

Invitation for Bids

RFx No. 3160001794

Smart No. 1450-17-R-IFBD-00008

MARINE PATROL VESSEL



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

Contact: Kacey Williams, CFO procurement@dmr.ms.gov

Table of Contents

Section 1 – Introduction.....	3
Section 2 – Purpose.....	3
Section 3 - Deadlines/Timeline.....	3
Section 4 - MDMR Contact and Questions/Requests for Clarification	4
Section 5 - Amendments to this IFB	4
Section 6 - Scope of Work – General Requirements	5
Section 7 – Deliverables	5
Section 8 – Basis for Award	6
Section 9 - Minimum Required Qualifications	7
Section 10 - Bond Requirements	7
Section 11 – Insurance Requirements.....	7
Section 12 – Payment.....	8
Section 13 - Term of Contract.....	9
Section 14 - How to Submit a Bid	9
Section 15 - Requirements for Bidding.....	11
Section 16 – Conditions of Solicitation	11
Section 17 - Notification of Intent to Award	12
Section 18 – Bid Protests	12
Section 19 - Governing Law	12
Section 20 - Relationship of Parties.....	12
Section 21 - Contract Administration	13
Section 22 - Equal Opportunity Statement	13
Section 23 – Attachments	13
Attachment A – Vessel Specifications.....	15
Attachment B – Additional Specifications.....	16
Attachment D - Bid Form	20
Attachment E - Contract Clauses	22
Attachment F - Checklist of Submitted Documentation	29

Section 1 - Introduction

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the Commission on Marine Resources. 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 issuing an Invitation for Bids (IFB) to establish a contract with an individual, entity, or firm for the design, construction, and delivery of a Marine Patrol vessel. The vessel length must be between 32 feet – 34 feet. The specifications included in this IFB, establish minimum requirements for a vessel to be used by Marine Patrol Officers on waters within Mississippi's state territorial boundary and adjacent federal waters of the Gulf of Mexico.

Due to the boat's potential to be operated continuously and during adverse weather conditions, the boat must be constructed to the highest marine standards to ensure personnel and equipment safety. The vessel will be a multipurpose Marine Patrol boat, with the primary intended use being law enforcement activities and emergency response.

The scope of work to be performed and the deliverables required under a contract resulting from this solicitation are set forth herein.

Section 2 - Purpose

The specifications ([Attachment A- Vessel Specifications](#) and [Attachment B- Additional Specifications](#)) are intended to describe and establish minimum requirements for a vessel to be used for emergency response conditions and law enforcement activities including, but not limited to, red snapper enforcement on coastal waters of the Gulf of Mexico.

Section 3 - Deadlines/Timeline

IFB Issue Date

October 27, 2017

Newspaper Publication Dates

October 27, 2017 & November 3, 2017

Deadline for Questions to MDMR	November 9, 2017 at 10:00 a.m. CST
Posting of Written Answers to Questions	November 9, 2017 at 4:00 p.m. CST
Bid Submission Deadline	November 17, 2017 at 2:00 p.m. CST

Sealed bids will be opened and read at the Department of Marine Resources, **5th Floor Conference Room** at 1141 Bayview Avenue, Biloxi, Mississippi 39530 at **2:00 p.m. CST on Friday, November 17, 2017**. Any interested party to this IFB is welcome to attend.

Section 4 - MDMR Contact and Questions/Requests for Clarification

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

Kacey Williams, CFO at procurement@dmr.ms.gov

All questions/requests for clarification must be received no later than **November 8, 2017 at 10:00 a.m. CST**.

All questions/requests for clarification and the answers thereto will be published on the MDMR website (<http://dmr.ms.gov>) and the MAGIC Portal <http://www.mmrs.state.ms.us/vendors/index.shtml> in a manner that all bidders will be able to view by **November 10, 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.

Section 5 - Amendments to this IFB

Should an amendment or amendments to this IFB be issued by MDMR, it will be posted on the MDMR website 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 in a manner that all bidders will be able to view. **Furthermore, bidders must acknowledge receipt of any amendment to this**

IFB by signing and returning the amendment with the bid submission, by identifying the amendment number and date in the space provided for this purpose on the Bid Form ([Attachment D](#)), 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 6 - Scope of Work – General Requirements

The boat must be manufactured in accordance with United States Coast Guard (USCG), National Marine Manufacturers Association (NMMA), and American Boat and Yacht Council (ABYC) guidelines. The boat must be self-bailing. To ensure that MDMR receives a boat of proven performance, the quoted hull must be in current production. Should questions arise, manufacturers will be required to submit names and phone numbers of clients who are currently using the manufacturer's products. NO PROTOTYPE HULLS WILL BE ACCEPTED.

All workmanship must be free from faults and defects and in conformance with the specifications set forth below in [Attachment A - Specifications](#) and [Attachment B – Additional Specifications](#). The boat must be delivered in a seaworthy condition and fit for the purposes for which it is intended.

Section 7 - Deliverables

Upon execution of a contract and receipt of a purchase order from MDMR, the contractor shall provide all deliverables as specified in the Scope of Work, [Attachment A – Specifications](#) and [Attachment B – Additional Specifications](#) within eight months (240 days).

Ten days prior to delivery of the boat, the contractor must provide a copy of the following:

- a Builder's Certificate so the boat can be documented;
- any other forms or documents necessary to obtain documentation of the boat with the United States Coast Guard;
- the warranty and maintenance package that includes the manufacturer's literature;
- the boat's finishes and appurtenant equipment; and,
- any as-built drawings and manuals.

- A copy of the warranty (for commercial and government use) must be provided with the bid for item one below. For items two and three, a warranty must be submitted ten days prior to the delivery of the boat. Warranties shall at a minimum include:
 1. Hull structure: for fiberglass hull, limited lifetime warranty from the date of delivery to MDMR against manufacturer defects.
 2. Accessories manufactured by the vendor: one (1) year from the date of delivery to MDMR against manufacturer defects.
 3. Engines, electronics and other accessories: to be warranted by the manufacturer of the products (engines, electronics, and other accessories).

All boats offered to MDMR must have provisions for warranty and service that will provide reasonable convenience or onsite services for the MDMR.

The contractor must make the boat available for a sailing and motoring sea trial to MDMR's satisfaction. Contractor must make the boat available for marine and engine condition surveys to the MDMR's satisfaction at MDMR's expense. If the sea trial or surveys reveal defects in the boat, then the contractor must correct the defects at no additional cost to MDMR. On the delivery of the boat, the contractor must provide a bill of sale, warranting the boat to be free and clear of all liens, claims, and encumbrances.

- This vessel shall be delivered FOB Destination, Freight Prepaid. The contractor bears all risk of loss of the boat until delivery to and acceptance by MDMR.
- After completion of sea trial and surveys and/or correction of all noted defects, the contractor must deliver the completed boat to MDMR on a trailer.

Section 8 - Basis for Award

The MDMR will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the Public Procurement Review Board, if necessary. The MDMR reserves the right to reject any and/or all bids and waive minor informalities which do not affect quality, quantity, price or delivery.

Section 9 - Minimum Required Qualifications

The minimum qualifications for bidding include:

- Bidders must have prior experience designing and manufacturing marine vessels comparable to the boat sought in this IFB. Bidders must submit at least three prior projects they have successfully completed within the last ten (10) years, which demonstrate the required experience, including a description of each vessel and reference (customer for the project) with contact name, phone number, and email address. *See [Attachment C - Bid Cover Sheet](#)*; and,
- 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 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 Section 14.

The minimum qualifications for contracting include:

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

Section 10 - Bond Requirements

No bonds are required for this Invitation for Bids.

Section 11 - Insurance Requirements

In order to enter into a contract, you must meet minimum insurance protection requirements. You must provide evidence of your policies **within ten (10) calendar days of a fully executed contract.**

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

You must hold the following insurance throughout the term of the contract:

Coverage Type	Amount
Workers' Compensation (as required by Mississippi law)	
Accident (Per Occurrence)	\$100,000
Disease-Policy Limit	\$500,000
Disease-Per Employee	\$100,000
General Liability	
Aggregate	\$1,000,000
Personal Injury/Bodily Injury and Property Damage (Per Occurrence)	\$500,000
Fire Damage (Per Fire)	\$50,000
Medical Expense (Per Person)	\$5,000

Section 12 - Payment

- **Payment.** The MDMR will pay Contractor upon satisfactory completion of the Scope of Work and Deliverables.
- **Invoice.** Contractor must submit a detailed invoice upon completion of the Scope of Work and Deliverables. In order to process payment, the Invoice must include the following information and supporting documentation:
 1. Contract number;
 2. Purchase Order Number;
 3. Date(s) of delivery; and,

4. 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 in full by the Contractor.
- **Payment Processing.** 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.

Section 13 - Term of Contract

The start date for the contract is the date the contract is signed by the selected 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 pricing, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

Section 14 - How to Submit a Bid

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 prior to submitting a bid. 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 MAGIC’s portal. **This process could take up to 72 hours to complete.**

IFB MAGIC Submission Requirements (option #1)

- The bid submission must be submitted in MAGIC no later than **2:00 PM CST, November 17, 2017.**

Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and the unopened bid will be made a part of the procurement file. **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.**

IFB Paper Submission Requirements (option #2)

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to MDMR Department of Finance and Administration, 6th Floor, at 1141 Bayview Avenue, Biloxi MS 39530 no later than **2:00 PM CST, November 17, 2017.**
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and the unopened bid will be made a part of the procurement file.
- 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 and must be labeled as follows:

“Marine Patrol Vessel”

RFx No. 3160001794

Smart No. 1450-18-R-IFBD-00008

Opening Date: 2:00 PM CST, November 17, 2017

Mississippi Department of Marine Resources

6th Floor Department of Finance and Administration

Attention: Kacey Williams, CFO

1141 Bayview Avenue

Biloxi MS 39530

SEALED BID – DO NOT OPEN

The **deadline** for receiving Bids is **November 17, 2017 at 2:00 p.m.** Late submissions will not be accepted.

Section 15 - Requirements for Bidding

All Bids must include the following:

- Bid Cover Sheet ([Attachment C – Bid Cover Sheet](#)) completed and signed
- Bid Form ([Attachment D – Bid Form](#)) completed and signed
- Check List of Submitted Documentation ([Attachment F – Bidder's Checklist](#)) completed and signed

Use the bid form ([Attachment D – 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 ([Attachment D – Bid Form](#)). Submissions without a bid form will be rejected as nonresponsive. Do not amend or add to the bid form, and do not alter the terms of the contract. We may reject 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. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

Section 16 - 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 D – Bid Form](#).

Section 17 - 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.

Section 18 - 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 <http://www.dfa.ms.gov/media/4002/chapter6.pdf>.

Section 19 - Governing Law

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

Section 20 - 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 a commodity or commodities and not based on an employer-employee relationship or a joint venture relationship.

Section 21 - Contract Administration

The contract awarded, if any, subsequent to this solicitation shall be administered by the MDMR. All invoices submitted upon delivery and MDMR's acceptance of the completed vessel by the Contractor for payment pursuant to the contract shall be submitted as follows:

By Mail:

Mississippi Department of Marine Resources
Kacey Williams, CFO
Department of Finance and Administration
1141 Bayview Avenue
Biloxi, Mississippi 39530

By Email:

Attention: Kacey Williams
Procurement@dmr.ms.gov

The MDMR will provide timely payment 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. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

Section 22 - Equal Opportunity Statement

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

Section 23 - 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](#) – Specifications
- [Attachment B](#) – Additional Specifications

- [Attachment C](#) – Bid Cover Sheet
- [Attachment D](#) – Bid Form
- [Attachment E](#) – Contract Clauses
- [Attachment F](#) – Checklist of Submitted Documentation

Attachment A – Vessel Specifications

Specifications for IFB #3160001794									
STANDARD FEATURES:									
SP-1	Length:							32ft - 34ft	
SP-2	Minimum -Maximum Horse Power							900-1050 horsepower	
SP-3	Approximate Draft:							12 inches - 24 inches	
SP-4	Approximate Boat Weight:							Manufacturer suggested (based on hull design)	
SP-5	Fuel Capacity:							300-400 gallons	
SP-6	Persons and Total Persons Weight (minimum of 4 person crew):							Manufacturer suggested (based on hull design)	
SP-7	Max Weight Capacity:							Manufacturer suggested (based on hull design)	
SP-8	Hull must come with aluminum slide on trailer with spare tire, Triple axles or greater, with power wench and trailer brakes.							Manufacturer suggested (based on	
SP-9	Width							9ft-10ft	
CONSTRUCTION					CONSOLE				
SP-10	Fiberglass stepped hull (must have limited lifetime warranty)				MARINE GRADE ELECTRICAL SYSTEM:				
SP-11	Self-bailing				SP-25	Electronics must be compatible with Marine Patrol Equipment			
SP-12	Dedicated Head (must meet all Coast Guard standards)				SP-26	Simrad or equivalent (must be compatible) radar with overlay			
SP-13	T-Top				SP-27	Simrad GPS or equivalent (must be compatible)			
SP-14	Seating capacity minimum of 4 man crew				SP-28	AM/FM Stereo with optional satellite radio for weather update capability			
SP-15	Pilot and copilot bench seat with cushioned back rest				SP-29	Minimum of 4 USB charging ports			
SP-16	Trim tabs				SP-30	All electronics must be mounted under console			
SP-17	Under Deck Storage Compartments				SP-31	LED Navigation lights			
					TRAILER:				
HARDWARE:					SP-32	Aluminum slide on trailer with spare tire; triple axel or greater			
SP-18	Stainless Steel Propellers for Engines								
SP-19	Stainless steel hardware				STORAGE:				
SP-20	Engines will be drop shipped for installation				SP-33	Long gun storage behind pilot/copilot seat			
SP-21	Stainless steel pop up cleats				SP-34	Must contain electronic dry storage for officer electronic equipment			
SP-22	Heavy duty rub rail - white rubber								
SP-23	Saltwater wash-down				SP-35	Foldout table for office paperwork			
SP-24	Bilge pump(s) (manufacturer suggested based on hull								

Attachment B – Additional Specifications

OUTBOARD MOTOR EQUIPMENT, WARRANTY, INSTRUCTION MANUALS

OUTBOARD MOTOR EQUIPMENT AND INSTALLATION:

NOTE: After award, MDMR will purchase engines and drop ship them to the Contractor's facility for installation.

Proper sized stainless-steel propellers are to be supplied and installed by the Contractor.

WARRANTIES:

A copy of the warranty (for commercial and government use) must be provided with the bid and shall at a minimum include:

1. Hull structure: for fiberglass hull, limited lifetime warranty from date of delivery to MDMR against manufacturer defects.
2. Accessories manufactured by the vendor: one (1) year from the date of delivery to MDMR against manufacturer defects.
3. Engines, electronics and other accessories: to be warranted by the manufacturer of the products (engines, electronics, and other accessories).

All boats offered to MDMR must have provisions for warranty and service that will provide reasonable convenience or onsite services for the MDMR.

INSTRUCTION MANUALS:

The supplier shall furnish one copy of complete instructions for the maintenance and operation of each different model, size, type, etc., of the equipment furnished.

Attachment C - Bid Cover Sheet

COMPANY NAME: _____

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for a Marine Patrol Vessel.

Bids must be submitted by **2:00 p.m. CST on November 17, 2017.**

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 MDMR:

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

Company Name: _____

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: You must list at least 3 references from customers that you have completed the design and/or manufacturing of a vessel of similar size and scope within the last ten (10) years. MDMR must be able to contact these references within 48 hours of bid opening.

Company Name: _____

1. Reference Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Description of Vessel:

2. Reference Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Description of Vessel:

3. Reference Name (customer): _____

Telephone: _____

Email: _____

Job Title: _____

Description of Vessel:

Attachment D - BID FORM

MARINE PATROL VESSEL

COMPANY NAME: _____

Bid price \$_____

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

1. That you thoroughly read and understand the Invitation for Bids and its attachments.
2. That you meet all requirements and acknowledge all the certifications contained in the IFB.
3. That you agree to all provisions of the IFB, including the contract clauses in [Attachment E – Contract Clauses](#).
4. That you will design, manufacture, deliver and warranty the boat specified at the price quoted above.
5. 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.
6. **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.
7. **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.
8. **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:

9. **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 <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/>.

10. **ACKNOWLEDGMENT OF AMENDMENTS.** You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

COMPANY NAME: _____

SIGNATURE: _____

Name and Title

Date

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 project. The final contract may contain additional clauses.

Payment

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

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

Certifications

The Contractor certifies the following:

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

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

Employees and Subcontracts

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

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

E-Verify Program. The Contractor will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. §§ 71-11-3. For anyone hired to perform work in Mississippi, the Contractor must register and participate in the E-Verify Program operated by the United States Department of Homeland Security. The Contractor agrees to maintain records of compliance and to provide a copy of verification to the MDMR on request. The Contractor further represents and warrants that any person assigned to perform services related to this contract meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands that any breach of these warranties may subject it to the following:

- a) 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
- b) 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
- c) 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:

- A. for default;
- B. for convenience;
- C. for insufficient funds; or
- D. by 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:

1. Terminate outstanding orders and subcontracts as they relate to the terminated work.
2. Settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.
3. Take timely, reasonable, and necessary action to protect and preserve property in its possession in which the state has an interest.
4. Assign the Contractor's rights, titles, and interest under terminated orders or subcontracts to the state, if requested by the MDMR.
5. 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:

- a) cancel the stop work order; or
- b) 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:

- 1. the stop work order results in an increase in the time or cost required for performance of this contract;
- 2. 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,
- 3. 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:

- a) 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;
- b) Disclosure of the confidential information is required to be made by any law, regulation, governmental authority, or court; or,
- c) 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.
- d) 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

Page 26 of 29

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 Mississippi. The Agreement is further governed by the Mississippi Procurement Manual, a copy of which is available online at <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/>

Attachment F - Checklist of Submitted Documentation

	Initials
Prior Projects with References (Customers) Submitted.	
Registered with MAGIC.	
Amendments to IFB acknowledged, if any.	
Attachment C, Attachment D, and Attachment F signed.	

Signed: _____

Printed Name: _____

Company Name: _____

Date: _____