



Mississippi Department of Marine Resources

SOLICITATION:

REQUEST FOR QUALIFICATIONS

RFQ NUMBER

3140001712

TO PROVIDE:

PhD Level Botanist to Assist in Developing a
Certification Program

ISSUE DATE:

February 8, 2019, 10:00 AM CST

CLOSING LOCATION:

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

MDMR CONTACT:

Rickey Kinnard
(228) 523-4147
procurement@dmr.ms.gov

CLOSING DATE AND TIME:

March 8, 2019, 2:00 PM CST

Section 1 - 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. The MDMR is issuing a Request for Qualifications (RFQ) to establish a contract with a PhD level Botanist to aid in the development of a certification program in alternative bulkhead design by assisting in the design of a syllabus and curriculum that will provide training and education to the coastal community and marine contractors to reduce the uncertainty in permitting for these types of new structures.

A contract may be awarded to the individual, entity, or firm, whose qualifications are determined to be the most advantageous to the MDMR and the State of Mississippi. The contract amount will not exceed \$13,600.00. The submission requirements, scope of work to be performed and deliverables required under the contract are set forth herein.

Section 2-Deadlines/Timeline

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|--------------------------|-------------------------------|
| RFQ Issue Date: | February 8, 2019 10:00 AM CST |
| SOQ Submission Deadline: | March 8, 2019 2:00 PM CST |

Section 3 – Contact Person and Questions/Requests for Clarification

Please submit all questions and requests for clarification by email to Rickey Kinnard at procurement@dmr.ms.gov. Contact with anyone other than the Procurement Staff regarding this RFQ may result in respondent disqualification.

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

Section 4 - Scope of Work and Deliverables

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

1. Assist in the design of a syllabus and curriculum to aid in the development of a certification course in alternative bulkhead design;
2. Assist in training and certification of two courses for the coastal community and marine contractors in alternative bulkhead design;

Deliverables. The deliverables for the contract will include the following:

1. Within thirty (30) calendar days of a fully executed contract, the Contractor must meet with MDMR staff to discuss the project.

Section 5 - Minimum Qualifications

The minimum qualifications which the MDMR is seeking for this service include:

- Education – Respondent must have a PhD in Botany or equivalent.
- Experience – Respondent must have completed a minimum of two (2) projects of comparable scope, size and complexity to the scope of work herein. These projects must have been within the past five (5) years and demonstrate PhD level experience, or equivalent in marsh grass restoration and living shoreline creation. Respondent must provide the project name, location, date completed, timeframe for completion, and current client contact information.

Section 6 - Term of Contract

The start date for the contract is the date the contract is signed by the selected respondent 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.

Section 7 - Amendments to this RFQ

Should an amendment or amendments to this RFQ be issued by MDMR, it will be posted on the MDMR website <http://www.dmr.ms.gov> for all respondents to view. Respondents must acknowledge receipt of any amendment to this RFQ by identifying the amendment number and date in the space provided for this purpose on the SOQ Cover Form, or by letter. The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of SOQs. It is the respondent's sole responsibility to monitor the website for amendments to the RFQ.

Section 8 - Submission Instructions

You may submit your Statement of Qualifications (SOQ) by hand delivery or by mail to the Procurement Office, 1141 Bayview Avenue, Biloxi, MS. 39530, or by email to procurement@dmr.ms.gov. Your SOQ must be received by **March 8, 2019, at 2:00 p.m. CST**. Respondents are responsible for making sure their SOQ is received by the deadline. **SOQs received after the deadline will not be considered.**

The SOQ must contain the following:

- The SOQ must be completed, signed and submitted to the Procurement Office, 1141 Bayview Avenue, Biloxi MS 39530 no later than 2:00 PM CST, March 8, 2019.
- Timely submission of the SOQ is the responsibility of the respondent. SOQs received after the specified time will be rejected and placed in MDMR's Procurement file.

- The time and date of receipt will be indicated on the package by the MDMR staff.
- **SOQs submitted via facsimile (faxes) will not be accepted.** It is suggested that if a SOQ 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 SOQs submitted by hand delivery, mail or email shall become the property of the MDMR.
- Hand delivered or mailed SOQs should be labeled as follows:

“PhD Level Botanist to Assist in Developing a Certification Program”

Opening Date: 2:00 PM CST, March 8, 2019

RFQ #3140001712

Mississippi Department of Marine Resources

Attention: Rickey Kinnard

1141 Bayview Avenue

Biloxi MS 39530

Section 9 - Submission Requirements

All SOQs shall contain the following information:

- [Attachment A](#) – SOQ Cover Form completed and signed;
- Resume listing the education, training, abilities, qualifications, general and specific experience for the required services; and,
- Copy of PhD certification.

Modifications or additions to any portion of this RFQ and its attachments may be cause for rejection of the SOQ.

The MDMR reserves the right to select any responsive Statement of Qualifications, pursuant to the criteria contained herein, to reject all SOQs not meeting minimum requirements, and to exercise its discretion and apply its judgment with respect to any SOQ submitted. The MDMR reserves the right to decide, on a case-by-case basis, whether to reject an SOQ with modifications or additions as nonresponsive. As a precondition to SOQ acceptance, the MDMR may request the respondent to withdraw or modify any portion of the SOQ deemed nonresponsive that does not affect quality, quantity, or delivery of the service. Any respondent claiming that its SOQ 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 respondent must submit all attachments. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

Section 10 - Conditions of Solicitation

The release of this RFQ does not constitute an acceptance of any offer, nor does such release in any way obligate the MDMR to execute a contract with any party. The final decision to execute a contract with any party rests solely with the MDMR.

Before preparing the Statement of Qualifications, all respondents should note:

- The MDMR will not be liable for any costs associated with the preparation of the Statement of Qualifications;
- The award of a contract pursuant to this RFQ is contingent upon the favorable review of the SOQ; and,
- Contracted parties will be required to assume full responsibility for all specified services and may not subcontract any part of the services without the express written consent of the MDMR.

Section 11 - Notification of Successful Respondent

Notification of the successful respondent will be sent to all respondents by email.

Section 12 - 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 courts of Biloxi, Harrison County, Mississippi.

Section 13 - Relationship of Parties

It is expressly understood and agreed that if MDMR enters into a contract with a respondent, it does so based on the purchase of professional 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.

Section 14 - Contract Administration

The contract awarded subsequent to this solicitation shall be administered by the MDMR. All invoices submitted by the contractor for payment of services performed pursuant to the contract shall be submitted via email to procurement@dmr.ms.gov or via mail as follows:

MDMR Procurement Office
Attn: Rickey Kinnard, 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 31-7-301, *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.

Section 15 - Compensation for Services

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

Section 16 - Equal Opportunity Statement

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

Section 17 - Attachments

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

- [Attachment A](#) – SOQ Cover Form
- [Attachment B](#) – Contract Clauses

Attachment A: SOQ Cover Form

Complete, sign and submit this form and all required documentation. You may use supplemental pages, if necessary.

Respondent's Name: _____

Address/Principal Place of Business: _____

Phone Number: _____

Fax Number: _____

Respondent's Email: _____

The place of performance of the proposed contract, if different from the principal place of business identified above:

Resume:

Please attach a resume listing the education, training, abilities, qualifications, general and specific experience for the required services.

Prior Projects of Comparable Scope and Complexity

Please list a **minimum of two (2) prior projects** of comparable scope, size and complexity to the project listed in this RFQ that have been completed within the last five (5) years. You must list at least two prior projects. For each project provide the project name, project scope of work, location, date completed, timeframe for completion, and client contact (customer).

You may use supplemental pages, if necessary, to discuss the scope of the prior projects. You must provide **current contact information** for the client contacts (customers), as MDMR must be able to contact references within 48 hours of the submission deadline. MDMR will attempt to reach the client contact in the order listed by the respondent.

Project #1:

Project Name: _____

Project Scope of Work: _____

Location: _____

Date Completed: _____

Timeframe for Completion: _____

Client Contact

Name & Job Title (customer): _____

Telephone: _____

Email: _____

Project #2:

Project Name: _____

Project Scope of Work: _____

Location: _____

Date Completed: _____

Timeframe for Completion: _____

Client Contact

Name & Job Title (customer): _____

Telephone: _____

Email: _____

Certifications/Assurances:

By signing below, you certify the following:

1. **Contingent Fees.** Have you promised compensation to any person to solicit or secure this state contract?
 Yes
 No

If you checked yes, please explain: _____

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2. **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*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at dfa.ms.gov.

1. **Conflicts of Interest.** Persons or entities submitting qualifications in response to this RFQ must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the person or entity, or management or employees of the person

or entity or other persons relative to the firm, with the State of Mississippi, the Mississippi Department of Marine Resources and/or its current and former employees. Please list any known conflicts below:

2. **Amendments.** You acknowledge all amendments, if any, to this RFQ. Please list amendments acknowledged by number and date.

3. You certify that you will enter into a contract with MDMR and provide the services solicited in this RFQ if you are the successful respondent.
4. That you have thoroughly read and understand the RFQ and Attachments, and that you agree to all provisions of the RFQ and Attachments including, but not limited to, the clauses contained in [Attachment B](#) which will be included in any contract resulting from this RFQ.

Printed Name: _____

Signature: _____

Title: _____

Date: _____

Attachment B: Required Service Contract Clauses

Any contract entered into pursuant to this Request for Qualifications will contain these 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 courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

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 written 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.

Acknowledgment of Amendments

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of bids.

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 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 its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Stop Work Order

(1) **Order to Stop Work:** The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- (a) cancel the stop work order; or,
- (b) terminate the work covered by such order as provided in the Termination for Default clause-or the Termination for Convenience clause of this contract.

(2) **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (a) the stop work order results in an increase in the time required for, or in Contractor's properly allocable to, the performance of any part of this contract; and,
- (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

Representation Regarding Contingent Fees

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

Representation Regarding Gratuities

The bidder, Offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board, Office of Personal Service Contract Review Rules and Regulations*.

Certification of Independent Price Determination

The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

Prospective Contractor's Representation Regarding Contingent Fees

The prospective Contractor represents as a part of such Contractor's bid or proposal that such Contractor has/has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure 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.*

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, both.
- (3) In the event of such cancellations/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

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

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 designee 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 for Convenience.

(1) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The 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 upon Bankruptcy. This contract may be terminated in whole or in part by 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 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.

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.

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.

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.

Paymode

Payments by state agencies using the Statewide 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 submit invoices and supporting documentation electronically at any time during the term of this Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

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.

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.

Authority to Contract

The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceeding or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

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.

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.

Priority

The contract will consist of this agreement with exhibits, the procurement Request for Proposals (RFP), and the response proposal. Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, referencing this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the Proposal. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

Change in Scope of Work

The MDMR may order changes in the work under the contract consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring changes to the amount of compensation to the 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 the Contractor and approved by the OPSCR, if necessary.

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

The Contractor shall, at all times, be regarded as an Independent Contractor and shall at no time act as an agent for the MDMR. Nothing contained herein shall be deemed or construed by the MDMR, the 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 MDMR and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDMR or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the MDMR and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDMR. Neither the 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 the Contractor, its servants, agents, or employees. MDMR shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MDMR shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State to 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, address

For the MDMR: Rickey Kinnard, Procurement Director, Mississippi Department of Marine Resources, 1141 Bayview Avenue Biloxi, MS. 39530

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 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 Contract for the purpose of making audits, examination, excerpts, and transcriptions. All records related to this Contract shall be

retained by the Contractor for five (5) 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 Contract is commenced before the end of the five (5) 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 five (5) 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 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.