

**Buoy Reef Deployment Project #15-409**  
**Jimmy Sanders-Artificial Reef Bureau Director**

**GENERAL INSTRUCTIONS**

**1.0 Invitation/Timeline**

**INVITATION:** Written bids subject to the conditions herein stated and attached hereto, will be received at this office until, **July 14, 2015, 10:00 AM CST** local time at which time they will be opened at the Mississippi Department of Marine Resources.

**TIMELINE**

<b>Invitation for Bid Issue Date:</b>	<b>June 24,2015 11:00 AM CST</b>
<b><u>Mandatory Pre-bid on Site Meeting</u></b>	<b>July 1, 2015, 09:00 AM CST</b>
<b>Questions to MDMR Deadline:</b>	<b>July 6, 2015, 05:00 PM CST</b>
<b>Written Answers to Questions Posted:</b>	<b>July 8, 2015, 11:00 AM CST</b>
<b>Bid Package Submission Deadline:</b>	<b>July 14, 2015, 11:00 AM CST</b>
<b>Bid Opening:</b>	<b>July 14, 2015, 11:00 AM CST</b>
<b>Notification of Successful Bidder:</b>	<b>July 17, 2015, 11:00 AM CST</b>
<b>Bid Debriefing Request</b>	<b>July 22, 2015, 05:00 PM CST</b>
<b>Bid Protest Deadline:</b>	<b>July 24, 2015, 05:00 PM CST</b>

Proposals and attachments must be submitted to:

Sonja Slater, Procurement Director     **or**  
Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, MS 39530  
(5 copies required)

MAGIC portal:  
<http://www.mmrs.state.ms.us/vendors/index.shtml>  
(5 copies not required if submitted in MAGIC)

## 2.0 Description

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

## 3.0 Scope of Services

Will include the transport and deployment crush concrete/limestone by barge from MDMR's staging site in Gulfport, Mississippi (See Figure 1) to Buoy Reef which is located approximately five (5) nautical miles southwest of Pass Christian Harbor (See Figure 2). A **mandatory** Pre-bid on site meeting will be held at MDMR's staging site in Gulfport on **July 1, 2015, 09:00 AM CST**

- 3.1 The contractor or his designee shall be present at the **mandatory** pre-bid site visit prior to submitting a bid. Any contractor/or designee who does not attend the pre-bid meeting will not be allowed to submit a bid. If a bid is submitted by a contractor/designee who did not attend the pre-bid meeting, it will be returned unopened.
- 3.2 The contractor shall meet with MDMR representatives at their office in Biloxi, Mississippi to discuss all aspects of the agreement prior to beginning any work. The date and time of the meeting will be set by mutual agreement following award of the contract.
- 3.3 The contractor shall supply the MDMR with the name(s) and phone number(s) of the person(s) who will be the official contact for the contractor's company.
- 3.4 The MDMR will be provided Global Positioning System (GPS) coordinates and a map of deployment locations to the successful contractor.
- 3.5 A MDMR representative(s) shall be onsite to monitor and oversee that material is deployed at the locations specified by MDMR.
- 3.6 The contractor shall give a twenty four (24) hour notice prior to contractor's departure to reef site.
- 3.7 All deployment activities shall be conducted Monday through Friday. No deployment shall be conducted on State and/or Federal holidays
- 3.8 In the event that the weather and/or other environmental conditions are deemed by MDMR to be unsuitable for deployment, MDMR reserves the right to either cancel or postpone the deployment. There will be NO deployment activity during a Small Craft Advisory or greater.
- 3.9 Throughout the operation, the barge will be maneuvered over the deployment location in a fashion so that crushed concrete/limestone will cover the entire area to the needed density as determined by appropriate MDMR personnel.
- 3.10 The contractor must place all materials in a manner such that no portion of the resulting structure exceeds the 6 inches Mean Lower Low Water (MLLW) clearance at the reef site
- 3.11 The contractor is responsible for insuring that the minimal clearances are met.
- 3.12 The contractor shall be responsible for determining the best method for ensuring the reef material is deployed inside the designated reef zone. All arrangements for labor and equipment required to load or transport the reef units, including rental or lease of cranes, lift barge or other equipment and the hiring of labor such as stevedores or crane operators, are the responsibility of the contractor to locate if needed.

- 3.13 The crushed concrete/limestone material will be measured by MDMR personnel on board barges prior to deployment and the total cubic yards of material on each barge will be calculated (Figure 3).**
- 3.14** The contractor shall be responsible for providing the means to move the material from its current location at the Gulfport staging site to the barge loading zone at Gulfport staging site.
- 3.15** The contractor's submitted bid shall be inclusive of a deployment plan and the plan shall include a methodology for verifying that all deployed structures meet the requirements as stated in Section 3. Failure to submit a design/plan that is consistent with the requirements of this agreement may cause the bid to be rejected as non-compliant.
- 3.16** The contractor shall submit a minimum of two (2) references with RFP document. References shall illustrate recent (within the last five years) experience in successfully completing offshore marine work of a similar nature and scope as the work described in this RFP. Reference shall include contact names and phone numbers of the contractor's customers and a description of the work.
- 3.17** Contractor must have a Coast Guard certified license to operate or tow vessels in open seas of the Gulf of Mexico
- 3.18** Before any award is made, as a result of bid received, the contractors under consideration shall be required to designate the exact equipment that will be used in the performance of the work and MDMR personnel may inspect the equipment which may be accepted or rejected because it is not considered to be satisfactory for the purpose of this contract. The contractor shall start the project within ten (10) days of receipt of fully executed contract. Additionally, all equipment shall be fully equipped with marine safety equipment as required by applicable state or federal law.
- 3.19** The contractor shall provide MDMR documents evidencing that all equipment used on this project is in compliance with Occupational Safety and Health Administration and United States Coast Guard.
- 3.20** The contractor shall retrieve any and all debris which is expelled during the deployment. The contractor shall provide a vessel and personnel to achieve this debris collection. The debris collection vessel shall be capable of communicating with the captain in charge of the deployment barge. All personnel shall be required to wear a United States Coast Guard approved Personal Flotation Device while on deck during deployment and while retrieving any debris.
- 3.21** The contractor shall be responsible for the removal and disposing of any debris and/or any material in the water located at the Gulfport staging site that would impede the contractor's ability to load the material onto the barge.
- 3.22** Barge loads will be determined and verified by MDMR on site staff members.

#### **4.0 Insurance Requirements**

The Contractor represents that it will maintain workers' compensation insurance as required by the State of Mississippi which shall insure to the benefit of all the Contractor's personnel provided hereunder; comprehensive general liability **OR** professional liability insurance. The contractor must list the State of Mississippi as an additional insured. The MDMR request that your proposal include certificates of

insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.

**Coverage and Minimum Amount:**

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

**Owners/Contractors protective Liability:**

General Aggregate \$1,000,000  
Per Occurrence \$500,000

**Automobile Liability:**

Bodily injury/Property Damage Combined Single Limit (Per Occurrence) \$500,000  
Bodily Injury (Per Person) \$250,000  
Bodily Injury (per Accident) \$250,000  
Property Damage (Per Occurrence) \$100,000

**Excess Liability (Umbrella on projects over \$500,000):**

Aggregate \$1,000,000  
Per Occurrence \$1,000,000

**Workers' Compensation (As required by Statute) Employers' Liability:**

Accident (Per Occurrence) \$100,000  
Disease-Policy Limit \$500,000 Disease-Per Employee \$100,000

\*USL&H, Jones Act Coverage

\*Per the Joes Act, the workers compensation should include the Untied States Longshore and Harbor Workers Compensation Act (USL&H) rider.

**5.0 DEBARMENT**

By submitting a proposal, the offeror certifies that it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the state of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the state of Mississippi.

**6.0 COMPENSATION FOR SERVICES WILL BE IN THE FORM OF A FIRM FIXED PRICE AGREEMENT**

**7.0 REJECTION OF PROPOSALS**

Proposals which do not conform to the requirements set forth in this RFP may be rejected by MDMR. Proposals may be rejected for reasons which include, but are not limited to, the following:

- (1) the proposal contains unauthorized amendments to the requirements of the RFP;
- (2) the proposal is conditional;
- (3) the proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
- (4) the proposal is received late;
- (5) the proposal is not signed by an authorized representative of the party;
- (6) the proposal contains false or misleading statements or references; and,
- (7) the proposal does not offer to provide all services required by the RFP.

## **8.0 INFORMALITIES AND IRREGULARITIES**

The MDMR has the right to waive minor defects or variations of a bid from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder with the bid for the MDMR to properly evaluate the bid, the MDMR has the right to require such additional information as it may deem necessary after the time set for receipt of bids, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

### **8.1 DISPOSITION OF BIDS OR PROPOSALS**

When bids or proposals are rejected, or a solicitation canceled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the agency's procurement file, or if unopened, returned to the bidders or offerors.

### **8.2 PRE-BID CONFERENCE (MANDATORY)**

A *mandatory* pre-bid conference will be held at **July 1, 2015, 09:00 AM CST** . All interested parties are required to attend. The purpose of the pre-bid conference is to allow potential bidders an opportunity to present questions to staff and obtain clarification of the requirements of the bid documents. Because the [agency] considers the conference to be critical to understanding the bid requirements, attendance is mandatory in order to qualify as a bidder. Minutes of the conference will not be published.

## **9.0 STANDARD TERMS AND CONDITIONS WHICH WILL BE INCLUDED IN ANY CONTRACT AWARDED FROM THIS RFB**

The successful offeror shall be required to execute a formal written contract containing, at a minimum, the following standard provisions:

## **9.1 Applicable Law**

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

## **9.2 Availability of Funds**

It is expressly understood and agreed that the obligation of the State to proceed under this agreement, or any agreement or contract entered into as a result of the IFB, 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 state, the state shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the state of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## **9.3 Confidentiality**

The contractor shall agree to assure the confidentiality of any records obtained from the MDMR as required by state and federal privacy laws. No information, documents or other material provided to or prepared by the contractor deemed confidential by MDMR pursuant to state and federal privacy laws, shall be made available to any person or organization without the prior approval of MDMR. Any liability resulting from the wrongful disclosure of confidential information on the part of the contractor shall rest with the contractor.

## **9.4 Stop Work Order**

(1) *Order to Stop Work.* The Procurement Officer, 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 Procurement Officer shall either:

- (a) cancel the stop work order; or

- (b) terminate the work covered by such order as provided in the ‘Termination for Default Clause’ or the ‘Termination for Convenience Clause’ of this contract.
- (2) *Cancellation or Expiration of the Order.* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
- (a) the stop work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and
  - (b) 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 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.
- (3) *Termination of Stopped Work.* If a stop work order is not cancelled 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.
- (4) *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

**9.5 Anti-Assignment/Subcontracting**

The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor’s special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this agreement in whole or in part without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

**9.6 Approval**

It is understood that the Contract requires approval by the governing agency. If this contract is not approved, it is void and no payment shall be made hereunder.

## **9.7 Attorneys' Fees and Expenses**

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

## **9.8 Authority to Contract**

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

## **9.9 Change in Scope of Work**

The MDMR may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDMR and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the MDMR in writing of this belief. If the MDMR believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

## **9.10 Contractor Personnel**

MDMR shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Contractor. If MDMR reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to MDMR in a timely manner and at no additional cost to



MDMR. The day-to-day supervision and control of the Contractor's employees and Subcontractors is the sole responsibility of the Contractor.

#### **9.11 Failure to Deliver**

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, MDMR, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that MDMR may have.

#### **9.12 Failure to Enforce**

Failure by MDMR at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of MDMR to enforce any provision at any time in accordance with its terms.

#### **9.13 Force Majeure**

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

#### **9.14 Indemnification**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the Agency, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be

allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

#### **9.15 Independent Contractor Status**

The Contractor shall, at all times, be regarded as an independent Contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint venturers, employer and employee, or any similar such relationship between the State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the State and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of MDMR; and MDMR shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. MDMR shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, MDMR shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

#### **9.16 No Limitation of Liability**

Nothing in this Agreement shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

#### **9.17 Notices**

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return

receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

**For the Contractor:** *name, title, contractor, address*

**For the Agency:**           **Sonja Slater, Procurement Director**  
  **Mississippi Department of Marine Resources**  
  **1141 Bayview Avenue**  
  **Biloxi, MS 39530**

### **9.18 Oral Statements**

No oral Statement of any person shall modify or otherwise affect the terms, conditions, or specifications Stated in this contract. All modifications to the contract must be made in writing by MDMR.

### **9.19 Ownership of Documents and Work Papers**

MDMR shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal Project correspondence. The Contractor shall deliver such documents and work papers to MDMR upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDMR and subject to any copyright protections.

### **9.20 Record Retention and Access to Records**

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the Contractor for three (3) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

### **9.21 Right to Inspect Facility**

The State may at reasonable times inspect the place of business of a Contractor or any Subcontractor which is related to the performance of any Contract awarded by the State.

## **9.22 State Property**

Contractor will be responsible for the proper custody and care of any State-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

## **9.23 Termination for Convenience Clause**

- (1) **Termination.** The DMR may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State.
- (2) **Contractor's Obligations.** The Contractor shall incur no further obligations in connection with the terminated work on the date of termination to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The DMR may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## **9.24 Termination for Default Clause**

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

Contractor such sums as the Procurement Officer 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, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Procurement Officer 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, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience,". (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 the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- (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.

## **9.25 Third Party Action Notification**

Contractor shall give MDMR prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

#### **9.26 Unsatisfactory Work**

If at any time during the contract term, the service performed or work done by the Contractor is considered by MDMR to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by MDMR, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, MDMR shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

#### **9.27 Waiver**

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

### **10.0 REQUIRED CLAUSES FOR PROCUREMENT**

#### **10.1 Acknowledgement Of Amendments**

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter to MDMR. The acknowledgment must be received by MDMR by the time and at the place specified for receipt of proposals.

#### **10.2 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.

### **10.3 Prospective Contractor's Representation Regarding Contingent Fees**

The prospective contractor represents as a part of such contractor's bid or proposal that such contractor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract

### **10.4 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. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. 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 such cancellation/termination being made public, or
- (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or
- (c) both. In the event of such termination/cancelation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

### **10.5 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 the Mississippi law on "Timely Payments for Purchases by

Public Bodies,” Section 31-7-301, et seq. Mississippi Code Annotated as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice.(Miss.Code Ann.§31-7-305(1972, as amended)

#### **10.6 Representation Regarding Contingent Fees**

The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor’s proposal.

#### **10.7 Representation Regarding Gratuities**

The offeror or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

#### **10.8 Procurement Regulations**

The contract shall be governed by the applicable provisions of the governing agency, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, MS 39201, for inspection. or downloadable at <http://www.mspb.ms.gov>.

#### **10.9 Transparency**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983”, codified as section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 31-7-13 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access. Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted..

#### **10.10 Paymode**

Payments by state agencies using the Statewide Automated Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The State,



may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency

#### **10.11 Stop Work Order**

(1) *Order to Stop Work.* The Procurement Officer, 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 Procurement Officer shall either:

(a) cancel the stop work order; or

(c) terminate the work covered by such order as provided in the ‘Termination for Default Clause’ or the ‘Termination for Convenience Clause’ of this contract.

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

(a) the stop work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and

(c) 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 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.

(3) *Termination of Stopped Work.* If a stop work order is not cancelled 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.

(4) *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

## **10.12 Compliance with Laws**

The Contractor understands that the State 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, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

## **11.0 EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS:**

### **11.1 Qualifications of Offerors**

The offeror may be required before the award of any contract to show to the complete satisfaction of MDMR that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The offeror may also be required to give a past history and references in order to satisfy MDMR in regard to the offeror's qualifications. MDMR may make reasonable investigations deemed necessary and proper to determine the ability of the offeror to perform the work, and the offeror shall furnish to MDMR all information for this purpose that may be requested. MDMR reserves the right to reject any offer if the evidence submitted by, or investigation of, the offeror fails to satisfy MDMR that the offeror is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the offeror's qualifications shall include:

- (1) The ability, capacity, skill, financial, and other necessary resources to perform the work or provide the service required;
- (2) The ability of the offeror to perform the work or provide the service promptly or within the time specified, without delay or interference;
- (3) the character, integrity, reputation, judgment, experience, and efficiency of the offeror; and,
- (4) The quality of performance of previous contracts or services.

**11.2 Step I:** Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

- 11.3 Step II:** Proposals that satisfactorily complete Step 1 will be reviewed/analyzed to determine if the proposal adequately meets the needs of MDMR. Factors to be considered are as follows:
- A. The overall quality of the proposal for performing the required services—the plan should reflect an understanding of the project and its objectives. Consideration will be given to the completeness of the response to the specific requirements of the solicitation. *(20%)*
  - B. Proposer’s ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.). This includes the ability of the Proposer to provide a work product that is legally defensible *(20%)*
  - C. The personnel, equipment, facilities, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting *(20%)*
  - D. A record of past performance of similar work *(20%)*
  - E. Time frame for completion of proposal *(20%)*
- 11.4 Step III.** MDMR Executive Director and/or his designee will contact the offeror with the proposal that best meets MDMR needs (based on factors evaluated in Step II) and attempt to negotiate an agreement that is deemed acceptable to both parties.
- 12.0 ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST SHALL BE IN WRITING.**
- 13.0 COST DATA SUBMITTED AT THIS STAGE IS SUBJECT TO NEGOTIATION BUT SHOULD INCLUDE AN ESTIMATE OF THE ANNUAL COST OF THE SERVICE.**
- 14.0 THE FOLLOWING RESPONSE FORMAT SHALL BE USED FOR ALL SUBMITTED PROPOSALS:**
- A. **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service;
  - B. **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks;
  - C. **Corporate experience and capacity:** Describe the experience, abilities, and qualifications of the firm and all persons who would be assigned to provide the required services, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service;
  - D. **Personnel:** Attach resumes' of all those who will be involved in the delivery of service - from principals to field technicians - that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
  - E. **References:** Give references for contracts of similar size and scope. Include the names of the organizations, the length of the contract, a brief summary of the work,

- samples in the form of screenshots or URLs should be included, and the name and telephone number of a responsible contact person;
- F. **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed;
  - G. **Additional data:** Provide any additional information that will aid in evaluation of the response;
  - H. **Cost data:** Estimate the cost of the service. Cost data submitted at this stage is not binding and is subject to negotiation if your firm is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals.

## **15.0 POST- AWARD DEBRIEFING**

### **15.1 General Statement**

In an effort to build and strengthen business relationships and improve the procurement process between vendors and the State, post-award vendor debriefing is available. The following information may be disclosed during post-award debriefing in accordance with Section 7-112.03 of the *Personal Service Contract Review Board Rules and Regulations*:

- 1) The agency's evaluation of significant weaknesses or deficiencies in the vendor's bid or proposal, if applicable;
- 2) The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
- 3) The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;
- 4) A summary of the rationale for award; and,
- 5) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

### **15.2 Debriefing Request**

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission, to be received by the MDMR within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify the MDMR and identify its attorney. Debriefing request deadline for this is 7/23/2015.

### **15.3 When Requested Debriefing Will Be Conducted**

Unless good cause exists for delay, the debriefing will occur within five (5) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the MDMR.

#### **15.4 Additional Information Regarding Post-Award Debriefing**

Additional information regarding post-award debriefing may be found in Section 7-112 of the *Personal Service Contract Review Board Rules and Regulations* which may be found at <http://www.mspb.ms.gov>.

**Artificial Reef Staging Site**



Figure 1

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

### **Buoy Reef**

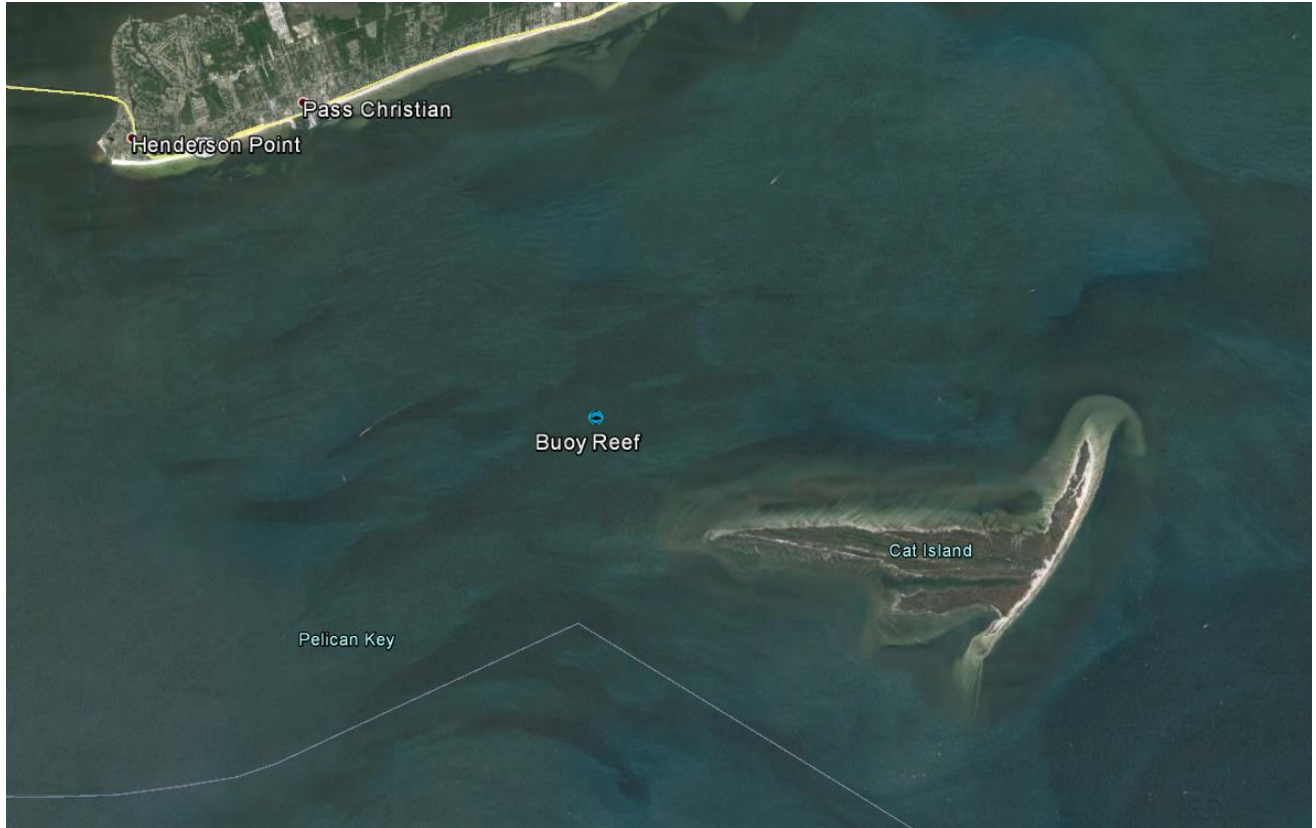


Figure 2

## 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.

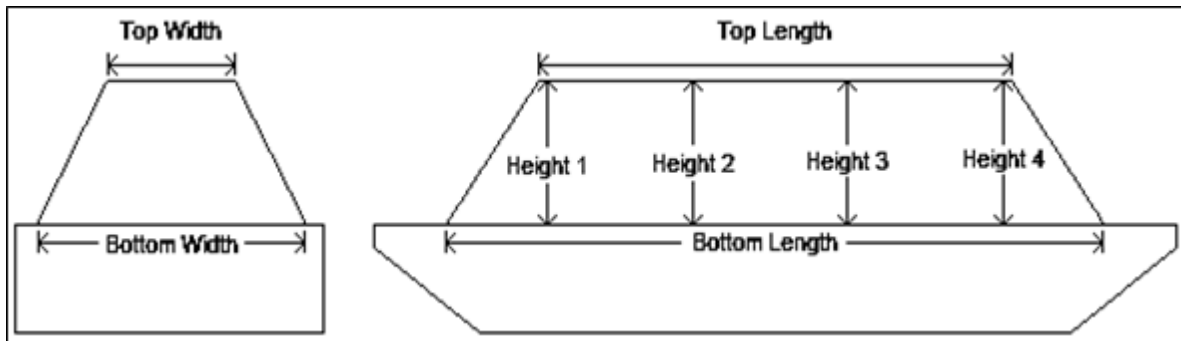


Figure 1. Typical Barge Loaded With Material Showing Measurement Locations

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.

Figure 3