

Invitation for Bids
RFx No. 3160001800
Smart No. 1450-18-R-IFBD-00009
Oyster Bag Dredges



ENHANCE ★ PROTECT ★ CONSERVE

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

Contact: Kacey Williams procurement@dmr.ms.gov

Introduction

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

MDMR is seeking bids to establish a contract with an individual, entity, or firm to furnish up to 100 oyster bag dredges. The scope of work to be performed and the deliverables required under the contract are set forth herein.

Deadlines/Timeline

IFB Issue Date	November 8, 2017
Sun Herald Advertising Dates	November 8, 2017 & November 15, 2017
Deadline for Questions to MDMR	November 20, 2017 at 10:00 a.m. CST
Posting of Written Answers to Questions	November 21, 2017 at 4:00 p.m. CST
BID Submission Deadline	November 29, 2017 at 2:00 p.m. CST

How to Bid

Your bid submission must be **received** by MDMR no later than **November 29, 2017 at 2:00 p.m.** You may submit your bid electronically through the State of Mississippi MAGIC portal or you may personally deliver or mail your bid to Kacey Williams, 1141 Bayview Avenue, Procurement Department 6th Floor, Biloxi, Mississippi 39530. Remember, you are responsible for making sure your bid submission is received by the deadline. **Submissions received after the deadline will not be considered and will be placed in the procurement file unopened.** Instructions on how to submit your bid are set forth herein.

Scope of Project

The contractor will be responsible for constructing and furnishing up to 100 oyster bag dredges. The quantity of oyster bag dredges is dependent on participation by fishermen in the program for which the dredges will be used. The contractor must allow fishermen authorized by the MDMR

to receive a bag dredge, to pick up the dredge at contractor's place of business. The contractor will be responsible for insuring the safety of all fishermen who come to contractor's place of business to pick up an oyster bag dredge while the fishermen are on the contractor's premises. There is no minimum quantity for this contract. The oyster bag dredges must meet the specifications required under Mississippi Department of Marine Resources Rules and Regulations Title 22, Part 1, Chapter 7, Paragraph 100 which include:

- Must not weigh in excess of 115 pounds;
- The tooth bar cannot have more than 16 teeth; and,
- The teeth on the tooth bar cannot exceed five inches.

Additional Specifications:

- Must be hot dipped galvanized steel;
- Must include rope bag; and,
- Must include chain bag.

Deliverables

Upon execution of a contract and receipt of a purchase order from MDMR, the contractor shall begin constructing and furnishing the oyster bag dredges within fifteen (15) calendar days.

Required Qualifications for Bidding

The required qualifications for bidding include:

- Bidders must have prior experience constructing and furnishing oyster bag dredges. Each bidder must submit contact information for at least three (3) customers (references) for whom the bidder has constructed and furnished oyster bag dredges within the last ten (10) years. For each customer (reference), the bidder must provide the contact name, phone number, and email address on [Attachment A](#) – Bid Cover Sheet.
- By submitting a bid, the bidder certifies that he 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 he is not an agent of a person or entity so debarred.
- Bidders are required to be electronically registered in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) before submitting their bid. For instructions on registering in MAGIC, see pages 5 and 6.

The required qualifications for contracting include:

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

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

Selection Criteria

The contract will be awarded to the responsive, responsible bidder who submits the lowest unit price (price per bag dredge).

Term of Contract

The start date for the contract is the date the contract is signed by the successful bidder and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date. The contract may be extended subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the contractor. Any contract renewal or extension shall be under the same prices, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the contractor.

MDMR Contact and Questions/Requests for Clarification

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

Kacey Williams, Procurement Director

procurement@dmr.ms.gov

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

All questions/requests for clarification and the answers thereto will be published on the MDMR website (<http://dmr.ms.gov>) and the MAGIC Portal (<http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>) for all bidders to view by **November 21, 2017 at 4:00 p.m. CST.**

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

Amendments to this IFB

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

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

acknowledgment must be received by the MDMR by the time and at the place specified for receipt of bids. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

How to Submit a Bid

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

IFB SUBMISSION OPTIONS

Vendor Electronic Registration in MAGIC:

- It shall be the responsibility of each bidder to ensure that its vendor profile is current in the MAGIC system. The website to register as a vendor with the State of Mississippi is: <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>.
- For online learning instructions on submitting your bid electronically, select "Supplier Training" from the link listed above. Select the LOG820 Supplier Self-Service Course link and then click "Launch Course."
- If you have problems getting on the website, please contact the Mash Helpdesk at (601) 359-1343 or mash@dfa.ms.gov. You must receive a User ID and Password to access the MAGIC portal. **This process could take up to 72 hours to complete.**

MAGIC Submission Requirements (option)

- The bid submission must be submitted in MAGIC no later than 2:00 p.m. CST, November 29, 2017.
- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and placed in the procurement file unopened. **It is suggested that you allow 48 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user.**

Paper Submission Requirements (option)

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to 1141 Bayview Avenue, Procurement Department 6th Floor, Biloxi MS 39530 no later than 2:00 p.m. CST, November 29, 2017.
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and placed in the procurement file unopened.

- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- Submissions via facsimile (faxes) or email will not be accepted. It is suggested that if a submission is mailed to MDMR, it should be posted in certified mail with a return receipt requested. MDMR will not be responsible for mail delays or lost mail.
- All bids submitted by hand delivery or mail will become the property of the MDMR.
- Bids should be mailed or hand delivered to MDMR and the envelope labeled as follows:

“Oyster Bag Dredges”

RFx No. 3160001800

Smart No. 1450-18-R-IFBD-00009

Opening Date: 2:00 p.m. CST, November 29, 2017

Mississippi Department of Marine Resources

Procurement Department, 6th Floor

Attention: Kacey Williams

1141 Bayview Avenue

Biloxi MS 39530

SEALED BID – DO NOT OPEN

The **deadline** for receiving bids is **November 29, 2017 at 2:00 p.m.** Late submissions will not be accepted.

Requirements for Bidding

All bids must include the following:

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

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

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

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

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

Conditions of Solicitation

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

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

Notification of Intent to Award

Notification will be sent to all bidders by mail and email of the selection of the successful bidder. We will also post the selection of the successful bidder on our website at www.dmr.ms.gov. Work is expected to begin within 15 calendar days of receipt of a fully executed contract.

Bid Protests

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

Governing Law

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

Relationship of Parties

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

Contract Administration

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

Kacey Williams, Procurement Director
Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, MS. 39530

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

Compensation for Goods and Services

Compensation for services will be in the form of a fixed unit price multiplied by the number of units constructed and furnished. The contractor understands and agrees that MDMR is exempt from the payment of taxes. The contractor may submit an invoice after each unit is constructed and furnished to a fisherman. Each invoice must include the following information:

- Contract number;
- Purchase Order Number;
- Date(s) oyster bag dredge was furnished to fisherman; and,
- A certification signed by the contractor that all employees working on the project, all material suppliers, and all sub-contractors, if any, have been paid or will be paid in full by the contractor.

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

Equal Opportunity Statement

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

Attachments

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

- [Attachment A](#) – Bid Cover Sheet
- [Attachment B](#) – Bid Form
- [Attachment C](#) – Checklist

Mississippi Department of Marine Resources
RFx #3160001800
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Issued – November 8, 2017

- [Attachment D](#) – Reference Score Sheet
- [Attachment E](#) – Contract Clauses

Attachment A

BID COVER SHEET

Company Name: _____

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for Oyster Bag Dredges.

Bids must be submitted by **2:00 p.m. CST on November 29, 2017**

Sealed envelopes must read as follows:

OYSTER BAG DREDGES
RFx No. 3160001800
Opening Date: November 29, 2017 at 2:00 p.m. CST
Mississippi Department of Marine Resources
Attention: Kacey Williams
1141 Bayview Avenue
Procurement Department, 6th Floor
Biloxi, MS 39530
SEALED BID – DO NOT OPEN

Quoted by:

Signature:

Address:

City/State/Zip:

Telephone:

Fax Number:

Email Address:

Company Name: _____

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

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

What year was your company started?

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

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

References

List at least three (3) references (customers) for whom you have constructed and furnished oyster bag dredges within the last five (5) years, one of which must have been within the last three (3) years. **For each reference (customer), please provide current contact information, including phone number, as MDMR must be able to contact them immediately following the bid opening.**

You may provide more than three references, and use a supplemental sheet, if necessary. However, MDMR will only contact three references from this list. MDMR staff will use the Reference Score Sheet ([Attachment D](#)) when contacting each reference.

Company Name: _____

Reference # 1:

Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Reference # 2:

Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Reference # 3:

Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Attachment B

BID FORM

Oyster Bag Dredges

Company Name: _____

Unit price per oyster bag dredge \$ _____

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

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

If yes, please explain: _____

Company Name: _____

- **Gratuities:** You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual available online at www.dfa.state.ms.us/Purchasing/ProcurementManual.html.
- **Acknowledgment of Amendments:** You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

Signature

Date

Attachment C
Checklist of Submitted Documentation

	Initials
Three References (Customers) Submitted.	
Registered with MAGIC.	
Amendments to IFB acknowledged, if any.	
Attachment A, Attachment B, and Attachment C signed.	

Company Name: _____

Signed: _____

Printed Name: _____

Date: _____

Attachment D

Reference Score Sheet

TO BE COMPLETED BY MDMR STAFF ONLY

Bidder Name: _____

Reference Name: _____

Person Spoken To: _____

Score: _____

Was the Bidder easy to work with in the construction and furnishing of oyster bag dredges?	Yes	No
Were you satisfied with the bag dredges provided? If no, please explain.	Yes	No
Was the Bidder responsive to your needs?	Yes	No
Would you recommend the Bidder to others for future projects?	Yes	No

Each “yes” is one point; each “no” is zero points. Bidder must have a minimum total score of “9” from the three references to be considered responsible and for Bidder’s bid to be considered.

Called By: _____

Signature: _____

Title: _____

Date and Time: _____

Notes: _____

Attachment E

CONTRACT CLAUSES

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

Payment

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

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

Certifications

The Contractor certifies the following:

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

Representation Regarding Contingent Fees: The Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for compensation, except as disclosed in Contractor's bid or proposal.

Employees and Subcontracts

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

Discrimination Prohibited: The MDMR is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. The Contractor agrees to strictly adhere to this policy in its employment practices and provision of services.

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

contract meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands that any breach of these warranties may subject it to the following:

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

Access to Records

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

Termination

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

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

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

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

Termination for Insufficient Funds: The MDMR's obligations under this contract are conditioned on the appropriation of funds by the state or federal government. If the anticipated funds are ever insufficient or there is a material alteration in the funded program, then the MDMR may terminate this agreement with 10 day's written notice to the Contractor. If the

MDMR terminates the contract under this subsection, then it does so without any damage, penalty, cost, or expense.

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

Force Majeure: Each party is excused from performance of any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of the party or its contractors. Force majeure events include acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters. When such a cause arises, the Contractor must notify the MDMR immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDMR determines it to be in its best interest to terminate the contract.

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

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

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

Stop Work Order

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

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

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

Cancellation or Expiration of the Order:

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

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

Confidentiality

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

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

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

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

Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

Liability and Indemnification

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

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

Miscellaneous

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

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

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

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

obligations without consent is null and void. No approval by the MDMR of any subcontract is consent to increase the maximum price of this contract.

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