



Mississippi Department of Marine Resources

SOLICITATION:

REQUEST FOR PROPOSALS

TO PROVIDE:

Coastal Zone Management (“CZM”)
Section 309 2021 – 2025 Assessment and
Strategy Project

ISSUE DATE:

August 12, 2019

PROPOSAL COORDINATOR:

Michelle Williams
(228) 523-4146
procurement@dmr.ms.gov

CLOSING DATE AND TIME:

September 10, 2019, 2:00 PM CST

Description

The Mississippi Department of Marine Resources (“MDMR”) is issuing a Request for Proposals (“RFP”) to establish a contract with an individual, entity, or firm to provide for the CZM Section 309 2021-2025 Assessment and Strategy Project. The previous Assessment and Strategy document may be viewed at <http://www.dmr.ms.gov/images/dmr/MS-Final-309-Assessment-and-Strategy-2016-2020.pdf>.

The National Oceanic and Atmospheric Administration (“NOAA”) Section 309 Coastal Zone Enhancement Program was developed to encourage states to enhance their Coastal Management Programs (“CMP”) in one or more of nine areas. These “enhancement areas” include wetlands, coastal hazards, public access, marine debris, cumulative and secondary impacts, special area management plans, ocean and Great Lakes resources, energy and government facility siting, and aquaculture. To receive Section 309 grant funding, a state must evaluate its CMP in the nine enhancement areas every five years through a process known as the Section 309 Assessment and Strategy. Based on assessment of the CMP in the nine enhancement areas, states develop a comprehensive five-year strategy to address issues where enhancement is needed.

Scope of Work and Deliverables

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

1. The Contractor will collect, develop, and analyze data utilizing NOAA’s Coastal Zone Management Act Section 309 Program Guidance for the 2021-2025 Enhancement Cycle, dated June 2019 (https://coast.noaa.gov/czm/media/Sect-309_Guidance_2021-2025.pdf), including the state-reported contextual measures for the CZMA Performance Measurement System;
2. The Contractor will revisit previous updates of Mississippi’s CZM Section 309 program, review and survey changes since the last revision, and review recommendations and guidelines from public review;
3. The Contractor will address the nine coastal zone enhancement areas (wetlands, coastal hazards, public access, marine debris, cumulative and secondary impacts, special area management plans, ocean resources, energy and government facility siting, and aquaculture) in the Assessment;
4. Assessment data will be used to identify priority enhancement areas, develop program change strategies, and identify any necessary implementation activities;
5. A public review will be facilitated on the Draft Assessment and Strategy; and,
6. MDMR will respond to NOAA’s comments on the draft and submit a final Assessment and Strategy by the deadline to be finalized by the Office of Ocean and Coastal Resource Management;

Deliverables. The deliverables for the contract will include the following:

1. Draft Assessment and Strategy due January 31, 2020.
2. Review NOAA comments on Draft and provide Final by June 1, 2020.

Deadlines/Timeline

RFP Issue Date:	August 12, 2019
Deadline for Questions:	August 21, 2019 10:00 a.m.
Posting of Answers to Questions:	August 22, 2019 by 4:00 p.m.
RFP Submission Deadline:	September 10, 2019 at 2:00 p.m.
Intent to Award issued:	September 23, 2019

Minimum Qualifications and Requirements

Proposals must contain the following information:

The minimum qualifications the MDMR is seeking for this service include:

- Experience – Offeror must have completed a minimum of one (1) project of comparable scope, size and complexity to the Scope of Work herein. This project must have been within the past five (5) years. Offeror must provide the project name, location, date, client contact and summary of work performed; and,
- Two professional references from clients for which the respondent has provided comparable services.

Selection Process

An MDMR selection committee will review all proposals which are completely and timely submitted. The proposal of those offerors meeting the minimum qualifications set forth above will be evaluated by the committee which will select the best proposal submission. The criteria with each criterion are:

1. The plan for performing the required services;
2. Ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
3. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting;
4. A record of past performance of similar work; and,
5. Price.

Evaluation Scoring

- Proposed Plan – up to 35 points
- Ability to Perform Services – up to 25 points
- Personnel, Equipment, and Facilities – up to 10 points
- Record of Past Performance – up to 20 points
- Price Proposal – up to 10 points

Total points possible: 100 points

Requirements for Proposal

All Proposals must include the following:

- The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
- The age of the offeror's business and average number of employees over the previous twelve month period of time;
- The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
- A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken;
- A plan giving as much detail as is practical explaining how the services will be performed; and,
- Price Proposal which includes unit pricing and the total price not to exceed \$35,000.00.

MDMR Contact and Questions/Requests for Clarification

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

Rick Kinnard, Procurement Director or Michelle Williams, Contract Analyst
procurement@dmr.ms.gov

The MDMR will not be bound by any verbal or written information that is not specified within this Request for Proposal unless issued in writing by the contact person.

How to Submit a Proposal

You may submit your proposal by paper submission via mail or hand delivery to MDMR, or by email to procurement@dmr.ms.gov.

The **deadline** for receiving RFPs is **September 10, 2018 at 2:00 p.m.** Late proposals will not be accepted.

Attachments

The attachments listed below are made a part of this RFP as if copied herein in words and figures and include:

[Attachment A](#): Proposal Cover Form

[Attachment B](#): Project Management Questionnaire

[Attachment C](#): Contract Clauses

[Attachment D](#): Federal Assurances

[Attachment E](#): Reference/Past Experience Score Form

Attachment A: Proposal Cover Form

Please complete and sign this sheet to include with your proposal. You may use supplemental pages, if necessary.

Offeror's Name: _____

Business Name: _____

Address/Principal Place of Business: _____

Length of Time in Business: _____

Phone Number: _____

Fax Number: _____

Vendor's Email: _____

If business or firm, Contact Person, Phone Number, and Email:

The place of performance of the proposed contract, if different from the principal place of business identified above:

Signature & Title

Date

Plan and Price:

Please submit a detailed plan for completion of this project.

Please quote the total fixed price for which you will perform the required Scope of Work as designated in your plan for completion of this project. Price will need to be on the offeror's letterhead and signed. Price will be factored into the overall score of the proposal.

Resumes:

Please attach a resume listing the education, training, abilities, qualifications, general experience, and specific experience for you and each person who will be assigned to provide the required services.

Certificate of Good Standing:

If Offeror is a domestic business entity, other than a sole-proprietorship, please attach a Certificate of Good Standing from the Mississippi Secretary of State. All foreign business entities, other than sole-proprietorships, may be required to register with the Mississippi Secretary of State prior to a contract being executed.

Prior Projects of Comparable Scope and Complexity

Please list a **minimum of one (1) prior project** of comparable scope, size and complexity to the project listed in this RFP that has been completed within the last five (5) years. You must list at least one prior project. Provide the name of the project, description of scope, location, date completed, timeframe for completion, and client contact (customer) information.

You may use supplemental pages to discuss the scope of the prior project. You must provide **current contact information** for the client contact (customer), as MDMR **must be able to contact** the reference within 48 hours of the proposal submission deadline.

Project #1:

a. Project Name: _____

b. Description of Scope: _____

c. Location: _____

d. Date of Completion: _____

e. Timeframe for Completion: _____

f. Client Contact

Name & Job Title (customer): _____

Telephone: _____

Email: _____

References:

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

- a. Reference Name: _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____
 - iv. Professional Relationship: _____

- b. Reference Name: _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____
 - iv. Professional Relationship: _____

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

Certifications/Assurances:

By signing below, you certify the following:

- 1. **Contingent Fees.** Have you promised compensation to any person to solicit or secure this state contract?
 - Yes
 - No

If you checked yes, please explain:

- 2. **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 of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and*

Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at dfa.ms.gov.

3. **Conflicts of Interest.** Offeror must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the Offeror, or management or employees of the Offeror, or other persons relative to the Offeror, with the State of Mississippi, the Mississippi Department of Marine Resources and/or its current and former employees. Please list any known conflicts below:

4. You certify that you will enter into a contract with MDMR and provide the services solicited in this RFP if you are the successful Offeror.
5. You represent that you have thoroughly read and understand the RFP and Attachments, and that you agree to all provisions of the RFP and Attachments including, but not limited to, the clauses contained in [Attachment C](#) and Attachment D which will be included in any contract or purchase order resulting from this RFP.

Printed Name: _____

Signature: _____

Title: _____

Date: _____

Attachment B-Project Management Questionnaire

With regard to the Scope of Services and Deliverables in this RFP (hereinafter “Project”), please answer the following questions (you may use supplemental pages, if necessary):

1. The Offeror submitting this proposal has been in business since _____ (date).

2. Average number of employees over the past twelve (12) months:

3. What personnel do you anticipate needing to successfully complete the Project?

4. Do you currently have the necessary personnel? If not, how will you obtain the personnel by the time of contracting?

5. What equipment do you anticipate needing to successfully complete the Project?

6. Do you currently have the necessary equipment? If not, how will you obtain the equipment by the time of contracting?

7. What facilities do you anticipate needing to successfully complete the Project?

8. Do you currently have the necessary facilities? If not, how will you obtain the facilities by the time of contracting?

9. What financial resources do you anticipate needing to successfully complete the Project?

10. Do you currently have the financial resources? If not, how will you obtain the financial resources by the time of contracting?

11. Have you or your firm/business filed for bankruptcy within the last ten years?

Attachment C: Contract Clauses

Any contract entered into pursuant to this Request for Proposals will contain these clauses and may contain other clauses. Any reference to “he”, “his” or “himself” also includes “she”, “her” or “herself.”

Payment

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

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

Availability of Funds

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

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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

Representation Regarding Contingent Fees. The Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor’s bid, proposal, or quote.

Environment. The Contractor acknowledges that it must comply with all standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

Lobbying. The Contractor certifies that it has not, and will not, use Federal appropriated funds to pay any person or organization to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The Contractor must disclose any lobbying with non-Federal funds that takes place in connection

with obtaining any Federal award. This clause must be included in any sub-contracts or sub-grants made by the Contractor.

The Contractor warrants:

- 1) 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;
- 2) Notwithstanding any other provision of this contract 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 contract; and,
- 3) That it is qualified to perform the scope of services of this contract and is authorized to do business in the State of Mississippi to the extent required by Mississippi law.

Employees and Subcontracts

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

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

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

Termination for Default

Default. If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

Compensation. Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

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

Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Termination for Convenience.

Termination. The Agency Head or designee may, when the interest of the State so requires, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

Contractor's Obligations. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

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

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

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.

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

federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Stop Work Order

Order to Stop Work. The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:

- 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.

Cancellation or Expiration of the Order. If a stop work order expires or is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, 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 Contractor's cost properly allocable to, the performance of any part of this contract; and,
- b. the Contractor asserts a claim for an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

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

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

Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the Mississippi Public Records Act of 1983 and its exceptions. See Miss. Code Ann. § 25-61-1 *et seq.* and § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi

Accountability and Transparency Act of 2008 (Miss. Code Ann. § 27-104-151 *et seq.*). Unless exempted from disclosure due to a court-issued protective order, a copy of this contract is required to be posted to the Department of Finance and Administration's independent agency contract 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 to be kept confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Trade Secrets, Commercial and Financial. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

Liability and Indemnification

Liability and Indemnity. The Contractor 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. The Contractor assumes all liability for work to be performed and for breach of any of the terms of this Agreement. 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 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. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict of laws provisions, and any litigation with respect thereto shall be brought in the state courts of Harrison County, Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations. This Agreement is further governed by the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* downloadable at www.DFA.ms.gov.

Attachment D: Federal Assurances

- 1) This contract may be funded in whole, or in part, by federal grant funds. Accordingly, Contractor agrees to the following provisions. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. 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 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 Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws.
- 3) The 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 advising the labor union or workers' representatives of the 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 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 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 its 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 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 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) Contractor will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1693, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability; and (i) the requirements of any other nondiscrimination statute(s) which may apply to the contract.
- 8) Contractor will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); (h) the Coastal Barriers Resources Act (16 U.S.C. §§ 1451 *et seq.*; and, (i) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- 9) Contractor will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
- 10) Contractor will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104), which prohibits private entities from: (1) engaging in severe forms of trafficking in persons during the period of time that the contract is in effect; (2) procuring a commercial sex act during the period of time that the contract is in effect; or, (3) using forced labor in the performance of the contract.
- 11) Contractor will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874), which prohibits a contractor engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

- 12) Contractor will comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 “Government-wide Requirements for Drug-Free Workplace (Financial Assistance)”, which require that the Contractor take steps to provide a drug-free workplace.
- 13) Pursuant to E.O. 13043 (62 FR 19217, 1997), Contractor will enforce on-the-job seat belt policies and programs when employees are operating company-owned, rented, or personally-owned vehicles.
- 14) Contractor will comply with the Pilot Program for Enhancement of Employee Whistleblower Protections and shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.
- 15) Contractor will comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program.
- 16) The United States expressly disclaims any and all responsibility or liability to the Contractor or third persons for the actions of the Contractor or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this contract.
- 17) That acceptance of this contract by the Contractor does not in any way constitute an agency relationship between the United States and the Contractor.
- 18) That Contractor is subject to Subpart C of 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).”

Attachment E: Reference/Past Experience Score Form
EXAMPLE-TO BE COMPLETED BY MDMR STAFF ONLY

Assigned Company ID: _____

Project Name: _____

Reference Name: _____

Person Spoken To: _____

Score: _____

Were you satisfied with the services provided? If no, please explain.	Yes	No
Would you recommend the Offeror to others for future projects?	Yes	No
Did the Offeror meet all relevant deadlines for the Project?	Yes	No
Did the Offeror successfully complete all required deliverables?	Yes	No
Did the Offeror complete the project within the agreed upon budget?	Yes	No

Each “yes” is two point; each “no” is zero points. The References will account for up to 20 points of the total score.

Called By: _____

Signature: _____

Title: _____

Date and Time: _____

Notes: _____