

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
REQUEST FOR PROPOSALS**

Request for Proposals for Development of Beach Outfalls Design Challenge Project

The Mississippi Department of Environmental Quality (“MDEQ”) is soliciting written proposals, subject to the conditions stated herein and attached hereto, from consulting firms, non-governmental organizations, and public institutions to assist MDEQ, on an as needed basis, with designing and constructing a beach outfalls challenge, as more thoroughly described in the scope of work for the Design Challenge for Measureable Improvement of Water Quality from Beach Outfalls (the “Project”) funded through the National Fish and Wildlife Foundation (“NFWF”) Gulf Environmental Benefit Fund (“GEBF”), Agreement #49982.

Proposals shall be submitted by 3 p.m. CST on Friday, April 1, 2016, to:

**Proposal for Beach Outfalls Design Challenge
Mississippi Department of Environmental Quality
Attn: Melanie Green
515 East Amite Street
Jackson, Mississippi 39201**

The proposals submittal deadline has been set due to the complex requirements of this solicitation. An optional pre-submittal conference will be held at 11:00 a.m. CST on Friday, March 18, 2016 at the Wingate by Wyndham, 4302 W. Beach Boulevard, Gulfport MS, 39501.

The proposal shall be limited to no more than a total of thirty (30) typed pages including contents pages, supporting appendices, and resumes. Paper size shall be 8 1/2” x 11”. Text shall not be smaller than a font size of 12. Any information contained on pages that exceed the page limit, except as allowed by this Request for Proposal (“RFP”), will not be evaluated. Offerors shall submit the signed original and five (5) copies of the proposal, along with a digital copy of the proposal in PDF format on a CD-ROM or USB flash drive, in a sealed envelope or package to MDEQ on or before the date and time specified. The original must be signed by an authorized representative of the offeror.

MDEQ will receive proposals offered from organizations having specific experience and qualifications in the area identified in this solicitation. For consideration, proposals for the Project must contain evidence of the organization’s experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by MDEQ is included herein. Unless otherwise stated, all offerors shall provide profiles and resumes of the staff to be assigned to the Project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the offeror’s expertise in the area of this solicitation.

A selection committee shall review and evaluate all proposals. Therefore, offerors should emphasize specific information pertinent to the work in the proposal.

I. Project Description

The Mississippi Comprehensive Ecosystem Restoration Tool (“MCERT”) identified the beach outfalls as consistent and major stressors to water quality in the Mississippi Sound. After storm events, beach closures are a common occurrence throughout the year as a result of storm water flow from outfalls into the Mississippi Sound causing increased sediment, nutrients, and pollutants. The purpose of this Project is to enhance Mississippi’s ability to restore and maintain ecological integrity of priority bays and estuaries by providing measurable improvements to water quality and reducing significant non-point sources of degradation. In order to accomplish this goal, MDEQ will issue a design challenge to solicit ideas for improving water quality of storm water outfalls to reduce non-point impacts to marine resources. This design challenge has three major criteria: 1) eco-restoration idea that function to improve water quality to the Mississippi Sound from beach outfalls; 2) designs that enhances overall ecosystem service delivery of beach habitats; and 3) solutions that are cost effective and implementable over a large scale. The challenge will be multi-phased. Phase 1 is the initial grant that is focused on the creation and execution of the challenge. Phase 2 will be the engineering and design portion and pilot scale implementation of the winning designs.

The purpose of this RFP is to solicit proposals for developing, researching, and creating the Design Challenge for Improvement of Water Quality from Beach Outfalls. This RFP is not soliciting engineering and design services. Challenge development and creation will include engagement with MDEQ, Mississippi Department of Marine Resources (“MDMR”), and potential competitors in rule document development, public relations and media strategy, and facilitation of the advertisement(s) for the design and/or construction challenge. The challenge development contractors will be integral throughout the life of the Project, and assist MDEQ in challenge execution.

II. Scope of Work

The scope of the engagement may include, but is not limited to, the following tasks:

- (A) Develop challenge construct, including challenge rules, vision statement, goals and outcomes;
- (B) Produce a document of team rules and guidelines, including a legal agreement between teams and MDEQ that will outline the following: the format and weight of scoring for the respective categories, how the scores will be tabulated (e.g., summed, average, or median of the scores, and circumstances upon receipt of very few design teams (<3).
- (C) Create challenge goals by engaging technical experts to provide measurable outcomes for the challenge;
- (D) Engage MDEQ and MDMR staff to ensure that deliverables meet with conservation outcomes as outlined by NFWF-GEBF conservation framework; and

USACE staff to lend expert opinion to permitting requirements for potential implementation;

- (E) Develop a construction cost threshold for Phase 2 of the challenge by engaging and interviewing potential competitors to determine their interest in competing and what cost threshold they have determined needs to be put in place to ensure a workable, cost-effective water quality solution that could be implemented across the Mississippi Gulf Coast;
- (F) Create a public relations and communications strategy for engaging public interest throughout the life of the challenge;
- (G) Assist with announcement of the challenge;
- (H) Develop and help maintain a website that will host the challenge through MDEQ Office of Restoration throughout the life of the challenge;
- (I) Coordinate with MDEQ on questions that might arise during the challenge application window;
- (J) Assist with announcement and publicity of the winning teams;
- (K) Assist in required compliance activities, including, without limitation, permitting and other requirements;
- (L) Provide schedule, budget and Project updates monthly throughout the period of performance of the contract;
- (M) Provide expert witness testimony related to the Project, if needed;
- (N) Provide services necessary for closeout and audit support, if needed; and/or
- (O) Perform other tasks identified by MDEQ related to the Project.

III. Period of Performance

The period of performance of any contract awarded pursuant to this RFP is expected to commence upon execution by both parties and continue for an initial term of one (1) year. The Contract may be renewed for successive one-year period(s), at the discretion of MDEQ, upon providing written notice to Contractor at least sixty (60) days prior to the then-expiring term. The total contract period of this Contract, including any renewals thereof, shall not exceed five (5) years.

The anticipated project schedule for this Contract is as follows:

Design challenge development – six (6) months; and

Execution of the challenge – six (6) months.

IV. Compensation

Compensation for services requested under this RFP will be in the form of fixed hourly rates for the professionals and staff members the selected firm will utilize to complete the scope of work required for this Project.

V. Minimum Requirements

The proposal must contain the following information:

- (A) Company Information: Please provide offeror's company name, location of offeror's principal place of business, the place of performance of the proposed Contract, all appropriate contact information, the age of offeror's business, and the average number of employees over the past three (3) years.
- (B) Project Plan Management and Technical Approach: Provide a summary analyzing the various tasks and course of action necessary for development, creation and completion of the Challenge construct and various components (guidelines, PR campaign, website) within the anticipated project schedule.
- (C) Experience with Projects of Similar Scope and References: Provide a record of projects of similar size and scope completed by the proposed Project Team within the past ten (10) years. For each project, identify which member(s) of the proposed Project Team participated and what role they served. Each referenced project shall include the name, telephone number and email address of a responsible individual who may be contacted for a reference.
- (D) Project Team, Resources and Résumés: Provide résumés of all persons who would be assigned to provide the required services, including, but not limited to, their respective backgrounds, experience, Project responsibilities, licenses, certifications, education, and skills.

Provide information on the offeror's access to or ability to obtain the equipment, facilities and financial resources to perform the work.

This information must also include the name and DUNS number of any company or individual anticipated to be used as a *subcontractor* on this Project, as well as that subcontractor's duties on the Project. If subcontractors have not yet been identified but offeror has certain duties that it anticipates subcontracting, offeror shall delineate that scope of work to be subcontracted. Also, offeror should be aware that all subcontractors must be approved by MDEQ. Therefore, for those subcontractors not identified in the proposal, the successful offeror must submit a Request to Subcontract form, to be provided by MDEQ, during the term of the Contract.

- (E) Price: Provide an hourly rate schedule for each position the offeror proposes to utilize to provide the services to be performed under this RFP, including the hourly rate schedules of any proposed subcontractors. All expenses to be

incurred by the offeror or its subcontractors in performing the work shall be factored into the hourly rate calculation presented in offeror's rate schedule, except mileage for work-related travel, which shall be reimbursed at the federal rate and the state per diem for work-related meals. Expenses incurred in performing the work, except as noted above, shall not be separately reimbursed outside of the rate schedule. The offeror shall assign a percentage to each listed position on the rate schedule(s) for the offeror and any proposed subcontractor to identify the amount of work to be performed by each position under the Contract throughout the complete period of performance. The total percentage allocation must equal 100%.

- (F) Certificate of Good Standing: Provide an official Certificate of Good Standing issued within sixty (60) days prior to the submission deadline by the Office of the Secretary of State of the State of Mississippi demonstrating that the offeror is in good standing to do business in Mississippi, which will not be included in the proposal's thirty (30) page limit.
- (G) MBE/WBE: Provide documentation of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) as required under Section XXII(C)(1)-(2) of this RFP, which will not be included in the proposal's thirty (30) page limit.
- (H) Offeror's Affidavit: Offeror must execute, notarize, and attach the Offeror's Affidavit to its proposal, which will not be included in the proposal thirty (30) page limit. A copy of the Offeror's Affidavit is attached hereto as Attachment "A".
- (I) Non-resident Contractor: If an offeror is a non-resident contractor, offeror shall provide a copy of the offeror's current state bidder/offeror preference law pertaining to that state's treatment of non-resident contractors pursuant to Miss. Code Ann. § 31-7-47 or a statement on letterhead signed by an officer or manager of the offeror stating that no preference laws exist in that state. The state of residency of a contractor shall be the same as the corporate office reported by the offeror to the Mississippi Secretary of State.
- (J) Contractor's Representation Regarding Contingent Fees. Offeror's compliance with the requirements of Section XVI of this RFP related to Contractor's representation regarding contingent fees.

VI. Evaluation Procedure and Factors to Be Considered in the Evaluation Process

A selection committee shall review and evaluate each proposal as set forth below.

- (A) Determination of Acceptability. Proposals will be reviewed to ensure compliance with the minimum requirements of this RFP. The committee shall classify proposals as "acceptable," "potentially acceptable," or "unacceptable." Proposals that do not comply with the minimum requirements

may be deemed “unacceptable” and rejected immediately, receiving no further consideration.

- (B) Discussions with Individual Offerors. At MDEQ’s sole discretion, MDEQ may choose to hold discussions with individual offerors whose proposals are classified as “acceptable” or “potentially acceptable” to determine in greater detail each offeror’s qualifications and to determine if an offeror classified as “potentially acceptable” should be reclassified as “acceptable.” All offerors so classified shall be given an equal and fair opportunity to participate in individual discussions.
- (C) Evaluation Criteria. Proposals that are classified or reclassified as “acceptable” will be reviewed/analyzed by the committee to determine which proposal is most advantageous to the State based on the following factors:
- (1) the overall quality of the proposal and offeror’s proposed plan and implementation for project management, project execution and performing the services described in the scope of work, which should reflect an understanding of the Project and its objectives. Consideration will be given to the completeness of the response to the specific requirements of the solicitation. *See Section V(B) of this RFP, Minimum Requirements. (Critical – Weighted percentage: 30);*
 - (2) a record of past performance of similar projects. *See Section V(C) of this RFP, Minimum Requirements. (Very Important – Weighted percentage 20);*
 - (3) offeror’s ability to provide the required services as reflected/evidenced by qualifications (education, experience, professional certification and licensure (as applicable), etc.) and the personnel, equipment, facilities, and financial resources to perform the services currently available or demonstrated to be available at the time of contracting . *See Section V(E) of this RFP, Minimum Requirements. (Very Important – Weighted percentage 25);* and
 - (4) Price. *See Section V(F) of this RFP, Minimum Requirements. (Very Important – Weighted percentage 25).*

The committee will rate each criterion 0-100, multiply each rating by the weighted percentage and then add the weighted scores. Based upon the above scoring method, a perfect score would be 100.

VII. Rejection of Proposals

Proposals that do not conform to the requirements set forth in this RFP may be rejected by MDEQ. Proposals may be rejected for reasons which include, but are not limited to, the following:

- (A) The offeror is determined to be non-responsible under Rule 3-401.03 of the Personal Services Contract Review Board Manual;
- (B) the proposal contains unauthorized amendments to the requirements of the RFP;
- (C) the proposal is in the form of a conditional offer;
- (D) the proposal is incomplete or contains irregularities that make the RFP indefinite or ambiguous;
- (E) the proposal is received late;
- (F) the proposal is not signed by an authorized representative of the offeror;
- (G) the proposal contains false or misleading statements or references; or
- (H) the proposal does not offer to provide all services required by this RFP.

VIII. Qualifications of Offerors

The offeror may be required before the award of any contract to show to the complete satisfaction of MDEQ that it has the necessary facilities, ability, and financial resources to provide the service(s) specified therein in a satisfactory manner. The offeror may also be required to give a past history and references in order to satisfy MDEQ in regard to the offeror's qualifications. MDEQ may make reasonable investigations deemed necessary and proper to determine the ability of the offeror to perform the work, and the offeror shall furnish to MDEQ all information for this purpose that may be requested. MDEQ reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy MDEQ that the offeror is properly qualified to carry out the obligations of the Contract and to complete the work described therein. Evaluation of the offeror's qualifications shall include, without limitation, inquiry into the following:

- (1) the ability, capacity, skill, and financial resources to perform the work or provide the service required;
- (2) the ability of the offeror to perform the work or provide the service promptly or within the time specified, without delay or interference;
- (3) the character, integrity, reputation, judgment, experience, and efficiency of the offeror; and,
- (4) the quality of performance of previous contracts or services.

IX. Informalities and Irregularities

MDEQ reserves the right, in its sole discretion, to waive minor defects or variations of a proposal from the exact requirements set forth in this RFP that do not give one offeror an

advantage or benefit not enjoyed by other offerors or that adversely impact the interest of MDEQ. If insufficient information is submitted by an offeror for MDEQ to properly evaluate the proposal, MDEQ has the right to require such additional information as it may deem necessary after the time set for receipt of proposals, provided that the information requested has no more than a negligible effect on the price, quality, quantity, delivery or performance time of the services being procured. Waivers, when granted under this Section IX of the RFP, shall in no way modify the RFP requirements or excuse an offeror from full compliance with the RFP's specifications and other requirements of the Contract in the event the offeror being granted the waiver is awarded the Contract.

X. Disposition of Proposals

All submitted proposals become the property of the State of Mississippi.

XI. Competitive Negotiation

The solicitation method to be used is that of competitive negotiation from which MDEQ is seeking the best combination of experience, quality of service and price. Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, MDEQ also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of offered terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

XII. RFP Does Not Constitute Acceptance of Offer

The release of the RFP does not constitute an acceptance of any offered proposal, nor does such release in any way obligate MDEQ to execute a contract with any offeror. MDEQ reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. MDEQ reserves the right to negotiate final terms, budget, rates, contract type, and contract amount prior to the awarding of the Contract. The final decision to execute a Contract with any party rests solely with MDEQ, including the decision to make no award of Contract.

XIII. Nonconforming Terms and Conditions

A proposal that includes terms and conditions that do not conform to the terms and conditions in this RFP is subject to rejection as "unacceptable." MDEQ reserves the right to permit the offeror to withdraw nonconforming terms and conditions from its RFP prior to a determination by MDEQ of unacceptability based on the submission of nonconforming terms and conditions.

XIV. Exceptions and Deviations

Offerors taking exception to any part or section of the RFP shall indicate such exceptions in the proposal and shall be fully described. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written.

Conditional or qualified offers, unless specifically allowed, shall be subject to rejection in whole or in part.

XV. Proposal Acceptance Period

The original and five (5) copies of the proposal and all attachments shall be signed and submitted, along with a digital copy of the proposal in PDF format on a CD-ROM or USB flash drive, in a sealed envelope or package to:

**Proposal for Beach Outfalls Design Challenge
Mississippi Department of Environmental Quality
Attn: Melanie Green
515 East Amite Street
Jackson, Mississippi 39201**

no later than 3 p.m. CST on Friday, April 1, 2016. Timely submission of the proposal is the responsibility of the offeror. Proposals received after the specified time shall be rejected and returned to the offeror unopened.

The only acceptable evidence to establish the time of receipt at the MDEQ office identified for proposal opening is the time and date stamp of that office on the proposal wrapper or other documentary evidence of receipt used by that office.

MDEQ will not be responsible for delayed or lost mail received after the deadline. All packages received after this deadline will be returned unopened.

XVI. Proposal Withdrawal

If the price offered is substantially lower than those of other offerors, a mistake may have been made.

An offeror may withdraw its proposal from consideration if certain conditions are met:

- (1) The proposal is submitted in good faith;
- (2) The price offered is substantially lower than those of other offerors because of a mistake;
- (3) The mistake is a clerical error, not an error of judgment; and
- (4) Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the proposal demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

To withdraw a proposal that includes a clerical error after proposals are opened, the offeror must give notice in writing to MDEQ of claim of right to withdraw the proposal.

Within two business days after the proposal opening, the offeror requesting withdrawal must provide to MDEQ all original work papers, documents, and other materials used in the preparation of the proposal.

An offeror may also withdraw a proposal, prior to the time set for the opening of proposals, by simply making a request in writing to MDEQ. No explanation is required.

An offeror may also withdraw a proposal if MDEQ fails to award or issue a notice of intent to award the proposal within sixty (60) days after the date fixed for the opening of proposals.

No offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the Contract is awarded, or otherwise benefit from the Contract.

No partial withdrawals of a proposal are permitted after the time and date set for the proposal opening; only complete withdrawals are permitted.

XVII. Offeror's Certification

The offeror agrees that submission of a signed proposal form to MDEQ is certification that the offeror will accept an award made to it as a result of the submission.

XVIII. Expenses Incurred in Preparing Proposals

MDEQ accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of a proposal. Such expenses shall be borne exclusively by the offeror.

XIX. Proprietary Information

The offeror should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Miss. Code Ann. §§ 25-61-9 and 79-23-1. The provisions of the Contract which contain the 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 in accordance with Miss. Code Ann. § 25-9-120 and the Mississippi Public Records Act. Any pages not marked accordingly will be subject to review by the general public after award of the Contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

XX. Pre-Submittal Conference

An optional pre-submittal conference will be held at 11:00 a.m. CST on Friday, March 18, 2016 at the Wingate by Wyndham, 4302 W. Beach Boulevard, Gulfport MS, 39501. The purpose of the pre-submittal conference is to allow potential offerors an

opportunity to present questions to staff and obtain clarification of the procurement requirements. Minutes of the conference will not be published.

XXI. Additional Information and Inquiries

All questions/inquiries about this RFP must be submitted in writing to the above address or via email or fax to **Melanie Green** at Melanie_Green@deq.state.ms.us or at fax number (601) 961-5275 and must be received by MDEQ by close of business on March 25, 2016. Offerors are cautioned that any statements made by any person shall not be relied upon unless subsequently ratified by a formal written response to the RFP, such as an amendment or Response to Inquiries. MDEQ will issue one or more Response to Inquiries on or before March 29, 2016.

XXII. Minority and Women Businesses

MDEQ's policy is to promote participation of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in the contracts let by MDEQ. The intent of the following provision is to encourage contractors to involve such businesses in a meaningful role in the provision of services under this RFP.

- (A) Offeror's and offeror's subcontractors will abide by the following steps to encourage participation by MBE and WBE:
 - (1) Including MBE and WBE on solicitation lists;
 - (2) Assuring that MBE and WBE are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBE and WBE;
 - (4) Establishing delivery schedules, where the requirements of the work permits, which will encourage participation by MBE and WBE;
 - (5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce or Mississippi Development Authority's Minority Business Small Business Development Division (Mississippi Procurement Technical Assistance Program), as appropriate; OR satisfying the self-certification requirements of this section where appropriate, and
 - (6) Including these steps in any subcontracts awarded under this Contract.
- (B) If applicable, offeror shall supply MDEQ with proof of offeror's and offeror's subcontractor's minority status by providing the following:
 - (1) Certification by the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce;

- (2) Certification by the Mississippi Development Authority's Minority Business Certification Program; or
 - (3) Self-Certification through Notarized affidavit of the MBE/WBE documenting that said business is:
 - a. Wholly owned or majority controlled by a minority or woman; and
 - b. Has been doing business in Mississippi for a period of at least six months prior to the provision of work under this Contract.
- (C) **Offeror shall supply MDEQ with the following two lists, which should be included as an attachment to the proposal but will not be included in the thirty (30) page limit:**
- (1) A list of MBE/WBE firms specifically solicited for participation in the offeror's response to this RFP, to include subcontractor's company name, contact information, type of work solicited, estimated percentage of Contract value solicited to be performed by each subcontractor, and each solicited subcontractor's proof of minority status, as set forth above; and
 - (2) A list of MBE/WBE firms selected for participation as a subcontractor in offeror's response to this RFP, to include subcontractor's company name, contact information, type of work to be performed, estimated percentage of Contract value to be performed by each subcontractor, and subcontractor's proof of minority status, as set forth above.

XXIII. Acknowledgement of Amendments

Offerors shall acknowledge receipt of any amendment to this RFP by signing and returning the amendment with its proposal by identifying the amendment number and date in the space provided for this purpose by letter. Such acknowledgement must be received by MDEQ by the time and at the place specified for receipt of offerors.

XXIV. Certified Independent Price Determination

The offeror certifies that the prices submitted in response to the RFP have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices offered.

XXV. Offeror Investigations

Before submitting a proposal, each offeror shall make all investigations and examinations necessary to ascertain all site conditions, plans, specifications, drawings and requirements affecting the full performance of the Contract and to verify any representations made by MDEQ upon which the offeror will rely. If the offeror receives an award as a result of its

proposal submission, failure to have made such investigations and examinations will in no way relieve the offeror from its obligation to comply in every detail with all provisions and requirements of the Contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

XXVI. Debarment

By submitting a proposal, the offeror certifies that it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi.

XXVII. Debriefing Request

Unsuccessful offerors may request a post-award offeror debriefing, in writing, by United States mail or electronic submission to **Melanie Green** at Melanie_Green@deq.state.ms.us, to be received by the agency within three (3) business days after notification of the contract award or notice that no contract was awarded. An offeror debriefing is a purely administrative function of MDEQ and not a hearing; therefore, legal representation is not required. If an offeror prefers to have legal representation present, the offeror must notify MDEQ and identify its attorney. MDEQ will strive to schedule the debriefing to occur within five (5) business days after receipt of the offeror's request, and the debriefing may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to MDEQ. At a minimum, the debriefing information shall include the following:

- (A) the agency's evaluation of significant weaknesses or deficiencies in the offeror's proposal, if applicable;
- (B) the overall evaluated cost or price and technical rating, if applicable, of the successful proposal(s) and the debriefed proposal;
- (C) the overall ranking of all offerors, if a ranking was developed by the agency during the selection process;
- (D) a summary of the rationale for award; and
- (E) reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

XXVIII. Contract Terms and Conditions

Offeror's proposal and any subsequently-awarded contract are subject to the Standard Contract Terms and Conditions, a copy of which is attached hereto as Attachment "B"

and fully incorporated herein by reference, and any additional terms and conditions included in the subsequently-awarded contract.

XXIX. List of Attachments

The following are included as attachments to this RFP:

Attachment A – Offeror’s Affidavit

Attachment B – Standard Contract Terms and Conditions

ATTACHMENT A
OFFEROR'S AFFIDAVIT

NON-COLLUSION AND CONFLICT OF INTEREST AFFIDAVIT

State of _____
County of _____

I, _____, individually, and in my capacity as _____ of _____ (offeror), being first duly sworn on oath, depose and state the following on behalf of the company:

The Offeror represents as a part of such Offeror's proposal that such Offeror has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Contract.

The Offeror certifies that the prices submitted in response to the RFP have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices offered.

Offeror has not either directly or indirectly entered into any agreement, participated in any collusion; or otherwise taken any action in restraint of free competitive bidding in connection with this Contract; nor have any of its corporate officers or principal owners.

Except as noted hereafter, it is further certified that said legal entity and its corporate officers, principal owners, managers, auditors, and others in a position of administering governmental funds:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental department or agency;
- b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction;
- c) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in b) and c) above; and
- e) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The offeror further certifies, to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions will be completed and submitted.

The offeror hereby certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under any contract or task order resulting from this RFP that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the State's satisfaction, such conflict of interest (or apparent conflict of interest). The offeror further certifies that it has no conflict of interest with respect to the National Fish and Wildlife Foundation (NFWF) or the Project (as defined in the RFP).

All of the foregoing and attachments (when indicated) is true and correct.

Offeror's Name: _____

RFP Title: _____

Signature: _____

By (Print Name): _____

Title: _____

SWORN TO AND SUBSCRIBED before me, this the ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

ATTACHMENT B

STANDARD CONTRACT TERMS AND CONDITIONS

1. Availability of Funds. All Parties expressly understand and agree that the obligation of the Mississippi Department of Environmental Quality (“MDEQ”) to proceed under this Contract is conditioned upon the availability of funds from state, federal, and/or other funding sources. 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to Contractor to terminate this Contract without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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

3. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations, as amended*.

4. Trade Secrets. 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.

5. Compliance with Laws. Contractor understands that MDEQ 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 Contract 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 Contract 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.

6. Stop Work Order

A. *Order to Stop Work.* MDEQ 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 ninety (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, MDEQ 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.

B. *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:

- (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) Contractor provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

C. *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.

D. *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.

7. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. MDEQ 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. Miss. Code Ann. § 31-7-305.

8. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. 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 of Mississippi 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 Contract may subject Contractor to the following:

A. 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;

B. The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or

C. Both. In the event of such termination/cancellation, 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.

9. Transparency. This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. *See* Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this 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>. 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. The personal or professional services to be provided, the price to be paid, and the terms of this Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

10. 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 Contractor’s choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation 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.

11. Anti-Assignment/Subcontracting. Contractor acknowledges that it was selected by MDEQ to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Unless subcontractors are otherwise identified and approved in accordance with the Request for Proposals, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part; and MDEQ, in its sole reasonable discretion, shall have the right to

reject the letting of any such assignment or subcontract. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

12. Antitrust. By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDEQ all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State that relate to the services purchased or acquired by MDEQ under this Contract.

13. Attorney's Fees and Expenses. Subject to other terms and conditions of this Contract, in the event Contractor defaults in any obligations under this Contract, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees and costs for discovery, court costs, and attorney's fees) incurred by the State in enforcing this Contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall MDEQ be obligated to pay any attorney's fees or costs of legal action to Contractor.

14. Authority to Contract. Contractor warrants that (a) it is a validly organized business with valid authority to enter into this Contract; (b) it is qualified to do business and in good standing in the State of Mississippi; (c) 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, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

15. Change in Scope of Work. MDEQ may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDEQ and Contractor. If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify MDEQ in writing of this belief. If MDEQ believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the services within the Contract.

16. Claims Based on a Procurement Officer's Actions or Omissions.

A. *Notice of Claim.* If any action or omission on the part of a procurement officer or designee of such officer requiring performance changes within the scope of the Contract constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the Contract in

compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

- (1) Contractor shall have given written notice to the procurement officer or designee of such officer:
 - (i) prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
 - (ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
 - (iii) within such further time as may be allowed by the procurement officer in writing; and
- (2) The notice required by subparagraph (1) of this paragraph shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time; and the procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
- (3) The notice required by subparagraph (1) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,
- (4) Contractor maintains and, upon request, makes available to the procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. *Limitation of Clause.* Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

C. *Adjustment of Price.* Any adjustment in the Contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

17. Information Designated by Contractor as Confidential.

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss.

Code Ann. §§ 25-61-9 and 79-23-1. As provided in the Contract, the personal or professional services to be 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.

Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDEQ shall result in the immediate termination of this Contract.

18. Confidentiality.

A. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDEQ shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to Contractor for disclosure of information required by court order or required by law.

B. *Disclosure of Confidential Information.* In the event that either party to this Contract receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

C. *Exceptions to Confidential Information.* Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“**Disclosing Party**”) which is:

- (1) Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements;
- (2) Generally known or easily ascertainable by nonparties to this Contract;
- (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) Independently developed by the recipient without any reliance on confidential information;
- (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or

(6) Disclosed with the Disclosing Party's prior written consent.

19. Contractor's Personnel. MDEQ shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If MDEQ reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to MDEQ in a timely manner and at no additional cost to MDEQ. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

20. Copyrights. Contractor agrees that MDEQ shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this Contract. Further, Contractor hereby grants to MDEQ a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this Contract but which is incorporated in the material furnished under the Contract. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

21. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors and others in a position of administering governmental funds:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. Have not, within a three year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Contract under a public transaction;
- C. Have not, within a three year period preceding this Contract, been convicted of or had a civil judgment rendered against them for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- D. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in subparagraphs B. and C. of this certification; and
- E. Has not, within a three year period preceding this Contract, had one or more public transactions (federal, state, or local) terminated for cause or default.

22. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the Contract terms and conditions, MDEQ, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that MDEQ may have.

23. Failure to Enforce. Failure by MDEQ, at any time, to enforce the provisions of this Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Contract or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

24. Final Payment. Upon satisfactory completion of the work performed under this Contract, as a condition before final payment under this Contract, or as a termination settlement under this Contract, Contractor shall execute and deliver to MDEQ a release of all claims against the State arising under, or by virtue of, the Contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this Contract, by state law, or otherwise expressly agreed to by the parties in this Contract, final payment under the Contract or settlement upon termination of this Contract shall not constitute waiver of the State's claims against Contractor under this Contract.

25. Force Majeure. Each party shall be excused from performance for 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 such party and/or its subcontractors. Such acts shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("Force Majeure Events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how the Force Majeure event affects its performance, and the anticipated duration of the inability to perform. In the event of delays in delivery or in meeting completion dates due to Force Majeure Events, MDEQ will extend such dates for a period not to exceed the duration of the delay caused by such events, unless the State determines that termination of the Contract is in the State's best interest.

26. Insurance Requirements. Contractor shall maintain during the period of performance of the contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, and shall require its subcontractors to maintain said coverage, related to the work of the contractor and in connection with the contract.

(A) Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Contractor shall supply MDEQ endorsements from

its carriers evidencing waiver of subrogation in favor of MDEQ.

- (B) Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- (C) Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.
- (D) Errors and Omissions/Professional Liability Coverage. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

NFWF, MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi shall be named as additional insureds on such policies. The successful offeror shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said agency and subdivisions thereof. The Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDEQ, and any insurance covering MDEQ shall be excess coverage over the Contractor's coverage. Endorsements so stating shall be provided to MDEQ by the Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy. While Contractor shall provide MDEQ with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Contract, does not constitute waiver or estoppels as to MDEQ of their respective legal and equitable rights, including but not limited to the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the contractual provisions addressing the indemnity of MDEQ by the Contractor. Upon execution of the Contract, the Contractor shall promptly furnish MDEQ with certificates of insurance showing the successful Contractor's compliance with the insurance provisions of this paragraph.

27. HIPAA Compliance. If requested by MDEQ, Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this Contract.

28. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands,

liabilities, suits, actions, damages (including punitive damages), losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, costs of discovery and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this Contract. In MDEQ's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to MDEQ; Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without MDEQ's concurrence, which MDEQ shall not unreasonably withhold.

29. Infringement Indemnification. Contractor warrants that the materials and deliverables provided to MDEQ under this Contract, and their use by MDEQ, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the customer to discontinue using such items, in which case Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use and shall compensate the customer for the lost value of the infringing part to the phase in which it was used up to and including the Contract price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use.

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate, at its own expense, MDEQ, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi, against and pay all costs, including discovery costs, damages (including punitive damages) and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this Contract.

30. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, 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 State and Contractor. Neither the method of computation of fees or other charges nor any other provision contained herein nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MDEQ, and MDEQ shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDEQ shall not withhold from the Contract payments to Contractor any

federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, MDEQ shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

31. No Limitation of Liability. Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

32. Ownership of Documents and Work Papers. MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with this Contract, except for Contractor's internal administrative and quality assurance files and internal documents. Contractor shall deliver such documents and work papers to MDEQ upon termination or completion of this Contract. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDEQ and subject to any copyright protections.

33. Conflict of Interest. Contractor shall immediately notify MDEQ in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to the National Fish and Wildlife Foundation (NFWF), MDEQ, or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDEQ's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Contract per the Termination for Convenience clause of this Contract.

34. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by 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 Project 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.

35. Recovery of Money. Whenever, under the Contract, any sum of money shall be recoverable from or payable by Contractor to MDEQ, the same amount may be deducted from

any sum due to Contractor under the Contract or under any other Contract between Contractor and MDEQ. The rights of MDEQ are in addition and without prejudice to any other right MDEQ may have to claim the amount of any loss or damage suffered by MDEQ on account of the acts or omissions of Contractor.

36. Right to Inspect. The State of Mississippi, acting by and through MDEQ or any other authorized subdivision of the State, may at reasonable times, inspect the place of business of a Contractor or any subcontractors which is related to the performance of this Contract.

37. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by MDEQ or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment or until they are audited by MDEQ, whichever event occurs first. These records shall be made available during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

38. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this Contract. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

39. Severability. If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

40. Termination for Convenience.

A. *Termination.* The Agency Head or designee may, when the interests 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.

B. *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.

41. Termination for Default.

A. *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. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. 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.

B. *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.

C. *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.

D. *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. 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 "Termination for Convenience." (As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.)

E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, MDEQ determines 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 subparagraph D (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.

F. *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.

42. Termination upon Bankruptcy. This Contract may be terminated in whole or in part by MDEQ 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.

43. Third Party Action Notification. Contractor shall give MDEQ 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.

44. Unsatisfactory Work. If, at any time during the Contract term, the service performed or work done by Contractor is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate Contract or with its own resources at the expense of Contractor.

45. Waiver. No delay or omission by either party to this Contract in exercising any right, power, or remedy hereunder or otherwise afforded by 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 Contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Contract will void, waive, or change any other term or condition. No waiver by one party to this Contract of a default by the other party will imply, be construed as or require waiver of future or other defaults.

46. Procurement Regulations. The Contract shall be governed by the applicable provisions of 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 <http://www.mspb.ms.gov>.

47. Approval by Personal Service Contract Review Board. It is understood that the Contract is nonexistent and/or void and no payment shall be made in the event that the Personal Service Contract Review Board does not approve this Contract.

48. Acknowledgment of Amendments. In accordance with the requirements of the solicitation for this Project, Contractor acknowledges receipt of any amendment to this Contract by signing and returning the amendment with its proposal form, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter.

49. Integrated Agreement/Merger. This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

50. Applicable Law. This 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.

51. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract.

52. Modification or Renegotiation. All modifications to the Contract must be made in writing by the MDEQ and agreed to by Contractor. The parties agree to renegotiate the Contract if federal and/or state revisions of any applicable laws or regulations, including the availability of funding, make changes in this Contract necessary, which determination of necessity solely rests with MDEQ.

53. Price Adjustment.

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.

54. Notices. All notices required or permitted to be given under this Contract 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 Contractor: *name, title, contractor, address*

For the Agency: *name, title, agency, address*

55. Non-solicitation of Employees. Each party to this Contract agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this Contract terminates unless mutually agreed to in writing by the State and Contractor.

56. Quality Control. Contractor shall develop, submit, institute and maintain throughout the Contract period a properly documented quality control program, which shall be approved by MDEQ as soon as practicable after award of Contract (and subject to further revision as deemed necessary by MDEQ during the term of the Contract), designed to ensure that the services are provided at all times and in all respects in accordance with the Contract. The program shall include, but not be limited to, providing weekly reports which are the product of daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained which monitor actual progress against work schedules and describes the disposition of all complaints. For this project, weekly status reports shall include sites visited; number of plots observed, location of the plots observed and any data analysis that has occurred. The records and reports so created shall be open to inspection by MDEQ.

57. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.