

**REQUEST FOR QUOTES
CAT ISLAND CONCRETE CULVERT
DEPLOYMENT PROJECT**



ENHANCE ★ PROTECT ★ CONSERVE

Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, Mississippi 39530
Contact Erin Gallagher – procurement@dmr.ms.gov

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Introduction

The purpose in the deployment of concrete culverts for the development of artificial reefs are for the enhancement of fishing opportunities in Mississippi state waters. These state waters consist primarily of a featureless, flat, mud/sand bottom. The addition of artificial reefs enhances the environment by providing habitats for a variety of reef fish species. This is a request for a quote, not an order.

The Mississippi Department of Marine Resources (MDMR) is seeking to move the maximum number of concrete culverts from the Artificial Reef staging site on Industrial Seaway in Gulfport, Mississippi to the Cat Island Reef. The estimated total number of concrete culverts available for this project is 370-15-inch (15”) four (4’) foot concrete culverts and 280-18-inch (18”) four (4’) foot concrete culverts.

Quotes should provide pricing for cost per ton to load and deploy concrete culverts including insurance and bond costs and **must not exceed** \$35,000.00.

RFQ Timeline

RFQ Issue Date:	October 14, 2016
Pre- Quote Site Visit:	October 20, 2016 at 9:00 a.m.
Questions to MDMR Deadline:	October 24, 2016 at 2:00 p.m.
Answers Posted to Questions to MDMR:	October 25, 2016, at 2:00 p.m.
Quote Submission Deadline:	November 1, 2016 at 10:00 a.m.

Specifications/Scope of Work

The specifications/scope of work for the project will include:

Transport and deploy concrete culverts by barge from the MDMR Artificial Reef Staging Site on Industrial Seaway in Gulfport, Mississippi (See Attachment B) to the Cat Island Reef which is located approximately nine (9) nautical miles south of the Gulfport Harbor (See Attachment C).

A pre-quote on site visit will be held at the MDMR Artificial Reef Staging Site in Gulfport on **Thursday, October 20, 2016 at 9:00 a.m.** The contractor or his designee are **strongly urged** to be present at the pre-quote site visit prior to submitting a quote. **This will be the only opportunity for contractors to visit the MDMR Artificial Reef Staging Site for this project. There will be no unscheduled site visits allowed.**

The contractor must start the project within ten (10) days of receipt of notice to proceed. The contractor will be responsible for all materials, labor, supervision, tools and equipment necessary to complete the project and all costs associated therewith. The contractor will be responsible for determining the best method for ensuring reef units are deployed inside the designated reef zone. All arrangements for labor and equipment required to load or transport the reef units, including rental or lease of cranes, lift barge or other equipment and the hiring of labor such as stevedores or crane operators, are the responsibility of the contractor to locate if needed.

The work must be completed within thirty (30) calendar days of notice to proceed, weather permitting.

GENERAL INFORMATION/REQUIREMENTS:

- All Quotes submitted must include a detailed project plan that will provide the methodology and equipment to be used in the loading of concrete culverts from the MDMR Artificial Reef Staging Site and deploying the concrete culverts to the Cat Island Reef deployment site.
- The contractor must meet with MDMR representatives at their office in Biloxi, Mississippi to discuss all aspects of the project prior to beginning any work. The date and time of the meeting will be set by MDMR following award of the contract.
- The contractor must supply the MDMR with the name(s) and phone number(s) of the person(s) who will be the official contact for the contractor.
- The MDMR will provide Global Positioning System (GPS) coordinates and a map of deployment locations to the successful contractor.
- The MDMR will provide an accredited Marine Surveyor, to conduct a draft/displacement survey to determine the tonnage on the barge. Contractors are strongly encouraged to have a representative(s) present during the Marine Surveyor's survey.
- The contractor must provide the manufactures barge draft tables for the barge designated for this project to the MDMR representative(s).
- The contractor must give a seventy-two (72) hour notice prior to contractor's departure to the Cat Island Reef deployment site.
- All deployment activities must be conducted Monday through Friday between 8:00 am and 5:00 pm. No deployment must be conducted on State and/or Federal holidays. An MDMR representative must be onsite to monitor and oversee that material is deployed at the locations specified by MDMR.

- The contractor is responsible for any tools or equipment left onsite in the absence of the contractor at the Artificial Reef Staging Site.
- In the event that the weather and/or other environmental conditions are deemed by MDMR to be unsuitable for deployment, MDMR reserves the right to either cancel or postpone the deployment. There will be NO deployment activity during a Small Craft Advisory or greater.
- The contractor must deploy concrete culverts by using at least one (1) anchoring point (spud).
- The contractor will be required to deploy a loaded barge of concrete culverts in multiple locations within the Cat Island Artificial Reef area.
- The contractor must place all materials in a manner such that no portion of the resulting structure exceeds the authorized 8-ft Mean Lower Low Water (MLLW) clearance at the reef site. The contractor is responsible for insuring that the minimal clearances are met.
- The contractor will be responsible for providing the means to move the material from its current location to a specified loading zone at the Gulfport staging site and onto the contractor's barge.
- The contractor must retrieve any and all debris which is expelled during the deployment. The contractor must provide a vessel and personnel to achieve this debris collection. The debris collection vessel must be capable of communicating with the captain in charge of the deployment barge. All personnel must be required to wear a United States Coast Guard approved Personal Flotation Device while on deck during deployment and while retrieving any debris.
- The contractor must be responsible for the removal and disposing of any debris and/or any material in the water located at the Gulfport staging site that would impede the contractor's ability to load the material onto the barge.
- The contractor will be responsible for any damages to the MDMR Bulkhead at the Artificial Reef Staging Site during the entirety of this project.

Minimum Qualifications

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

1. Two (2) professional references from individuals familiar with the contractor's abilities in the areas involved with this solicitation; and,
2. Each reference must demonstrate experience successfully completing offshore marine work of comparable scope and complexity performed within the last five (5) years. For each project, give the date and a description (scope) of the project, location, time frame for

completion of the project, reference person (customer) with current contact information (telephone and email).

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:

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

Bond Requirements

You must provide payment bond **within ten (10) calendar days of a fully executed contract**. The 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. 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.

All Bonds must be accompanied by an appropriate Power of Attorney.

Requirements for Quote

All Quotes must include the following:

- Attachment A – Quote Form (completed and signed)
- A detailed project plan that will provide the methodology and equipment to be used in the loading of concrete culverts at the MDMR Artificial Reef Staging Site and deploying the concrete culverts at the Cat Island Reef deployment site. The plan must include a description of the exact equipment that will be used in the performance of the work.

Modifications or additions to any portion of Attachment A may be cause for rejection of the Quote. All information on Attachment A must be completed. All requested attachments must be attached. You may use additional sheets, if necessary.

MDMR Contact and Questions/Requests for Clarification

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

Erin Gallagher, Procurement Director procurement@dmr.ms.gov

Contact with anyone other than the Procurement Director regarding this Request for Quotes may result in respondent disqualification.

All questions/requests for clarification must be received no later than **Monday, October 24, 2016 at 2:00 p.m. CST.**

All questions/requests for clarification and the answers thereto will be published on the MDMR website (<http://dmr.ms.gov>) in a manner that all respondents will be able to view by **Tuesday, October 25, 2016 at 2:00 p.m. CST.**

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

Deadline for Submitting Quote

You may submit your Quote (Attachment A – Quote Form and attachments) in one of three ways:

- Via email to procurement@dmr.ms.gov;
- Via U.S. mail, postage prepaid, to:

Erin Gallagher, Procurement Director, Mississippi Department of Marine Resources
6th Floor, 1141 Bayview Avenue, Biloxi, MS 39530; or,

- Via hand delivery to Erin Gallagher at the above address.

The **deadline** for receiving Quotes is **Tuesday, November 1, 2016 at 10:00 a.m. CST.** Late quotes will not be accepted.

Equal Opportunity Statement

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

ATTACHMENT A: Quote Form

Please complete and sign Quote Form. Incomplete or unsigned Quote Form may be rejected.
You may use supplemental pages, if necessary.

Vendor's Name:

Address/Principal Place of Business:

Address /Place of Performance of Proposed Contract:

Phone Number: _____

Fax Number: _____

Vendor's Email: _____

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

Timeframe for Completion and Detailed Project Plan:

Please submit a plan for completion of this project (*see* Specifications/Scope of Work). You must include a timeframe for completion of this project.

Please submit a detailed project plan that will provide the methodology and equipment to be used in the loading of concrete culverts at the MDMR Artificial Reef Staging Site and deploying the concrete culverts at the Cat Island Reef deployment site. The plan must include a description of the exact equipment that will be used in the performance of the work.

Statement of Price:

On the line below, please quote the price per ton to load and deploy concrete culverts required in the Scope of Work as designated for Completion of this Project.

_____ per ton

Prior Project of Comparable Scope and Complexity:

Please list a **minimum of two prior projects** of comparable scope and complexity. You must list at least two prior projects, but may list more. For **each** project give the date and a description (scope) of the project, location, time frame for completion of the project, reference person (customer) with current contact information (telephone and email). You may use supplemental sheets to discuss the scope of the prior projects and to list additional projects. You must provide **current contact information** for the reference person(s), as MDMR **must be able to contact** the reference(s) as soon as possible.

Project:

- a. Date Completed: _____
- b. Description of Scope: _____
- c. Location: _____
- d. Timeframe for Completion: _____
- e. Reference Name (customer): _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____

Project:

- a. Date Completed: _____
- b. Description of Scope: _____
- c. Location: _____
- d. Timeframe for Completion: _____
- e. Reference Name (customer): _____
 - i. Telephone: _____
 - ii. Email: _____
 - iii. Job Title: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

ATTACHMENT B: Directions to Artificial Reef Staging Site

A Pre-quote on site visit will be held at MDMR's staging site in Gulfport on **Thursday, October 20, 2016 at 9:00 a.m. CST**. The contractor or his designee are **strongly urged** to be present at the pre-quote site visit prior to submitting a quote.

From I-10

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

From Highway 90

- Turn north on Cowan/Lorraine Road
- Head north for approximately 3 miles.
- Turn right on Reichold Road at the light at foot of bridge
- At the end of Reichold Road when it turns hard left, there will be a gravel road and a gate on right
- Follow gravel road to staging site

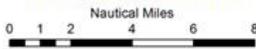
ATTACHMENT C: Map of Cat Island Reef

Offshore Artificial Reef Sites



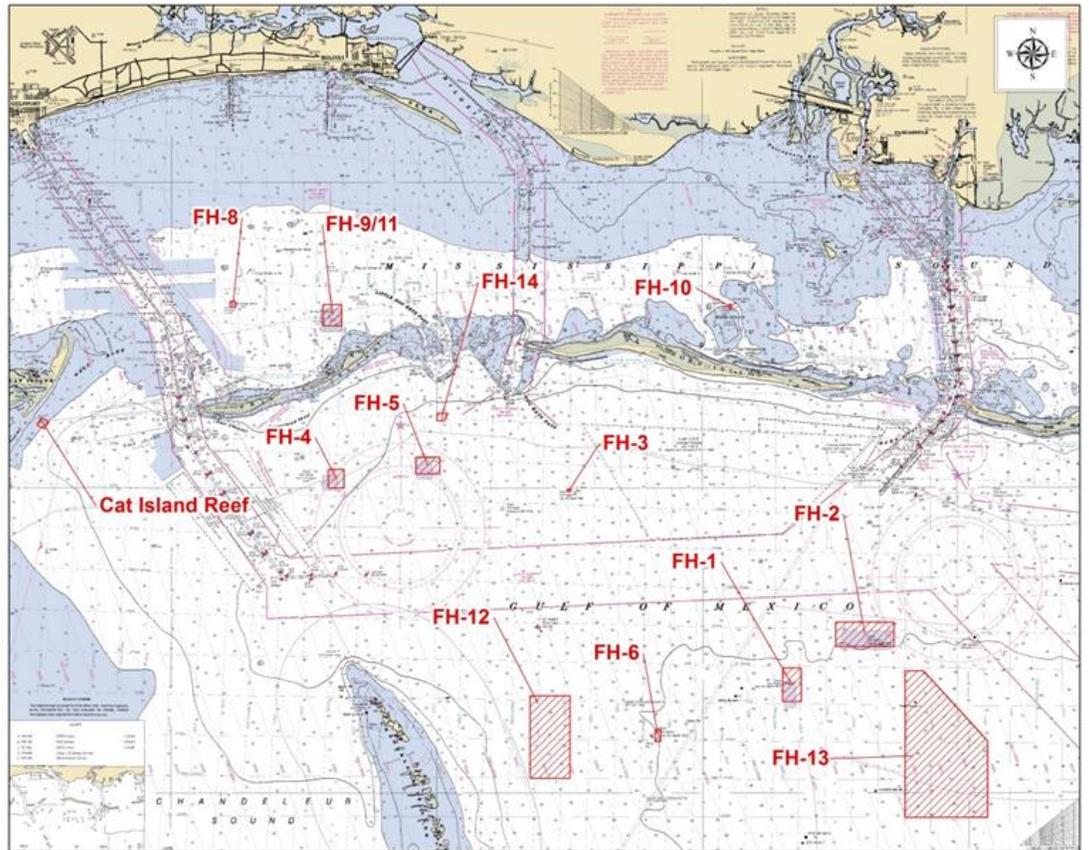
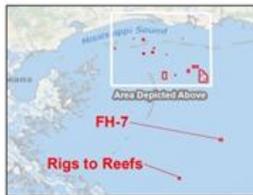
Artificial Reef Site

NOT FOR NAVIGATION



Based on NOAA Nautical Chart 11737
 Mississippi Sound + Appr (Dauphin Island to Cat Island)
 --FOR PLANNING PURPOSES ONLY--

Reef Center Points		
Fish Haven	Longitude	Latitude
FH-1	-88 36.648	30 03.552
FH-2	-88 33.9	30 05.202
FH-3	-88 45.03	30 09.918
FH-4	-88 53.802	30 10.302
FH-5	-88 50.352	30 10.728
FH-6	-88 41.7	30 01.902
FH-7	-88 24.102	29 57.098
FH-8	-88 57.702	30 16.002
FH-9/11	-89 04.854	30 12.102
FH-10	-88 38.952	30 15.93
FH-12	-88 45.75	30 01.848
FH-13	-88 30.852	30 01.188
FH-14	-88 49.8	30 12.318
Cat Island Reef	-88 53.952	30 15.648



ATTACHMENT D: Terms and Conditions

PAYMENT TERMS

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 agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

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 § 7-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

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

EMPLOYEES AND SUBCONTRACTS

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

Discrimination Prohibited. The MDMR is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, 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. § 71-11-1, *et.seq.* For anyone hired to perform work in Mississippi, the Contractor must register and participate in the E-Verify Program operated by the United States Department of Homeland Security. The Contractor agrees to maintain records of compliance and to provide a copy of verification to the MDMR on request. The Contractor further represents and warrants that any person assigned to perform services related to this contract meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands that any breach of these warranties may subject it to the following:

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

ACCESS TO RECORDS

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

TERMINATION

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

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

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 designed 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 require, 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 her 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

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

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

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

(2) ***Cancellation or Expiration of the Order.*** If a stop work order expires or is cancelled, the Contractor may resume work. An appropriate adjustment may be made in the delivery schedule and price if:

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

(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.

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 agency 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).

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.

LIABILTY 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 conflicts of laws provisions, and any

litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations. This Agreement is further governed by the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi, 39201 for inspection, or downloadable at www.mspb.ms.gov.

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.