

REQUEST FOR PROPOSALS

ISSUE DATE: March 30, 2010 RFP #CRD 10-02

TITLE: Aquaculture Growout System for Growing Oysters in Chesapeake Bay

COMMODITY CODE: 94532

ISSUING AGENCY: Commonwealth of Virginia
Marine Resources Commission
2600 Washington Avenue, 3rd Floor
Newport News, Virginia 23607

WORK LOCATION: Vendors place of business, delivery to various Tidewater locations.

PERIOD OF CONTRACT: From date of award to August 1, 2010 (*renewable).

SEALED PROPOSALS WILL BE RECEIVED UNTIL APRIL 23, 2010 AT 2:00 P.M. FOR FURNISHING THE SERVICES DESCRIBED HEREIN. LATE PROPOSALS WILL NOT BE CONSIDERED.

ALL INQUIRIES FOR INFORMATION SHOULD BE DIRECTED TO:

James A. Wesson
Telephone (757) 247-2121

SEND SEALED PROPOSALS DIRECTLY TO:

Brandy L. Battle
Marine Resources Commission
2600 Washington Ave., 3rd Floor
Newport News, Virginia 23607
(757) 247-2260

OR HAND DELIVER SEALED PROPOSALS TO:

Brandy L. Battle
Marine Resources Commission
2600 Washington Avenue, 3rd Floor
Newport News, Virginia 23607

TABLE OF CONTENTS FOR RFP# CRD10-02

	PAGE
I. <u>PURPOSE</u>	4
II. <u>BACKGROUND</u>	4
III. <u>SCOPE OF WORK</u>	4
IV. <u>PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS</u>	5-7
V. <u>EVALUATION AND AWARD CRITERIA</u>	7-8
VI. <u>REPORTING AND DELIVERY INSTRUCTIONS</u>	Omitted
VII. <u>MANDATORY PREPROPOSAL CONFERENCE</u>	8
VIII. <u>GENERAL TERMS AND CONDITIONS</u>	8-16
IX. <u>SPECIAL TERMS AND CONDITIONS</u>	16-20
X. <u>METHOD OF PAYMENT</u>	20
XI. <u>PRICING SCHEDULE</u>	20
XII. <u>ATTACHMENTS</u>	20-24

I. Purpose: The intent and purpose for this Request for Proposal (RFP) is to solicit sealed proposals from qualified sources through competitive negotiation to supply an oyster aquaculture growout system for approximately 3,000,000 oysters in the Chesapeake Bay.

II. Background: The VMRC Conservation and Replenishment Department (CRD) has the responsibility for managing and restoring the oyster resources in the State. There has been an increase in interest in oyster aquaculture within the Commonwealth, but generally there is little “hands on” instruction available for conventional watermen to gain knowledge of its practicality for them. The VMRC-CRD will be conducting an oyster aquaculture-training program for up to 60 crab industry participants to grow 50,000 cultchless eastern oysters in the summer of 2010. Growout locations will be in the tributaries of the Chesapeake Bay and on the Seaside of the Eastern Shore. This project will require an oyster growout system that can be adapted to various sites and locations. This RFP seeks proposals, including costs, for growout cage systems to complete this project.

III. Scope of Work:

- a) Build and deliver an aquaculture cage system for each of up to 60 participants in the project to individually growout 50,000 oysters to market size—for a total of up to 3,000,000 oysters according to the following requirements. Identical type cage systems will be used at each grow-out location. Use of structures that sit more than 12” off the bottom or that float in the water will require a general permit #4 as referenced in Regulation Chapter 4VAC20-1130-10 ET SEQ in Attachment D.
- b) Cage systems may be floating design, an intertidal or subtidal bottom design, or a combination.
- c) All systems shall be workable from small boats, not requiring a crane-type lifting device.
- d) All systems shall be constructed with plastic coated wire for marine exposure in Chesapeake Bay.
- e) All systems should include all aquaculture mesh bags for growout from an initial oyster seed size of approximately 15 mm, to a maximum of 400 oysters per bag at final growout.
- f) All systems must be constructed and delivered by August 1, 2010 to each crab participant’s locations in Tidewater, Virginia. Delivery locations will be provided by Virginia Marine Resources Commission to be determined prior to shipment. Site will be truck accessible. Delivery can be done as each system is completed, or one large delivery can be made at the end of the project. List of participants in oyster aquaculture program will be made available upon request.
- g) Written proposals including description of equipment, and itemized and total costs will be due by April 23, 2010.
- h) The exact number of participants in this program will not be known until after the response due date for this RFP. Proposals should include prices that reflect quantities from 40 to 60 growout systems.

IV. Proposal Preparation and Submission Instructions:

A. General Instructions:

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and (4) copies of each proposal must be submitted to the issuing agency. No other distribution of the proposal shall be made by the offerer.

2. Proposal Preparation:
 - a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

 - b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

 - c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

 - d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be

fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.

- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

- 3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the agency. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

- B. Specific Proposal Instructions: Proposals should be as thorough and detailed as possible so that the Marine Resources Commission may properly evaluate your capabilities to provide the required goods/services. Offerors are required to submit the following items as a complete proposal:

- 1. Return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
- 2. Offeror Data Sheet, included as Attachment A to the RFP, Attachment B, Subcontractor Data Sheet if applicable, Attachment C Small Business Subcontracting form and any other data requested in this RFP.

3. A written narrative statement to include:
 - a. Experience in providing the goods/services described herein, to include supplies and equipment used.
 - b. Names, qualifications and experience of personnel to be assigned to the project.
 - c. Resumes of staff to be assigned to the project.

4. Specific plans for providing the proposed goods/services including:
 - a. List of proposed equipment/goods/etc. including operating parameters, illustrations, materials used in construction, etc.
 - b. What, when and how the service will be performed.
 - c. Time frame for completion (if not otherwise specified by the agency in the statement of needs).

5. Proposed Price. Indicate in the pricing schedule, Section XI of the RFP, page 19.

6. Small Business Subcontracting Plan – Summarize the planned utilization of DMBE-certified small businesses which include businesses owned by women and minorities, when they have received DMBE small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist (Attachment C).

V. Evaluation and Award Criteria: Proposals shall be evaluated by the Marine Resources Commission using the following criteria:

A. Evaluation Criteria	Percentage Value
Quality of oyster growout system including materials, workmanship of product, responsiveness to conditions in the Chesapeake Bay, and adaptability to crab participants.	30%
Contractor’s Experience with providing equipment for other oyster aquaculture systems in Chesapeake Bay or similar marine environments.	30%
Costs of growout system for up to 60 participants to grow 50,000 oysters at each site—for	20%

a total of 3,000,000 market-size oysters.

SWAM Utilization

20%
100%

B. AWARD - Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

VII. Mandatory Preproposal Conference:

- A. A mandatory preproposal conference will be held on April 12, 2010 at 10:00 AM at Virginia Marine Resources Commission, 2600 Washington Ave. 4th Floor - Library, Newport News, VA 23607. The purpose of this conference is to allow potential offers an opportunity to present questions and to obtain clarification relative to any facet of this solicitation.
- B. Due to the importance of all offerors having a clear understanding of the scope of work and requirements of this proposal, **attendance at this conference will be a prerequisite for submitting a proposal.** Preproposal will only be accepted from those offerors who are represented at this preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. **No one will be admitted after 10:10 AM.**
- C. Bring a copy of the proposal with you. Any changes resulting from this conference will be issued in a written addendum to this proposal.

VIII. General Terms and Conditions:

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for

filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."

- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds by public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or Purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not

offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships,

and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7)

days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by

the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- R. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence.

S. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.

T. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

U. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

V. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

W. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

X. **SET-ASIDES.** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

Y. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

IX. Special Terms and Conditions:

- 1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the Marine Resources Commission will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that Commonwealth of Virginia has purchased or uses any of its products or services, and the contractor shall not include the Commonwealth in any client list in advertising and promotional materials..

2. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

3. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

- A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder/offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

4. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best And Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.
5. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 10 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
6. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for one year/3 successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 30 days prior to the expiration date of each contract period.
 1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
7. **SWaM CERTIFICATION:** If contractor is eligible for certification as a Small, Women or Minority owned business (SWaM), the contractor must apply to the Virginia Department of Minority Business Enterprises (DMBE) for certification.
8. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The

contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

9. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
10. **IDENTIFICATION OF SEALED PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	<u>4/23/2010</u>	<u>2:00p.m.</u>
Name of Offeror	Due Date	Time
<u>2600 Washington Ave., 3rd Floor</u>	<u>CRD10-02</u>	
Street or Box Number	RFP No.	
<u>Newport News, VA 23607</u>	<u>Aquaculture Growout System for</u>	
City, State, Zip Code	<u>Growing Oysters in Chesapeake Bay</u>	
	RFP Title	

Name of Contract/Purchase Officer or Buyer Brandy L. Battle

SEALED REQUEST FOR PROPOSAL – DO NOT OPEN

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

11. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in one purchase order with the eVA transaction fee specified below assessed for each order.
- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

- X. **Method of Payment:** Contractor will be paid on the basis of invoices submitted after receipt of each shipment of Oyster Cages, Oyster Trays or Oyster Bags by VMRC Replenishment Department. Contractor will be paid fifteen days from receipt of each invoice for delivered goods.
- XI. **Pricing Schedule:** The Offeror agrees to provide services in compliance with Section III, Scope of Work, and the terms and conditions of this Request for Proposal at the total price figure listed below:

Total Costs of growout systems for 40 participants to grow
 50,000 oysters at each site – for a total of 2,000,000
 Market – size oysters \$ _____

Total Costs of growout systems for 20 additional participants to grow
 50,000 oysters at each site – for a total of 1,000,000
 Market – size oysters \$ _____

XII. Attachments:

- Attachment A - Contractor Data Sheet
- Attachment B - Subcontractor Data Sheet
- Attachment C – Small Business Subcontracting Plan
- Attachment D – Chapter 4VAC20-1130-10 ET SEQ. – General Permit #4

ATTACHMENT A

**CONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Offerors must have the capability and capacity in all respects to fully satisfy all the contractual agreements.

2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing this type of service.

_____years _____months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>PERSON TO CONTACT AND PHONE NO.</u>

ATTACHMENT B

**SUBCONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF SUBCONTRACTOR:** Subcontractor must have the capability and capacity in all respects to fully satisfy all the contractual agreements.

2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing this type of service.

_____ years _____ months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>PERSON TO CONTACT AND PHONE NO.</u>

ATTACHMENT C

Annex 7-G

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbe.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ Date: _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (check only one below):

- _____ Small Business
_____ Small and Women-owned Business
_____ Small and Minority-owned Business

Certification number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.****PREAMBLE**

This chapter establishes a general permit authorizing the use of temporary protective enclosures to grow shellfish on leased grounds. This chapter is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-603.1 of the Code of Virginia. The effective date of this General Permit is December 1, 2007.

4VAC20-1130-10. Purpose.

The purpose of this chapter is to establish a general permit for the use of temporary protective enclosures for the propagation of oysters and clams, including a notification process and special conditions necessary for the protection of public safety, navigation, natural resources, and the environment.

4VAC20-1130-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Submerged aquatic vegetation” or “SAV” means any rooted, vascular submerged plants such as eelgrass (*Zostera marine*), widgeon grass (*Ruppia maritima*), or other species commonly found in the Chesapeake Bay and its tributaries.

“Temporary protective enclosure” means cage, rack, tray, or other similar device for holding and protecting oysters or clams.

4VAC20-1130-30. Notification Procedures.

A. All notifications for the use of temporary protective enclosures authorized by this general permit shall be made in writing to the Commissioner.

B. The notification shall contain the following information: the name, address and telephone number of the applicant, the location and plat file number depicted on an accurately scaled vicinity map, the approximate size of the area that will contain the temporary protective enclosures, the maximum number of structures to be placed on the leasehold at any given time, a detailed description of the temporary protective enclosures proposed to be deployed, the species to be cultured, a general description of the area within 500 feet of the lease boundary, including existing marine resources (SAV, shellfish beds, fixed fishing devices, traditional fishing and shellfish areas), locations of public and private piers and docks, water depths at mean low water, tidal range, the minimum vertical clearance, at mean low water, over the enclosures, the estimated date of placement of the structures, and any other information the Commissioner deems

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.**

necessary to evaluate the proposal. Accurately scaled drawings shall be included with the notification, which depict the type of structures proposed to be deployed and the proposed deployment pattern. The notification shall also include a list of the names and addresses of all riparian property owners within 500 feet of the area containing the temporary protective enclosures and shall depict the location of their land on a tax map or other suitable map. Riparian Property Owner Acknowledgement Forms for such riparian property owners, may be included with the notification. Such forms shall be signed by the riparian property owner and shall indicate their comments on the notification. Should such forms not be provided in the notification, the Commissioner, or his designee, shall notify the adjacent property owners of the pending notification.

C. The Commissioner, or his designee, shall determine that the notification is complete and filed in accordance with the instructions contained therein.

D. The Commissioner will provide written notice to the leaseholder of his final action on the proposal.

E. In accordance with the provisions of §28.2-603.2 of the Code of Virginia, the Commissioner may approve the proposal, approve the proposal with conditions, or deny the proposal, of the leaseholder. The Commissioner may prescribe conditions for any proposal for the protection of public safety, navigation, natural resources, and the environment, that include, but are not limited to: the type of construction materials used for the temporary enclosures; the manner in which such structures are deployed; the distances the structures are placed from the shoreline, navigable channels, piers, wharfs, or other water dependent facility; and the minimum vertical clearance at mean low water over any temporary structure. When determining these conditions, the Commissioner shall also consider those factors set forth in Section 28.2-1205 A. of the Code of Virginia.

4VAC20-1130-40. General Conditions.

A. The general permit established by this chapter grants no authorizations to the permittee to encroach upon the property rights, including riparian rights, of others.

B. Authorized agents of the Commission shall have the right to enter upon the premises at reasonable times, for the purpose of inspecting the work being done pursuant to this permit.

C. This general permit shall not be transferred without written consent of the Commissioner.

D. The permittee shall, minimize the adverse effects of the project upon adjacent properties and wetlands and upon the natural resources of the Commonwealth.

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.**

E. This permit may be revoked at any time by the Commissioner upon the failure of the permittee to comply with any of the terms and conditions hereof.

F. There is expressly excluded from the permit any portion of the waters within the boundaries of the Baylor Survey.

G. The issuance of this permit does not confer upon the Permittee any interest or title to the beds or waters of the Commonwealth.

H. All structures authorized by this permit which are not maintained in good repair shall be completely removed from State-owned bottom within five business days after written notification by the Commissioner.

I. This permit authorizes no claim to archaeological or historic artifacts which may be encountered during the the placement of temporary protective enclosures. If, however, archaeological remains are encountered, the Permittee agrees to notify the Commissioner, who will, in turn notify the Department of Historic Resources and Virginia Institute of Marine Science. The Permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

J. The Permittee agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment, operation or maintenance of said project.

K. The public shall not be excluded from any space not physically occupied by the authorized temporary protective enclosures.

L. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law or regulation.

4VAC20-1130-50. Special Conditions.

A. The Permittee authorized by this chapter shall hold a current Oyster or Clam Aquaculture Product Owners Permit, issued by the Commission, shall be in compliance with the provisions of Regulation 4VAC20-610-10 et seq., "Pertaining to Mandatory Harvest Reporting", and shall have paid all fees, costs, and the annual rent for the oyster ground lease. Failure to pay all fees and rents as required by §§ 28.2-608 and 28.2-612 of the Code of Virginia and failure to report as required in 4VAC20-610-10 et seq. may result in termination of the lease and general permit.

B. Any temporary protective enclosure shall be constructed of non-toxic materials.

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.**

C. No temporary protective enclosure shall be placed in or upon submerged aquatic vegetation beds, and consideration, by the Commissioner, for authorizing the placement of protective enclosures in currently un-vegetated areas that are documented as historically supporting SAV beds, shall include consultation with the Virginia Institute of Marine Science, in order to determine the potential for impacts on SAV, within the term of the prospective lease. If SAV colonizes within the boundaries of the area designated for the temporary protective enclosures, the authorization for those structures under this general permit shall remain in effect only for the remainder of the term of the lease. The general permit shall be renewed only upon a finding by the Commissioner that the placement of the temporary protective enclosures, within the lease, will not significantly interfere with the continued vitality of the SAV.

D. No individual temporary protective enclosure shall exceed 70 cubic feet, in volume.

E. Temporary protective enclosures may be placed individually on the bottom, placed in racks, or stacked one on top of another.

F. Temporary protective enclosures shall not be placed within any marked navigation channel, or in any area that would create a hazard.

G. Temporary protective enclosures shall not be placed in any area that would impede customary access to navigable waters, from any riparian property, public or commercial landing, or marina facility.

H. Temporary protective enclosures shall not be placed within 100 feet of any shoreline or pier without the agreement of the riparian property owner.

I. Temporary protective enclosures shall be placed in a manner that allows for their ease of access, maintenance, and removal and shall not exceed an average of 250 individual structures per acre within the permitted area or 250 arrays of structures, when those enclosures are stacked one on top of another.

J. In addition to the marking of the boundary of the lease, required by Regulation 4VAC20-335-10 et seq., the boundary of the area containing the structures shall be identified with markers meeting the description for markers identified in Regulation 4VAC20-290-30, while structures are located on the bottom. At intervals no smaller than 150 feet and along the perimeter of the area containing the temporary protective enclosures, the leaseholder shall place placards, constructed of a durable material, which shall be at least four feet above the mean high water line, and shall conform to the description established by the Commissioner.

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.**

K. No temporary protective enclosure shall be marked by more than one buoy, which shall not exceed 15 inches in its longest dimension. The Commissioner may designate the color of the buoys used for marking temporary protective enclosures.

L. Nothing in this general permit shall authorize the placement of any temporary protective enclosure designed to float on the surface of the water.

M. Leaseholders shall, within five business days, remove any enclosure that is not actively in use for the planting and propagating of shellfish, and, upon expiration or termination of a lease, or of the leaseholder's Aquaculture Product Owner's Permit, the leaseholder shall promptly remove all enclosures placed on the leasehold.

N. Leaseholders shall maintain a list identifying those leases on which enclosures are placed during the terms of the lease and provide, upon request, a current copy of the list to authorized representatives of the Commission. Leaseholders shall also submit such list to be filed with any application for lease renewal made pursuant to §28.2-613 of the Code of Virginia.

O. The Commissioner, at his discretion, may order the immediate removal or relocation of any enclosure that interferes with navigation, creates a hazard, or otherwise fails to comply with the conditions of the general permit.

4VAC20-1130-60. General Permit Fees.

A. Upon approval of the notification to use temporary protective enclosures, the applicant shall pay to the Commission the following fee:

1. For up to 500 structures, \$125.00.
2. For over 500 but not more than 1000 structures, \$250.00.
3. For over 1000 but not more than 2500 structures, \$625.00.
4. For over 2500 structures, \$1000.00.

B. The fee established by this section shall be paid annually by the leaseholder, on or before the anniversary date of the issuance of the general permit.

4VAC20-1130-70. Penalty.

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH

CHAPTER 4VAC20-1130-10 ET SEQ.

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on November 27, 2007.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: *Jack H. Travelstead*
for Steven G. Bowman
Commissioner

Subscribed and sworn to before me this 30 day of November, 2007.

Brandy L. Battle
Notary Public