

Critical Need Statement

Items requested to Purchase: Complex concrete material will be deployed on reef sites 10 and ~~11~~ ⁹.

Program: Artificial Reef Program

Funding: Sport Fish Restoration funds (F-48-D)

Essential Critical Need/Background (Be sure to highlight how the good or service is essential to the program): The Artificial Reef Program involves on-going enhancement of fish habitat on 14 permitted sites. Deployment of concrete materials is a fundamental activity of the program and creates a novel invertebrate community which provides up to 400 times more food per square foot than is found in the native infaunal community.

What is the potential impact if this purchase is delayed or denied? Fish habitat would not be enhanced and federal funds might be lost to reversion back to the Sport Fish Restoration fund.

Check box after an electronic copy of the critical needs statement has been sent to Carol Pearson



Request for Action by

Chief Operating Officer

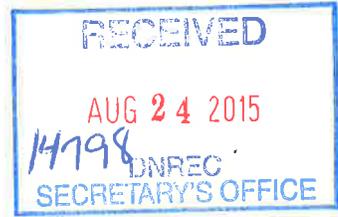
Division Director

Action Requested

- For Your Approval/Signature
- Review & Comment
- For Your Information

Distribution Requested

Return to: Stew Michels
Mail to:
Other:



Due Date: ~~8/14/15~~ 8/31/15

Approvals Required Prior to Submission:

<u>Name</u>	<u>Initials</u>	<u>Date</u>	RECEIVED SEP 22 2015 FINANCIAL SERVICES
Shelley DiBona	SD	8/6/15	
Dave Saveikis		8/20/15	
David Small			
→ Approved - OK to sign (DA) 9/17/2015			

Remarks:

Purchase complex concrete material to place on artificial reef sites 9 and 10

From: Kim Gadow

Date: 8/5/15

Division: Fish and Wildlife

Phone: 9911

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of September 1, 2015 ("Effective Date") and will end on December 31, 2015, by and between the State of Delaware, Department of Natural Resources & Environmental Control, Division of Fish & Wildlife, 89 Kings Hwy., Dover, DE 19901 ("Delaware"), and Coleen Marine, a Delaware corporation, with offices at 1416 Claudia Driv, VA Beach, VA 23455 ("VENDOR"). This contract is for the 2015 project year and is the first renewal.

WHEREAS, Delaware desires to obtain certain services to enhance fish habitat on 10 designated artificial reef sites; and

WHEREAS, Coleen Marine desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Coleen Marine represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Coleen Marine agree as follows:

1. Services.

1.1 VENDOR shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix D; and (c) VENDOR's response to the request for proposals, attached hereto as Exhibit 1. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VENDOR, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of VENDOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR's performance or failure to perform under this Agreement.

3.4 VENDOR shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by VENDOR's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
	Delaware Artificial Reef Project Team		
	Coleen O'Malley	President/Project Manager	20%
	Tim Mullane	Lead Project Manager	40%
	Steve McGee	Assistant Project Manager	20%
	Henry Hauck	Assistant Project Manager	20%

3.5 Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, VENDOR will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If VENDOR fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of VENDOR is unsuitable to Delaware for good cause, VENDOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 VENDOR shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 VENDOR agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 VENDOR has or will retain such employees as it may need to perform the

services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 VENDOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix C.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that VENDOR fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix B.

5. State Responsibilities.

5.1 In connection with VENDOR's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 Delaware agrees that its officers and employees will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to VENDOR. It is understood that Delaware's representatives' review comments do not relieve VENDOR from the responsibility

for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by VENDOR as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

VENDOR shall return any original data provided by Delaware.

5.6 Delaware shall assist VENDOR in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 VENDOR will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use VENDOR's name, either express or implied, in any of its advertising or sales materials. VENDOR reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VENDOR for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. VENDOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 VENDOR retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a

perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR retains title, whether individually by VENDOR or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall VENDOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 VENDOR warrants that its services will be performed in a good and workmanlike manner. VENDOR agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VENDOR for Delaware in connection with the provision of the Services, VENDOR shall pass through or assign to Delaware the rights VENDOR

obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 VENDOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the VENDOR, its agents or employees, or (B) VENDOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies VENDOR in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by VENDOR; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

10. Employees.

10.1 VENDOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner,

employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 VENDOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VENDOR has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by VENDOR under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to VENDOR at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay VENDOR its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. VENDOR shall not perform further work under this Agreement after the effective date of suspension.

VENDOR shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by VENDOR for any cause other than the error or omission of the VENDOR, for an aggregate period in excess of 30 days, VENDOR shall be entitled to an equitable adjustment of the compensation payable to VENDOR under this Agreement to reimburse VENDOR for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to VENDOR at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of VENDOR's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of VENDOR assigned to the

performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of VENDOR to fulfill contractual obligations it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to VENDOR, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against VENDOR it could pursue in the event of a breach of this Agreement by VENDOR.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by VENDOR, without prior written approval of Delaware.

15.3 Approval by Delaware of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VENDOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by VENDOR, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the VENDOR's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the U.S. Fish & Wildlife Service (USFWS) of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this 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.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

VENDOR and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* §

2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 VENDOR may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, VENDOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 VENDOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR in breach of the Agreement, terminate the Agreement, and designate VENDOR as non-responsible.

20.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR's performance and records pertaining to this Agreement at the VENDOR business office during normal business hours.

20.9 Federal Terms and Conditions

20.9.1 General:

(a) VENDOR shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the Federal Funding Terms and Conditions, then applicable laws and regulations supersede the Federal Funding Terms and Conditions. The Federal Funding Terms and Conditions shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting

provisions of this Contract.

(b) This Contract is funded by a Sportfish Restoration grant from the U.S. Fish & Wildlife Service under award number F14AF01208, and Catalog of Federal Domestic Assistance (CFDA) number 15.605. Neither the United States nor any of its Departments, agencies, or employees is a party to this Contract.

(c) The cover of the title page of all reports, studies, or other documents supported in whole or in part by this sub-award shall acknowledge the financial assistance provided by the **U.S. Fish & Wildlife Service** by including the following statement: *"This project was funded, in part, through a grant(s) from the U.S. Fish & Wildlife Service under award number(s) F14AF01208.*

(d) The rights and remedies of Delaware provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

20.9.2 Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between Delaware and VENDOR arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

20.9.3 Audit; Access to Records: VENDOR shall maintain books, records, documents and other evidence directly pertinent to performance on Federal grant work under this Contract in accordance with generally accepted accounting principles and practices. VENDOR shall also maintain the financial information and data used by VENDOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to Delaware. The United States Department of Labor, Delaware or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. VENDOR will provide proper facilities for such access and inspection.

20.9.4 Subcontracts: Any sub-contractors and outside associates or consultants required by VENDOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by Delaware during the performance of this Contract. Any substitutions in or additions to such sub-contractors, associates, or consultants will be subject to the prior written approval of Delaware.

20.9.5 Equal Employment Opportunity: VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

20.9.6 Utilization of Small and Minority Business: VENDOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Federal grant-assisted contracts and subcontracts.

20.9.7 Covenant against Contingent Fees: VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, Delaware shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

20.9.8 Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of the Code of Federal Regulations for the **U.S. Fish & Wildlife Service**, in effect on the date of execution of this Contract. In such case, VENDOR shall report the discovery or invention to the **U.S. Fish & Wildlife Service** directly or through Delaware and shall otherwise comply with Delaware's responsibilities in accordance with the Code of Federal Regulations. VENDOR hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of the Code of Federal Regulations. VENDOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

20.9.9 Debarment, Suspension, Ineligibility and Voluntary Exclusion: The VENDOR certifies, by submission of this proposal, that

neither it nor any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor is presently, or has within the past five years, been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State, or Local government department or agency.

20.9.10 Clean Air Act: for Federal grant-assisted contract and subcontracts exceeding \$150,000, VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

20.9.11 Lobbying: Federal grant-assisted contracts and subcontracts exceeding \$100,000 in Federal funds are subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented at the part entitled "New Restrictions on Lobbying" in the Code of Federal Regulations for the **U.S. Fish & Wildlife Service**, in which case the VENDOR must submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted to Delaware.

20.9.12 Cost and Compensation: It is agreed that the total cost for the services provided under this Contract shall not exceed \$27,500. Notwithstanding other terms and conditions of this Contract, it is understood and agreed that the total cost and compensation under this Contract shall not exceed the funds made available to Delaware by the **U.S. Fish & Wildlife Service** for this project.

20.9.13 Obligations: The obligations of Delaware under this Contract shall be subject to the receipt of sufficient funds appropriated by the (insert Federal agency/agencies) and the obligations of Delaware are limited to the amount of such appropriation.

21. Insurance.

21.1 VENDOR must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. VENDOR must carry the following coverage depending on the type of service or product being delivered:

- A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and
- B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or
- C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or
- D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and
- F. VENDOR shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The VENDOR is an independent contractor and is not an employee of the State of Delaware.

VENDOR must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

21.2. VENDOR shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Division of Fish and Wildlife

89 Kings Highway
Dover, DE 19901

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VENDOR consents to jurisdiction and venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE: Jeff Tinsman, Reef Program Coordinator
3002 Bayside Drive
Dover, DE 19901

TO Coleen Marine: Coleen O'Malley
1416 Claudia Drive
Virginia Beach, VA 23455

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

AND ENVIRONMENTAL CONTROL

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES**

Witness [Signature]

Name: [Signature]
David Small

Date: 9/20/15

Title: Department Secretary
Date: 9/20/15

Coleen Marine

Witness _____

Name Coleen O'Malley [Signature]

Date: 7/9/2015

Title: President
Date: 7-9-2015

**Scope of Services
APPENDIX A**

1. The contractor is free to locate complex concrete material from any current owner. Materials will be new, never used manufacturers reject material not suitable for sale. Culvert shall be 24" in diameter or larger. Materials other than culvert, junction boxes and manholes must be cleared with Division of Fish & Wildlife personnel. **Materials such as pilings, beams, railroad ties and demolition debris are NOT acceptable materials under this contract.**
2. The Contractor shall acquire the material from the current owner. Historically this material has been donated free of charge by manufacturers.
3. The Material shall be transported from the manufacturer's facility to the contractor's waterfront access. During the trucking process the load shall be weighed. Weigh slips will be the basis of payment for the contractor who has bid this work by the ton. Weight of donated material will also be used by Delaware to calculate the value of donations, necessary to match federal expenditures on this project.
4. The materials shall be loaded onto the contractor's barge for transport to a Delaware Reef Site. This shall be done in a manner which assures that material is stable and will not be lost during transport. Also, during the loading process, all dunnage, wood blocking material and Styrofoam from the manufacturing process will be removed. (any floatable material)
5. Deployment of material on the designated reef sites is a weather dependent activity. Delaware personnel must be present during each deployment. The scheduling of deployments is negotiated between the Contractor and Delaware. Delaware will provide a vessel for placement of the Contractor and his personnel on the barge, if necessary. During deployments the barge must be anchored and all anchoring equipment retrieved upon completion.
6. The Contractor shall annually provide Delaware with a total tonnage of material acquired from each manufacturer.
7. Delaware has not determined at this time how much complex concrete material will be deployed during the second year of this contract. In subsequent years, the volume of work may vary as Delaware considers other materials of opportunity (i.e. vessels) which may become available.
8. **During the second year of the project, Delaware will focus enhancement efforts on sites 9 and 10**

Appendix B.

Payment Schedule

Coleen Marine shall invoice Delaware, noting the Purchase Order and Contract numbers and including sufficient documentation to substantiate the weight of complex material deployed, at the rate of \$78. per ton. Delaware will pay the contractor within 30 days of receipt of invoice.

Appendix C.

Project Schedule

Time is of the essence on this contract, which must be completed by 12/31/15. The final decision regarding the volume of concrete work to be done in 2015 has not been made. The contractor shall not commence work until receipt of an purchase order from Delaware.

Appendix D

Request for Proposal

Requests for proposal were advertised in 2014 soliciting proposals for placement of complex concrete materials on 10 permitted sites (see enclosure). One bid was received from Coleen Marine.

Appendix B

Pricing

The vendor's single price per ton for complex concrete material delivered to any of ten (1-10) reef sites, at discretion of the Division.

\$78.00

STATE OF DELAWARE
Division of Fish and Wildlife

Site #4:	39° 03.000'N	075° 15.500'W
Site #5:	38° 54.500'N	075° 12.000'W
Site #6:	38° 58.000'N	075° 09.500'W
Site #7:	38° 56.500'N	075° 08.500'W
Site #8:	38° 52.000'N	075° 09.000'W
Site #9:	38° 40.500'N	075° 00.000'W
Site #10:	38° 36.500'N	074° 56.500'W

APPENDIX B
Pricing

The vendor's single price per ton for complex concrete material delivered to any of ten (1-10) reef sites, at the discretion of the Division.

\$ _____