



Mississippi Department of Marine Resources

SOLICITATION: Invitation for Bids (IFB)

SOLICITATION NUMBER: 3160003197

DESCRIPTION: Furnish & Deliver Six (6) Boat Motors

ISSUE DATE: October 10, 2019

BID CLOSING LOCATION: Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, Mississippi 39530

BID COORDINATOR: Valerie McWilliams
(228) 523-4118
procurement@dmr.ms.gov

CLOSING DATE AND TIME: October 30, 2019 2:00 PM CST

1. INTRODUCTION

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the Commission on Marine Resources. We are dedicated to enhancing, protecting and conserving the marine interests of Mississippi for present and future generations. We manage all marine life, public trust wetlands, adjacent uplands and waterfront areas for the long-term recreational, educational, commercial, and economic benefit of everyone.

2. PURPOSE

MDMR is issuing an Invitation for Bids (IFB) to establish a contract with an individual, entity, or firm to furnish and deliver six (6) boat motors for the Office of Marine Patrol. The specifications included in this IFB establish minimum requirements for the boat motors to be furnished and delivered for installation on Marine Patrol vessels primarily used for law enforcement activities and emergency response on waters within Mississippi's state territorial boundary and adjacent federal waters of the Gulf of Mexico.

The specifications in [Attachment A](#)-Specifications Checklist are intended to describe and establish minimum requirements for the boat motors.

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

3. TIMELINE

Start Date	
• First Date of Advertisement:	October 10, 2019
• Second Date of Advertisement	October 17, 2019
Questions Submission Deadline	October 24, 2019 10:00 AM CST
Answers Posted	October 25, 2019 4:00 PM CST
Bid Submission/Bid Open Deadline	October 30, 2019, 2:00 PM CST
Bid Evaluations	October 30, 2019
Contract Intent to Award	November 1, 2019
Contract Approval	Unexecuted contract will require additional approval from DFA before it is awarded.

4. SCOPE OF SERVICES

The Contractor will furnish and deliver six (6) boat motors that meet the minimum specifications listed in [Attachment A](#) – Specifications Checklist.

The Contractor will furnish and deliver the motors FOB Destination, freight prepaid, to the following location:

Metal Craft Marine US, Inc. C/O Chris Toller
583 Broadway Street East
Cape Vincent, New York 13618

The contractor bears all risk of loss of the motors until delivery to and acceptance by Metal Craft Marine US, Inc.

5. DELIVERABLES

The deliverables are to include:

Upon execution of a contract and receipt of a purchase order from MDMR, the contractor shall provide all deliverables as specified in the Scope of Work, [Attachment A](#)-Specifications Checklist within six (6) months.

The Contractor shall provide the warranty and maintenance package, including any of the manufacturer's literature, if applicable, for each boat motor upon delivery.

Once installation is complete, the Contractor must ensure that the boat motors are fully functional. If any of the boat motors reveal any defects in materials or workmanship, then the Contractor must correct the defects or workmanship at no additional cost to MDMR.

6. MINIMUM REQUIRED QUALIFICATIONS

The minimum qualifications for bidding include:

- By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision, agency of the State of Mississippi, any other state, or the federal government, and that it is not an agent of a person or entity that is currently so debarred.
- Bidders are required to be electronically registered in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) before submitting their bid. Instructions for registering in MAGIC can be found below in Section 10.

The minimum qualifications for contracting include:

- Vendors which are domestic corporations, limited liability companies, or limited partnerships must be in good standing with the Mississippi Secretary of State.
- Vendors which are foreign corporations, limited liability companies, or limited partnerships may be required to register with the Mississippi Secretary of State to transact business in Mississippi. See Miss. Code Ann § 79-4-15.01.

7. BASIS FOR AWARD

The MDMR will award the bid to the lowest responsive, responsible bidder who meets all required specifications, subject to approval by the Public Procurement Review Board, if necessary. The MDMR reserves the right to reject any and/or all bids and waive minor informalities which do not affect quality, quantity, price or delivery.

8. INSURANCE REQUIREMENTS

In order to enter into a contract, you must meet minimum insurance protection requirements. **You must provide evidence of your policies within ten (10) calendar days of a fully executed contract.**

All insurance policies must be issued by companies licensed or holding a Certificate of Authority from the Mississippi Department of Insurance. All liability insurance policies must provide coverage to the MDMR as an additional insured.

You must hold the following insurance throughout the term of the contract:

Coverage Type	Amount
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 and Property Damage (Per Occurrence)	\$500,000
Fire Damage (Per Fire)	\$50,000
Medical Expense (Per Person)	\$5,000

9. BOND REQUIREMENTS

No bonds are required for this procurement.

10. BID SUBMISSION INSTRUCTIONS

You are required to electronically register in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) and you may submit your bid electronically through MAGIC, or you may submit your bid by paper submission via mail or hand delivery to MDMR as outlined below:

Vendor Electronic Registration in MAGIC:

- It shall be the responsibility of each bidder to ensure that its vendor profile is current in the MAGIC system. The website to register as a vendor with the State of Mississippi is: <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>.
- For online learning instructions on submitting your bid electronically, select "Supplier Training" from the link listed above. Select the LOG820 Supplier Self-Service Course link and then click "Launch Course."
- If you have problems getting on the website, please contact the Mash Helpdesk at (601) 359-1343 or mash@dfa.ms.gov. You must receive a User ID and Password to access the MAGIC portal. **This process could take up to 72 hours to complete.**

MAGIC Submission and Technical Requirements

- The bid submission must be submitted in MAGIC no later than **2:00 PM CST, October 30, 2019.**
- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and the unopened bid will be made a part of the procurement file. **It is suggested that you allow 72 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user.**

Paper Bid Submission Requirements

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to MDMR Procurement Department, 6th Floor, at 1141 Bayview Avenue, Biloxi MS 39530 no later than **2:00 PM CST, October 30, 2019.**
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and the unopened bid will be made a part of the procurement file.
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- Submissions via facsimile (faxes) or email will not be accepted. It is suggested that if a submission is mailed to MDMR, it should be posted in certified mail with a return receipt requested. MDMR will not be responsible for mail delays or lost mail.
- All Bids submitted by hand delivery or mail will become the property of the MDMR.
- Bids should be mailed, or hand delivered and must be labeled as follows:

“Furnish & Deliver Six (6) Boat Motors”

RFx No. 3160003197

Smart No. 1450-20-R-RAEX-00002

Opening Date: 2:00 PM CST, October 30, 2019

Attention MDMR Procurement Department 6th Floor

1141 Bayview Avenue Biloxi MS 39530

SEALED BID – DO NOT OPEN

The **deadline** for receiving Bids is **October 30, 2019 at 2:00 p.m.**

Late submissions will not be accepted.

11. AMENDMENTS TO THIS IFB

Should an amendment or amendments to this IFB be issued by MDMR, it will be posted on the MDMR website dmr.ms.gov and on the Mississippi Contract Procurement Opportunity Search Board (Procurement Portal) website ms.gov/dfa/contract_bid_search/Bid in a manner that all bidders will be able to view. **Furthermore, bidders must acknowledge receipt of any amendment to this IFB by signing and returning the amendment with the bid submission, or by identifying the amendment number and date in the space provided for this purpose on the Bid Form-Attachment C, or 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.

12. QUESTIONS/REQUESTS FOR CLARIFICATION

All questions and requests for clarification must be submitted by email to: procurement@dmr.ms.gov. All questions/requests for clarification must be received no later than **October 24, 2019 at 10:00 a.m. CST**.

All questions/requests for clarification and the answers thereto will be published on the MDMR website, dmr.ms.gov, and the MAGIC Portal <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/> in a manner that all bidders will be able to view by **October 25, 2019 at 4:00 p.m. CST**.

The MDMR will not be bound by any verbal or written information that is not specified within this IFB unless formally noticed and issued by the contact person.

12. TERM OF CONTRACT

The start date for the contract is the date the contract is signed by the selected bidder and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date, however, the Contractor must furnish and deliver within six (6) months as specified in **Section-5. Deliverables**. The contract may be extended subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the Contractor. Any contract renewal or extension shall be under the same pricing, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

13. REQUIRED DOCUMENTS FOR BIDDING

All bids must include the following:

- [Attachment A](#)-Specifications Checklist completed and signed;
- [Attachment B](#)-Bid Cover Form completed and signed;
- [Attachment C](#)-Bid Form completed and signed; and,
- [Attachment E](#)-Bidder's Checklist completed and signed.

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

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

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

Any bidder claiming that its bid contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. § 25-61-1, *et seq.*), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. The bidder must submit all attachments. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

14. CONDITIONS OF SOLICITATION

When you submit a bid, then you promise that you will accept an award if offered. You also certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price. You can read more about your certifications on the Bid Form, [Attachment C](#).

The MDMR reserves the right to reject any and/or all bids and waive any minor informality.

15. BID PROTESTS

If you are an actual bidder, offeror or contractor and feel aggrieved by this IFB or the outcome, then you may file a protest with the Executive Director of the MDMR with a copy to the State Chief Procurement Officer. The protest must be in writing and explain the specific reasons that you are protesting. The protest must be filed within seven days after you know, or should have known, of the facts giving rise to your protest. Late protests will not be considered. See Section 6.204 of the Mississippi Procurement Manual available online at <http://www.dfa.ms.gov/media/4002/chapter6.pdf>.

16. NOTIFICATION OF INTENT TO AWARD

Notification will be sent to all bidders by mail and/or email of the selection of the successful bidder. We will also post the selection of the successful bidder on our website at www.dmr.ms.gov. Work is expected to begin within 15 calendar days of receipt of a fully executed contract.

17. GOVERNING LAW

This solicitation and any resulting contract shall be governed in all respects by 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 Biloxi, Harrison County, Mississippi.

18. RELATIONSHIP OF PARTIES

It is expressly understood and agreed that if MDMR enters into a contract with a bidder, it does so based on the purchase of commodities or services and not based on an employer-employee relationship or a joint venture relationship.

19. CONTRACT ADMINISTRATION

The contract awarded, if any, subsequent to this solicitation shall be administered by the MDMR. All invoices submitted by the Contractor for goods received or services provided pursuant to the contract shall be submitted as follows:

By Mail: Mississippi Department of Marine Resources, Procurement Department, 1141 Bayview Avenue, Biloxi, Mississippi 39530

By Email: Procurement@dmr.ms.gov

The MDMR will provide timely payment in accordance with Section 31-7-301, *et seq.* of the Mississippi Code Annotated, which generally provides for payment by the MDMR within forty-five (45) days of receipt of an approved invoice. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

20. COMPENSATION FOR GOODS AND SERVICES

- **Payment.** The MDMR will pay Contractor upon satisfactory completion of the Scope of Work and Deliverables.
- **Invoice.** Contractor must submit a detailed invoice upon completion of the Scope of Work and Deliverables. In order to process payment, the invoice must include the following information and supporting documentation:
 1. Contract number;
 2. Purchase Order Number; and,
 3. Date(s) of delivery.
- **Payment Processing.** The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for work performed before the execution or after expiration of the contract.

21. EQUAL OPPORTUNITY STATEMENT

MDMR will select the successful bidder without regard to political affiliation, race, color, handicap, genetic information, religion, national origin, sex, religious creed, age, or disability.

22. ATTACHMENTS

The attachments to this IFB are made a part of this IFB as if copied herein in words and figures and include:

- [Attachment A](#) – Specifications Checklist
- [Attachment B](#) – Bid Cover Form
- [Attachment C](#) – Bid Form
- [Attachment D](#) – Contract Clauses
- [Attachment E](#) – Bidder's Checklist

Attachment A-Specifications Checklist

Company Name: _____

The specifications set forth herein represent the minimum requirements for six (6) boat motors for the MDMR. The bidder may propose options above and beyond these specifications that best suit MDMR’s interests as determined by the agency. The bidder agrees to complete the scope of service and all deliverables within six (6) months from the execution of the contract, unless additional time is approved in writing by the MDMR. Failure to do so may result in cancellation of award. If cancellation of award occurs, a new award will be made to the next lowest bidder meeting required specifications.

1. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature, samples and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with MDMR will not satisfy this provision.
2. Respond “Yes” or “No” to indicate compliance to the specifications for each listed criterion and add comments as needed. Submit completed specifications checklist with bid package.

Specifications for Six (6) Boat Motors

YES	NO	STANDARD FEATURES		COMMENTS
		SP-1	Two (2) 4-Stroke Gasoline Powered Motors with 25-inch shafts including propellers	Counter Rotation
		SP-2	Minimum-Maximum Horsepower Per Motor	Minimum 300 horsepower
		SP-3	Two (2) 4-Stroke Gasoline Powered Motors with 30-inch shafts including propellers	Right-Hand Rotation
		SP-4	Minimum-Maximum Horsepower Per Motor	Minimum 300 horsepower
		SP-5	Two (2) 4-Stroke Gasoline Powered Motors with 25-inch shafts including propellers	Right-Hand Rotation
		SP-6	Minimum-Maximum Horsepower Per Motor	Minimum 300 horsepower

Signature

Date

Printed Name

Title

Attachment B-Bid Cover Form

The Mississippi Department of Marine Resources is accepting bids to furnish and deliver six (6) boat motors.

Bids must be submitted by 2:00 p.m. CST on October 30, 2019.

Company Name: _____

Quoted by: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Email Address: _____

Name, title and phone number of company representative to be contacted by MDMR:

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

What year was your company started? _____

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

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.

Attachment C-Bid Form

Company Name: _____

On the lines below, please bid the price to furnish and deliver six (6) boat motors as specified in the Scope of Services.

SP-1&2 Bid Price \$ _____

SP-3&4 Bid Price \$ _____

SP-5&6 Bid Price \$ _____

By signing below, you certify that you have authority to bind the company, and further acknowledge and certify on behalf of the company:

- That you thoroughly read and understand the Invitation for Bids and its attachments.
- That you meet all requirements and acknowledge all the certifications contained in the IFB.
- That you agree to all provisions of the IFB, including the contract clauses in [Attachment D](#).
- That you will deliver the goods and perform the services required at the prices quoted above.
- 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.
- **Non-Debarment:** By submitting a bid, you are certifying that you are not currently debarred from bidding by the State, any political subdivision of the State (towns, cities, counties, agencies, etc.), any other state, or the federal government. You also certify that you are not submitting a bid as an agent of someone so debarred.
- **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.
- **Contingent Fees:** Have you retained a person to solicit or secure a state contract upon an agreement or understanding for compensation?

Yes No

If yes, please explain: _____

Gratuities: You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual available online at www.dfa.ms.gov .

- **Acknowledgment of Amendments:** You acknowledge all amendments to this IFB. Please list the amendments acknowledged by the amendment number and date:

Signature

Date

Attachment D-Contract Clauses

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

Payment

Payment Processing. The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for services performed before the execution or after expiration of this contract.

How Payments Are Made. The MDMR makes payments electronically through the MAGIC Accounting System. Payments are deposited into the Contractor's chosen bank account. The MDMR may require the Contractor to electronically submit invoices and supporting documentation. The Contractor understands that the MDMR is exempt from paying taxes.

Certifications

The Contractor certifies the following:

Representation Regarding Gratuities. The Contractor has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual.

Representation Regarding Contingent Fees. The Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for compensation, except as disclosed in Contractor's bid or proposal.

Employees and Subcontracts

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

Discrimination Prohibited. The MDMR is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. The Contractor agrees to strictly adhere to this policy in its employment practices and provision of services.

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

- a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three years, with notice of the termination being made public, or

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

Access to Records

The Contractor agrees that the MDMR, or any of its duly authorized representatives, at any time during the term of this contract, has access to, and the right to audit or examine any pertinent documents, paper, and records, related to charge and performance under this contract. The Contractor agrees to refund to the MDMR any overpayments disclosed by an audit. Records must be kept for a period of three years after final payment, unless the MDMR authorizes earlier disposal. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.

Termination

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

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

Cancellation or Expiration of the Order:

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

1. The stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,

2. The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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 to be kept confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted. In the event the MDMR receives a public records request for documents containing information identified by the Contractor as trade secrets or proprietary information, the MDMR will notify the Contractor who will be given a reasonable time to obtain a court order protecting the information. *See* Mississippi Code Annotated § 25-61-9(1).

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

Liability and Indemnification

Liability and Indemnity. The Contractor assumes all liability for work to be performed and for breach of any of the terms of this Agreement. **The Contractor agrees to indemnify, hold harmless and defend the State of Mississippi, MDMR and any and all of its affiliates, directors, officers, agents or employees from and against all loss, injury, damage and legal liability including attorneys' fees and other costs of defense, arising out of any breach of confidentiality, negligent act, error or omission of Contractor, its employees or representatives.** Contractor assumes all

liability for workers' compensation and employers' liability coverage for its own employees. Contractor is responsible for and holds MDMR harmless from loss of or damage to Contractor's or Contractor's tools and equipment and rented items which are used or intended for use in performing work, and for any consequential, special or indirect damages, or loss of anticipated profits sustained by Contractor or its independent contractors. Contractor must comply with all applicable laws and government regulations, including OSHA and comparable state requirements.

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

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, excluding its conflict of laws provisions. Any lawsuit arising directly or indirectly out of this Agreement must be litigated in the state courts of Harrison County, Mississippi. The Agreement is further governed by the Mississippi Procurement Manual, a copy of which is available online at <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/>.

Attachment E-Bidder's Checklist

Registered with MAGIC	
Amendments to IFB acknowledged, if any.	
Attachment A, Attachment B, Attachment C and Attachment E completed and signed.	

Printed Name: _____

Signature: _____

Date: _____