



State of Delaware  
Department of Natural Resources and Environmental Control  
**Delaware Division of Parks and Recreation**  
89 Kings Highway  
Dover, Delaware 19901

April 1, 2017

ISSUED BY: Rebecca Lovin  
Paralegal III  
302-739-9206

SUBJECT: **AWARD NOTICE**  
**CONTRACT NO. NAT16007\_FISH SERVICES\_HEADBOAT**  
**Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing at**  
**Indian River Marina**

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**KEY CONTRACT INFORMATION**

**1. CONTRACT PERIOD**

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Each contractor's contract shall be valid for a **five (5) year** period from **April 1, 2017 to March 31, 2022**. Each contract may be renewed for one (1) five (5) year period through negotiation between the Vendor and the Division of Parks and Recreation. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

**2. VENDORS**

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Hook'em & Cook'em, LLC. / Judy V., LLC 24603 Bay Ave. Milford, DE 19963 Phone: 302-226-8220 Email: <a href="mailto:info@hookemcookem.com">info@hookemcookem.com</a>
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**3. PRICING**

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Prices will remain firm for the term of the contract year.

<b>Annual Contract Fee: \$40,000.00 + 1.0% of Gross Receipts</b>
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| <ul style="list-style-type: none"><li>• All extension options shall be negotiated and mutually agreed upon by the parties to the Contract, to include negotiated payment terms.</li></ul> |
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**ADDITIONAL TERMS AND CONDITIONS**

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**4. PAYMENT**

The annual Contract fee shall be due in two (2) installments on July 15<sup>th</sup> and September 15<sup>th</sup> during the term of this Contract. The Vendor agrees to pay the percentage of total gross receipts to the Division on or before December 31<sup>st</sup> of each year.

Any payments which become due from the Vendor to the Division and which are not paid on or before the due date shall be subject to an interest penalty of twelve (12) percent per annum until paid, computed from the due date. When a late payment is received, the Vendor shall be billed the amount of interest penalty as applicable. This provision is in no way a waiver of the Vendor's obligation to make payments when they are due.

**5. REQUIREMENTS**

**a. Reporting:**

The Vendor agrees to submit to: [OBS\\_Parks@state.de.us](mailto:OBS_Parks@state.de.us), a mandatory usage report once a month, covering each day's operation under the Contract, **plus a tabulated annual gross receipts report and annual financial statement report** for the period of operation on or before December 31<sup>st</sup> of each year. Monthly reporting shall be submitted no later than the 15<sup>th</sup> (or next business day after the 15<sup>th</sup> day) of each month, detailing the reporting required in the Division provided usage report. All annual financial

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statement reports must be **“Reviewed”** by a certified public accountant prior to submission and proof of “Review” must be included in Vendor submission.

**b. Utilities and Fuel:**

Electricity, water, telephone and/or other utilities used in the operations will be at the Vendor’s expense. The Vendor will be required to make independent arrangements for the service not provided by the Division. The Division will invoice the Vendor for water, electricity, trash, and recycling usage. The Division shall bill water and trash/recycling as follows:

1. The Division shall only bill for water from May to September.
2. Trash and Recycling shall be at the State of Delaware contract rate for an agreed upon estimated square footage used by the Awarded Vendor.

The Vendor agrees to purchase fuel for the boats used to provide the services described hereunder from the Division’s fuel station located at the marina while boat is moored at Indian River Marina.

**c. Taxes and Permits:**

Vendor shall pay all State and Federal taxes and/or license fees which may be imposed or legally chargeable, and, obtain all necessary permits and licenses, including but not limited to, a Delaware Business License, Public Health License and other necessary permits at its own cost and expense as a result of operating the business conducted as part of the services.

**d. Security:**

Vendor shall be responsible for security of its vessels, equipment, software and any credit card services while contracting with the Division.

**e. Inspection:**

Vendor will allow free access to its designated operation space while on Park premises as needed to authorize representatives of the Division and other county, state or federal officials having jurisdiction for inspection purposes. The Vendor shall further agree that if notified in writing by the Division or its authorized representatives that any part of the contracted premises or the facilities thereof for which Vendor are responsible for services rendered are not in conformance with the Contract granted, then Vendor shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the Division and the Vendor.

**f. Accounting and Reports:**

Vendor shall maintain proper and complete books and records of accounts of its operation under the Contract granted. Internal control procedures implemented by the Vendor shall be adequate to ensure that all revenue is accounted for and recorded. All receipts of any nature from the operation of this Contract provided by the Vendor shall be immediately and properly recorded. Vendor shall permit the Division or its authorized representatives to examine and audit financial records relative to this Contract at any reasonable time during normal business hours, after giving the Vendor two (2) weeks’ notice of the date and time of such examination and audit. Vendor shall retain these financial records for a period of five (5) years beyond the termination of this Contract, unless earlier disposal is approved by the Division in writing.

**g. Operating Schedule:**

1. Vendor agrees to operate the **Fish Cleaning, Seafood, Bait and Tackle Service** in accordance with the following minimum schedule:

- January 1<sup>st</sup> to February 28<sup>th</sup> Closed/On Call
- March 1<sup>st</sup> to April 14<sup>th</sup> Open on an AS NEED basis and weather dependent
- April 15<sup>th</sup> to May 14<sup>th</sup> Open Weekends
- May 15<sup>th</sup> to Memorial Day Open Daily 6 a.m. to 5 p.m.
- Memorial Day to Labor Day Open Daily 5 a.m. to 8 p.m.
- Labor Day to October 31<sup>st</sup> Open Daily 6 a.m. to 6 p.m.
- November 1<sup>st</sup> to December 31<sup>st</sup> Open Daily 7 a.m. to 4 p.m. / weather dependent

- During Seasonal peak fishing periods, such as mackerel in April and trout and bluefish from June through August, and scheduled fishing tournaments, the Vendor shall extend the hours of operation for fish cleaning to 8:00 p.m. or any reasonable time to accommodate the public demand for these services.

2. Vendor agrees to operate the **Head Boat Services** in accordance with the following minimum schedule:

- Fishing trips provided weekly, including holidays, weather permitting, between May 15th to June 15th and September 15th to September 30th
- ½ day fishing and manning the information/ticket office on weekends.
- Fishing trips provided daily, including holidays, weather permitting, between June 15th to September 15th
- ½ day fishing and the office seven (7) days a week.
- Specific Schedule:

- January 1<sup>st</sup> to February 28<sup>th</sup> Closed/On Call
- March 1<sup>st</sup> to April 14<sup>th</sup> Open on an AS NEED basis and weather dependent
- April 15<sup>th</sup> to May 14<sup>th</sup> Open Weekends
- May 15<sup>th</sup> to Memorial Day Open Daily 10 a.m. to 6 p.m.
- Memorial Day to Labor Day Open Daily 10 a.m. to 8 p.m.
- Labor Day to October 31<sup>st</sup> Open Daily 10 a.m. to 6 p.m.
- November 1<sup>st</sup> to December 31<sup>st</sup> Open Daily 10 a.m. to 4 p.m. / weather dependent

- Scenic and whale/dolphin watch cruises may be established by the Vendor based on public interest and demand.
- Departure from the marina for all fishing trips and cruises will be at times agreed upon by the Department and the Vendor.

3. **Vendor is required to promptly contact the Park Management and receive approval prior to canceling service for the day.** The Division may, in its sole discretion, close or limit the operation or parking availability temporarily for repairs or special events as needed, or permanently with prior notice to the Vendor.

4. The Division reserves the right to revoke the Contract of the Vendor if they do not adhere to the agreed-upon schedule of operations.

**h. Trash Removal and Use of Recyclable Products:**

1. Vendor shall ensure that the premises occupied during this Contract, including immediate area around the concession (concrete decks, etc.) are kept clean and sanitary at all times in conformity with rules and regulations pertaining to sanitation and public health. All rubbish, refuse garbage and debris collected by the Vendor shall be deposited in containers.
2. Vendor refuse shall be put into designated Park dumpster daily by Vendor. If the Division determines that the concession area becomes unsanitary and emits foul odors to the general public, that issue will be handled as a performance deficiency under the terms of the Contract.
3. Vendor shall serve food in recyclable materials and use care for the environment in all operational functions.
4. Vendor shall be invoiced by the Division for trash and recycling services.

**i. Emergencies:**

Vendor and the Division or their designated agent(s) shall be available by phone twenty-four (24) hours a day, seven (7) days a week for emergencies during the entire term of the Contract. Information on how to contact the Vendor or their designee is to be provided as part of Vendor's proposal (Attachment 4).

**j. Parking and Entrance:**

Vendor will not pay the daily Park entrance fees for participation in Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing Services, however, it is the expectation of the Division that all visitors to Delaware State Parks pay daily entrance fees where applicable or procure an annual park pass. The Division reserves the right to add a fee booth, automatic fee collection system or vehicle self-registration pay at this site. The Division will meet with the Awarded Vendor prior to any change in fee collection at the Indian River Marina to discuss impacts and strategic planning in an effort to efficiently manage resulting changes at the site. Parking spaces for the Vendor and their employees will be assigned by the Park Superintendent.

**k. Franchise Limitations:**

Vendor shall faithfully conform to all the provisions of this RFP and any contract signed between the Division and Vendor, and for as long as any Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing Services are provided as heretofore described at the Indian River Marina. Awarded Vendor shall have exclusivity for commercial Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing at the Indian River Marina located at Delaware Seashore State Park with exception to Division programming and events and the general public's use. No Vendor or other commercial business shall operate in these areas other than the Vendor for normal daily operations without express permission by the Division. **The Division reserves the right to provide auxiliary Fish Cleaning Stations on the docks. The Division also reserves the right to schedule events that may include Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing. For all instances, the Vendor shall be notified by the Division of all activities.**

**I. Marketing and Promotion Plans; Signs and Advertising:**

1. Vendor is encouraged to work with the Division of Parks and Recreation on a marketing and promotion plan for each calendar year, beginning summer season, 2017. The agreed upon marketing plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with Delaware Seashore State Park individually. Copies of the publications promoting Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing Services at the Indian River Marina shall be made available to the Park Management for distribution.
2. Vendor agrees not to use signs or any other means of soliciting business without the approval of the Division and agrees not to advertise any contract between the State and Vendor in any manner or form on or about premises contracted to it, or elsewhere, or in any newspaper or otherwise, without such prior approval. Any printed advertising shall include the correct name and location of the operation (e.g. XYZ Fish Services at the Indian River Marina).
3. The Division, through their authorized agents, reserves the right to prohibit the erection, display or use of signs which are not in keeping with the park area. Permission must be granted by the Division or their authorized agents prior to the erection, display or use of signs. The Division also reserves the right to designate the type, size, wording, color and number of signs requested by the Vendor.
4. Any signs authorized by the Division for specific events shall become the property of the Division, if not removed by the Vendor after reasonable notice from and at the direction of the Division.
5. It is mutually agreed by the Vendor and the Division that no permanent or temporary advertising, signage, or trademark visibility for Vendor's Fish Cleaning, Seafood, Bait and Tackle and Head Boat Fishing Services and any tour or instructional information, equipment rental or for sale products will be displayed or permitted anywhere in the designated Park locations without prior written approval from the Division, except that it is agreed that the Vendor shall be permitted to include its trademark and brand names on its equipment (e.g. fishing rods and reels, ocean tackle, shell fishing equipment, fish cleaning station, clothing or other Vendor -owned products, etc.).
6. Vendor may offer educational programs or activities without charge to state park visitors for promotional purposes, with the Division's prior approval, and **the cost of these free services to park visitors shall be included in Vendor's annual financial statement as non-revenue generating services.**

**m. Payment Credit Card Industry (PCI) Requirements:**

The Vendor agrees that it is their responsibility to become PCI compliant and maintain compliance. For more information related to PCI Security Standards, the following link is provided: [https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php)

**n. Quality and Pricing:**

1. Vendor warrants that the Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing Services, including any instructional, certified or educational programs offered by it to the public, shall be of the highest quality and consistent with quality specifications as provided by the Vendor pursuant to this section.

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2. Vendor shall have the right and privilege to charge prices and rates as are reasonable and fair. All price changes shall be subject to the prior written approval of the Division.
3. Vendor shall submit a price list to the Division each season, before the beginning of the operation, with a schedule of products and services to be offered and the prices to be charged for each product or service. Vendor agrees to offer only such products and services and any retail items for rent or sale at such prices as have been approved by the Division. In approving rates, primary consideration will be given to the prices charged for similar classes of products and services furnished outside the areas administered by the Division under similar conditions.

If, in the sole opinion of the Division, any products or services offered by the Vendor are inconsistent with the image or reputation of the Division or the State of Delaware, or are otherwise deemed unsuitable for sale on the contracted premises, the Division shall request the Vendor cease selling such products or services and the Vendor shall cease doing so immediately upon receipt of such written request from the Division.

**o. Vendor Responsibilities:**

A Vendor will be granted the right to provide Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing Services at the Indian River Marina located at Delaware Seashore State Park. Vendor's responsibilities and services under a Contract with the Division shall include the following:

1. Vendor shall offer for rent or sale Fish Cleaning, Seafood, Bait and Tackle, and Head Boat equipment which may include, but is not limited to, fish cleaning, the retail sale of ice (block or flaked), fresh/raw fin fish and shellfish (e.g. crabs and lobsters), cooked/steamed/baked seafood prepared as deli sandwiches and meals (no other deli sandwiches, meals or breakfast sandwiches are permitted unless listed herein or with written approval from the Division), shrimp/tuna salad pre-packaged as deli sandwiches and in containers, crab cake sandwiches (upon providing verification to the Division of a current State of Delaware Public Health License), fish bait (live and frozen), fishing tackle, accessories and supplies, fish storage containers, shell fish and fin fish equipment, limited outdoor recreational clothing, and steamed seafood directly to the consumer. Rentals of surf rods, ocean fishing tackle, and shellfish fishing equipment (e.g. clam rakes, crab traps) are also inclusive. For Head Boat Services, there must be rod and reel rentals provided, and prepackaged convenience foods. Food products must be served in recyclable containers. Vendor shall include, as part of their services, a variety Head Boat Fishing tours, along with ecological tours (e.g. scenic evening cruises, and whale/dolphin watch cruises). The Division reserves the right to contract with alternative vendors for services, a variety of Head Boat Fishing tours, along with ecological tours (e.g. scenic evening cruises, and whale/dolphin water cruises), if the awarded vendor is unable or unwilling to provide those services. The Division shall give the awarded Vendor first right of refusal to provide these services prior to engaging alternative vendors. Additional items may be offered for rent or sale, (e.g. sun visors, hats, water shoes / sandals, sun products, etc.), water, sodas, non-alcoholic beverages and packaged snacks, upon advanced written approval by the Division.
2. Vendor shall provide Head Boat Fishing Tours utilizing a Head Boat of at minimum sixty-five feet (65 ft.) and a second Head Boat licensed to carry a minimum of forty (40) passengers for hire. Ecological tours (e.g. scenic cruises, whale/dolphin watches, etc.), private rental tours for special events, programs, and water tours may also be conducted. The successful applicant shall also submit proof of ownership and/or an executed lease agreement for all watercraft utilized for the Head Boat Services during the period of the contract. The boats used to provide the services described herein shall be subject to approval by the Division. The successful applicant will be permitted to keep any boats used for this concession at their assigned dockage during the life of the contract. Vendor may be required to move the vessel from the bulkhead or the marina

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completely for weather related emergencies, when repairs to the bulkhead require removal or any event that the Marina Manager deems it necessary.

- a. Scenic cruises/evening cruises as well as whale and dolphin watch cruises may be offered by the Vendor during the summer season based upon public interest and feasibility/profitability. The smaller of the two boats shall be made available at least one (1) day a week in June and two (2) days a week in July and August to the Division for the provision of Division sponsored Ecological Tours taken in the Indian River. A flat per-tour rate shall be proposed by the Vendor as part of the offer. The Division reserves the right to secure the provision of other or additional Ecological, scenic/evening or historical tour services as and if deemed necessary or appropriate, The Division also reserves the right to add additional daily Ecological Tours based on demand and schedule the vessel for special events with adequate notice. Additionally, the Division reserves the right to contract with alternative vendors for any back-bay and shallow water activities. The Division shall give the awarded Vendor first right of refusal to provide these services prior to engaging alternative vendors.
  - b. The Division shall issue and collect revenue for all Division program (includes ecological programs and special events) tickets sold.
  - c. Departure from the Marina for all fishing trips, cruises and Ecological Tours will be at times agreed upon by the Division and the awarded Vendor.
  - d. The Vendor shall make every effort to accommodate disabled persons who wish to participate in Head Boat Fishing and Ecological Tours.
3. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Contract. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards.
4. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal and State statutes, codes, ordinances, resolutions and other regulations.
5. Each vessel used by Vendor in connection with this Contract shall be approved by the United States Coast Guard and manned and operated in accordance with a United States Coast Guard certificate of inspection. All vessels used in connection with this Contract shall be kept neat and clean and in good order. Safety shall be adhered to at all times.
6. In the event there is an oil spill from one of Vendor's vessels used in connection with this Contract, Vendor shall comply with all applicable State and Federal environmental laws in handling such spill. Vendor shall be aware of any hazardous substances or environmental laws that may impact this Contract. Vendor shall immediately notify the Division of any such instances of oil spill, hazardous substance spill or leakage or environmental law issues
  - a. "Hazardous Substances" means (1) hazardous materials, hazardous substances, hazardous wastes, low-level radioactive waste, toxic substances, asbestos and other substances as defined in or regulated under the following federal statutes and their state counterparts, as well as the regulations implementing such statutes: the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Atomic Energy Act, 42 U.S.C. § 2011 et seq., the



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Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.,; (2) petroleum and petroleum products, including crude oil and any fractions thereof; (3) natural gas, synthetic gas, and any mixtures thereof; (4) radon; (5) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; and (6) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring, reporting or remediation.

- b.** "Environmental Laws" means any federal, state or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, judicial decision, common law rule, decree, injunction or other authorization or requirement including the requirement to register underground storage tanks, relating to: (1) emissions, discharges, spills, releases or threatened releases of Hazardous Substances, materials containing Hazardous Substances, or other contaminants or pollutants into ambient air, surface water, groundwater, publicly or privately owned treatment works, sewer systems, wetlands or onto land; (2) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Substances, products or by-products containing Hazardous Substances, or of equipment or apparatus containing Hazardous Substances; or (3) otherwise relating to pollution or the protection of human health or the environment.
- 7.** Vendor and its employees shall be knowledgeable in signaling devices, such as required by the Coast Guard including a whistle, flag, smoke, and/or day time flares.
- 8.** Vendor shall carry either a VHF marine radio or cell phone when providing Head Boat Fishing Services.
- 9.** Vendor shall furnish the following items for Head Boat Fishing Services:
  - a.** One (1) Head Boat that is a minimum of sixty-five feet (65 ft.) long and is licensed to carry seventy-five (75) or more passengers for hire.
  - b.** A second Head Boat that is a licensed to carry a minimum of at least forty (40) passengers for hire.
  - c.** Both Head Boats shall be equipped with radar (minimum six (6) mile range), a fish finder and suitable protected areas for passengers during inclement weather.
  - d.** Both Head Boats shall have enough life vests for all passengers on board at all times.
  - e.** Bait shall be included in the fee for the head boat fishing trip. Rod and reel rentals shall be available to the passengers for an additional charge.
- 10.** Vendor will be required to furnish all equipment necessary to operate Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Services. These items include, but are not limited to:
  - a.** Tank and pumps for live bait sales.
  - b.** Display case for retail area.
  - c.** Pricing display board. This should list all pricing neatly and clearly.
  - d.** Appropriate equipment to prepare cooked seafood. All equipment must be kept operational, clean and sanitary to State of Delaware Public Health standards.

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- e. Cash register with cumulating total capable of producing a permanent record of sales. Record of all sales shall be required for mandatory monthly reporting as well as end of year annual financial statement reporting that is to be "reviewed" by a certified accountant.
11. Proof of ownership and/or an executed lease agreement for watercraft utilized for the head boat fishing services must be submitted.
12. All of the Vendor-owned equipment shall be serviceable and in compliance with Federal, State, and Municipal Codes and Regulations.
13. Vendor shall ensure that all vessels shall be under the charge of a licensed operator
14. Vendor shall have all customers sign a safety and informational waiver noting the inherent risks of offered activities and safety precautions/procedures. The Division shall approve any waivers to use.
15. Vendor agrees to abide by the Division of Delaware Parks and Recreation's vehicular rules and regulations, (as provided on the state's official website: [www.destateparks.com/rules](http://www.destateparks.com/rules)), including but not limited to the following:
  - a. Vehicles (including golf carts, mopeds, all-terrain vehicles, etc.):
    1. Vehicles will only be permitted on approved roads within each of the Park location(s) or areas specifically designated by the Division for such purpose.
    2. Vehicles are not allowed on paved pedestrian trails/paths or paved walkways.
    3. Vehicles are not permitted to cut across lawns or gardens.

Vendor, their employees, subcontractors and customers shall park their vehicles only in the designated parking lot or area. No parking is permitted under the trees, on the lawn or any landscaped area of the Park.
16. Vendor, their employees and volunteers shall wear staff clothing that identifies them as the Fish Cleaning, Seafood, Bait and Tackle Sales and Head Boat Fishing crew, employee, guide or instructor.
17. Vendor shall be responsible in employing only competent, mature and orderly employees and ensure their employees shall keep themselves neat and clean and be courteous to all visitors and patrons of the Park. Further, Vendor and its employees will not use improper language, behave in a boisterous manner nor engage in any unlawful or unbecoming conduct during the course of their employment by the Vendor. Any significant visitor complaints may be considered performance deficiencies under this Contract.
18. Fish cleaning and Fish Market services are to be located on the southern portion of the marina complex. The retail sale of marine hardware, parts and supplies offered at other marina concession operations may not be dispensed from this location.
19. Vendor shall repair and maintain all equipment and watercraft owned by Vendor. Equipment shall be clean, painted or polished, safe for use by Vendor customers and in maintained in proper serviceable condition at all times.

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20. Vendor shall provide maintenance of the operation area, including removal of all debris to ensure accessible for handicap visitors, in compliance with Americans with Disabilities Act (ADA) laws and legislation.
21. Vendor and their employees shall at all times generate and maintain an inviting atmosphere within the designated location for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this Contract.
22. Vendor must publically display in a conspicuous place the Indian River Marina a neat and legible sign listing all Fish Cleaning, Seafood, Tackle and Bait Sales, and Head Boat Services hours of operation, rates, prices and charges for all products for rent or sale and services.
23. Vendor shall be responsible for providing quality equipment, products, limited retail items and services included in this request for proposal at a reasonable price, in addition to providing excellent customer service to Park visitors.
24. Vendor shall be responsible for interior and minor exterior building fixtures, utilities (such as locks, lightbulbs, faucets, storm doors, etc.).
25. At the end of the contract term or at the request of the Division, Vendor shall ensure that all facilities and/or equipment provided by the Division are returned to the Division in good order, reasonable wear and tear expected. Failure to return such facilities to its natural state or return equipment to the Division at the end of the Contract term may result in the Division billing Vendor, as applicable.
26. Upon expiration of the Contract period, Vendor shall remove all equipment and inventory furnished by Vendor, provided all fees have been paid. Any equipment, inventory and/or personal property left on the premises beyond sixty (60) days from the expiration of the Contract shall become the property of the Division.
27. If the Division does not provide storage for Vendor equipment, then Vendor shall be responsible for installing temporary storage at the beginning of the season. All temporary storage must be removed at the end of the season. All temporary and portable storage must be approved by the Division.

**28. Modifications to Park Facilities:**

Vendor may make alterations, modifications, additions or improvements to the contracted premises and facilities with prior Division approval of the design, development, timeline and approved plans. **No work shall commence until Vendor receives the Division's approval and consent in writing. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor, unless the Division consents to share a portion of said costs or provide necessary materials and/or labor.** Vendor shall submit a proposed layout of the operation and a description of any alterations or modifications which are contemplated to set up the operation. Vendor is responsible for obtaining any work permits, adhering to state and local ordinances, code and regulations at Vendor's expense. Additional requirements based on state and local ordinances, code and regulations may be required and shall be the responsibility of the Vendor. Vendor shall coordinate any subcontractor access to the Park with the Park Management. **Any award associated with capital investment/improvements shall result in the Division's ownership of all capital improvements executed during the life of the contract at the point of expiration and/or termination.**

**29. Damage to Park Facilities:**

In the event State property or facilities are damaged in any way whatsoever by reason of any act or omission of Vendor or its employees, Vendor shall repair at its own cost and expense the facility or property so damaged. Upon the failure of Vendor to make such repairs within five (5) working days or a reasonable time period agreed upon by the Division and Vendor, the Division will repair such damage at the cost and expense of Vendor and deliver a detailed invoice to Vendor which will be due and payable within thirty (30) days of the date of the invoice.

**30. Waiver of Damages:**

Vendor waives any and all claims for compensation of any loss or damage sustained by the Vendor resulting from fire, water, natural disaster (e.g. hurricane, tornado, etc.) civil commotion or riots.

**p. Division Responsibilities:**

1. The Division reserves the right to enlarge, close and/or reduce the size of Indian River Marina for the purposes of improvement, repair, construction or any other legitimate purpose including the hosting of a special event or adding pavilions which may restrict flow of business and onsite parking. It is understood that any of the above actions shall not entitle Vendor to any reduction or suspension of the Contract or fees unless otherwise approved by the Division.
2. The Division shall be responsible for the major utility and structural repairs and exterior Maintenance of the Park facilities. In the event of an immediate repair need or request from the Vendor, the Division shall be the sole determining authority of prioritizing, scheduling and repair. Division shall bill Vendor for the monthly water use charges used in the performance of the operation services.
3. The Division reserves the right to limit or temporarily cease Heat Boat operations for Marina dredging activities. The Division shall notify the Vendor of scheduled dredging. Dredging is part of maintenance of waterways and the Marina. The Vendor shall not be entitled to discounts or refunds on fees from the Division for dredging activities.
4. The Division reserves the right to add the Marina's Divisionally operated "Ship Store" into the service offerings of this contract at a later date, through mutual written agreement, with the awarded vendor.
5. The Division may perform maintenance tasks which are the responsibility of the Vendor for which the Division shall charge the Vendor a fee based upon actual costs for labor and materials. Requests for said maintenance tasks shall be submitted in writing by the Vendor and approved by the Division prior to commencement of work.
6. The areas to be included by the Division for located in the southern portion of the marina complex include:
  - a. Fish cleaning – 13' x 22' area with two (2) 9' roll-up doors and (2) 10' roll-up doors, a triple stainless steel sink with double drain boards, and 2 ventilation fans, stainless steel table, one door to Market.
  - b. Fish Sales – Comprised of two sections separated by stairs, 16' x 23' section and 23' x 24' section, rough-in plumbing at 3 locations for sinks.

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- c. Washroom – 6' x 7' room contains a lavatory only.
  - d. Attic – 12' x 60' with 7-1/2' headroom. Finished storage area with permanent interior stairs.
  - e. 8' x 24' walk-in cooler for fish storage located outside building.
  - f. 8' x 24' walk-in freezer for ice storage located outside building.
  - g. Porch – 8' x 80' covered porch.
  - h. Utilities – 50 gallon water heater, 2 thru-wall heat pumps for heating and cooling and, lighting and electrical outlets throughout.
  - i. 200' of bulkhead to service customers of fishing vessels.
  - j. Stainless steel table and cutting boards.
7. The resources to be included by the Division for Head Boat Services include:
- a. Permanent mooring facilities for at least two (2) boats on the bulkhead with passenger loading ramps will be granted to the Vendor during the period of this license providing the Vendor shall make no alterations, deletions, or renovations to the docks without written permission from the Division and/or signing a waiver for release of the Division's liability.
  - b. A 7' x 11' office area and 9' x 11' ticket and storage area with 8' roll-up door and public waiting area will be provided adjacent to the mooring location which is situated in the northern portion of the concession building.
8. The Division shall provide the following services (unless otherwise noted in the specific park locations below):
- a. Weed control, trimming of bushes and leaf removal around all buildings.
  - b. The Division shall be responsible for maintenance of the parking lot(s).
  - c. The Division shall be responsible for security and patrolling of the Park area during normal Park hours.
  - d. The Division shall be responsible for grass mowing and maintain landscape of the Park area.
  - e. The Division shall be responsible for major utility and structural repairs and exterior maintenance to Division-owned buildings and facilities, including capital improvements, extensive renovations and exterior painting.

**6. INSPECTION**

Vendor will allow free access to its designated operation space while on Park premises as needed to authorize representatives of the Division and other county, state or federal officials having jurisdiction for inspection purposes. The Vendor shall further agree that if notified in writing by the Division or its authorized representatives that any part of the contracted premises or the facilities thereof for which Vendor are responsible for services rendered are not in conformance with the Contract granted, then Vendor shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the Division and the Vendor.

## **7. PERSONNEL, EQUIPMENT AND SERVICES**

- a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
- b. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
- c. **None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State.**
- d. Vendor shall, upon written request from the Division, provide an employee list for all employees and subcontractors/employees including name, title, function and qualifications.

## **8. SUBCONTRACTS**

Subcontracting is permitted under this contract. However, every subcontractor shall be and agreed to in writing by the Division. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

**The Vendor shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the Contract and with all local, State and Federal Laws. The Vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.**

## **9. INDEMNIFICATION**

The Vendor agrees will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.

## **10. VENDOR BACKGROUND CHECK REQUIREMENTS**

The Vendor selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry: Delaware Sex Offender Central Registry at:  
<https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state Contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

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By Agency request, the Vendor shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a Contract award. A violation of this condition represents a violation of the Contract terms and conditions, and may subject the Vendor to penalty, including Contract cancellation for cause.

The Vendor shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's Contract.

**The Agency may require additional background checks to be accomplished by the Vendor to comply with legislative requirements and recommendations. If additional background checks are required, the Vendor will be notified by the Agency and shall accomplish checks and adhere to all requirements listed in this section.**

## 11. TERMINATION OF CONTRACT

The contract awarded as a result of this RFP may be terminated as follows by the Division of Parks and Recreation.

- a. **Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

On receipt of the Contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A Vendor response shall not effect or prevent the Contract cancellation unless the State provides a written acceptance of the Vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original Contract cancellation timeline.

- b. **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination
- c. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

## 12. FORCE MAJEURE

Neither the Vendor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

## 13. AGENCY'S RESPONSIBILITIES

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The Agency shall:

- a.** Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.
- b.** Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c.** When the Division first experiences a relatively minor problem or difficulty with a Vendor, the Division will contact the Vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the Contract scope of work and services delivered to the public. The Division should stress to Vendor that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the Awarded Contract.
- d.** The state has several remedies available to resolve non-performance issues with the Vendor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the Contract to confirm that the issue is a part of the Contract. If the issue is not covered by the Contract, the state cannot expect the Vendor to perform outside the agreement. If the issue is a part of the Contract, the Agency must then contact the Vendor, discuss the reasons surrounding the default and establish a date when the Vendor will resolve the non-performance issue.