



Invitation to Bid – Price Agreement

Title: **Live Channel Catfish**

ITB Number: **10-51600-20-05576**

Agency Requested Delivery: **As Requested**

Commodity Code(s): 04040, 04042, 12045, 94514

**Return Bid to: New Mexico General Services Department
State Purchasing Division:**

Electronic bid submission:

<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>

Bids Due No Later Than:

Date: **November 24, 2020** Time: **2:00pm**

Late Submission of Bids Will Not Be Accepted.

Formal Sealed Bid Opening:

Place: <https://www.gotomeeting.com/>

To occur immediately following due date/time.

If you have questions regarding this ITB please contact:

Procurement Specialist: **Michael Saavedra** Telephone No.: **505-827-0610** Email: **Michael.Saavedra@state.nm.us**

Bidder MUST complete applicable and sign the following in order for Bid to be valid (type or print clearly):

NM Vendor ID# (if applicable): _____	Address: _____
Company Name: _____	_____
DBA (if applicable): _____	_____
Co. Email: _____	Co. Phone No.: _____
NM Gross Receipts Tax # (CRS): _____	Federal Tax ID#: _____

Payment terms: _____ (e.g., **Net 30**. Discount will not be considered in computing the low bid, see “Terms and Conditions”)

F.O.B. Point must be Destination, unless otherwise indicated by the NM State Purchasing Agent

Contractor’s Delivery: _____ (May be considered in the award)

Authorized Signature: _____ Print or type name: _____

Signatory Email: _____ Phone No.: _____

Important - In light of the COVID-19 developments, bids must be submitted via electronic submission. Bids will be received electronically through eProNM. Please see Bid Submission Instructions on page 2.

Bids are subject to the “Terms and Conditions,” shown on the attached pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this document.

BIDS SUBMITTED ELECTRONICALLY VIA eProNM (Jagger): Bids will be time-stamped in the system when Bidder clicks “OK” after “Review and Submit.” The bidder will receive a confirmation email of the submission for their records. Such electronic submissions will be considered sealed bids in conformance with statute.

If applicable, Bidder acknowledges receipt of the following amendments(s):

Amendment No. _____ Dated _____ Amendment No. _____ Dated _____

*It is your responsibility as a bidder to ensure your bid is correct and accurate. By bidding electronically, you acknowledge any and all amendments and it is your responsibility to ensure your bid corresponds with any amendments.

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Bidder Instructions for Invitation to Bid (ITB)

Viewing ITB:

1. Bidders can access active procurements at the following sites:
 - <https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>
 - <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>
2. Complete bid documents as required by the ITB Specifications, and submit any required documentation, supporting materials, certificates, etc. in addition to the bid documents.

Submitting Bids:

Bidders have one option to submit bids to the State Purchasing Division (SPD):

- Electronic submissions through eProNM at the following site:
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>
- Bids will be time-stamped in the system when Bidder clicks “OK” after “Review and Submit.” The bidder will receive a confirmation email of the submission for their records. Such electronic submissions will be considered sealed bids in conformance with statute.
- Bids must be received by the due date and time listed on the front page of this ITB or as amended. Bids submitted electronically within 2 hours of the close time cannot be guaranteed to upload successfully.
- If an amendment is processed after you submit your bid, you must resubmit your bid in order for your bid to be considered fully submitted.

Bid Opening:

Sealed bids will be publicly opened online via GoToMeeting. Bids are subject to the “Terms and Conditions,” shown on the subsequent pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this ITB document.

Please join Bid Opening from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/332519117>

You can also dial in using your phone. (For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (312) 757-3121

- One-touch: <tel:+13127573121,332519117#>

Access Code: **332-519-117**

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com

Meeting ID: **332 519 117**

Or dial directly: [332519117@67.217.95.2](tel:332519117@67.217.95.2) or 67.217.95.2##332519117

New to GoToMeeting? Get the app now and be ready when Bid Opening starts:

<https://global.gotomeeting.com/install/332519117>

Additional Bidder Information:

All resident businesses, contractors and veterans will have to obtain preference certificates from the NM Department of Taxation & Revenue. In order for the appropriate preference to be applied to any solicitation, there must be no federal funds involved, and bidder must submit a copy of their preference certificate with each solicitation. Applications are available for download at: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

Technical Online Bidding Questions:

(505) 795-1894 or (800) 233-1121 or by email GSD.SPDeProcurement@state.nm.us, or you can contact the buyer listed on the ITB front page.

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Terms and Conditions
(Unless otherwise specified)

1. **General:** When the State Purchasing Agent or his/her designee issues a purchase document in response to the bid, a binding contract is created.
2. **Variation in Quantity:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.
3. **Assignment:**
 - a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Contractor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the State Purchasing Agent or his/her designee. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this order.
 - b. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. **State Furnished Property:** State furnished property shall be returned to the State upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.
5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid.
6. **Inspection:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.
7. **Inspection of Plant:** The State Purchasing Agent or his/her designee may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.
8. **Commercial Warranty:** The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. **Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.**
9. **Taxes:** The unit price shall exclude all state taxes.
10. **Packing, Shipping and Invoicing:**
 - a. The State's purchasing document number and the Contractor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.
 - b. The Contractor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.
 - c. Invoices must be submitted to the using agency and NOT the State Purchasing Agent.
11. **Default:** The State reserves the right to cancel all or any part of this order without cost to the State, if the Contractor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and

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defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

12. **Non-Collusion:** In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or his/her designee.

13. **Nondiscrimination:** Contractor doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

14. **The Procurement Code:** Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

15. **Items:** All bid items are to be NEW and of most current production, unless otherwise specified.

16. **Payment for Purchases:** Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

17. **Workers' Compensation:** The Contractor agrees to comply with state laws and rules pertaining to Workers' Compensation benefits for its employees. If the Contractor fails to comply with Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. **Submission of Bid:** Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left hand side of the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

19. **Contractor Personnel:** Personnel proposed in the Contractor's written bid to the Procuring Agency are considered material to any work performed under this Price Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Procuring Agency shall retain the right to request the removal of any of the Contractor's personnel at any time.

20. **Subcontracting:** The Contractor shall not subcontract any portion of the Price Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Price Agreement, nor shall any subcontracting obligate payment from the Agency.

21. **Records and Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Price Agreement's term and effect, and retain them for a period of three (3) years from the date of final payment under this Price Agreement. The records shall be subject to inspection by the Agency, State Purchasing Division, Department of Finance and Administration, and for Information Technology contracts, State Chief Information Officer. The Agency shall have the right to audit billings, both before and after payment. Payment for services under this Price Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

22. **Subcontracts:** The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.

Important Bidding Information

All Bidders must notify the State Purchasing Agent or his/her designee if any employee(s) of the requesting agency or the office of the State Purchasing Agent have a financial interest in the Bidder. Financial interest is defined as:

- A. holding a position in a business as officer, director, trustee or partner or holding any position in management; or
- B. ownership of more than five percent interest in a business.

No financial interest Yes financial interest

If yes, specify the employee's name: _____ and financial interest: _____

Bid tabulations will be posted to our website approximately two (2) weeks after bid opening date. To access go to www.generalservices.state.nm.us/spd/, click on Active Bids and Proposals, Bid Tabulations.

Failure of Bidder to complete bidding documents, in accordance with all instructions provided, is cause for this office to reject their bid.

Brand names and numbers are for reference only; equivalents will be considered. If bidding "equivalent" bidders must be prepared to furnish "complete data" upon request, preferably with bid, to avoid delay in award.

Specifications on the bid are not to exclude any bidder or manufacture. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him from submitting a bid on this ITB, it is requested that his opinion be made known to the State Purchasing Agent or his/her designee, in writing, at least seven (7) days prior to the bid opening date.

Bidders must, upon request of the State Purchasing Agent or his/her designee, provide information and data to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The State Purchasing Agent or his/her designee reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the State of New Mexico. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Awards

Determination of Lowest Bidder – Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the State in accordance with the specifications and terms & conditions set forth in the Invitation to Bid. The State Purchasing Agent reserves the right to award this Invitation to Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the State of New Mexico.

The New Mexico State Purchasing Agent or his/her designee reserves the right to accept and/or reject any and all bids, to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the State of New Mexico.

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Special Notice – To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the State Purchasing Agent or his/her designee.

F.O.B. Destination – Means goods are to be delivered to the destination designated by the user which is the point at which the user accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause bid to be declared nonresponsive.

If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our bid openings, please contact State Purchasing (505) 827-0472 at least five (5) working days prior to the scheduled bid opening.

New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com/>.

D. For purposes of this Paragraph, the following terms have the following meanings:

- (1) “New Mexico Employee” means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee’s work for Contractor within the State of New Mexico, regardless of the location of Contractor’s office or offices; and
- (2) “offer” means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

Department Price Agreement

Article I – Statement of Work

Under the terms and conditions of this Price Agreement, the using agency may issue orders for items and/or services described herein.

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The terms and conditions of this Price Agreement shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be listed under Article IX – Price Schedule. All orders issued hereunder will bear both an order number and this Price Agreement number. It is understood that no guarantee or warranty is made or implied by either the New Mexico State Purchasing Agent or the user that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order issued.

Article II – Term

The term of this Price Agreement for issuance of orders shall be as indicated in specifications.

Article III – Specifications

Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX - Price Schedule. Orders issued against this schedule will show the applicable price agreement item(s), number(s), and price(s); however they may not describe the item(s) fully.

Article IV – Shipping and Billing Instructions

Contractor shall ship in accordance with the instructions of this form. Shipment shall be made only against specific orders which the user may place with the contractor during the term indicated in Article II – Term. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial parts number (if any) for each item. Delivery shall be made as indicated on page 1. If Contractor is unable to meet stated delivery the State Purchasing Agent must be notified.

Article V – Termination

The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article VI – Amendment

This Price Agreement may be amended by mutual agreement of the New Mexico State Purchasing Agent or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the New Mexico State Purchasing Agent or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided for in the bid and price agreement specifications.

Article VII – Issuance or Orders

Only written signed orders are valid under this Price Agreement.

Article VIII – Packing (if applicable)

Packing shall be in conformance with standard commercial practices.

Article IX – Price Schedule

Prices as listed in the price schedule hereto attached are firm.

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Specifications:

The New Mexico Department of Game and Fish (NMDGF) wishes to establish a price agreement for Live Channel Catfish. NMDGF would like to award to multiple vendors to allow for varying delivery schedules of these live animals. This agreement will replace price agreement number 70-516-17-05425 that is expiring on 4/20/21 without the option to renew.

Term:

The term of this Price Agreement shall be for one (1) year from date of award with the option to extend for a period of three (3) additional years, on a year-to-year basis, by mutual agreement of all parties and approval of the New Mexico State Purchasing Agent at the same price, terms and conditions. This Price Agreement shall not exceed four (4) years.

In the event of a product cost increase an escalation request will be reviewed by this office on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor. The State Purchasing Division reserves the right to reject an escalation request.

ITB will involve federal funds, awarded vendor(s) must be registered under the Federal System of Award Management (SAMS) at the time of bid opening and have a status of 'Active' throughout the course of the award.

To register:

<https://www.sam.gov>

Scheduling:

For the yearly contract period there will be five (5) deliveries: The first delivery shall be made during the week prior to Memorial Day, The second delivery shall be made during the week prior to the New Mexico Department of Game and Fish free fishing day (normally during the first week of June), the third delivery shall be made during the week prior to July 4th, the fourth delivery shall be made during the week prior to Labor Day, and the fifth delivery shall be scheduled at a time identified by the Department. The vendor shall be informed of that date no later than May 1st. The vendor shall contact Fisheries Division Personnel at (505) 476-8055 two weeks in advance of deliveries to coordinate fish transfers.

Fish Size:

All channel catfish shall be a minimum of one (1) pound, maximum of two (2) pounds, and average size shall be approximately 1.25 pounds. An optional five (5%) percent can be in excess of two (2) pounds, but not to exceed five (5) pounds.

Fish Condition:

All channel catfish shall be in acceptable condition upon delivery and unloading at destination. An agency representative shall inspect all deliveries prior to acceptance. Deliveries of channel catfish with a mortality rate in excess of three (3) percent at the time of delivery shall be deemed unacceptable and will be rejected. The Contractor shall replace unacceptable loads of catfish with healthy catfish within one week.

Disease Certification:

All deliveries shall be accompanied by reports of general health histories of originating hatcheries, which demonstrate the absence of Channel Catfish Viral Disease for the twelve (12) months immediately preceding **June 1, 2021** and each year thereafter.

Estimated Quantities:

The quantities listed above are estimates only. Actual quantities purchased may vary from estimates. The State of New Mexico reserves the right to purchase greater or lesser quantities than indicated without penalty. The bidders shall include delivery to Santa Rosa New Mexico and shall be on a per pound basis.

Note: This contract may be terminated at any time if contractor(s) performance does not meet Department expectations or if customer satisfaction levels are low.

Items' Submission Instructions:

Submission process only - Contact the help line directly at: (505) 795-1894 or (800) 233-1121 or by email GSD.SPDeProcurement@state.nm.us, or you can contact the buyer listed on the ITB (this document) front page.

Items are located on our website: <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>

Online Submissions (Items' Page):

Use one of the two following options on eProNM to submit your prices for each item:

Option 1 (Import Bid):

1. Download the Excel spreadsheet;
2. Enter your bid prices into the Excel spreadsheet;
3. Upload the Excel spreadsheet into the website.

*Exporting the Items may leave out any item options (make, model, vehicle options, etc.). If you choose to fill out the Excel spreadsheet (Option 1), make sure you respond to the additional information in the comments section. After importing the spreadsheet make sure all items are complete and all necessary item options are complete.

Option 2 (Enter Bid):

1. Fill out the prices for items directly on the website (add comments if necessary).

If the item requires a % discount off, place the number in the unit price and reiterate the discount in the comments box of each item. E.g., "10% off list price"

NOTE: Bids submitted electronically must be received by the due date and time listed on the front page of this ITB or as amended. Electronic submissions via eProNM (<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>) submitted within 2 hours of the close time cannot be guaranteed to upload successfully.

Items:

A multiple vendor award is anticipated for this ITB. The exact amount of work is unknown at the time of the ITB but will be determined by needs of the agency.

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Items:

Item	Approx. Qty.	Unit	Article and Description	Unit Price
001	1	1 per pound	Live Channel Catfish deliveries of five (5) shipments of 7,140 LBS (Cost per pound) See Fish Size on Page 8	\$_____

***** 1 Items Total *****

Note to Bidders:

All bids must be made completely independent of all other bids submitted. Where multiple bids are submitted by bidding entities owned by the same person or persons, those bids will be presumed to not be made independently of one another and may be disqualified.