of the clauses that will be included in any contract arising from this IFB. By submitting a bid, you agree to be bound by these clauses (or clauses substantially similar to these) if you are awarded the project. The final contract may contain additional clauses.**

#### **Payment**

**Payment Processing:** The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for services performed before the execution or after expiration of this contract.

**How Payments are made:** The MDMR makes payments electronically through the MAGIC Accounting System. Payments are deposited into the Contractor's chosen bank account. The MDMR may require the Contractor to electronically submit invoices and supporting documentation. The Contractor understands that the MDMR is exempt from paying taxes.

#### **Certifications**

The Contractor certifies the following:

**Representation Regarding Gratuities:** The Contractor has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual.

**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 compensation, except as disclosed in Contractor's bid or proposal.

#### **Employees and Subcontracts**

**Independent Contractor Status:** The Contractor is an independent contractor for MDMR, not an employee, agent, or partner.

**Discrimination Prohibited:** The MDMR is an equal opportunity employer and 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. The Contractor agrees to strictly adhere to this policy in its employment practices and provision of services.

**E-Verify Program:** The Contractor will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. §§ 71-11-3. For anyone hired to perform work in Mississippi, the Contractor must register and participate in the E-Verify Program operated by the United States Department of Homeland Security. The Contractor agrees to maintain records of compliance and to provide a copy of verification to the MDMR on request. The Contractor

further represents and warrants that any person assigned to perform services related to this contract meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands that any breach of these warranties may subject it to the following:

- Termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three years, with notice of the termination being made public, or:
- the loss of any license, permit, certification or other document granted to Contractor by an agency, department or government entity for the right to do business in Mississippi for up to one year, or:
- both. In the event of termination, Contractor is also liable for any additional costs incurred by the state due to contract cancellation or loss of license or permit.

### **Access to Records**

The Contractor agrees that the MDMR, or any of its duly authorized representatives, at any time during the term of this contract, has access to, and the right to audit or examine any pertinent documents, paper, and records, related to charge and performance under this contract. The Contractor agrees to refund to the MDMR any overpayments disclosed by an audit. Records must be kept for a period of three years after final payment, unless the MDMR authorizes earlier disposal. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.

### **Termination**

The MDMR may terminate the contract for any of the following reasons:

- Default;
- Convenience;
- Insufficient funds; or:
- Mutual agreement.

**Termination for Default:** If the MDMR determines that the Contractor has breached any provision of this contract, or it appears that the project deadlines will not be met, the MDMR may notify the Contractor in writing of the delay or nonperformance. The writing must provide a time period for cure. If the Contractor does not cure in the time specified, then the MDMR may terminate all or part of the contract. The MDMR may then procure similar supplies or services from another vendor. The Contractor must continue performance of the contract to the extent it is not terminated and is liable for MDMR's excess costs to procure similar goods or services.

**Termination for Convenience:** The MDMR may, when the interests of the state so require, terminate this contract in whole or in part, for the convenience of the state.

**Termination for Insufficient Funds:** The MDMR's obligations under this contract are conditioned on the appropriation of funds by the state or federal government. If the anticipated funds are ever insufficient or there is a material alteration in the funded program, then the

MDMR may terminate this agreement with 10 day's written notice to the Contractor. If the MDMR terminates the contract under this subsection, then it does so without any damage, penalty, cost, or expense.

**Mutual Termination:** Upon agreement of both parties, the contract can be terminated immediately.

**Force Majeure:** Each party is excused from performance of 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 the party or its contractors. Force majeure events include acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters. When such a cause arises, the Contractor must notify the MDMR 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 automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDMR determines it to be in its best interest to terminate the contract.

**In Case of Termination:** On the date of termination, the Contractor incurs no further obligations regarding the terminated portion of the work. The MDMR will pay for completed services at the contract price. The MDMR may withhold such sums as the MDMR considers necessary to protect the state against loss because of outstanding liens or claims of former lien holders and to reimburse the MDMR for the excess costs incurred in procuring similar goods and services.

On termination, the Contractor must do all of the following:

- Terminate outstanding orders and subcontracts as they relate to the terminated work.
- Settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.
- Take timely, reasonable, and necessary action to protect and preserve property in its possession in which the state has an interest.
- Assign the Contractor's rights, titles, and interest under terminated orders or subcontracts to the state, if requested by the MDMR.
- If the termination is just for a portion of the work, then complete the non-terminated work duties.

## Stop Work Order

**Order to Stop Work:** The MDMR may require the Contractor to stop all work or any part of the work called for by this contract. The order must be identified as a "stop work order" and cite this section of the contract. The written stop work order must not exceed 90 days, unless the parties agree to a longer period. The MDMR may issue the order at any time and without notice to any surety.

The Contractor must comply with the stop work order and take all reasonable steps to minimize costs allocable to the order. Before the stop work order expires, the MDMR may either:

- cancel the stop work order; or
- terminate the work covered by the order. If MDMR elects to terminate for default, it does not need to issue a new notice and may terminate immediately.

**Cancellation or Expiration of the Order:**

If a stop work order expires or is cancelled, the Contractor may resume work. An appropriate adjustment may be made in the delivery schedule and price if:

- the stop work order results in an increase in the time or cost required for performance of this contract;
- the Contractor asserts a claim for an adjustment within 30 days after the end of the period of work stoppage. The MDMR may waive this time requirement if it decides that the facts justify such an action; and
- the modifications are put in writing and signed by the parties.

**Confidentiality**

**Confidentiality:** The Contractor must not use or disclose any confidential information.

However, nothing in this section precludes the Contractor from disclosing or using confidential information, if:

- The confidential information is available to the public or in the public domain at the time of such disclosure or use, without breach of this Agreement;
- Disclosure of the confidential information is required to be made by any law, regulation, governmental authority or court; or
- The confidential information was received by the Contractor after termination of the service period from a third party that had a lawful right to disclose it to the Contractor.
- Contractor must not disclose or discuss the contents of any personnel file except to MDMR personnel that are authorized to receive and review such information.

**Transparency:** This contract, including all attachments, is under the Mississippi Public Records Act of 1983 (Miss. Code Ann. §§ 25-61-1 *et seq.* and § 79-23-1) and the Mississippi Accountability and Transparency Act of 2008 (Miss. Code Ann. §§ 27-104-151 *et seq.*). Unless exempted by a court-issued protective order, a copy of this contract will be posted to the Department of Finance and Administration's website for public access at [www.transparency.mississippi.gov](http://www.transparency.mississippi.gov). Information identified by the Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required to be kept confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted. In the event the MDMR receives a public records request for documents containing information identified by the Contractor as trade secrets or proprietary information, the MDMR will notify the Contractor who will be given a reasonable time to obtain a court order protecting the information. *See* Mississippi Code Annotated § 25-61-9(1).

## Liability and Indemnification

**Liability and Indemnity:** The Contractor assumes all liability for work to be performed and for breach of any of the terms of this Agreement. **The Contractor agrees to indemnify, hold harmless and defend the State of Mississippi, MDMR and any and all of its affiliates, directors, officers, agents or employees from and against all loss, injury, damage and legal liability including attorneys' fees and other costs of defense, arising out of any breach of confidentiality, negligent act, error or omission of Contractor, its employees or representatives.** Contractor assumes all liability for workers' compensation and employers' liability coverage for its own employees. Contractor is responsible for and holds MDMR harmless from loss of or damage to Contractor's or Contractor's tools and equipment and rented items which are used or intended for use in performing work, and for any consequential, special or indirect damages, or loss of anticipated profits sustained by Contractor or its independent contractors. Contractor must comply with all applicable laws and government regulations, including OSHA and comparable state requirements.

**Attorneys' Fees and Expenses:** Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor must 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 contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances is the MDMR or the State of Mississippi obligated to pay any attorneys' fees or costs of legal action to the Contractor.

## Miscellaneous

**Severability:** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Agreement remains in full effect.

**Entire Agreement:** This Agreement and its attachments are the entire understanding between the parties.

**Changes:** The parties can amend this Agreement only by a written document signed by both parties.

**No Delegation (Subcontracting):** The Contractor acknowledges that it was selected by the MDMR to perform the work based upon the Contractor's special skills and expertise. The Contractor must not delegate its duties under this Agreement in whole or in part without the prior written consent of the MDMR. The MDMR may, in its sole discretion, approve, approve with conditions, or deny consent without reason. Any attempted delegation or transfer of its obligations without consent is null and void. No approval by the MDMR of any subcontract is consent to increase the maximum price of this contract.

**Applicable Law:** This Agreement is governed and interpreted by Mississippi law. Any lawsuit arising directly or indirectly out of this Agreement must be litigated in the state courts of Harrison County, Mississippi. The Agreement is further governed by the Mississippi Procurement Manual, a copy of which is available online at [www.dfa.state.ms.us/Purchasing/ProcurementManual.html](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).

## **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

Each “yes” is one point; each “no” is zero points. Bidder must have a minimum total score of “5” from the two references to be considered responsible and for Bidder’s bid to be considered.

**Called By:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

**Date and Time:** \_\_\_\_\_

**Notes:** \_\_\_\_\_

**Attachment E**  
**Checklist of Submitted Documentation**

	Initials
Prior Project(s) with References (Customers) Submitted.	
One Additional Reference.	
Registered with MAGIC.	
Amendments to IFB acknowledged, if any.	
Attachment A, Attachment B and Attachment E signed.	

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment F**

### **Directions to Mississippi Department of Marine Resources Marine Fisheries Staging Site**

#### **From I-10**

- Take exit 38 on Lorraine Road.
- Head south for approximately 1 mile.
- Turn left on Reichold Road at the light at foot of the bridge.
- At the end of Reichold Road when it turns hard left, there will be a gravel road and a gate on the right.
- Follow gravel road to staging site.

#### **From Highway 90**

- Turn north on Cowan/Lorraine Road.
- Head north for approximately 3 miles.
- Turn right on Reichold Road at the light at foot of the bridge.
- At the end of Reichold Road when it turns hard left, there will be a gravel road and a gate on the right.
- Follow gravel road to staging site.