Mississippi Department of Marine Resources (MDMR)

INVITATION FOR BIDS
No. 15-001
IFB-AR-ARTIFICIAL REEF

Concrete Culvert Deployment

Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi MS 39530

Contact: Sonja Slater
Sonja.Slater@dmr.ms.gov
Date: October 17, 2014

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GENERAL INSTRUCTIONS

Section 1 – Purpose

The MDMR is inviting bids for the **Concrete Culvert Deployment**.

Section 2 – Overview

The purpose for the deployment of concrete culverts is for the enhancement of fishing opportunities in Mississippi's adjacent federal waters. These adjacent federal waters consist primarily of a featureless flat mud/sand bottom. The addition of artificial reefs enhances the environment by providing habitat for a variety of reef fish species.

Section 3 – Timeline

Invitation for Bid (IFB) Issue Date:	**October 17, 2014**
Ads to run in the Paper	**October 22 and October 31, 2014**
Pre-bid on Site Meeting	**November 4, 2014, 9:00 AM CST**
Questions to MDMR Deadline:	**November 10, 2014, 10:00 AM CST**
Written Answers to Questions Posted:	**November 11, 2014, 10:00 AM CST**
Bid Package Submission Deadline:	**December 1, 2014, 10:00 AM CST**
Bid Opening:	**December 1, 2014, 10:00 AM CST**
Bid Protest Deadline	**December 8, 2014, 10:00 AM CST**
Award Date	**December 8, 2014, 2014, 10:00 AM CST**

Section 4 – MDMR Contact and Questions/Requests for Clarification

4.1 All questions and requests for clarification must be directed by **email** to:

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

4.2 Questions and requests for clarification must be submitted via email by the deadline reflected in Section 3.

4.3 All questions and answers will be published on the MDMR website (http://www.dmr.ms.gov) in a manner that all bidders will be able to view by the date and time reflected in Section 3.

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

4.5 Should an amendment to the IFB be issued, it will be posted on the MDMR website (http://www.dmr.ms.gov) in a manner that all bidders will be able to view. Further, bidders must 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. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

Section 5 – Scope of Services

Transport and deploy concrete culverts by barge from various locations at MDMR's staging site in Gulfport, Mississippi (See Map Attachment D) to Fish Haven 13 located approximately eleven (11) nautical miles south of the west tip of Petit Bois Island (See Map Attachment E). These concrete culverts range in size between three (3) feet to five (5) feet in diameter and four (4) feet to eight (8) feet in length. A **mandatory** Pre-bid on site meeting will be held at MDMR's staging site in Gulfport on **November 4, 2014** at 9:00AM. **All work on this project shall be completed by February 28, 2015.**

- The contractor or his designee shall be present at the **mandatory** pre-bid site visit prior to submitting bid. Any contractor/or designee who does not attend the pre-bid meeting will not be allowed to submit a bid. If a bid is submitted by a contractor/designee who did not attend the pre-bid meeting, it will be returned unopened.
- The successful contractor shall supply the MDMR with the name(s) and phone number(s) of the person(s) who will be the official contact for the contractor's company.
- Before any award is made, as a result of bid received, the contractors under consideration shall be required to designate the exact equipment that will be used in the performance of the work and MDMR personnel may inspect the equipment which may be accepted or rejected because it is not considered to be satisfactory for the purpose of this contract. The contractor shall start the project within ten (10) days of receipt of fully executed contract. Additionally, all equipment shall be fully equipped with marine safety equipment as required by applicable state or federal law.
- The successful contractor shall provide MDMR documents evidencing that all equipment used on this project is in compliance with Occupational Safety and Health Administration and United States Coast Guard.
- The contractor shall meet with MDMR representatives at their office in Biloxi, Mississippi to discuss all aspects of the agreement prior to beginning any work. The date and time of the meeting will be set by mutual agreement following award of the contract.
- The successful contractor shall have and provide proof of prior experience deploying and placing of the material described herein or has completed a government contract for similar services.
- The successful contractor shall be required to obtain any permits or license that may be necessary to complete this project that meets the requirements of the US Army Corps of Engineers and the MDMR's Coastal Zone Management.

- The successful contractor shall be responsible for providing the means to move the material from various locations at the Gulfport staging site to a specified loading area on the east side of the staging site.
- The successful contractor shall deploy concrete culverts by using at least one (1) anchoring point.
- The successful contractor may be required to deploy a loaded barge of concrete culverts on multiple locations.
- The successful contractor shall deploy the material according to permit specifications which requires there must be at least fifty feet (50') of relief from the material to the water surface.
- A minimum of an eight hundred (800) ton barge shall be required for deployment of the concrete culverts.
- The successful contractor shall provide a credited marine surveyor or a representative on site daily to conduct a draft/displacement survey to determine the tonnage on the barge. A daily survey tonnage report shall be turned in to the MDMR within twenty four (24) hours of the end of work each day.
- The contractor shall retrieve any and all debris which is expelled during the deployment. The contractor shall provide a vessel and personnel to achieve this debris collection. The debris collection vessel shall be capable of communicating with the captain in charge of the deployment barge. All personnel shall be required to wear a United States Coast Guard approved Personal Flotation Device while on deck during deployment and while retrieving any debris.
- The successful contractor shall responsible for the removal and disposing of any debris and/or any material in the water located at the Gulfport staging site that would impede the contractor's ability to load the material onto the barge.
- The successful contractor will provide a performance and fidelity bond to the MDMR within seven (7) days or less after receipt of a fully executed contract and agree that these bonds will be secured through the association of insurance companies doing business in the State of Mississippi. The performance bond and fidelity bond must meet State requirements. Coverage will be confirmed prior to awarding the contract. All other insurance requirements are outlined in Attachment C (6).
- The successful contractor shall give MDMR a twenty four (24) hour notice prior to contractor's departure to reef site.
- All deployment activities shall be conducted Monday through Friday. No deployment shall be conducted on State and/or Federal holidays.
- MDMR shall provide the successful contractor a Global Positioning System (GPS) coordinates and a map of deployment locations.
- MDMR representative(s) shall be onsite to monitor and oversee that material is deployed at the locations specified by MDMR.
- In the event that the weather and/or other environmental conditions are deemed by MDMR to be unsuitable for deployment, MDMR reserves the right to either cancel or postpone the deployment. There will be **NO** deployment activity during a Small Craft Advisory or greater.

Section 6 – Basis for Award

6.1 The MDMR will award the bid to the lowest and best bidder who meets all required specifications. The MDMR reserves the right to reject any and/or all bids and waive minor informality.

Section 7 – Contract Deliverables

7.1 Upon execution of a contract with the MDMR, the contractor shall provide all deliverables as specified in the Scope of Services (Section 5).

Section 8 – Minimum Bidder Qualifications to be Deemed Responsible

8.1 The successful bidder shall have prior experience deploying and placing of the material described in the Scope of Services (Section 5).

Section 9 – Bid Submission Requirements

9.1 Submission format

The bid package must be sealed and must contain the following:

9.1.1 Bid Cover Sheet **(Attachment A)**.

9.1.2 Bid Form **(Attachment B)** – all pricing must be submitted on the bid form.

9.2 Submission requirements

9.2.1 The bid package shall be signed and submitted in a sealed envelope or package to 1141 Bayview Avenue, Biloxi MS 39530 no later than **10:00 AM CST, Monday, December 1, 2014**. (*Also see,* 9.2.3. and 9.2.11.)

9.2.2 Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time will be rejected and returned to the bidder unopened.

9.2.3 The envelope or package shall be marked with the bid opening date and time, and the number of the invitation for bids (**10:00 AM CST, Monday, December 1, 2014; No. 15-001**).

9.2.4 The time and date of receipt will be indicated on the envelope or package by the MDMR staff.

9.2.5 Each page of the bid form and all attachments shall be identified with the name of the bidder.

9.2.6 Failure to submit a bid on the bid form provided will be considered cause for rejection of the bid. **Modifications or additions to any portion of the bid document may be cause for rejection of the bid.**

9.2.7 The MDMR reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as nonresponsive.

9.2.8 As a precondition to bid acceptance, the MDMR may request the bidder to withdraw or modify those portions of the bid deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service.

9.2.9 Any bidder claiming that its response 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.

9.2.10 All bid packages must be received by MDMR no later than **10:00 AM CST, Monday, December 1, 2014**. Bids submitted via facsimile (faxes) or electronically **will not** be accepted. It is suggested that if a bid 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.

9.2.11 Sealed bids should be mailed or hand delivered to and labeled as follows:

Concrete Culvert Deployment
Bid No. 15-001
Opening Date: 10:00 AM CST, December 1, 2014
Mississippi Department of Marine Resources
Attention: Sonja Slater
1141 Bayview Avenue
Biloxi MS 39530
SEALED BID – DO NOT OPEN

Section 10 – Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

Section 11 – 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.

Section 12 – Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business with the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the MDMR that they have been chosen as the lowest and best bid submitted for this project.

Section 13 – Insurance and Bond Requirements

13.1 Each successful bidder shall maintain insurance policies and post bonds as described in section 13.1 and 13.2. In addition:

- Bidders must maintain Workers Compensation as required by the State of Mississippi;
- All insurance policies will list the *Mississippi Department of Marine Resources* as an additional insured.
- All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
- The MDMR may reserve the right to request from carriers, certificates of insurance regarding the required coverage.

13.2 Insurance

The Contractor represents that it will maintain workers' compensation insurance as required by the State of Mississippi which shall inure to the benefit of all the Contractor's personnel provided hereunder; comprehensive general liability or professional liability insurance, with minimum limits of $1,000,000 per occurrence; and employee dishonesty insurance or fidelity bond insurance with minimum limits of $1,000,000 with third party liability coverage. All general liability, professional liability, employee dishonesty, and fidelity bond insurance will provide coverage to the *State of Mississippi* as an additional insured. The MDMR reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

a. **Coverage and Minimum Amount.**

General Liability - General Aggregate/Product comp/Ops $1,000,000
Personal Injury/Bodily Injury (Per Occurrence) $500,000
Fire Damage (Per Fire) $50,000
Medical Expense (per Person) $5,000
Owners/Contractors protective Liability:
General Aggregate $1,000,000
Per Occurrence $500,000
Automobile Liability:

Bodily injury/Property Damage Combined Single Limit (Per Occurrence) $500,000
Bodily Injury (Per Person) $250,000
Bodily Injury (per Accident) $250,000
Property Damage (Per Occurrence) $100,000
Excess Liability (Umbrella on projects over $500,000):
Aggregate $1,000,000
Per Occurrence $1,000,000
Workers' Compensation (As required by Statute) Employers' Liability:
Accident (Per Occurrence) $100,000
Disease-Policy Limit $500,000
Disease-Per Employee $100,000

13.3 Bonds

a. **Performance Bond.** The Contractor shall provide a performance bond to guarantee timely and complete establishment of the Contract and related administrative services in the amount of one million dollars ($1,000,000). The Board must be named as exclusive beneficiary. Upon the Board's agreement that the implementation of the Contractor's responsibilities for the Benefit Plan and related administrative services are complete, the performance bond shall be released.

b. **Payment Bond.** The Contractor shall provide a payment bond in the amount of 100 percent of the bid to guarantee payment of all persons who have and fulfill contracts with the Contractor for performing labor or providing equipment or material in the performance of the work provided for in the contract. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi as required under Mississippi Code § 31-5-51(2013).

Section 14 – Bid Opening

Bid opening will be open to the public; however, this will include opening, reading, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening.

Section 15 – Debriefing Request

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission, to be received by the agency within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify the agency and identify its attorney. The agency shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

The following information may be disclosed during a debriefing:

- MDMR's evaluation of weakness or deficiencies in the bid;
- The cost and technical rating of the successful vendors and the debriefed vendors;
- The overall ranking of all vendors;
- A summary of the rationale for the award; and
- Reasonable responses to relevant questions about the selection procedures, applicable regulations, and applicable authorities complied with.

Section 16 – Award Notification

MDMR will award the contract to the lowest and best bidder. The bidder to be awarded the contract will be posted on the MDMR website at http://www.dmr.ms.gov (pending approval by the Personal Services Contract Review Board, if required). Bidders will be notified via e-mail of the awards. Additionally, a letter will be sent to all bidders.

Section 17 – Procurement Methodology

17.1 Restrictions on communication with MDMR and MDMR staff

At no time shall any bidder contact, or attempt to contact, any MDMR or MDMR staff regarding this IFB except the contact person as set forth in Section 4.

17.2 Cost of preparing bid

The MDMR accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

17.3 Independent price determination

By submitting a bid, the bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without 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.

17.4 Rejection of bids

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as nonresponsive. The MDMR reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the MDMR of non-responsiveness based on the submission of nonconforming terms and conditions.

17.5 Withdrawal of bid

17.5.1 If a bidder's price bid is substantially lower than those of other bidders, a mistake may have been made.

17.5.2 A bidder may withdraw its bid from consideration if certain conditions are met:

(1) The bid is submitted in good faith;
(2) The price bid is substantially lower than those of other bidders because of a mistake;
(3) The mistake is a clerical error, not an error of judgment; and,
(4) Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

17.5.3 To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to the MDMR of claim of right to withdraw a bid. Within two (2) business days after the bid opening, the bidder requesting withdrawal must provide to the MDMR all original work papers, documents, and other materials used in the preparation of the bid.

17.5.4 A bidder may also withdraw a bid, prior to the time set for the opening of bids, by simply making a request in writing to the MDMR. No explanation is required.

17.6 Protests

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with this solicitation or the outcome of this IFB may file a protest with the Director of the MDMR. The protest shall be submitted on or before 10:00 AM CST, Monday, November 10, 2014, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. A protest is considered filed when received by the Director of the MDMR. Protests filed after 10:00 AM CST, Monday, November 10, 2014, will not be considered.

Section 18 – Required and optional Contract Terms and Conditions Used for this IFB

Any contract entered into with the MDMR shall have the required clauses found in **Attachment C** and those required by the *Mississippi Personal Service Contract Review Board's Rules and Regulations* as updated.

Section 20– Attachments
The attachments (A, B, C, & D) to this IFB are made a part of this IFB as if copied herein in words and figures.

Section 21 – Mississippi Department of Marine Resources Website
This IFB and questions and answers concerning this IFB, will be posted on the MDMR website at http://www.dmr.ms.gov.

ATTACHMENT A

BID COVER SHEET

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi is accepting bids for the **Concrete Culvert Deployment**.

Bids are to be submitted to as listed below, on or before 10:00 AM CST, Monday, December 1, 2014.

PLEASE MARK YOUR ENVELOPE:

Concrete Culvert Deployment
Bid No. 15-001
Opening Date:10:00 AM CST, December 1, 2014
Mississippi Department of Marine Resources
Attention: Sonja Slater
1141 Bayview Avenue
Biloxi MS 39530
SEALED BID – DO NOT OPEN

NAME OF COMPANY _____

QUOTED BY _____

SIGNATURE _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE _____

FAX NUMBER _____

EMAIL ADDRESS _____

NAME AND PHONE NUMBER OF COMPANY REPRESENTATIVE TO BE CONTACTED BY AGENCIES SEEKING TO CONTRACT FOR SERVICES PURSUANT TO 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. _____

_____

_____

_____

_____

List prior experience in the building and construction of artificial reefs as described in the Scope of Services (Section 5).

_____

_____

_____

_____

_____

ATTACHMENT B

BID FORM FOR CONCRETE CULVERT DEPLOYMENT

Bid price $_____ per ton of concrete culvert deployed

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, 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 Personal Service Contract Review Board 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 *Personal Service Contract Review Board 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.

4. 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.

5. 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.

6. 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.

7. 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*.

8. 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.

9. 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.

10. 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,

    c. both. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 Personal Service Contract Review Board. 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.

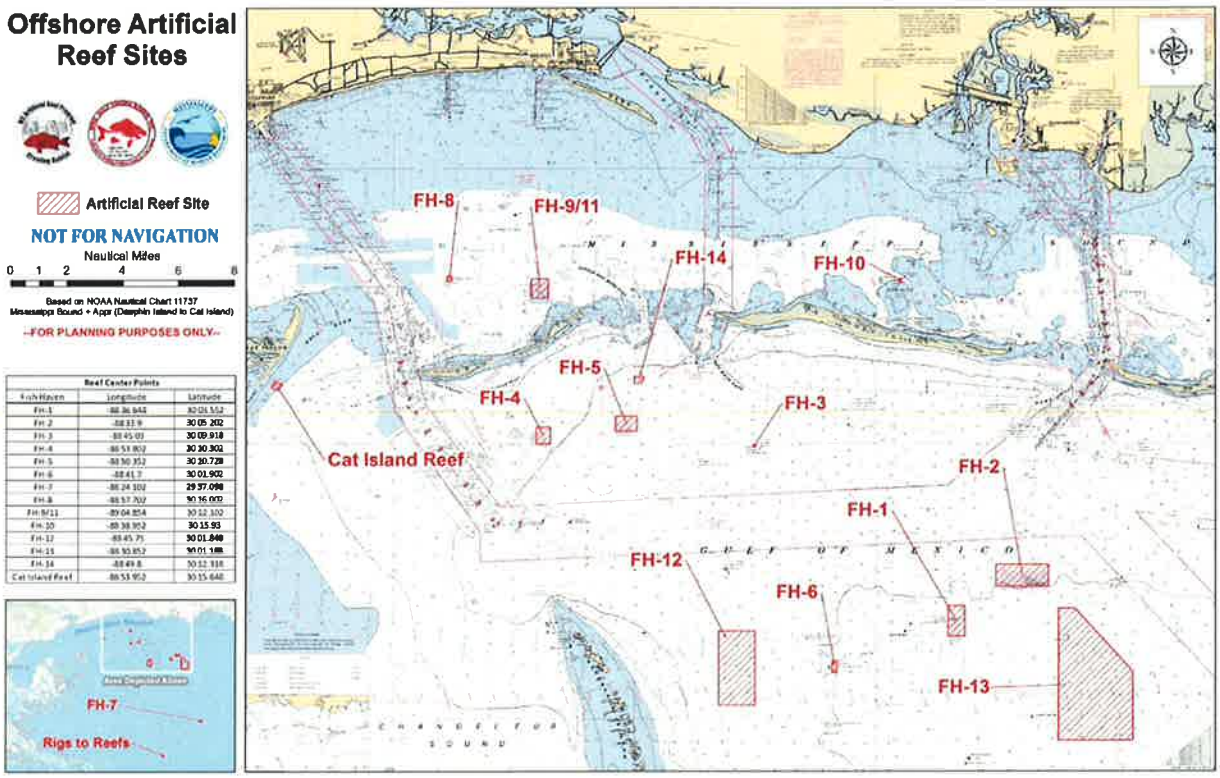
ii. *Third party action notification*: Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

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.

Attachment D

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



Attachment E