

**Invitation for Bids**  
**RFx No. 3160001087**  
**Smart No. 1450-16-R-IFBD-00032**  
**Furnish and Deploy Approved Cultch**  
**Material**



**ENHANCE ★ PROTECT ★ CONSERVE**

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

Contact: Erin Gallagher – [procurement@dmr.ms.gov](mailto: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 a bid from you, the bidder, for furnishing and deploying approved cultch material (sometimes referred to herein as “cultch”). The deployment of cultch material is for the enhancement of oyster beds in the Mississippi Sound. The scope of work to be performed and the deliverables required under the contract are also set forth herein.

## **Deadlines/Timeline**

<b>RFQ Issue Date</b>	<b>June 16, 2016</b>
<b>Deadline for Questions to MDMR</b>	June 24, 2016, 10:00 a.m. CST
<b>Posting of Written Answers to Questions</b>	June 28, 2016, 4:00 p.m. CST
<b>IFB Submission Deadline</b>	July 8, 2016, 2:00 p.m. CST

## **How to Bid**

Your bid submission must be **received** by MDMR no later than **July 8, 2016, at 2:00 p.m. CST**. You may submit your bid electronically through the State of Mississippi MAGIC portal, or you may personally deliver or mail your bid to Erin Gallagher, 1141 Bayview Avenue, Procurement Department 6<sup>th</sup> 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 returned unopened.** Instructions on how to submit your bid are set forth herein.

## **Scope of Project**

The Contractor will be responsible for furnishing and deploying cultch material by barge to the western Mississippi Sound and Biloxi Bay. The cultch material will be clean and

free from any hazardous substances or excessive dust. Cultch material will be transported to deployment areas on deck barges that are loaded to conform to the depth of the water at the deployment site. Bids should include the unit price per cubic yard of cultch material, total cubic yards of cultch material and overall price (unit price per cubic yard multiplied by total cubic yards) which will include deployment. The price of this project will not exceed \$600,000.

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

- The Contractor will plant cultch in specified areas which will be designated by MDMR personnel in advance of the day of the cultch laying. The contract will give the MDMR Project Manager at least twenty four (24) hours notice in cultch deployment.
- Types of approved cultch material are oyster shells, clam shells, limestone, or crushed concrete.
- Cultch will be clean and free of any hazardous substances or excessive dust.
- Bidders proposing any non-domestic or non-traditional cultch material must include a marked 5 gallon representative sample of the cultch material at the time of the bid submittal. This sample will be used to determine the cultch material's suitability for the project purpose.
- The Contractor will guarantee that all cultch is clean and no more than 5% of the cultch material, by volume, may consist of fragments, pieces, fines, or shells smaller than 3/8" (three-eighth inch) in diameter. For cultch material other than shell, the size should be American Association of State Highway and Transportation Officials ("AASHTO") Size #57 or equivalent, with no more than 5% by volume of the cultch material out of the AASHTO Size #57 specification. The MDMR reserves the right to have its representatives inspect all cultch material at the loading site before cultch material is accepted and each barge-load will be monitored at the deployment site. All small particles in excess of the allowed 5%, or otherwise outside of the specifications listed above, will be deducted from the total project cost.
- Cultch material will be transported to deployment areas on deck barges that are loaded to conform to the depth of the water at the deployment site. Tugboats and barges (loaded) will not draw more than five (5) feet of water. The deployment will be performed utilizing a grid pattern so as to accomplish a uniform distribution of the cultch material. To ensure proper maneuverability, the tugboat used to distribute the cultch material will not push or pull more than two (2) loaded barges at one time during deployment. MDMR employees will be onsite to monitor compliance with the terms of the contract. This will include

among other aspects, the even distribution of cultch material during the deployment at locations specified by the MDMR.

- The Contractor is responsible for ensuring that the minimal clearances are met.
- The MDMR will measure cultch material on board the barges prior to deployment and will calculate the total cubic yards of material on each barge (See Attachment F).
- Cultch material will be washed overboard using a minimum of three (3) high-pressure water hoses having not less than 90 p.s.i. pressure on a 1.25 inch nozzle or greater. This high-pressure jet of water is directed against the cultch in a manner to spray it in a thin, even layer for a distance of 20 to 50 feet from the barge. Throughout the operation, the barge will be maneuvered over the deployment location in a fashion so that cultch will cover the entire area to the needed density as determined by authorized MDMR personnel.
- At no time will the spray barge and tug pass over previously deployed areas unless authorized to do so by MDMR personnel.
- The diagrams found in Attachments D and E illustrate the procedure and necessary equipment for deployment (See Attachments D and E). The Contractor must have equipment and personnel capable of unloading two hundred and fifty (250) cubic yards of suitable cultch material within one (1) hour, once on site and have sufficient equipment and crew capable of handling a minimum one thousand two hundred and fifty (1250) cubic yards per day. The use of multiple pumps and spray nozzles will increase the rate of unloading proportionately. Multiple pumps, spray nozzles and hoses, three or more in number, will unload a two hundred and fifty (250) cubic yard barge in approximately one (1) hour or less. This system is highly recommended.
- Additionally, all equipment as required by applicable State and/or federal law will have the necessary marine safety equipment on-board. The Contractor will designate the exact equipment that will be used in the performance of the work to MDMR personnel and agree that MDMR personnel may inspect the equipment and that the MDMR personnel may accept and/or reject some or all equipment selected.
- The Contractor must understand and agree that the deadlines in this agreement are essential to the successful planting of the cultch and must be done at a time when oyster spat is present in order to yield the best results, therefore, the Contractor agrees to adhere to the specified timeline.
  - The Contractor will move and deploy cultch material between August 15, 2016 and September 30, 2016, with actual deployment to begin no later September 7, 2016.

- The Contractor agrees to commence delivery within the time frame as stated above in this IFB and to continue delivery without delay unless otherwise notified by the MDMR personnel monitoring this project, or the contractual amount of cultch material has been successfully deployed.
- All deployment activities must be conducted during daylight hours Monday through Friday. No deployments may be made on weekends, or State or federal holidays.
- In the event that the weather 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.
  - The Contractor must retrieve any and all debris which is expelled during the deployment. If debris is present, the Contractor must provide a vessel and personnel to achieve this debris collection. The debris collection vessel must be capable of communicating with the captain in charge of the deployment barge.
  - All personnel must wear a United States Coast Guard approved Personal Flotation Device while on deck during deployment and while retrieving any debris.
- All equipment to be used on this project by Contractor must be in compliance with Occupational Safety and Health Administration and United States Coast Guard requirements. The successful bidder may be required to provide MDMR with documents evidencing this compliance.
- Before a contract is signed, the successful bidder will 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 project. The inspection will be conducted at a date and time mutually agreed upon between the successful bidder and the MDMR representative. Failure to comply with this requirement may result in rejection of the bid.
- The contractor will also provide a functioning U.S. Coast Guard approved marine sanitation device (MSD) on either the pump barge or the tug boat.

## **Deliverables**

The deliverables are to include:

1. Furnishing of cultch material;

2. Deployment of cultch material between August 15, 2016 and September 30, 2016, with actual deployment to begin no later September 7, 2016.; and,
3. Project completion date: September 30, 2016

## **Required Qualifications for Bidding**

The required qualifications for bidding include:

- Bidders must have prior experience furnishing and deploying cultch materials using the methods described in this IFB. Bidders must submit at least one prior project they have successfully completed which demonstrates the required experience, including a description of the work performed, and reference (customer for the project) with contact names, phone numbers, and email address. Bidders may submit more than one project but are not required to do so. (*See Attachment A*); and,
- Bidders must also submit two additional references from clients for which the bidder has provided comparable goods and marine services.

## **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:

<b>Coverage Type</b>	<b>Amount</b>
<b>Workers' Compensation (as required by Mississippi law)</b>	
Accident (Per Occurrence)	\$100,000
Disease-Policy Limit	\$500,000
Disease-Per Employee	\$100,000
<b>General Liability</b>	
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

### **Bond Requirements**

**You must provide certain bonds within ten (10) calendar days of a fully executed contract.** All bonds must be corporate surety bonds issued by a surety company authorized to do business in Mississippi. MDMR must be named as exclusive beneficiary. This project requires the following bonds:

**Performance Bond.** You must provide a performance bond for 100 percent of the bid. The bond helps guarantee timely and complete performance of the project.

**Payment Bond.** You must provide a payment bond for 100 percent of the bid. The bond guarantees payment of all workers and subcontractors working on this project.

### **Authority to Do Business with MDMR**

- 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.*

### **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:

**Erin Gallagher, Procurement Director**  
[procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

All questions/requests for clarification must be received no later than June 24, 2016 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 June 28, 2016 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](https://www.ms.gov/dfa/contract_bid_search/Bid)) in a manner that all potential bidders will be able 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.mmrs.state.ms.us/vendors/index.shtml>.

- 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](mailto: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.** You may also contact Erin Gallagher at (228) 523-4147 or email [Procurement@dmr.ms.gov](mailto:Procurement@dmr.ms.gov).

### **MAGIC Submission Requirements (option)**

- The bid submission must be submitted in MAGIC no later than 2:00 PM CST, July 8, 2016.
- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and returned to the bidder 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 6<sup>th</sup> Floor, Biloxi MS 39530 no later than 2:00 PM CST, July 8, 2016.
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and returned to the bidder unopened.
- The envelope must be marked with the bid opening date and time, and the number of the IFB (July 8, 2016, 2:00 PM CST; RFX No.3160001087; Smart No. 1450-16-R-IFBD-00032).
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- Submissions via facsimile (faxes) 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 labeled as follows:

**“FURNISH AND DEPLOY APPROVED CULTCH MATERIAL”**

RFx No. 3160001087  
Smart No. 1450-16-R-IFBD-00032  
Opening Date: 2:00 PM CST, July 8, 2016  
Mississippi Department of Marine Resources  
Procurement Department, 6<sup>th</sup> Floor  
Attention: Erin Gallagher  
1141 Bayview Avenue  
Biloxi MS 39530  
**SEALED BID – DO NOT OPEN**

The **deadline** for receiving bids is **July 8, 2016 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 G) 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 Mississippi Department of Marine Resources reserves the right to reject any and/or all bids and waive any minor informality.

### **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](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).

### **Notification of Successful Bidder**

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](http://www.dmr.ms.gov). Work is expected to begin within 15 calendar days of receipt of a fully executed contract.

### **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.

### **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. For all purposes under any such contract:

- The Contractor shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be an employee of MDMR; and,
- Amounts paid to the Contractor under a contract will be paid as a gross sum with no withholdings or deductions being made by MDMR for any purpose.

## **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:

Erin Gallagher, Procurement Director  
Mississippi Department of Marine Resources  
1141 Bayview Avenue

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 the invoice.

## **Compensation for Goods and Services**

Compensation for services will be in the form of a flat rate. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

## **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 – Contract Clauses
- Attachment D – Procedure and Equipment
- Attachment E – Procedure and Equipment
- Attachment F – Barge Measurement Method
- Attachment G – Checklist

## Attachment A

# BID COVER SHEET

COMPANY NAME: \_\_\_\_\_

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for the furnishing and deployment of approved oyster cultch material.

Bids must be submitted by 2:00 p.m. CST on July 8, 2016.

### You Must Mark Your Sealed Envelope Like This:

**FURNISH AND DEPLOY APPROVED OYSTER CULTCH MATERIAL**  
**RFx No. 3160001087**  
**Opening Date: July 8, 2016 at 2:00 p.m. CST**  
**Mississippi Department of Marine Resources**  
**Attention: Erin Gallagher**  
**1141 Bayview Avenue**  
**Procurement Department, 6<sup>th</sup> Floor**  
**Biloxi, MS 39530**  
**SEALED BID – DO NOT OPEN**

**Name of Company:**

\_\_\_\_\_

**Quoted by:**

\_\_\_\_\_

**Signature:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**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:

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.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

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.

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### **Prior Project(s) of Comparable Complexity/References**

List prior experience furnishing and deploying cultch materials using the methods described in this IFB, including a description of the project, location, time-frame for completion of the project, the actual completion date, and reference (customer) for the project who can be contacted by MDMR. You must list a minimum of one project, but you may list more. **For each reference, please provide current contact information, including phone number, as MDMR must be able to contact references immediately following the bid opening.**

You may use a supplemental sheet to describe the projects, if necessary.

Project:

- a. Date Completed: \_\_\_\_\_
- b. Description of Scope: \_\_\_\_\_  
\_\_\_\_\_
- c. Location: \_\_\_\_\_
- d. Timeframe for Completion: \_\_\_\_\_
- e. Reference Name (customer): \_\_\_\_\_
  - i. Telephone: \_\_\_\_\_
  - ii. Email: \_\_\_\_\_
  - iii. Job Title: \_\_\_\_\_

**References:**

In addition to the prior project(s) listed above, please list at least two additional professional references familiar with the vendor's abilities in the areas involved with this solicitation.

Reference:

- a. Name (customer): \_\_\_\_\_
  - i. Telephone: \_\_\_\_\_
  - ii. Email: \_\_\_\_\_
  - iii. Job Title: \_\_\_\_\_

Reference:

- a. Name (customer): \_\_\_\_\_
  - i. Telephone: \_\_\_\_\_
  - ii. Email: \_\_\_\_\_
  - iii. Job Title: \_\_\_\_\_

Please provide current contact information as MDMR must be able to contact these references immediately following the bid opening. You may provide more than two references, however, MDMR will call only one reference from this list as well as the reference (customer) listed above under Prior Project(s) of Comparable Scope and Complexity.

**Attachment B**

**BID FORM**

**OYSTER CULTCH MATERIAL FURNISHING  
AND DEPLOYMENT**

COMPANY NAME: \_\_\_\_\_

- (A) Unit price per cubic yard \$ \_\_\_\_\_
- (B) Total cubic yards of oyster cultch \_\_\_\_\_
- (C) Bid price \$ \_\_\_\_\_ (Total of (A) multiplied by (B))

Specify cultch material to be deployed \_\_\_\_\_

\_\_\_\_\_

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 D.
4. That you will deliver the goods and perform the services required at the prices 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.

**COMPANY NAME:** \_\_\_\_\_

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 [www.dfa.state.ms.us/Purchasing/ProcurementManual.html](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMPANY NAME:**

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**SIGNATURE:**

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Name and Title

Date

## **Attachment C**

# **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](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 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).

## 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 [www.dfa.state.ms.us/Purchasing/ProcurementManual.html](http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html).

## Attachment D

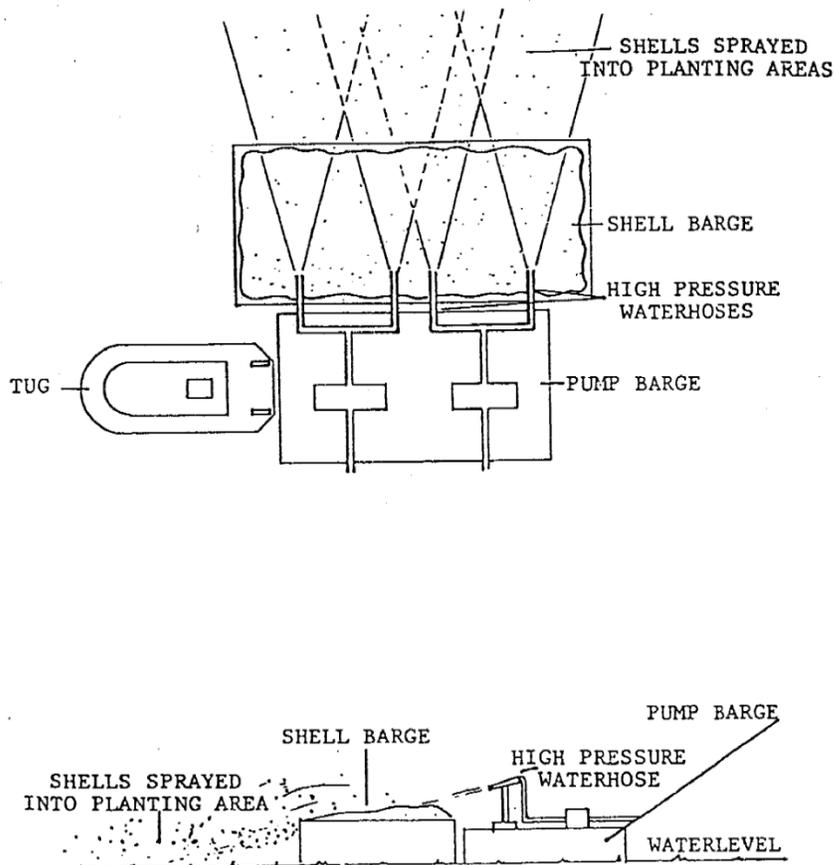
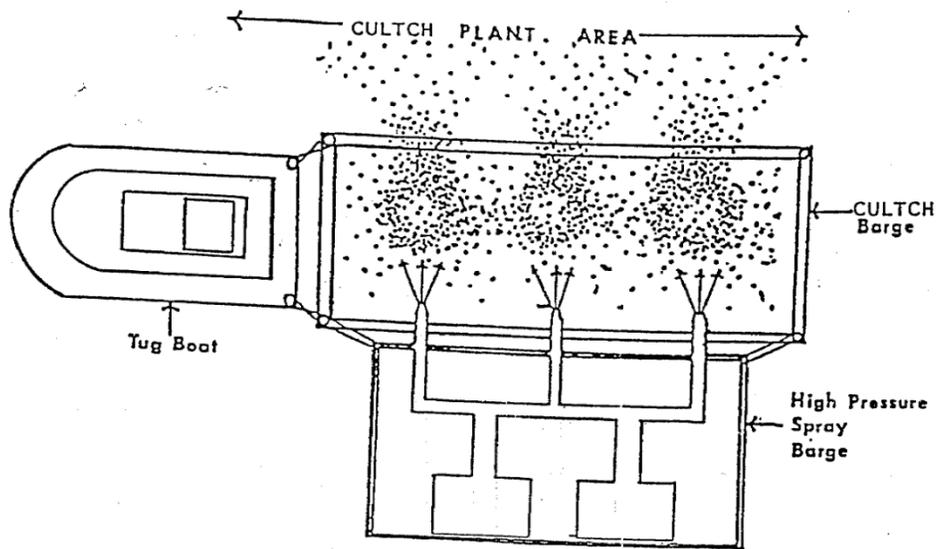


FIGURE I

## Attachment E



## Attachment F

### Barge Measurement Method

Materials will be measured to the nearest tenth of a foot using a tape measure for all lengths and widths and a laser level and a transit rod will be utilized for obtaining all heights.

Figure 1 illustrates the locations for obtaining measurement.

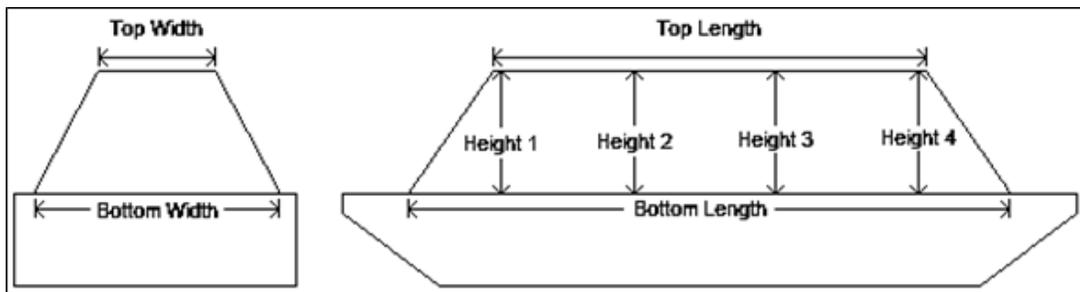


Figure 1. Typical Barge Loaded With Material Showing Measurement Locations

Eleven total measurements will be recorded. *Bottom Length, Bottom Width, Top Length, Height 1, Top Width 1, Height 2, Top Width 2, Height 3, Top Width 3, Height 4 and Top Width 4.*

To obtain the bottom width and length the total width and length of the barge is measured first. The edge of the slope of the shell pile is then measured to the side of the barge and subtracted from the total length/width of the barge. Several measurements may be taken for an average.

It is encouraged that the contractor witnesses all measurements and that any concerns or disputes about the measurements be resolved on site.

If the barge is listing, alternating sides of the barge will be measured where possible.

**Prismoidal Formula:**  $\text{Volume} = 1/6 \text{ Average Height } ((\text{Bottom Length} \times \text{Bottom Width}) + (\text{Bottom Length} + \text{Top Length}) \times (\text{Bottom Width} + \text{Average Top Width}) + (\text{Top Length} \times \text{Top Width}))$

**Note:** The volume as calculated above is in total cubic feet. To convert to total cubic yards, the result is divided by 27, since there are 27 cubic feet in a cubic yard.

## Attachment G

### Checklist of Submitted Documentation

	Initials
Prior Project(s) with References (Customers) Submitted.	
Two Additional References.	
Registered with MAGIC.	
Amendments to IFB acknowledged, if any.	
Attachment A, Attachment B and Attachment G signed.	

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_