

INVITATION FOR BIDS

No. 16-002

**SMART No. 1450-16-R-IFBD-
00002**

**IFB-JUVENILE REEF FISH HABITAT
DEPLOYMENT PROJECT**

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES
1141 BAYVIEW AVENUE
BILOXI, MISSISSIPPI 39530

Contact: Sonja Slater – Sonja.Slater@dmr.ms.gov

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SUMMARY

Project:

Juvenile Reef Fish Habitat Deployment Project

Description:

We are seeking the construction and deployment of artificial reef habitats.

MDMR Point of Contact:

Sonja Slater
Sonja.slater@dmr.ms.gov

Important Dates:

Bid Package Submission Deadline:	August 26, 2015, 10:00 AM CST
Notification of Successful Bidder:	September 4, 2015, 10:00 AM CST
Estimated Project start date:	September 20, 2015
Protest Date:	September 10, 2015, 5:00 PM
Debriefing Date:	September 10, 2015, 5:00 PM

ABOUT THIS IFB

The Mississippi Department of Marine Resources has issued this invitation for bids (IFB). The IFB contains the information necessary to submit a bid and describes the bid process. The MDMR is not bound by any information not contained in this IFB, unless formally noticed and issued by the point of contact. All attachments are incorporated as part of this IFB. Any contract issued from this IFB will contain certain required clauses. You can review these clauses in Attachment C.

The MDMR may issue amendments. If it does, the amendment will be posted on the MDMR website (<http://www.dmr.ms.gov>). All bidders must acknowledge receipt of amendments by signing and returning the amendment with the bid. The acknowledgment must identify the amendment number and date in the space provided on the bid form. If a bid has already been submitted, you may acknowledge receipt of the amendment by letter. The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of bids. It is the bidder's sole responsibility to monitor the website for amendments to the IFB.

THE PROJECT

We are the Mississippi Department of Marine Resources (“MDMR”). We are seeking bids from you, the bidder, for the construction of artificial reef habitats.

What is the Project?

The project will build and deploy juvenile reef fish habitat. The deployment of juvenile reef fish habitat is for the enhancement of recruitment of zero year class reef fish species in Mississippi’s adjacent federal waters. These adjacent federal waters consist primarily of flat featureless mud/sand bottom. The addition of this habitat will provide juvenile reef fish with habitat free from predators and competition and decrease mortality. A decrease in recruitment mortality will allow more fish to reach maturity and enter the fishery.

What is the project scope?

The contractor will be responsible for building and deploying juvenile reef fish habitat by barge at two locations on Fish Haven 13 and Fish Haven 14 (Attachment D). The juvenile reef fish habitat will be made out of concrete (4000 psi). The reefs will have a nested box design (Attachment E) with the outside box measuring 36”w x 36”l x 36”h with 3” holes distributed across the five surface areas. The inside box will be 16”w x 16”l x 16”h with 1.5” holes distributed across the five surface areas. The thickness of the sides of the boxes will be 3”. The reef will sit on a base 48”w by 48”l that will be 6” thick. Bids should include a maximum number of reefs that can be built and the price of deployment. The price of this project will not exceed \$89,000.

- The contractor must 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.

- The contractor must supply the MDMR with the names and phone numbers of the persons who will be the official contact for the contractor's company.
- The MDMR will be provided Global Positioning System (GPS) coordinates and a map of deployment locations to the successful contractor.
- An MDMR representative will be onsite to monitor and oversee that material is deployed at the locations specified by MDMR.
- The contractor must give a 24 hour notice prior to contractor's departure to reef site.
- All deployment activities must be conducted Monday through Friday. No deployments on the weekends, state or federal holidays.
- In the event that the weather or other environmental conditions are deemed by MDMR to be unsuitable for deployment, MDMR reserves the right to either cancel or postpone the deployment. There will be NO deployment activity during a Small Craft Advisory or greater.
- The successful contractor will deploy up to four structures at a time to the seafloor in a controlled manner and the structures shall be set in an upright position. The structures must be at least approximately 15m apart.
- The successful contractor must deploy the material according to permit specifications which requires there must be at least 20 feet of relief from the material to the water surface on FH-14 and 50 feet of relief from the material to the water surface on FH-13.
- The contractor is responsible for determining the best method for ensuring reef units are 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.

- The contractor's submitted bid must include a deployment plan and the plan must include a methodology for verifying that all deployed structures meet the requirements as stated in project scope. 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.
- The contractor must retrieve any and all debris which is expelled during the deployment. The contractor must provide a vessel and personnel to achieve this debris collection. The debris collection vessel must be capable of communicating with the captain in charge of the deployment barge. All personnel must wear a United States Coast Guard approved Personal Flotation Device while on deck during deployment and while retrieving any debris.

What are the expected deliverables?

- Construction of reefs.
- Deployment of reefs.

What is MDMR?

We are MDMR. The Mississippi Department of Marine Resources manages our coastal resources 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.

REQUIRED QUALIFICATIONS

What are the Required Qualifications?

The minimum qualifications for bidding are:

- The contractor shall submit a minimum of two references with RFB document. References shall demonstrate 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 RFB. Reference shall include contact names and phone numbers of the contractor's customers and a description of the work.
- 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 must start the project within 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.
- The selected contractor may be required to 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.
- You must be registered in MAGIC and with the Mississippi Secretary of State.

- You cannot submit a bid if you are debarred from bidding by the state, any political subdivision of the state (towns, cities, counties, agencies, etc.), or any other state. You also cannot submit a bid if you are an agent of someone debarred.

How Do I Register in MAGIC?

You must be registered in MAGIC in order to bid. You can register at

<http://www.mmrs.state.ms.us/vendors/index.shtml>.

How Do I Register with the Secretary of State?

You must register to do business with the Mississippi Secretary of State. If you are not already registered, then you must do so within seven days of being notified that you are the lowest and best bidder.

You can register at www.sos.ms.gov.

What Insurance Do I Need for this Project?

In order to enter into a contract, you must meet minimum insurance protection requirements. You must provide evidence of your policies.

All insurance policies must be issued by companies licensed or holding a Certificate of Authority from the Mississippi Department of Insurance. All general liability, professional liability, and employee insurance must provide coverage to the Mississippi Department of Marine Resources as an additional insured.

You must hold the following insurance in order to bid on this project:

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

What Bonds are Required for this Project?

In order to enter into a contract, you must provide certain bonds within seven days of a fully executed contract. All bonds must be corporate surety bonds issued by a surety company authorized to do business in Mississippi. MDMR

must be named as exclusive beneficiary. This project requires the following bonds:

Performance Bond. You must provide a performance bond for 100 percent of the bid. The bond helps guarantee timely and complete performance of the project. When we agree that your responsibilities under the contract have all been met, then we will release the performance bond.

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

BID SUBMISSION

What Do I Need to Include in My Bid Submission?

Your bid package must be signed and contain the following:

1. Bid cover sheet (Attachment A).
2. Bid form (Attachment B) including all pricing.

How Do I Fill Out the Bid Form?

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

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

In some cases before we find your bid unresponsive, we may require you to withdraw or change problem sections of your bid if they do not affect the quality, quantity, price, or delivery of the service.

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

How Do I Submit a Bid?

You may submit a bid in one of four ways. We do not accept email.

1. Personal Delivery.

You may bring the sealed bid package to the MDMR and deliver it directly to Sonja Slater on the 6th Floor. The address is:

1141 Bayview Ave.
Biloxi, Mississippi 39530

2. MAGIC.

You may submit the package electronically in the MAGIC portal at <http://www.mmrs.state.ms.us/vendors/index.shtml>. You may need to register if you have not already.

3. Mail.

If you mail the bid package, we recommend that you use certified mail with a return receipt requested. We are not responsible for lost or delayed mail. Keep in mind that packages must be **received** by the due date in order to be accepted.

Seal the envelope and label it **exactly** as follows:

**JUVENILE REEF FISH HABITAT
DEPLOYMENT PROJECT
Bid No. 16-002
Opening Date: 10:00 AM CST, August
26, 2015
Mississippi Department of Marine
Resources
Attention: Sonja Slater
1141 Bayview Avenue
Biloxi, MS 39530
SEALED BID – DO NOT OPEN**

When Are Bid Submissions Due?

Your bid submission must be ***received*** by

August 26, 2015 at 10:00 AM CST

If you submit by mail or personal delivery, we will mark your envelope with the date and time of receipt.

When I Submit My Bid, What am I Certifying?

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.

What If I Submit Confidential Information?

Once information is submitted to us, it is controlled by the Mississippi Public Records Act, Miss. Code Ann. 25-61-1 et al. Most information is then open to the public. Only certain exempt information remains confidential.

It is good practice to segregate confidential documents from the rest of the bid package. If you have information that is exempt from the Act, then you must:

1. Mark the document as “CONFIDENTIAL” and
2. Identify the exemption in the Act on which you are relying.

How do I Amend or Withdraw My Bid?

If you made a mistake in your bid submission, then you must notify us in writing requesting to withdraw the bid. If you discover the mistake after the bid opening, you must give us

all original documents and materials you used to prepare your bid within two days of the bid opening.

A request to withdraw a bid will only be allowed if all of the following are true:

1. The bid was submitted in good faith.
2. The bid price is substantially lower than the other bidders because of the mistake.
3. The mistake was a clerical error, not a judgment error.
4. The original documents used to prepare the bid clearly show that the mistake was an unintentional error in arithmetic or omission of labor or material.

BID PROCESS

What is the Bid Process Timeline?

Invitation for Bid Issue Date:	August 5, 2015 10:00 AM
Ads to run in the Paper:	August 5, 2015 and August 12, 2015
Questions to MDMR Deadline:	August 13, 2015, 10:00 AM CST
Written Answers to Questions Posted:	August 14, 2015, 10:00 AM CST
Bid Package Submission Deadline:	August 26, 2015, 10:00 AM CST
Bid Opening:	August 26, 2015, 10:00 AM CST
Notification of Successful Bidder:	September 4, 2015, 10:00 AM CST
Bid Protest Deadline:	September 10, 2015, 5:00 PM CST
Debriefing Request deadline	September 10, 2015, 5:00 PM CST
Estimated Project start date:	September 20, 2015

Questions and Requests for Clarification

August 15, 2015

If you have any questions or need clarification about this project, you must submit them to our point of contact by August 15, 2015, 10:00 AM CST. All questions and answers will be published on the MDMR website

<http://www.dmr.ms.gov>.

Do not contact any other MDMR staff regarding this IFB. Your MDMR point of contact is:

Sonja Slater, Director of Procurement
Mississippi Department of Marine Resources
Email: Sonja.Slater@dmr.ms.gov

**Bid Submissions Due
August 26, 2015**

You bid submission must be *received* by

August 26, 2015 at 10:00 AM CST

For more information on how to bid, see the Bid Submission section.

**Bid Opening
August 26, 2015**

The bid opening will be at 10:00 AM CST on August 26, 2015. At the bid opening, we will open, read, and announce the bid price of each bid. This is all that will happen. We will not discuss with any bidder the details of the specifications, and no award will be made at the bid opening. Bid openings are open to the public.

**Notification of Successful Bidder
September 4, 2015**

We will award the contract to the lowest and best bidder, subject to approval by the OPTFM if necessary. The award notification will be on September 4, 2015.

We will notify all bidders by mail and email of the award. We will also post the awarded bidder on our website at www.dmr.ms.gov.

Bid Protests

September 10, 2015

If you are an actual bidder and feel aggrieved by this IFB or the outcome, then you may file a protest with the Executive Director of the MDMR. The protest must be in writing and explain the specific reasons that you are protesting.

The Executive Director must receive protests by September 10, 2015. Late protests will not be considered.

Debriefing Requests

September 20, 2015

Whether the successful bidder or not, you may request a post-award bidder debriefing. Your request must be in writing (via mail or electronic submission) and we must receive it by September 20, 2015.

A bidder debriefing is not a hearing. You do not need legal representation. If you wish to bring an attorney, please identify the attorney in your request. We may reschedule the meeting until a representative of the Mississippi Attorney General's Office can be present.

The topics of discussion during the debriefing are limited. We may discuss topics such as an evaluation of your bid or our selection procedures. However, we will not discuss a point-by-point comparison of you to the other bidders.

ATTACHMENT A

BID COVER SHEET

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for the construction of artificial reef habitats.

Bids must be submitted by 10:00 AM CST on August 26, 2015.

You Must Mark Your Sealed Envelope Like This:

**JUVENILE REEF FISH HABITAT DEPLOYMENT
PROJECT**

Bid No. 16-002

Opening Date: 10:00 AM CST, August 26, 2015

Mississippi Department of Marine Resources

Attention: Sonja Slater

1141 Bayview Avenue

Biloxi, MS 39530

SEALED BID – DO NOT OPEN

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 agencies seeking services under this IFB:

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

What year was your company started?

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

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

List prior experience in the construction and deployment of artificial reefs as described in the Scope of Services.

ATTACHMENT B

BID FORM

**JUVENILE REEF FISH HABITAT
DEPLOYMENT PROJECT**

Bid price \$_____ per reef

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 C.
4. That you will perform the services required at the prices quoted above.
5. That, to the best of your knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

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.), or any other state. You also certify that you are not submitting a bid as an agent of someone debarred.

7. **INDEPENDENT PRICE DETERMINATION.** You certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price.

8. **CONTINGENT FEES.** Have you retained a person to solicit or secure a state contract upon an agreement or understanding for compensation?
 - Yes
 - No

9. **GRATUITIES.** You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi OPTFM Rules and Regulations*.

COMPANY NAME: _____

Name:
Title:

Date

ATTACHMENT C

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

Reporting Requirements

Activity Reports. Invoices must include detailed reports of all work performed including meetings, personnel interviews, reports drafted and other tangible work performed. A final report summarizing work performed for the contract period is due at the end of the contract period and is required before final payment on the contract can be made. Reports must be delivered to:

The Department of Marine Resources
Jimmy Sanders
1141 Bayview Avenue

Biloxi, MS 39530

Report Contents. Reports must include:

- A. Activities completed and date of completion;
- B. Problems encountered and remedial actions;
- C. Activities planned;
- D. Problems anticipated;
- E. Summary of meetings held and attendees; and
- F. Changes to the protocol or procedures.

Weekly Wage Reports. The Independent Contractor must provide the MDMR with a weekly statement of wages paid to each of its laborers and mechanics during the preceding weekly payroll period. Each payroll submitted must include a signed “Statement of Compliance” and can be found at <http://www.dol.gov/whd/forms/wh347.pdf>. These reports are due within seven days after the regular pay date, and must be kept for three years from the end of this contract. The statement of wages must include all of the following:

- A. The Employees’ names and addresses
- B. The Correct classification and rate of pay.
- C. Daily and weekly number of hours worked.
- D. Deductions made and actual wages paid.

Final Reports. The final report must include all outstanding information from the invoice reports and a summary of data and conclusions from the project.

Ownership and Intellectual Property

The MDMR owns all documents and intellectual property created in connection with this contract, except for the Contractor’s internal administrative and quality assurance files and internal correspondence. The Contractor must deliver all documents and working papers to MDMR on termination or completion of this contract.

The Contractor assigns all worldwide interest to the work created under this contract exclusively to MDMR, including all software code, documentation, design, trademarks, logos and trade dress associated with the work. Contractor disclaims all trademark and copyright interest in the work. The Contractor affirms that it has no other intellectual property interest that would undermine this assignment, or the use of the work, and will do nothing to undermine it in the future.

Certifications

The Contractor certifies the following:

Representation Regarding Gratuities. The Contractor has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board 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 compensation, except as disclosed in Contractor's bid or proposal.

Employees and Subcontracts

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

Discrimination Prohibited. The MDMR is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, 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.

Specifically, the Independent Contractor agrees to all of the following:

1. The Independent Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Independent Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Affirmative action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Independent Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Independent Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Independent Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Independent Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the Independent Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Independent Contractor will comply with all provisions of Executive Order 11246 of September 24,

1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Independent Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance.
6. In the event of the Independent Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this contract may be terminated or suspended in whole or in part and the Independent Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Independent Contractor will include the entirety of section 7.2.1 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions are binding upon each subcontractor or vendor. The Independent Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Independent Contractor becomes

involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency it may request the United States to enter into the litigation to protect the interests of the United States.

The Independent Contractor further agrees that it will be bound by these equal opportunity clauses with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Independent Contractor is a state or local government, this equal opportunity clause is not applicable to any agency, instrumentality or subdivision of the government which does not participate in work on or under the contract.

The Independent Contractor agrees that it will (1) assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; (2) that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and (3) that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Independent Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Independent Contractor agrees that if it fails or refuses to comply with these undertakings, the MDMR may take any or all of the following

actions: (a) Cancel, terminate, or suspend in whole or in part this contract; (b) refrain from extending any further assistance to the Independent Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the contractor; and (c) refer the case to the Department of Justice for appropriate legal proceedings.

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

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

Access to Records.

The Contractor agrees that the MDMR, or any of its duly authorized representatives, at any time during the term of this contract, has access to, and the right to audit or examine any pertinent documents, paper, and records, related to charge and performance

under this contract. The Contractor agrees to refund to the MDMR any overpayments disclosed by an audit. Records must be kept for a period of three years after final payment, unless the MDMR authorizes earlier disposal. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.

Termination

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

- A. for Default;
- B. for Convenience;
- C. for insufficient funds; or
- D. by mutual agreement.

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

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

Termination for Insufficient Funds. The MDMR's obligations under this contract are conditioned on the appropriation of funds by the state or federal government. If the anticipated funds are ever

insufficient or there is a material alteration in the funded program, then the MDMR may terminate this agreement with 10 day's written notice to the Contractor. If the MDMR terminates the contract under this subsection, then it does so without any damage, penalty, cost, or expense.

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

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

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

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

1. Terminate outstanding orders and subcontracts as they relate to the terminated work.

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

Stop Work Order

Order to Stop Work

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

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

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

Cancellation or Expiration of the Order:

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

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

Confidentiality

Confidentiality. The Contractor must not use or disclose any confidential information. However, nothing in this section precludes the Contractor from disclosing or using confidential information, if:

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

Transparency. This contract, including all attachments, is under the Mississippi Public Records Act of 1983 (Miss. Code Ann. §§ 25-61-1 *et seq.* and § 79-23-1) and the Mississippi Accountability and Transparency Act of 2008 (Miss. Code Ann. §§ 27-104-151 *et seq.*). Unless exempted by a court-issued protective order, a copy of this contract will be posted to the Department of Finance and Administration's website for public access at www.transparency.mississippi.gov. Information identified by the

Contractor as 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.

Liability and Indemnification

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

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

Miscellaneous

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

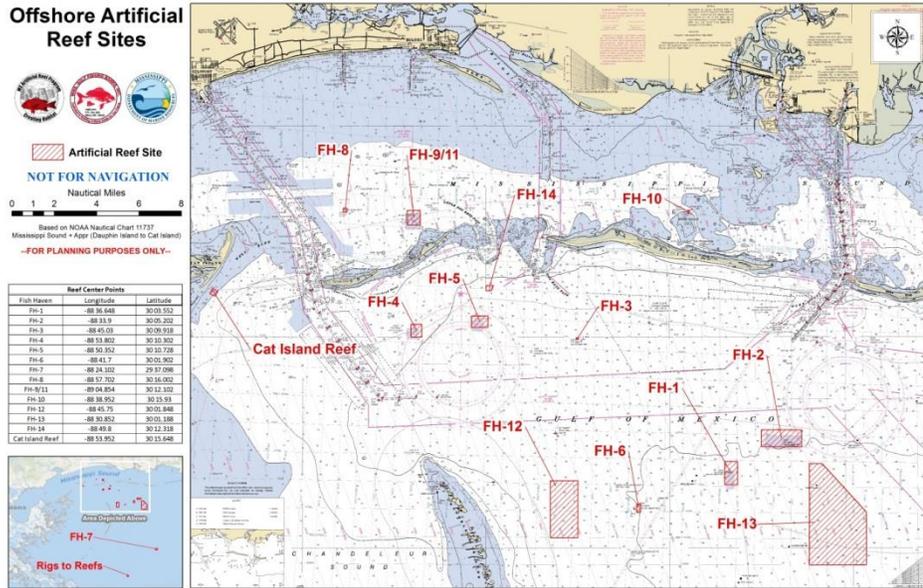
Entire Agreement. This Agreement and its attachments are the entire understanding between the parties.

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

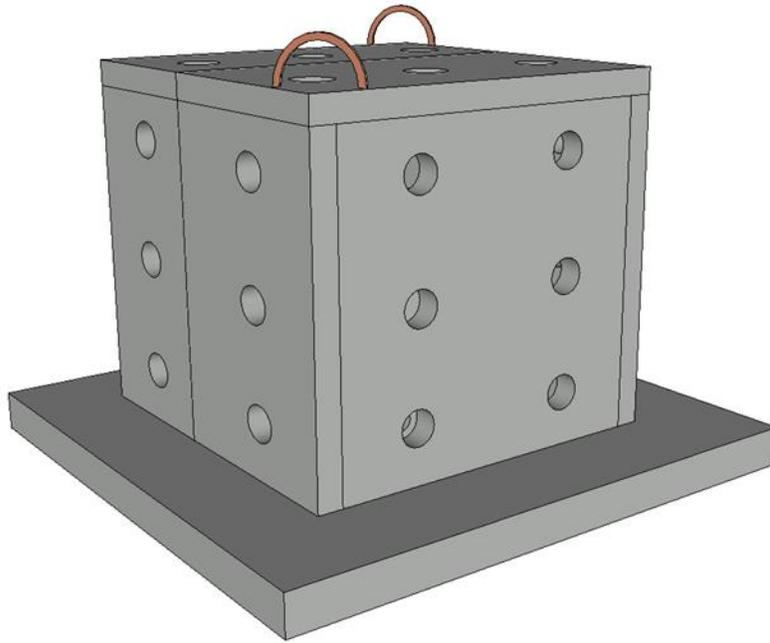
No Delegation (Subcontracting). The Contractor acknowledges that it was selected by the MDMR to perform the work based upon the Contractor's special skills and expertise. The Contractor must not delegate its duties under this Agreement in whole or in part without the prior written consent of the MDMR.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

Applicable Law. This Agreement is governed and interpreted by Mississippi law. Any lawsuit arising directly or indirectly out of this Agreement must be litigated in the state courts of Mississippi. The Agreement is further governed by the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi, 39201 for inspection, or downloadable at www.mspsb.ms.gov.

Attachment D

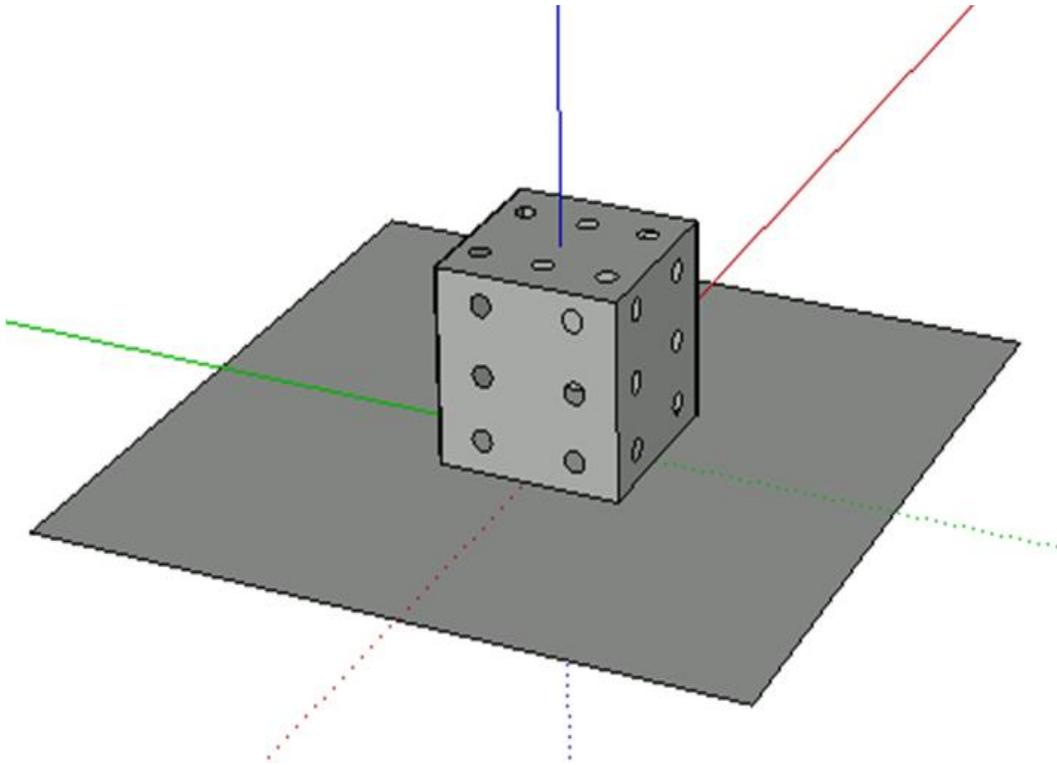


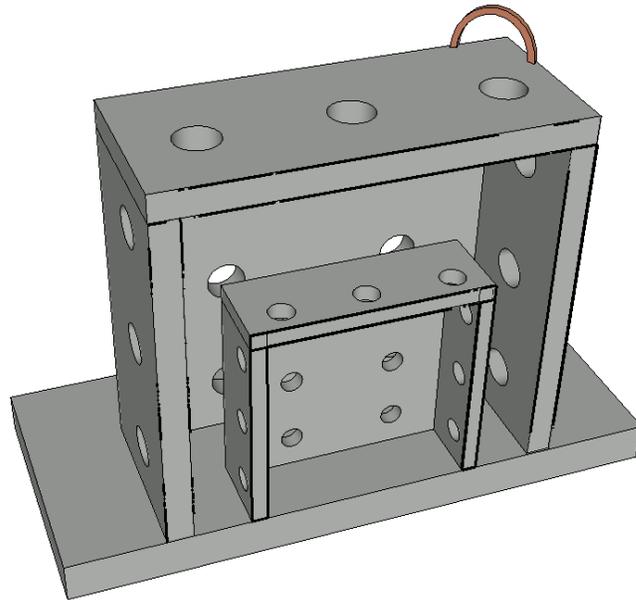
Attachment E



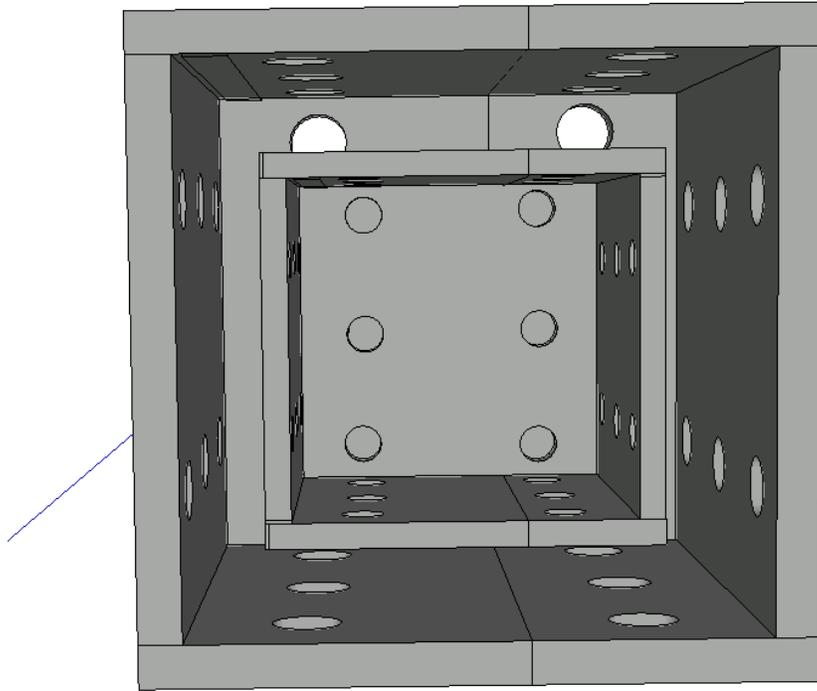
Outside Box: 36" w x 36" l x 36" h with 3" holes and 3" thick walls
Base: 48" w by 48" l and 6" thick

Inside Box: 16" w x 16" l x 16" h with 1.5" holes and 3" thick wall





Cross Section showing nested design of reef



Bottom view showing nested design of reef