

# **Invitation for Bids**

**RFx No. 3160002536**

**Smart No. 1450-19-IFBD-00001**

**Barge Use for Oyster Relay**



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

Contact: Rick Kinnard, Procurement Director  
[procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

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## 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 to provide personnel, vessels and/or barges, equipment and machinery for the transfer of oysters as directed by the MDMR.

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

## Section 2 – Scope of Work

- 1.1 The Contractor will provide and be responsible for personnel, vessels and/or barges, equipment and machinery necessary for the transfer of oysters as directed by the MDMR. The Contractor will load and deploy oysters only in areas designated by the MDMR and at the times allocated by the MDMR for such activities;
- 1.2 The Contractor will load a minimum of 3,000 sacks of oysters from oyster boats onto the Contractor's vessels or barges which will be located at Pascagoula, and then transport those oysters to a destination or destinations as determined by the MDMR. The Contractor will deploy the oysters evenly over the areas designated by the MDMR;
- 1.3 The Contractor will transport oysters to deployment areas on barges or vessels that are loaded to conform to the depth of the water at the deployment sites so as to not draw more than five feet of water;
- 1.4 The Contractor will utilize a grid pattern in deployment so as to accomplish a uniform distribution of the material to the density determined by MDMR personnel;
- 1.5 The Contractor agrees that at no time will the deploying barge and tug disburse the oysters over previously deployed areas unless authorized to do so by MDMR personnel;
- 1.6 The Contractor agrees that a tugboat used to disburse the oysters shall not push or pull more than one loaded barge at a time during transfer and deployment, so as to ensure proper maneuverability;
- 1.7 The Contractor will disburse the oysters in a thin, even layer;
- 1.8 The Contractor will allow independent contractor dealer/processors designated by MDMR to board the vessel at the loading site for the purpose of purchasing oysters;
- 1.9 The Contractor will allow MDMR personnel to accompany the Contractor on the vessel

to observe loading, transfer and deployment techniques and to verify that all oysters are being properly loaded, transferred and deployed;

- 1.10 The Contractor shall require all personnel and passengers to wear a U.S. Coast Guard Approved Personal Floatation Device while on deck during loading, transfer and deployment;
- 1.11 The Contractor will have equipment and personnel capable of loading, transferring and deploying a minimum of 3,000 sacks of oysters daily;
- 1.12 The Contractor must have a minimum of two (2) material barges, minimum size 90' x 25' or capable of carrying 15,000 sacks and a minimum of one (1) equipment barge capable of carrying MDMR personnel and independent contractor seafood dealers/processors;
- 1.13 The Contractor will provide vessels and barges with qualified and sufficient personnel and equipment for each vessel and will commence loading, transferring and deploying oysters within the time frame as specified in Section 1.14 of this agreement and will continue delivery without delay until notified to the contrary by the MDMR personnel monitoring this project;
- 1.14 The Contractor should be available to set up for operations by 0700 hours on December 6, 2018. The Contractor is aware operation can commence as early as December 6, 2018 and all operations will end no later than December 5, 2019. The Contractor will only deploy loaded barges during daylight hours and as directed by MDMR personnel;
- 1.15 The Contractor will assume responsibility for any damage to Contractor's vessel or equipment;
- 1.16 The Contractor will adhere to all applicable Mississippi and federal fishing regulations and all Mississippi and federal boating and other safety requirements;
- 1.17 The Contractor will perform additional duties as requested and mutually agreed upon by both the Contractor and the MDMR and agree to abide by rules and limitations established by the MDMR for this program;
- 1.18 All equipment used on this project by the Contractor must be in compliance with Occupational Safety and Health Administration (OSHA) and United States Coast Guard requirements. The successful bidder may be required to provide MDMR with documents evidencing this compliance;
- 1.19 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;

- 1.20 The contractor will also provide a functioning United States Coast Guard approved marine sanitation device (MSD) on the equipment barge; and,
- 1.21 The Contractor will not delegate or subcontract its duties under this Agreement in whole or in part.

### Section 3 - Deadlines/Timeline

<b>IFB Issue Date</b>	<b>September 20, 2018</b>
<b>Newspaper Publication Dates</b>	September 20, 2018 & September 27, 2018
<b>Deadline for Questions to MDMR</b>	October 2, 2018, 2018 by 10:00 a.m. CST
<b>Posting of Written Answers to Questions</b>	October 4, 2018 by 4:00 p.m. CST
<b>Bid Submission Deadline</b>	<b>October 23, 2018 at 2:00 p.m. CST</b>

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 Tuesday, October 23, 2018**. 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:

**Rick Kinnard, Procurement Director** at [procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

All questions/requests for clarification must be received no later than **October 2, 2018 by 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 <https://portal.magic.ms.gov/irj/portal> in a manner that all bidders will be able to view by **October 4, 2018 by 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 – Acknowledgment of Amendments

Should an amendment or amendments to this IFB be issued by MDMR, it will be posted on the MDMR website [www.dmr.ms.gov](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 bidders will be able to view. **Furthermore, bidders shall acknowledge receipt of any amendment to this IFB by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the Bid Form (Attachment B), or by letter.** The acknowledgment must be received by the MDMR

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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 - Basis for Award

The MDMR will award the bid to the lowest responsive, responsible bidder who meets the minimum required qualifications and can complete the scope of work, subject to approval by the Public Procurement Review Board (PPRB), 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 7 - Minimum Required Qualifications

### **The minimum qualifications for bidding include:**

- Bidders must have prior experience deploying oyster cultch material.
- Bidders must have two (2) material barges, minimum size of 90' x 25' or capable of carrying 15,000 sacks of oysters and a minimum of one (1) equipment barge capable of carrying MDMR personnel and independent contractor seafood dealers/processors.
- Bidders must have prior experience in successfully completing a minimum of one project of a similar scope as the work described in this IFB (deploying oyster cultch material). Bidders must submit a list of projects which demonstrate the required experience, including a description of the work performed, and references (customers for the projects) with contact names and phone numbers. See [Attachment A](#).
- Bidders must have two professional references from clients for which the respondent has provided comparable services; 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 12.

### **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 8 - Bond Requirements

No bonds are required for this Invitation for Bids.

## Section 9 - 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
<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

## Section 10 - 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 11 – Term and Type 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.

The contract will be a Firm Fixed Price contract. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

## Section 12 - 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](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.**

### IFB MAGIC Submission Requirements (option #1)

- The bid submission must be submitted in MAGIC no later than **2:00 PM CST, October 23, 2018**.  
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, 6<sup>th</sup> Floor, at 1141 Bayview Avenue, Biloxi MS 39530 no later than **2:00 PM CST, October 23, 2018**.
- 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:

**“Barge Use for Oyster Relay”**

RFx No. 3160002536

Smart No. 1450-19-R-IFBD-00001

Opening Date: 2:00 PM CST, October 23, 2018

Mississippi Department of Marine Resources  
6<sup>th</sup> Floor Department of Finance and Administration  
Attention: Rick Kinnard, Procurement Director

1141 Bayview Avenue

Biloxi MS 39530

**SEALED BID – DO NOT OPEN**

The **deadline** for receiving Bids is **October 23, 2018 at 2:00 p.m.** Late submissions will not be accepted.

## Section 13 - Requirements for Bidding

All Bids must include the following:

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

Use the bid form ([Attachment B – 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 B – 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 14 - 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 – Bid Form](#).

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

## Section 16 – Protests and Debriefing

**Protests.** If you are an actual or prospective bidder and feel aggrieved by this solicitation or award of a contract, then you may file a protest with the Chief Procurement Officer of the MDMR with a copy to the Department of Finance Administration (DFA) Office of Personal Service Contract Review (OPSCR). The protest must be in writing and explain the specific reasons that you are protesting. The protest must be filed within seven (7) calendar days of the award or seven (7) calendar days of the solicitation posting if the protest is based on this solicitation. Late protests shall not be considered.

Alternatively, an aggrieved party may file a protest directly to the PPRB OPSCR within seven (7) calendar days after the party knew or should have known of the facts and circumstances upon which the protest is based, but in no event later than within seven (7) days of the solicitation posting or award.

**Post Award Vendor Debriefing.** Pursuant to OPSCR Rules and Regulations Section 7-114, the vendor may request a post-award debriefing, in writing, by U. S. mail or electronic submission. The request must be made within three (3) business days of notification of the contract award. A debriefing is a meeting and not a hearing. Therefore, legal representation is not required. Should the vendor prefer to have legal representation present, the vendor must notify the MDMR and identify the attorney. The MDMR shall be allowed to schedule and/or suspend and reschedule the debriefing at a time when a representative from the Office of the Mississippi Attorney General's office can be present.

For additional information regarding the process and procedure for Protests and Vendor Debriefing, please refer to the OPSCR Rules and Regulations that may be found at <http://www.dfa.ms.gov/media/6559/4-6-18-final-opscr-rules-sos-apa.pdf>.

## Section 17 - Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

## Section 18 - 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 services and not based on an employer-employee relationship or a joint venture relationship.

## Section 219 - Contract Administration

The contract awarded, if any, subsequent to this solicitation shall be administered by the MDMR. All invoices submitted after the completion of the scope of work by the Contractor for payment pursuant to the contract shall be submitted as follows:

**By Mail:**

Attention: Rick Kinnard, Procurement Director, Mississippi Department of Marine Resources,  
1141 Bayview Avenue, Biloxi, MS. 39530

**By Email:**

Attention: Rick Kinnard

[Procurement@dmr.ms.gov](mailto:Procurement@dmr.ms.gov)

The MDMR will provide timely payment in accordance with Section 31-7-301 *et seq.* 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 20 - Equal Opportunity Statement

MDMR will select the bidder for award without regard to race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws.

## Section 21 - 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
- [Attachment B](#) – Bid Form
- [Attachment C](#) – Checklist of Submitted Documentation
- [Attachment D](#) – Contract Clauses
- [Attachment E](#) – Reference Score Sheet

## Attachment A - Bid Cover Sheet

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

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for Barge Use for Oyster Relay.

Bids must be submitted by **2:00 p.m. CST on October 23, 2018**

**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.

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

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

List prior experience deploying oyster cultch material using the methods described in this IFB, including a description of the project, location, time-period 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:**

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

Description of Scope: \_\_\_\_\_

Location: \_\_\_\_\_

Timeframe for Completion: \_\_\_\_\_

**Reference:**

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

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:

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Job Title: \_\_\_\_\_

Reference:

Name (customer): \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

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 one reference (customer) listed above under Prior Project(s) of Comparable Scope and Complexity. See [Attachment E](#).

## Attachment B – Bid Form

### BARGE USE FOR OYSTER RELAY

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 D - Contract Clauses](#).
4. That you will perform the Scope of Work in Section 2 of this IFB 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. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.** The Bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

8. **CONTINGENT FEES.** Have you retained a person on a percentage, commission, or other contingent fee arrangement to solicit or secure a state contract on upon an agreement or understanding for compensation?

- Yes
- No

If yes, please explain:

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9. **REPRESENTATION REGARDING GRATUITIES.** You represent that you have not violated, are not violating, and promise that you will not violate the prohibition against gratuities set forth in Section 6-204 of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* available online at <http://www.dfa.ms.gov/media/6559/4-6-18-final-opscr-rules-sos-apa.pdf>.

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

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

**SIGNATURE:** \_\_\_\_\_

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date





## Attachment C - Checklist of Submitted Documentation

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

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

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

Company Name: \_\_\_\_\_

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

## Attachment D - Contract Clauses

The following are some of the clauses that are applicable to this solicitation and that will be included in any contract resulting 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 represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

**Representation Regarding Contingent Fees.** The Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in 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-Verification.** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of the cancellation/termination being made public;
- b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c) both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to business in the State.

### **E-Payment**

Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

### **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.

### **Compliance with Laws**

Contractor understands that the MDMR is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

### **Termination**

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

- A. for default;
- B. for convenience;
- C. upon bankruptcy;
- D. for insufficient funds; or
- E. by mutual agreement.

### **Termination for Default.**

- (1) **Default.** If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) **Compensation.** Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.)
- (5) *Erroneous Termination for Default.* If after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**Termination for Convenience.**

- (1) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities

and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

**Termination upon Bankruptcy.** This contract may be terminated in whole or in part by MDMR upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

**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 Chief Procurement Officer of the MDMR, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

1. Cancel the stop work order; or,
2. Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

#### **Cancellation or Expiration of the Order:**

If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

1. The stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

#### **Termination of Stopped Work:**



If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

### **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 any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.*, and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

**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.

#### **Availability of Funds**

It is expressly understood and agreed that the obligation of the MDMR to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDMR, the MDMR shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDMR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

#### **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.

**Paymode.** Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

**Applicable Law.** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

**Procurement Regulations.** The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

**Approval Clause.** It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

# Attachment E – Reference Score Sheet

To Be Completed by MDMR Staff Only

**Bidder Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Reference Name:** \_\_\_\_\_

**Person Spoken To:** \_\_\_\_\_

**Score:** \_\_\_\_\_

Was the Bidder easy to work with in the scheduling and provision of the services rendered?	Yes	No
Were you satisfied with the services 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. Respondent must have a minimum score of “6” from two references (possible total of “8” points) to be considered responsible and for Bidder’s bid to be considered.

**Called By:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date and Time:** \_\_\_\_\_