

EVALUATION REPORT

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Title: Grand Bay National Estuarine Research Reserve (NERR) Invasive Vegetation Treatment

RFP Number: 3120001960

Evaluation Dates: May 13-14, 2020

The names of the members of the evaluation committee shall not be publicly disclosed until their evaluation report as required under Section 3-204.04 is published (48 hours prior to the award). Where evaluation committee members are not public employees, those members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be made available to the public.

EVALUATOR NAME(S) AND PROFESSIONAL TITLE(S)

Name	Position	Entity
Ayesha Gray, Ph.D.	Director, Grand Bay NERR	Mississippi Dept. of Marine Resources
Jonathan Pitchford, Ph.D.	Stewardship Coordination, GB NERR	Mississippi Dept. of Marine Resources
Mike Pursley	Invasive Species Program Manager, Coastal Preserves	Mississippi Dept. of Marine Resources
Jennifer Wittman	Bureau Director, Coastal Preserves	Mississippi Dept. of Marine Resources

AWARDED VENDOR REPORT

The submission of this report is in partial fulfillment of the transparency requirement as set forth by the Public Procurement Review Board in Section 3-204.04 of the Office of Personal Service Contract Review Rules and Regulations. On May 13-14, 2020, we evaluated proposals for the Mississippi Department of Marine Resources. The following potential offerors submitted proposals for evaluation:

- Eco-Restore, LLC
- Taylor Made Lawn Care, Inc.

The award recommendation decision was based on information provided in each proposal. The information below supports our decision for this recommendation. After thorough evaluation and great consideration, we recommend that Eco-Restore, LLC be awarded the contract for the Grand Bay NERR Invasive Vegetation Treatment RFP Number 3120001960.

AWARDED VENDOR

Vendor Name: Eco-Restore, LLC

Total Score: 390

Average Score: 97.5

- Detailed plan for treatment of invasive species
- Extensive, relevant experience with invasive species treatment
- Locals projects of similar nature
- Sufficient personnel and resources to complete the project
- Pricing met expectations

NON-AWARDED VENDORS

Vendor Name: Taylor Made Lawn Care, Inc.

Total Score: N/A

Evaluators were not able to score the Taylor Made Lawn Care, Inc proposal as it did not comply with all of the mandatory requirement of the solicitation. The vendor was notified of the disqualification by email on May 14, 2020.

Attached is the proposed contract template that includes the terms, conditions and scope of services for the contract. The signed contract will be on file and available for public inspection in the office of the Chief Procurement Officer.

CONTRACT AGREEMENT

XXXXXX

Contract #82000XXXXX

This agreement is between the Mississippi Department of Marine Resources (“MDMR”) and XXXXXXXX (“Contractor”).

SUMMARY

Project: NERR Invasive Vegetation Treatment

Payment: \$ XXXXX

Term: From XXX to XXX

Section 1 - PURPOSE

This agreement establishes a scope of work for the Contractor to treat non-native, invasive vegetation on NERR properties in accordance with the Contractor’s MDMR approved treatment plan.

Section 2 - SCOPE OF SERVICES

- 2.1 The Contractor will perform two (2) treatments, one per season, for two consecutive years for the entire 152 acres. Each treatment must be in accordance with the proposed treatment plan once the plan is approved by the MDMR. The treatment shall result in a minimum rate of 95% of original infestation treated per parcel (*treated, not controlled). The Treatment Site Data Form is attached herein as Attachment A. MDMR’s NERR personnel reserve the right to accompany the field crew on any workday to observe treatment methods, confirm the quality of work and to photograph the activities.

- 2.2 The Contractor shall furnish all necessary labor, equipment, supplies, permits, licenses, certifications, supervision, transportation, and incidentals to perform all chemical and/or mechanical applications necessary under the terms of a contract.
- 2.3 The Contractor will perform all treatments in accordance with the US Environmental Protection Agency regulations to maximize effectiveness of treatments while minimizing effects on surrounding habitat and non-target species.
- 2.4 The Contractor will strictly adhere to all herbicide label application, precautionary and safety statements, and shall be liable for damage due to an herbicide spill or contamination.
- 2.5 The Contractor will ensure that all equipment including, but not limited to, vehicles, trailers, ATV's, and chippers must be cleaned with a pressure washer to reduce the spread of exotic vegetation prior to initiating work activities on public lands. Decontamination protocols include spraying down all equipment surfaces, including the undercarriage and tires, to ensure that mud, sand, dirt, muck and vegetative debris and any other debris are not transported from the previous treatment site. All hand-held equipment such as chain saws, loppers, etc. used for treatment activities must be wiped down and cleaned so that they are free of debris.
- 2.6 The Contractor will ensure that all equipment used shall be in good repair and operating condition at all times and be in compliance with all federal, state, and local regulations. All equipment shall meet all safety standards as established for that piece of equipment. All equipment shall be operated and maintained in accordance with the manufacturer's recommendations. All equipment shall be equipped with all appropriate safety guards, as specified by the manufacturer. The MDMR reserves the right to request replacement of equipment or personnel if deemed to be unsafe or operating in an unsafe manner.
- 2.7 The Contractor shall be responsible for any repairs, replacements, or restoration to original condition on all property damaged as a result of any activity by the Contractor, to the satisfaction of the MDMR. This includes, but is not limited to, soil grade disturbance resulting from heavy equipment/stump removal, pavement surface, turf areas, manufactured structures, and equipment.
- 2.8 The Contractor shall be responsible for immediate work stoppage and clean-up operation in the event of any spill of herbicide, petroleum product or other hazardous material. The Contractor shall report any such incident to the MDMR immediately.
- 2.9 The Contractor will ensure that all trees and debris are prevented from falling into canals, roads, and adjacent private properties. If this occurs, work must cease until the tree or debris is immediately removed from the adjacent property, road or canals or any such area where it is not desirable. No tree will be treated and left standing leaving the possibility of a fall into a waterbody, road, or adjacent property at a later date.

Section 3 - DELIVERABLES

- 3.1 Within fifteen (15) calendar days of a fully executed contract, the Contractor must meet with MDMR staff to discuss the project and determine the most advantageous time to begin treatment.
- 3.2 Contractor must notify MDMR's NERR personnel each day prior to beginning work on any treatment area. Notifications must include the site location(s), name and phone number for the field supervisor and the estimated arrival and departure time for each site. Notifications must be sent either the day before, or on the same day of work, as long as notifications are sent before work commences. MDMR's NERR personnel must also be notified in the event work is cancelled due to weather or any other circumstances. Failure to comply with these notification requirements may result in early termination of the contract.
- 3.3 The Contractor will submit monthly progress reports by the 15th of each month. Reports should include a GIS map showing the size and location of the treated area(s), as well as a daily log of herbicide application and/or mechanical treatment by site and species. All progress reports must be submitted to the Procurement Department at procurement@dmr.ms.gov. Failure to submit reports to the Procurement Department will result in a delay of payment.
- 3.4 Within two years from the date of a fully executed contract, the project must be completed.

Section 4 - CONSIDERATION AND PAYMENT

- 4.1 **Consideration.** As consideration for the performance of this agreement, the MDMR agrees to pay the Contractor for work performed.
- 4.2 **Payment.** The MDMR agrees to make payments within 45 days of receipt of an approved invoice. The total payment for the entire project must not exceed \$XXX. Under no circumstances will payment be made for services performed before the execution or after expiration of this contract.
- 4.3 **How Payments Are Made.** The MDMR makes payments electronically through the State's Accounting System. Payments are deposited into the Contractor's chosen bank account. The MDMR may allow the Contractor to electronically submit invoices and supporting documentation. The Contractor understands that the MDMR is exempt from paying taxes. Invoices must include the following:
 - 1 The contract number (#82000XXXXX);
 - 2 Time period for services incurred;
 - 3 Description of services performed including number of acres treated; and,
 - 4 Activity reports by date for which services are being invoiced.

- 4.4 MDMR will be billed only for actual cost incurred for services specified in Section 2-Scope of Services, not to exceed the amount specified in 4.2 above. Invoices should detail work undertaken during the treatment period. Under no circumstances will the MDMR be obligated to pay for work performed after the specified period of performance as specified in Section 5- Period of Performance.

Section 5 - PERIOD OF PERFORMANCE

The period of performance for this agreement is from XXX through XXX. If deemed necessary, this contract can be extended or renewed on a no cost basis as needed, subject to mutual agreement of both parties.

Section 6 - CERTIFICATIONS

The Contractor certifies the following:

- 6.1 **Representation Regarding 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.
- 6.2 **Representation Regarding Contingent Fees.** The Contractor represents that it has not retained a person to solicit or secure a State contract, including this State contract, upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- 6.3 **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).
- 6.4 **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.
- 6.5 **The Contractor warrants:**
- (1) That entry into and performance under this agreement are 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.

Section 7 - INSURANCE AND BOND REQUIREMENTS

- 7.1 **Insurance Requirements.** In order to enter into a contract with MDMR, 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 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

- 7.2 **Bond Requirements.** The required bond must be a corporate surety bond issued by a surety company authorized to do business in Mississippi. MDMR must be named as exclusive beneficiary. **You must provide the bond within ten (10) calendar days of a fully executed contract.** This project requires the following 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.

Section 8 - REQUIRED SERVICE CONTRACT CLAUSES

- 8.1 **Applicable Law:** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the state courts of Harrison County, Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.
- 8.2 **Approval:** It is understood that this contract requires approval by the Mississippi Public Procurement Review Board Office of Personal Service Contract Review. If this contract is not approved, it is void and no payment shall be made hereunder.
- 8.3 **Attorneys' Fees and Expenses:** Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the MDMR all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the MDMR in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the MDMR be obligated to pay any attorneys' fees or costs of legal action to the Contractor.
- 8.4 **Authority to Contract:** The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceeding or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.
- 8.5 **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 [State] of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
- 8.6 **Compliance with Laws:** Contractor understands that the MDMR is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap,

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

- 8.7 **Change in Scope of Work:** The MDMR may order changes in the work under the contract consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDMR and the Contractor and approved by the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, if necessary.
- 8.8 **E-Payment:** Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*
- 8.9 **E-Verification:** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

(1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

(2) 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, both.

(3) In the event of such cancellations/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.

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

8.11 **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 Independent 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.

8.12 **Indemnification:** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDMR, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorney's fees arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDMR shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonable withhold.

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

8.14 **Notices:** All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by Certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: name, title, address

For the MDMR: Rickey Kinnard, Procurement Director, Mississippi Department of Marine Resources, 1141 Bayview Avenue Biloxi, MS. 39530

8.15 **Modifications or Renegotiation:** This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make change in this agreement necessary.

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

- 8.17 **Personnel:** MDMR shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work under the contract by the Contractor. If the MDMR reasonably rejects staff or subcontractor, the Contractor must provide replacement staff or subcontractors satisfactory to the MDMR in a timely manner and at no additional cost to the MDMR. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor.
- 8.18 **Priority:** The contract will consist of this agreement with exhibits, the procurement Request for Proposals (RFP), and the response proposal. Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, referencing this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the Proposal. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
- 8.19 **Procurement Regulations:** The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at dfa.ms.gov.
- 8.20 **Record Retention and Access to Records:** Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the MDMR or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Contract for the purpose of making audits, examination, excerpts, and transcriptions. All records related to this Contract shall be retained by the Contractor for three (3) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this Contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
- 8.21 **Recovery of Money:** Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the MDMR, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the MDMR. The rights of MDMR are in addition and without prejudice to any other right the MDMR may have to claim the amount of any loss or damage suffered by the MDMR on account of the acts or omissions of the Contractor.
- 8.22 **Stop Work Order:**

(1) **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.

(2) **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, 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 properly allocable to, the performance of any part of this contract; and,
- (b) 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.

(3) **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.

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

8.23 **Price Adjustment**

(1) *Price Adjustment Methods.* Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the additional performance;

- (b) by unit prices specified in the contract;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- (d) by the price escalation clause.

(2) *Submission of Cost or Pricing Data.* Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.*

8.23 Termination

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

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

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.

Termination for Bankruptcy. This contract may be terminated in whole or in part by MDMR upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event

of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

- 8.24 **Third Party Action Notification:** Contractor shall give the MDMR prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.
- 8.25 **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.
- 8.26 **Transparency:** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated § 25-61-1 *et seq.*, and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated § 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
- 8.27 **Unsatisfactory Work:** If at any time during the contract term, the service performed, or work done by the Contractor is considered by the MDMR to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by the MDMR, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the MDMR shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.
- 8.28 **Waiver:** No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by the contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver or modification to any term or condition of this agreement will void, waive, or change any other term or condition.

No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

Section 9 - SUB-CONTRACT CLAUSES REQUIRED BY MDEQ

All references to Sub-Grantee are to the Mississippi Department of Marine Resources and all references to Contracted Party are to the Contractor.

- 9.1 The Contracted Party agrees to allow the Sub-Grantee, Departments and Agencies of the State of Mississippi, and any of their duly authorized representatives' access to any books, documents, papers, and records of the Contracted Party which are directly pertinent to the Project for the purpose of making audits, examinations, excerpts, and transcriptions.
- 9.2 The Contracted Party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Sub-Grantee. All the services required hereunder will be performed by the Contracted Party or under its supervision, and all personnel engaged in the Work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on Work under this Agreement.
- 9.3 The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described Project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.
- 9.4 Salaries of personnel performing Work under this Agreement shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contracted Party shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering Work under this Agreement to insure compliance by the subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
- 9.5 The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a

- family, business, or other tie. The Contracted Party will comply with Miss. Code Ann. Section 21-39-1, (1972), which prohibits municipal officers and employees from having or owning any interest or share, individually or as agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.
- 9.6 The Contracted Party will also be aware of and avoid any violation of Miss. Code Ann. Section 97-11-19 (Supp. 1982), which prescribes a criminal penalty for any public officer who has an interest in any contract passed by the board of which he is a member during the term he was a member and for one year thereafter.
- 9.7 Both parties agree to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project or projects to which this grant relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- 9.8 It is the duty of the Sub-Grantee and Contracted Party to insure the construction of the Project, including the letting of contracts in connection therewith, shall comply with all applicable laws and regulations and requirements of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, or any local government or political subdivision to the extent that such requirements do not conflict with Federal laws and regulations and any regulations or policies established by the Commission on Environmental Quality.
- 9.9 To the extent allowed by State Law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.
- 9.10 The Sub-Grantee and Contracted Party acknowledge and agree that MDEQ is not a party, in any manner whatsoever, to any contract between the Sub-Grantee and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), subcontractor(s), or between any other parties of any kind whatsoever (hereinafter

- collectively referred to as "vendor"). The Sub-Grantee and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the Sub-Grantee or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the Sub-Grantee.
- 9.11 Upon execution of any contract between the Sub-Grantee and any other party in regard to this project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract.
- 9.12 The Sub-Grantee shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the Sub-Grantee and any other party.
- 9.13 The Sub-Grantee and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.
- 9.14 MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the Sub-Grantee and any other party.
- 9.15 Unless otherwise required by applicable law (based upon reasonable advice of counsel), Sub-Grantee shall not make any public announcements in respect to this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of MDEQ, and the parties shall cooperate as to the timing and contents of any such announcement.
- 9.16 The Sub-Grantee and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the Sub-grantee and the Contracted Party or any other parties.

ACKNOWLEDGEMENT

The Contractor acknowledges that it:

- A. Has had sufficient time to review and consider the contract thoroughly;
- B. Has read and understands the terms and scope of this contract and its obligations hereunder; and,
- C. Has been given an opportunity to obtain independent legal advice, or such other advice as it may desire concerning the interpretation and effect of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their undersigned authorized representatives.

MS DEPARTMENT OF MARINE RESOURCES

XXXXXXXXXXXX

Joe Spraggins, Executive Director

XXXXXX, XXXXX

Date

Date

SAMPLE

Attachment A
Treatment Site Data Form

Grand Bay NERR Restoration Area “Pecan”



Invasive Species Present Onsite	Site Specific Information
Chinese Tallow, <i>Triadica sebifera</i>	Lat: 30.447891 Lon: -88.423884 Total Treatment Area: 152 acres
Cogongrass, <i>Imperata cylindrica</i>	Access is gained via Pecan and Bayou Heron Roads. Entry to the northern sites is possible through a gated road (Atwell Rd.).
Chinese privet, <i>Ligustrum sinense</i>	This site is located on previous homesites in an area formerly known as “Pecan” that are now wet pine savanna restoration areas.
camphor tree, <i>Cinnamomum camphora</i>	Habitats include mixed pine (mostly slash pine) and oak stands, recently mulched mixed pine and oak, and emergent freshwater wetlands.
Japanese climbing fern, <i>Lygodium japonicum</i>	No known previous invasive species control efforts