INVITATION FOR BIDS

No. 16-001

SMART No. 1450-16-R-IFBD-00001

IFB-LYMAN FISH HATCHERY – SEMI LIQUID GEL SALT MIXTURE

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES
1141 BAYVIEW AVENUE
BILOXI, MISSISSIPPI 39530

Contact: Sonja Slater – Sonja.Slater@dmr.ms.gov

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SUMMARY

Project:

Lyman Fish Hatchery – Semi Liquid Gel Salt Mixture

Description:

We are seeking a six-month supply of semi-liquid (gel) salt to maintain the Lyman Fish Hatchery.

MDMR Point of Contact:

Sonja Slater
Sonja.slater@dmr.ms.gov

Important Dates:

Bid Package Submission Deadline:	**August 26, 2015, 11:00 AM CST**
Notification of Successful Bidder:	**August 31, 2015, 11:00 AM CST**
Estimated Project start date:	**September 11, 2015**
Debriefing date:	**September 4, 2015, 5:00 PM**
Protest Date:	**September 4, 2015, 5:00 PM**

About this IFB

The Mississippi Department of Marine Resources has issued this invitation for bids (IFB). The IFB contains the information necessary to submit a bid and describes the bid process. The MDMR is not bound by any information not contained in this IFB, unless formally noticed and issued by the point of contact. All attachments are incorporated as part of this IFB. Any contract issued from this IFB will contain certain required clauses. You can review these clauses in Attachment C.

The MDMR may issue amendments. If it does, the amendment will be posted on the MDMR website (http://www.dmr.ms.gov). All bidders must acknowledge receipt of amendments by signing and returning the amendment with the bid. The acknowledgment must identify the amendment number and date in the space provided on the bid form. If a bid has already been submitted, you may acknowledge receipt of the amendment 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.

THE PROJECT

We are the Mississippi Department of Marine Resources ("MDMR"). We are seeking bids from you, the bidder, for a six-month supply of semi-liquid (gel) salt.

What is the Project?

We are seeking a six-month contract with a successful bidder for the semi-liquid (gel) salt required to supply the Department of Marine Resources Lyman Fish Hatchery with salt for the maintenance and start of the Lyman Fish Hatchery ponds. The semi-liquid salt is used to ensure successful grow-out of marine fish. These marine fish are hatched in this solution and must be maintained in this solution throughout the grow-out process.

What is the project scope?

The semi-liquid salt must be research grade reef salt containing all the natural trace elements and buffers found in natural sea water. It should provide 400 gallons of sea water with a proper specific gravity greater or equal to a salinity of 27-31 PPT. or 1.020 to 1.023 at 75°F per five gallons of product, with the addition of Sodium Chloride.

- Price must include product and shipping costs.
- Price quote must be valid for no less than six months.
- We are seeking a price quote for a six month period.

What are the expected deliverables?

Product must be shipped to Lyman Hatchery Facility located at 16193 Fish hatchery Rd. Gulfport, MS 39503.

- Orders must be able to be filled in increments of at least sixty 55-gallon drums.

- Although incremental orders may be in the range of sixty 55-gallon drums the vendor must have the ability to fulfill an estimated order range of three hundred to six hundred 55-gallon drums annually.
- Individual payments will be made upon receipt of orders of sixty 55-gallon drums.

What is MDMR?

We are MDMR. The Mississippi Department of Marine Resources manages our coastal resources 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.

Operations at the Lyman aquaculture facility are critical to the sustainability of marine fisheries as well as important to the economy of the State of Mississippi. The release of cultured organisms can enhance, restore and conserve populations. Aquaculture for stock enhancement can provide a means to rebuild spawning stock biomass for species recovery, can help ensure the survival of stocks threatened by extinction, and can mitigate loss from habitat degradation or pollution. Additionally, aquaculture supports the global demand for seafood and the hatchery helps create jobs and marketable products by developing techniques that can be transferred to the private sector for commercial aquaculture.

REQUIRED QUALIFICATIONS

What are the Required Qualifications?

The minimum qualifications for bidding are:

- You must have prior experience transporting and delivering the requested materials.
- You must be registered in MAGIC and with the Mississippi Secretary of State.
- You cannot submit a bid if you are debarred from bidding by the state, any political subdivision of the state (towns, cities, counties, agencies, etc.), or any other state. You also cannot submit a bid if you are an agent of someone debarred.

How Do I Register in MAGIC?

You must be registered in MAGIC in order to bid. You can register at http://www.mmrs.state.ms.us/vendors/index.shtml.

How Do I Register with the Secretary of State?

You must register to do business with the Mississippi Secretary of State. If you are not already registered, then you must do so within seven days of being notified that you are the lowest and best bidder.

You can register at www.sos.ms.gov.

What Insurance Do I Need for this Project?

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

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

Coverage Type	Amount
Workers' Compensation	As required by Mississippi state law.

What Bonds are Required for this Project?

This project does not require any bonds.

BID SUBMISSION

What Do I Need to Include in My Bid Submission?

Your bid package must be signed and contain the following:

1. Bid cover sheet (Attachment A).
2. Bid form (Attachment B) including all pricing.
3. Registered agent number.

How Do I Fill Out the Bid Form?

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, and do not alter the terms of the contract. We may reject a modified bid forms as nonresponsive on a case-by-case basis.

In some cases before we find your bid unresponsive, we may require you to withdraw or change problem sections of your bid if they do not affect the quality, quantity, price, or delivery of the service.

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

How Do I Submit a Bid?

You may submit a bid in one of three ways. We do not accept email.

1. **Personal Delivery.**

   You may bring the sealed bid package to the MDMR and deliver it directly to Sonja Slater on the 6th Floor. The address is:

   1141 Bayview Ave.
   Biloxi, Mississippi 39530

2. **MAGIC.**

   You may submit the package electronically in the MAGIC portal at http://www.mmrs.state.ms.us/vendors/index.shtml. You may need to register if you have not already.

3. **Mail.**

   If you mail the bid package, we recommend that you use certified mail with a return receipt requested. We are not responsible for lost or delayed mail. Keep in mind that packages must be **received** by the due date in order to be accepted.

   Seal the envelope and label it **exactly** as follows:

   Lyman Fish Hatchery – Semi Liquid Gel Salt Mixture
   Bid No. 16-001
   Opening Date: August 26, 2015 11:00 AM CST, Mississippi Department of Marine Resources
   Attention: Sonja Slater
   1141 Bayview Avenue
   Biloxi, MS 39530
   SEALED BID – DO NOT OPEN
   Registered Agent Number

When Are Bid Submissions Due?

You bid submission must be ***received*** by

August 26, 2015 at 11:00 AM CST

If you submit by mail or personal delivery, we will mark your envelope with the date and time of receipt.

When I Submit My Bid, What am I Certifying?

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.

What If I Submit Confidential Information?

Once information is submitted to us, it is controlled by the Mississippi Public Records Act, Miss. Code Ann. 25-61-1 et al. Most information is then open to the public. Only certain exempt information remains confidential.

It is good practice to segregate confidential documents from the rest of the bid package. If you have information that is exempt from the Act, then you must:

1. Mark the document as "CONFIDENTIAL" and
2. Identify the exemption in the Act on which you are relying.

How do I Amend or Withdraw My Bid?

If you made a mistake in your bid submission, then you must notify us in writing requesting to withdraw the bid. If you discover the mistake after the bid opening, you must give us

all original documents and materials you used to prepare your bid within two days of the bid opening.

A request to withdraw a bid will only be allowed if all of the following are true:

1. The bid was submitted in good faith.
2. The bid price is substantially lower than the other bidders because of the mistake.
3. The mistake was a clerical error, not a judgment error.
4. The original documents used to prepare the bid clearly show that the mistake was an unintentional error in arithmetic or omission of labor or material.

BID PROCESS

What is the Bid Process Timeline?

Invitation for Bid Issue Date:	**August 5, 2015, 11:00 AM**
Ads to run in the Paper:	**August 5, 2015 and August 12, 2015**
Questions to MDMR Deadline:	**August 13, 2015, 11:00 AM CST**
Written Answers to Questions Posted:	**August 14, 2015, 11:00 AM CST**
Bid Package Submission Deadline:	**August 26, 2015, 11:00 AM CST**
Bid Opening:	**August 26, 2015, 11:00 AM CST**
Notification of Successful Bidder:	**August 31, 2015, 11:00 AM CST**
Bid Protest Deadline:	**September 4, 2015, 5:00 PM CST**
Debriefing Request deadline	**September 4, 2015, 5:00 PM CST**
Project start date:	**September 11, 2015**

Questions and Requests for Clarification – August 13, 2015

If you have any questions or need clarification about this project, you must submit them to our point of contact by August 13, 2015, 11:00 AM CST. All questions and answers will be published on the MDMR website (http://www.dmr.ms.gov).

Do not contact any other MDMR staff regarding this IFB. Your MDMR point of contact is:

Sonja Slater, Director of Procurement
Mississippi Department of Marine Resources
Email: Sonja.Slater@dmr.ms.gov

Bid Submissions Due – August 26, 2015

You bid submission must be ***received*** by

August 26, 2015 at 11:00 AM CST

For more information on how to bid, see the Bid Submission section.

Bid Opening – August 26, 2015

At the bid opening, we will open, read, and announce the bid price of each bid. This is all that will happen. We will not discuss with any bidder the details of the specifications, and no award will be made at the bid opening. Bid openings are open to the public.

Notification of Successful Bidder – August 31, 2015

We will award the contract to the lowest and best bidder, subject to approval by the OPTFM if necessary. The award notification will be on August 31, 2015.

We will notify all bidders by mail and email of the award. We will also post the awarded bidder on our website at www.dmr.ms.gov.

Bid Protests – September 4, 2015

If you are an actual bidder and feel aggrieved by this IFB or the outcome, then you may file a protest with the Executive Director of the MDMR. The protest must be in writing and explain the specific reasons that you are protesting.

The Executive Director must receive protests by September 4, 2015. Late protests will not be considered.

Debriefing Requests – September 4, 2015

Whether the successful bidder or not, you may request a post-award bidder debriefing. Your request must be in writing (via mail or electronic submission) and we must receive it by September 4, 2015.

A bidder debriefing is not a hearing. You do not need legal representation. If you wish to bring an attorney, please identify the attorney in your request. We may reschedule the meeting until a representative of the Mississippi Attorney General's Office can be present.

The topics of discussion during the debriefing are limited. We may discuss topics such as an evaluation of your bid or our selection procedures. However, we will not discuss a point-by-point comparison of you to the other bidders.

ATTACHMENT A

BID COVER SHEET

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi is accepting bids for the **semi-liquid (gel) form of salt**.

Bids are to be submitted to as listed below, on or before 11:00 AM CST,

Please Mark Your Envelope:

IFB- Lyman Fish Hatchery – Semi Liquid Gel Salt Mixture
Bid No. 16-001
Opening Date: August 26, 2015, 11:00 AM CST
Mississippi Department of Marine Resources
Attention: Sonja Slater
1141 Bayview Avenue
Biloxi, MS 39530
SEALED BID – DO NOT OPEN

Registered Agent #

Name of Company

_____

Registered Agent Number

_____

Quoted By

_____

Signature

_____

Address

_____

City/State/Zip

_____

Telephone

_____

Fax Number

_____

Email Address

_____

*6 month price guarantee

Name and phone number of company representative to be contacted by agencies seeking services under this IFB:

_____

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.

_____

_____

_____

_____

_____

ATTACHMENT B

BID FORM

LYMAN FISH HATCHERY SALT

Bid price $_____ per barrel of salt

Date: _____

By signing below, the company representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

1. That he/she has thoroughly read and understands the Invitation for Bids and Attachments thereto;
2. That the company meets all requirements and acknowledges all certifications contained in the Invitation for Bids and Attachments thereto;
3. That the company agrees to all provisions of the Invitation for Bids and Attachments thereto including, but not limited to, the Required and Optional Clauses to be included in any contract resulting from this IFB (**Attachment C**);
4. That the company will perform the services required at the prices quoted above;

5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date; and,

6. **NON-DEBARMENT**-By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision, agency of the State of Mississippi, or any other state and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision, agency of the State of Mississippi, or any other state.

7. **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 collusion, 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/offered.

8. **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 ***(please circle applicable word or words)*** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

9. **REPRESENTATION REGARDING CONTINGENT FEES**-The Contractor represents that it has/has not ***(please circle applicable word or words)*** retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or other

contingent fee, except as disclosed in the Contractor's bid or proposal.

10. **REPRESENTATION REGARDING GRATUITIES-**The bidder 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 OPTFM Rules and Regulations.*

Company Name:

_____

Printed name of representative:

_____

Date:

_____

Signature:

_____

Note: Please be sure to circle the applicable word or words on numbers 8 (Prospective Contractor's Representation Regarding Contingent Fees) and 9 (Representation Regarding Contingent Fees) above.

ATTACHMENT C

Clauses to be included in this Contracts Resulting from this IFB

1. Applicable Law: This 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. The Contractor shall comply with applicable federal, state and local laws and regulations.
2. Availability of Funds: It is expressly understood and agreed that the obligation of the Agency 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 Agency, the Agency shall have the right upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Procurement Regulations: This contract shall be governed by the applicable provisions of the *OPTFM Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS, for inspection, or downloadable at http://www.mspb.ms.gov.

Compliance with Laws: The 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 the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The 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.

Discrimination Prohibited. The Independent Contractor agrees to all of the following:

1. The Independent Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Independent Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Affirmative action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Independent Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Independent Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Independent Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Independent Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the Independent Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Independent Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Independent Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance.
6. In the event of the Independent Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this contract may be terminated or suspended in whole or in part and the Independent Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and

such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Independent Contractor will include the entirety of section 7.2.1 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions are binding upon each subcontractor or vendor. The Independent Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Independent Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency it may request the United States to enter into the litigation to protect the interests of the United States.

The Independent Contractor further agrees that it will be bound by these equal opportunity clauses with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Independent Contractor is a state or local government, this equal opportunity clause is not applicable to any agency, instrumentality or subdivision of the government which does not participate in work on or under the contract.

The Independent Contractor agrees that it will (1) assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the

Secretary of Labor; (2) that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and (3) that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Independent Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Independent Contractor agrees that if it fails or refuses to comply with these undertakings, the MDMR may take any or all of the following actions: (a) Cancel, terminate, or suspend in whole or in part this contract; (b) refrain from extending any further assistance to the Independent Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the contractor; and (c)refer the case to the Department of Justice for appropriate legal proceedings.

8. Stop Work Order:

a. *Order to Stop Work:* The Agency, may, by written order to the Contractor at any time, and without notice to any surety, require the 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 the 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, the 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 Agency shall either:

i. cancel the stop work order; or,
ii. terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract, if applicable.

b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the 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:

i. the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and,
ii. the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Agency 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.

c. *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.

d. *Adjustment 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.

9. 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 the Contractor's bid or proposal.

10. Representation Regarding Gratuities: The 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 Personal Service Contract Rules and Regulations*.

11. Acknowledgement 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 *[agency]* by the time and at the place specified for receipt of bids.

12. E-Payment: The 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," Mississippi Code Annotated §31-7-301, *et seq.*, which generally provides for payment of undisputed amounts by the Agency within forty-five (45) days of receipt of invoice.

13. **Lobbying**. The Independent Contractor certifies that it has not, and will not, use Federal appropriated funds to pay any person or organization to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The Independent Contractor

must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. This clause must be included in any sub-contracts or sub-grants made by the Independent Contractor.

14. E-Verification: The 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 and 71-11-3 et seq.(1972, as amended). 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 and, upon request of the State and after the approval of the Social Security Administration or Department of Homeland Security when required, the 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:

a. termination of this Agreement 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;

b. the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, both.

c. In the event of such termination/cancellation, the contractor shall also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit.

15. Transparency: This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," codified as § 25-61-1 et seq., Mississippi Code Annotated and exceptions found in § 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA). Miss. Code Ann. § 27-104-151 et seq. (1972, as amended). 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. Prior to posting the contract to the website for public access at 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 confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

16. Paymode: Payments by state agencies using the Statewide Automated 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 Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

17. Requirements contract: During the period of the contract, the contractor shall provide all the service described in the contract. The contractor understands and agrees that this is a requirements contract and that the MDMR shall have no obligation to the contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the MDMR for the period of the

contract. The amount is only an estimate and the contractor understands and agrees that the MDMR is under no obligation to the contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The contractor further understands and agrees that the MDMR may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

18. Termination for Convenience:

a. *Termination:* The Agency 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 shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

b. *Contractor's Obligations:* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

19. Termination for Default:

a. *Default:* If the 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 may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Agency, the Agency may terminate the 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 may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency. The 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.

b. *Contractor's Duties:* Notwithstanding termination of the contract and subject to any directions from the Agency, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.

c. *Compensation:* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due the Contractor such sums as the Agency 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.

d. *Excuse for Nonperformance or Delayed Performance:* Except with respect to defaults of subcontractors, the 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 the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Agency 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, the 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 the Contractor to meet the contract requirements. Upon request of the Contractor, the Agency shall ascertain the facts and extent of such failure, and, if the Agency determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the 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).

e. *Erroneous Termination for Default:* If, after notice of termination of the 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.

f. *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.

g. *Anti-assignment/subcontracting*: The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor's special skills and

expertise. The Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

h. *Approval:* It is understood that this contract requires approval by the OPTFM. If this contract is not approved, it is void and no payment shall be made hereunder.

i. *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 State all costs and expenses (including, without limitation, screening fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to the Contractor.

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

l. Confidentiality: Notwithstanding any provision to the contrary contained herein, it is recognized that the Agency is a public Agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §25-61-1, *et seq.* If a public records request is made for any information provided to the Agency pursuant to the agreement, the Agency shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

m. Debarment and suspension: The Contractor certifies to the best of its knowledge and belief, that it:

(1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or Agency or any political subdivision or Agency of the State of Mississippi;

(2) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction;

(3) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

(5) has not, within a three year period preceding this proposal, had one or more public transactions (Federal, State, or local)

terminated for cause or default.

o. *Disclosure of confidential information*: In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §25- 61-1, *et seq.*

p. *Errors in extension:* If the unit price and the extension price are at variance, the unit price shall prevail.

q. *Failure to deliver:* In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.

r. *Failure to enforce:* Failure by the Agency 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 Agency to enforce any provision at any time in accordance with its terms.

s. *Final payment:* Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, the Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against the Contractor under this contract.

t. *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, the 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.

u. *Indemnification:* To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the Agency, its commissioners, board members, officers, employees, agents, 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, screening fees and expenses, and attorneys' 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 Agency'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 Agency. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the Agency shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the Agency's concurrence, which the Agency shall not unreasonably withhold.

v. *Independent contractor status:* The 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, 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 State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. 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. The 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 Worker's Compensation, normally provided by the State for its employees

w. *Integrated agreement/merger:* This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and the Contractor. The Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

x. *Modification or renegotiation:* This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of

any applicable laws or regulations make changes in this agreement necessary.

y. *No limitation of liability:* Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

z. *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 Agency: [*Sonja Slater, Procurement Officer, Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi MS 39530*]

aa. *Oral statements:* No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by the Contractor.

bb. *Priority:* The contract consists of this agreement with exhibits, the MDMR Invitation for Bids 15-001 (hereinafter referred to as IFB), and the bid by [CONTRACTOR NAME] dated [add date] (hereinafter referred to as Bid). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the bid. 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.

cc. *Quality control*: The Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of the Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.

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

ee. *Right to audit*: The Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable Federal and State laws, rules, and regulations. The Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

ff. *Right to inspect facility*: The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

gg. *Severability*: If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

hh. *Termination upon bankruptcy*: This contract may be terminated in whole or in part by MDMR upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the 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.

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

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

kk. *Waiver*: No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by 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 of 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.