City of Biddeford

Finance Committee

September 19, 2017 5:00 PM Council Chambers

1. **Call to order**
2. **Approval of the Minutes**
   - 2.1. September 5, 2017 Finance Committee Meeting Minutes
     9-05-2017 Finance Committee Minutes.rtf
3. **Signing of the expenditure warrant**
4. **Discussion/Approval**
   - 4.1. Approval/Corrosion Repair and Body Work/Paint on Fire Truck
   - 4.2. Contract for Assistance in Appealing the 2017 Preliminary Flood Insurance Rate Maps
     Draft Order - FEMA Maps Appeal-Ransom Consulting.doc
     Briefing Memo - PFIRMs.pdf
     Ransom Proposal/Agreement.pdf
   - 4.3. Contract Renewal w/Gale Associates, Inc./Planning & Engineering Services at Biddeford Municipal Airport
     9-19-2017 Airport Consultant-Gale Associates-ORDER.doc
     9-19-2017 Airport Consultant Agreement-Gale Associates.pdf
   - 4.4. Contract for Saco River Marine Debris Cleanup Project
     9-19-2017 Saco River Debris Cleanup Project-ORDER.doc
     9-19-2017 Finance Committee Briefing Memo - Marine Debris.pdf
     9-19-2017 Saco River Debris Cleanup Project-BID REQUEST.pdf
     9-19-2017 Saco River Debris Cleanup Project-Bid Contract.pdf
     9-19-2017 Saco River Dredge - Smith Marine Exprerience Statement.pdf
     9-19-2017 Saco River Dredge-MAC Marine-Charters Letter.pdf
5. **Other Business**
6. **Adjournment**

City of Biddeford

Finance Committee Meeting Minutes

September 5, 2017

The meeting was called to order at 5:00 pm by Council President John McCurry.

Present: Chair, Council President John McCurry, Mayor Alan Casavant, Councilor Mike Ready, Councilor Steven St. Cyr, City Manager Jim Bennett, Finance Director Cheryl Fournier and City Clerk Carmen Morris.

Approval of Minutes
Motion by Councilor Ready to approve the Minutes of August 15, 2017, seconded by Councilor St. Cyr.
Vote: unanimous.
Motion carried 4-0.

The expenditure warrant was available for review and signature.

Discussion/Approval

Upgrade (or Replacement) of the City's Phone System Hardware
Motion by Councilor Ready to recommend to Council accepting Option 2, seconded by Councilor St. Cyr.
Discussion: Brian Phinney, COO, gave an explanation of the phone system hardware and why Staff is recommending Option 2. This option is to deploy a virtual phone server using our existing VMware infrastructure at a cost of $6,544.00.
Vote: unanimous
Motion carried 4-0.

Consideration/Execution of Resolution for 50 Lester B. Orcutt Blvd Property Abatement
Motion by Councilor Ready to recommend to Council the execution of the proposed resolution, seconded by Councilor St. Cyr.
Discussion: James Bennett, City Managaer, gave an overview explaining Ms. LeGallee will stay in her home, and the property ultimately stays in the family. All back taxes are paid and and the City waived all interest.
Vote: unanimous
Motion carried 4-0.

Other Business
Jeff Demers, WWTP Director, gave an update on the Horrigan's Court grinder explaining it was not working as it should and, with the City Manager's permission, purchased a new grinder as an emergency purchase. It was purchased out of the DEP account in the amount of $32,440.00.

James Bennett, City Manager, gave an update on properties for sale explaining the process that was followed and no reasonable offers had been forthcoming.

Motion by Councilor Ready to give the City Manager the authority to enter into an agreement with the bidder for the Maple Street property and do more research on the Main and Bradbury Street properties to decide if a realtor should be hired to sell them, seconded by Councilor St. Cyr.
Vote: unanimous.
Motion carried 4-0.

Financials - Preliminary Report for June 2017
Cheryl Fournier, Finance Director, presented an overview with the following highlights:

- City Budget is 90% below budget, mostly due to CIP funds carried over to the FY18 Budget.
- School Budget is below budget.
- Property tax collection is below budget due to the double counting of the Homestead Exemption and BETE, which ended up being offset by overlay, interest, lien costs, abatements and PILOT.
- School Revenues are above budget.

A discussion followed between the City Councilors and Staff.

Motion to adjourn made by Councilor Ready, seconded by Councilor St. Cyr.
Vote: unanimous.
Motion carried 4-0.
Adjourned at 5:46 pm.

2017.102 IN BOARD OF CITY COUNCIL…SEPTEMBER 19, 2017

BE IT ORDERED, that the City Council of the City of Biddeford does hereby authorize the City Manager to sign an agreement with Ransom Consulting, Inc for services required to initiate an appeal to the 2017 Preliminary Flood Insurance Rate Maps issued by FEMA for the Biddeford coastline. Phase I services shall not exceed $52,500. Phase II services shall be separated into two tasks. Phase II(a) shall not exceed $20,000. Phase II(b) shall require an additional authorization, under separate Order, to prepare FEMA transects and submit follow-up responses. The funding source for this authorization shall be 21111-60798 *Contingency*.

{Note that expenditures from the Contingency account require a 2/3 council authorization.}

City of Biddeford
Chief Operating Officer/Technology Dept/IPP
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Briefing Memo

TO: Chairman John McCurry and Members of the Finance Committee

CC: James Bennett, City Manager
Cheryl Fournier, Finance Director
Greg Tansley, City Planner
Roby Fecteau, Code Enforcement Officer

FROM: Brian S. Phinney, COO/Technology/IPP

DATE: September 14, 2017

RE: Contract for Assistance in Appealing the 2017 Preliminary Flood Insurance Rate Maps

In response to citizen requests and Council interest, staff has prepared a summary of the major issue associated with the 2017 Preliminary Flood Insurance Rate Maps (PFIRMs) prepared by the Federal Emergency Management Agency (FEMA). The overarching issue is agreement on the limits of the coastal flood zones. The 2017 PFIRMs expand the existing flood zones and in some locations, add new areas to flood zones.

First, it is important to understand the purpose of Flood Insurance Rate Maps (FIRMs). FIRMs map the various flood zones around streams, rivers, lakes, and coastlines. Along with many other agencies, insurance companies in particular use the flood zone designations to determine flood insurance rates, municipalities rely on FIRM data to determine appropriate building code requirement and prohibitions for flood zone areas, and the federal home loan program relies on FIRMs to determine the possible need for new mortgage recipients and refinanced mortgage recipients to obtain flood insurance.

FEMA utilizes modeling to develop the flood maps. As with all modeling, assumptions must be made in order to predict impacts many years in the future. These assumptions can be conservative or liberal and built into the model or factored in with the modeling data. Regardless, there is no practical method of consistently estimating future impacts without the use of modeling.

A number of citizens, municipalities, and companies have initiated efforts to challenge the 2017 PFIRMs, namely due to the additional flood zone areas identified. Some believe the PFIRMs should be challenged simply due to historical record. In other words, “This can’t be accurate; I’ve lived here all my life and the area has never flooded.” While this view may or may not be accurate, a more technical approach must be utilized to warrant an appeal.

The FIRM revision process has been underway since approximately June of 2009. In 2010, the City of Biddeford joined several other communities in funding a review of the PFIRMs and the supporting study document. In 2011, FEMA withdrew the PFIRMs in response to the comments received. That same year FEMA agreed to sign an MOU with interested parties, the City of Biddeford included, to work cooperatively to update the Risk Map. FEMA released revised PFIRMs in 2013 but review was delayed due to a challenge by Plymouth, Massachusetts. FEMA re-released the new PFIRMs in April of 2017. FEMA is expected to announce the beginning of the 90-day appeal window for this latest release in November or December of this year placing the end of the appeal process in February, March, or April of 2018 depending on the initial date of the appeal notice. Once the appeal end date is reached the appeal resolution process will begin and will likely run through December of 2018. FEMA will then prepare and issue a Letter of Final Determination around January of 2019. The new maps will then have an estimated effective date of July 2019.

Ransom Consulting, Inc (Ransom) is the consultant that assisted Biddeford, and several other communities, with the 2010 PFIRM review. The amount spent on that effort was about $20,000. The cost for a technical review and appeal of the current PFIRMs is considerably more - $230,000 plus. Ransom is proposing that municipalities join together to conduct the general analysis, expected to cost $210,000, in order to reduce individual community costs. Once the general work is completed each individual community would then pay for the community-specific analysis which is expected to exceed $20,000. The amount above $20,000 will depend on the amount of additional analysis needed to support an appeal and or needed in response to information requests from FEMA.

The municipalities currently considering an appeal are Harpswell, South Portland, Scarborough, Old Orchard Beach, Saco, Kennebunkport, Wells, and Kittery. If Biddeford and these eight communities all participate, each community's share will be approximately $23,000 for the initial work plus over $20,000 for the community-specific review ($43,000 +). By comparison, if a total of four communities participate, the communities' share will be approximately $52,500 for the initial work plus over $20,000 for the community-specific review ($72,200 +).

At this time, this is essentially a policy question. Without performing a technical review there is no way to determine whether a case can be made for a significant change to the PFIRMs. Additionally, there is now way to determine if the consultant review will support a significant revision to the PFIRMs nor can a prediction be made as to whether the data review will result in a successful appeal.

If the Finance Committee and ultimately the City Council decides not to join an appeal of the 2017 PFIRMs, it is predicted that there will be minimal impact to municipal government. The flood insurance that the City currently carries for the bathhouse may increase incrementally. If the 2017 PFIRMs are adopted, the changes may impact and estimated 300 or fewer homeowners at the coast. For those currently in a designated flood zone, a more restrictive FIRM may require adherence to building codes applicable to the designated zone. If the homeowner currently carries flood insurance and the final FIRM indicates an increased base flood elevation for the existing zone, the insurance premium may increase to account for the increase in base flood elevation. If the final FIRMS place a homeowner in a newly designated flood zone, the homeowner may be subject to the building code for renovations and/or replacement within a flood zone. A new homebuyer for the property carrying a federally backed mortgage may be required to obtain flood insurance as long as the mortgage is active.

Based on the information provided above, staff has prepared an Order authorizing the city manager to enter into an agreement with Ransom Consulting, Inc, see attached. No funding has been authorized for this project in the FY2018 budget. If the Finance Committee, and ultimately the City Council, wishes to proceed, the suggested funding source is the Contingency Fund (21111-60798). The account currently carries a balance of $250,000.

Please note that this item has been placed on the September 19th City Council agenda for review and approval. The recommendation from the Finance Committee will be presented at that time.

RANSOM Consulting, Inc.

Consulting Engineers and Scientists

September 11, 2017 Project 171.06105.001

Mr. Greg Tansley, City Planner
City Hall
205 Main Street
Biddeford, Maine 04005

Sent via Email: greg.tansley@biddefordmaine.org

RE: Appeal Assistance for 2017 Preliminary Flood Insurance Rate Maps
City of Biddeford, Maine

Dear Mr. Tansley,

Ransom Consulting, Inc. (Ransom) is pleased to present the following proposal to assist the City of Biddeford (City) in an appeal of the recently issued 2017 Federal Emergency Management Agency (FEMA) Preliminary Flood Insurance Rate Maps (FIRMs). Ransom has performed a preliminary review of the 2017 York County coastal engineering data. Based on our review of data from the 2017 preliminary maps and our understanding of FEMA's previous mapping efforts in York County, we are submitting this proposal to assist the City in preparing an appeal of the 2017 preliminary FIRM. Ransom's staff have been closely following FEMA map modernization efforts in southern Maine for nearly a decade and have an in-depth understanding of the potential scientific and/or technical deficiencies that may be present in FEMA's coastal flood analysis. Through FEMA's appeal process, we have successfully helped multiple municipal and private clients in Maine in obtaining flood maps with more accurate representations of the 1% annual chance flood hazard.

Perhaps the most significant deficiency in FEMA's coastal flood hazard analysis for Southern Maine is the use of simplified and overly-conservative methods to compute the components of the Total Water Level (TWL). The TWL is a primary input to calculations that ultimately determine the Base Flood Elevation (BFE), which is the elevation shown on the FIRM to represent the 1% annual chance flood hazard. Where the TWL is incorrect, it can lead to incorrect BFEs and incorrect delineation of the 1% annual chance Special Flood Hazard Area (SFHA), or more commonly known as "the 100-year flood zone." The TWL is the combination of two terms: 1) the Still Water Level (SWL), which is the mean water level that results from combination of astronomical tides and storm surge; and 2) The wave setup, which is an additional elevation of the mean water level due to shoreward momentum flux that is

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associated with breaking waves[1]. FEMA has computed these terms separately using statistical analyses of historic tide gauge data to determine the SWL and a simplified version of the Direct Integration Method (DIM) to calculate the wave setup. In reality, the processes that cause storm surge and wave setup interact dynamically and are not physically separable. The wave setup directly contributes to the mean water level, and the mean water level, in-turn, influences the wave conditions. This makes FEMA's approach, which separates the wave setup from the storm surge, conceptually confusing and theoretically questionable. Furthermore, FEMA's simplified approach does not account for the high degree of spatial variability of storm surge and wave setup because the tide gauge stations are sparsely distributed. And the DIM method does not consider nearshore wave transformation effects, such as wave refraction and diffraction.

FEMA has provided a guidance document, "Criteria for Appeals of Flood Insurance Rate Maps", dated November 30, 2011, which describes acceptable bases for appeals of preliminary FIRMs. Based on our preliminary review of FEMA's coastal engineering data for both York and Cumberland Counties, we believe the FIRM can be appealed on the basis that the SFHA and BFEs are scientifically incorrect because inaccurate methods were used to determine the TWL. However, according to the guidance, FEMA does not consider it sufficient criteria for appeal to simply point out the scientific deficiencies in their analysis. To appeal on this basis, FEMA requires the appellate also provide revised analyses and mapping based on an alternative methodology, and an explanation of why the alternative methodology is more correct.

On May 17, 2017, Ransom sent a memo to several municipalities in York and Cumberland Counties, which points out some of the common issues with the 2017 preliminary FIRMs in both counties and proposes a strategy to develop appeals. This memo describes a methodology that would leverage the recently completed North Atlantic Coast Comprehensive Study (NACCS), performed by the U.S Army Corps of Engineers (USACE), to provide more accurate TWL values. We believe an appeal following these methods would be defensible, as it uses methods that were largely developed by FEMA and have been applied by FEMA in coastal flood hazard analyses in many other regions of the Atlantic and Gulf of Mexico Coast. Because these methods are regional in nature, they could potentially benefit the coastal communities in Southern Maine by correcting overly-conservative estimates of the TWL throughout the region.

We believe a coordinated appeal effort between multiple communities in York and Cumberland counties would be the best approach to facilitate a broad correction in TWL values, based on state-of-the-practice modeling methodologies. This makes sense from a modeling perspective for multiple reasons: increased computational efficiency, reduced model development efforts, and consistency in modeling approach and technical documentation across multiple communities. It also makes sense from a political perspective,

[1] According to FEMA's 2005 "Final Draft Guidelines for Coastal Flood Hazard Analysis and Mapping for the Pacific Coast of the United States", the combination of the SWL and static wave setup is more appropriately termed the STatic Water Level (STWL), while the term TWL is defined to include the SWL, wave setup, and wave run-up. However, in FEMA Region I, FEMA has not included the wave run-up in the water level they have labeled as the TWL in their engineering data submission. To avoid confusion, we are using the term TWL to mean the same as FEMA has implied in Region I. That is, the TWL is defined as the sum of the SWL and the wave setup, but not including any wave run-up.

as it would demonstrate to FEMA that York and Cumberland County communities are interested in collectively improving the coastal flood hazard mapping with a consistent regional approach.

Although there are other possible approaches that could successfully improve the accuracy of the TWL[2], we recommend this approach for a number of reasons:

1. Coupled two-dimensional (2-D) Hydrodynamic-Wave modeling is the-state-of-the-practice for coastal flood hazard analyses across the nation. Using this technique, we can leverage the effort of the USACE recent NACCS.

2. It is the only method we are aware of that doesn't require the overly-conservative assumption that open coast wave setup fully propagates into estuaries and other sheltered areas.

3. Model results will provide TWL values everywhere, not just at the location of specific wave transects. This reduces the effort required for wave transect-based calculations that would be required at new transect locations, and is useful for non-FEMA mapping that can take full advantage of truly two-dimensional flood hazard data.

4. In addition to providing TWL values, the modeling results also provide incident nearshore wave condition data that are required for transect-based analyses and mapping.

5. If enough communities share the cost of a joint effort, the per-community cost is comparable to other less precise methods that would broadly revise the TWL values.

6. Although it is not a requirement for FEMA coastal flood mapping, the model will provide results for the full range of coastal flood probabilities and could serve as a tool for community level-planning and resiliency design. For example, 10-year, 50-year, and 500-year TWL values will be available from the model results, in addition to the 100-year value. The statistical methods can also be extended to include hazard assessments for future conditions that might consider sea level rise and/or future changes in the frequency of extreme storm events.

The following scope of work outlines a phased approach to appealing the 2017 preliminary FIRMs. Phase I involves the modeling and analysis required to develop revised TWL and incident wave conditions for all of York and Cumberland Counties. We propose Phase I as a single joint effort that would provide the basis for appeal in each of the Southern Maine coastal communities. Phase II is community-specific and assumes we will use Phase I results to perform revised site-specific wave transect-based calculations and re-mapping in particular areas of concern, which would be required to meet the criteria for an appeal. Phase II also involves preparation of community-specific appeal documentation for a select number of initial or priority wave transects.

[2] For example, applying Stimulating Waves Near Shore (SWAN)-1D on a transect-by-transect basis would be an improvement over FEMA's DIM calculation for wave setup.

Please be aware that Ransom is proposing a similar scope of work for the following communities: Town of Harpswell, City of South Portland, Town of Scarborough, Town of Old Orchard Beach, City of Saco, Town of Kennebunkport, Town of Wells, and Town of Kittery. It is our hope that each of these communities choose to participate in this effort, as this will dramatically reduce the per-community cost associated with the Phase I effort. We also believe that if more communities participate it will strengthen each individual community's argument and specific appeal under Phase II for more accurate FIRMs.

SCOPE OF WORK

Phase I – Coupled Hydrodynamic-Wave Modeling to Revise the 1% Annual Chance Still Water Level, Wave Setup, and Associated Nearshore Wave Conditions for Southern Maine Coastal Communities

Task 1 – Collect, Compile, and Develop Topographic-Bathymetric Digital Elevation Data

Ransom is aware of a significant amount of additional and available topographic and bathymetric data that are more recent than the data used by FEMA in their analysis for the 2017 preliminary maps. These data include terrestrial Lidar collected by the U.S. Geographic Survey (USGS), and topo-bathymetric Lidar and hydrographic surveys by the USACE and the National Oceanic and Atmospheric Administration, National Ocean Service (NOAA NOS). Ransom will also obtain recent available land cover data, which will be required to provide frictional characterization to the storm surge and wave models used in subsequent tasks. Ransom will transform all data to consistent horizontal and vertical datums, and develop a topographic-bathymetric digital elevation model for the region. Upon completion of this task, Ransom will provide a memorandum describing the data sources and digital elevation model for the area, and also provide the data in digital format for submission to FEMA with appeals.

Task 2 – Develop Advanced Circulation Model (ADCIRC)+SWAN Model for Southern Maine Coastal Communities [3]

Ransom will use the data collected in Task 1 above to develop a dynamic, "tightly coupled" 2-D ADCIRC+SWAN model to simulate hydrodynamics and wave conditions. Model development requires the following sub tasks:

Task 2.1 – Develop unstructured finite-element model grid:

This subtask involves drawing lines and polygons to specify the resolution and placement of nodal points at which the model calculations are made. It also involves interpolating merged elevation (topography and bathymetry) data to the model grid, and grid editing to ensure high quality and stable model results.

[3] For the purposes of this proposal, we describe developing a single model for all of York and Cumberland Counties. However, depending on community participation, Ransom may not model the entire area of both counties, and/or may choose to divide the area into a number of smaller overlapping models.

Task 2.2 - Configure boundary conditions

This subtask involves setting model nodal attribute data (e.g. bottom friction factors, eddy viscosity parameters, wind drag factors, etc.), defining river inflow and tidal elevation boundaries and associated forcing functions, and domain wide forcing including spatially and temporally variable wind and atmospheric pressure fields. Boundary conditions will be primarily extracted from results of NACCS model simulations.

Task 2.3 - Model sensitivity/stability testing

Ransom will run the model through a range of conditions to understand and improve model behavior and determine a set of model parameters that can be expected to produce stable model simulations with physically reasonable results. Stability testing is an iterative process where the model is stressed to point of instability (i.e., the model "crashes") in order to identify sensitive areas in the model domain and/or boundary condition specification. Adjustments are made to the model grid and boundary conditions and stability testing simulations are run again until a stable and physically reasonable result is achieved. Sensitivity testing involves running multiple model simulations, while varying some model parameters (e.g. friction and eddy viscosity parameters) within a reasonable range of values to understand the degree of uncertainty in model results that can be expected, due to uncertainty in the model input parameters.

Task 2.4 – Model Validation

Model validation involves simulating a number of historic events and comparing the model results to observations to quantify the model error. The model will be validated for normal tidal conditions by comparing model simulated water levels to tide gauge observations within the model domain. The model will also be validated against storm conditions by comparing model results to high water mark observations and tide gauge observation during the February 7, 1978 blizzard, and other significant storm events for which observations are available.

Task 3 – Determine the 1% annual chance TWL and associated wave conditions

Ransom will use the ADCIRC+SWAN model to simulate a sub-set of storms from the NACCS storm set and quantify the coastal storm hazard in terms of water level and wave exceedance probability, including determination of the 1% annual chance TWL and associated wave conditions.

Task 3.1 – Model Production Simulations

This subtask includes setting up the input files and carrying out a large number of model simulations to determine the maximum water levels and wave conditions for a set of storms that are representative of coastal storm climatology of Southern Maine. The production simulations will be based on a sub-set of historic extra-tropical storms and synthetic tropical storms (or hurricanes) taken from the NACCS storm set.

Task 3.2 - Statistical Analysis:

Following the statistical methodology developed for NACCS, we will utilize the results of the production simulations to develop spatially variable water level and wave height exceedance curves for the entire model domain. Following the NACCS methods, the statistical analysis will combine Extreme Value Analysis (EVA) for the extra-tropical storms with the Joint Probability Method with Optimal Sampling (JPM-OS) for tropical storms, and incorporate an evaluation of epistemic uncertainty in order to quantify the full range of coastal flood probability, including the 1% annual chance TWL and associated wave conditions required for FEMA appeals.

<u>Task 4 – Phase I Reporting and Documentation of the Southern Maine Hydrodynamic-Wave Model and 1% annual chance TWL and Wave Conditions.</u>

Ransom proposes to develop a single technical report and data submission describing the entire Phase I effort. Copies of the technical report and data submission will be provided to each participating community and will be incorporated by reference and provided to FEMA with appeal report submissions. Using a single report to describe the efforts for all participating communities will simplify the community appeal reporting requirements and also reduce the burden on FEMA for reviewing community-submitted technical data.

Task 4.1 – Prepare Report

Ransom will draft a technical report describing the model development, validation, production simulations, statistical analysis, and resulting 1% annual chance water levels and wave conditions.

Task 4.2 – Prepare digital data submission

Ransom will prepare a digital archive of all computer files developed during this effort.

<u>Phase II – Transect-Based Calculations, Revised Mapping, and Appeal Preparation for the City of Biddeford</u>

The BFE is the elevation shown on the FIRM that represents the 1% annual chance flood hazard. In order to appeal the preliminary FIRM, a community must compute revised BFEs and revise the FIRM, using methods that are more scientifically and/or technically correct than the methods applied by FEMA. Following FEMA's Guidelines and Specifications, the coastal BFE must be determined by following a series of standard engineering calculations made at precise locations along the shoreline using site-specific shore perpendicular elevation profiles called wave transects. The BFE, which may vary along a wave transect, is determined only at wave transect locations. FEMA's engineers exercise their judgement in choosing where to evaluate wave transects, and how to determine the BFE and SFHA boundaries between wave transects. The idea is that each wave transect should be representative of a segment of the shoreline and that enough transects should be evaluated to reasonably represent the entire shoreline.

For coastal analyses the BFE is determined by adding a number of different water level components together; depending on the specific wave transect elevation profile, incorporating slope, geology, and presence of structures, and the results of the calculations, different combinations of components may be used. In addition to the SWL, wave setup, and TWL described above, these components are:

1. <u>Wave run-up</u> – Wave run-up is the vertical extent of the rush of water that extends inland when waves come ashore. Various methods are used to calculate the wave run-up depending on the shoreline type and slope. The vertical height of the wave run-up is added to the SWL (without the wave setup) to determine the BFE in cases where run-up is the dominant hazard. This is typically the case on steep shorelines with wave exposure. If the run-up elevation is more than 3 feet above the top of the structure or steep shoreline crest the BFE is set to 3 above the crest elevation. If the run-up is higher than the crest of a structure crest or crest of a steep slope, FEMA may delineate a wave overtopping zone or wave splash zone that extends landward.

2. <u>Controlling Wave Height</u> – The controlling wave height is the wave height associated with the highest 1% of waves. The controlling wave height is determined by the Wave Height Analysis for Flood Insurance Studies (WHAFIS) model. 70% of the Controlling wave height is added to the TWL to determine the BFE in locations where the overland wave crest envelope dominates the hazard. This is typically the case on flatter shorelines.

For each transect, wave run-up and the controlling wave must both be evaluated, and the more hazardous condition is used to define the BFE. This analysis is further complicated where coastal structures are present, or where the shoreline is subject to erosion during the 1% annual chance event. In these cases, analyses must be carried out for both intact and failed (or eroded) profiles and the BFE is determined based on the more hazardous results.

Because the SWL, wave setup, and TWL are primary inputs to the wave transect based calculation, the results of Phase I will provide a basis for appeal of any or all transects and re-mapping of any portion or the entire SFHA within the community. While a complete revision of the SFHA throughout the community might ultimately be desirable, it is not likely necessary to meet FEMA's criteria for appeals. Because there will be limited time to prepare appeals for communities in York and Cumberland counties, and because it will take a large effort to re-calculate and re-map all transects in participating municipalities, we are recommending that each community consider revising only a limited number of priority transects at first. After evaluating an initial set of transects, we will revise the mapping for those transects and prepare a submission that meets FEMA's criteria for an appeal.

With this proposed approach, our goal is to assist several communities in submitting appeals that meet FEMA's criteria, so that FEMA must consider them all. With many appeal submissions, FEMA will likely be obliged to decide on the scientific and technical merit of the Phase I modeling and broadly revised TWL and nearshore wave data. We believe that if more communities submit appeals, based on the more advanced Phase I methodology, thus presenting an improved technical approach that is consistent across multiple communities, it is more likely that FEMA will more broadly accept the revised methodology and appeals.

After initial appeal submissions are prepared for each participating communities, time permitting, we could then evaluate and re-map additional wave transects and add them to the appeal submission (see Task 7 below). The cost for the additional wave transect-based calculations will be determined following the completion of the Phase I model and will not be completed without prior authorization from the City. Please also note that if there is not sufficient time within the 90-day appeal period to revise additional transects, it is possible that FEMA may allow additional information to be submitted after the end of the appeal period, while FEMA reviews the initial appeal. If there is not sufficient opportunity to revise remaining transects at that point, there is still opportunity to do so through the Letter of Map Revision (LOMR) process, as soon as the new maps become effective.

We propose the following Phase II tasks for the City of Biddeford:

Task 5 –Transect-Based Wave Analysis and Mapping for up to Four Priority Transects

Ransom proposes to compare the modelling results from Phase I to FEMA's 2017 engineering data and prioritize the transects FEMA utilized in generating the 2017 FIRMs in Biddeford. Ransom will also consider locations where it would be beneficial to evaluate additional transects between the ones evaluated by FEMA. In light of time constraints, Ransom will work with the City to identify up to four (4) transects with the highest priority for appeal. Priority will be based on the following criteria:

a. Apparent scientific or technical incorrectness in FEMA's analysis,

b. The degree of over-conservatism in FEMA's BFE and SFHA designation,

c. The area of land and number of properties affected by FEMA's proposed changes in the flood zones and BFE

Ransom will evaluate the BFE and SFHA designation for the priority transects using the TWL data and corresponding wave conditions from Phase I. This includes performing the controlling wave height analysis using the WHAFIS model, as well as wave run-up analyses to determine the Base Flood Elevation along these transects. Where appropriate, Ransom's analysis will incorporate assumed erosion profiles or structure failures as required by FEMA's guidelines and specifications. Upon completion of this task, Ransom will provide a draft map showing proposed revisions to the flood zones in this area.

Task 6 – Appeal Documentation Preparation and Submission

For this task, Ransom will solicit and incorporate feedback from the City on the draft analyses and mapping from Task 5 and finalize the modeling, analysis, and mapping. We will then compile the necessary documentation to meet FEMA's requirements for a formal appeal and prepare a final appeal report with digital data submission for the Town to submit directly to FEMA during the 90-day statutory appeal period.

Task 7- Transect-Based Wave Analysis for Additional FEMA Wave Transects

This optional task, or a portion thereof, may be completed within the 90-day appeal period if time permits. This task may also be completed following the end of the 90-day appeal period if FEMA agrees to consider additional transect analyses and remapping at that time. Alternatively, if not completed through the appeal process, this task may be completed using the LOMR process after the appeal is resolved and new maps are made effective.

Ransom will perform transect-based wave analysis and mapping for the remaining transects that were not evaluated during Task 5. Upon completion of this task, Ransom will provide a draft map showing the proposed revisions to the flood zones in the City. Time permitting, Ransom will incorporate the analysis and mapping into the appeal submission prior to the end of the 90-day appeal period. Otherwise, Ransom will prepare documentation of the additional analyses so that it can be submitted during appeal follow-up or as part of a LOMR application.

Task 8 – Appeal Follow-Up & Response to Subsequent FEMA Requests

Following appeal submission, Ransom will respond to requests for additional information that FEMA may have, until FEMA issues an appeal resolution. In our prior experience, FEMA typically will make at least one, and as many as three (or more), requests for additional information, and may require some revision to the appeal submission documentation, prior to accepting the final appeal. Please note that it is possible, but unlikely, that FEMA will outright deny an appeal. If that happens, FEMA's Scientific Resolution Panel (SRP) process is available for communities to request an independent review and decision regarding the appeal submission. If FEMA denies the appeal and the City decides to request an SRP review, Ransom will provide technical support for the City through the SRP process, on an as-needed basis.

PROJECT COST & SCHEDULE

We propose to complete the above scope of work on a time-and-materials basis, according to the fee schedule in Attachment A. The total cost for developing an overall coupled Hydrodynamic-Wave Model for communities in York and Cumberland Counties under Phase I is estimated at $210,000. A breakdown of the Phase I estimated costs by tasks is listed in the Table below. These are the total costs for all participating communities assuming modeling is performed for all communities in York and Cumberland Counties. Ransom will divide the billing for Phase I tasks equally between all participating communities. Depending on the number of participating communities, the Phase I cost per community may be less. For example, if four communities participate in the effort, the estimated Phase I cost per community would be approximately $52,500; and if eight communities participate, the estimated Phase I cost per community would be approximately $26,250.

To be fair to all communities that choose to participate in the effort, Ransom has decided that we will only use Phase I model results to support appeals in communities that share in the cost for Phase I. If additional communities, decide they would like to participate after the completion of Phase I Ransom will allow those communities to join the effort, but with lower priority in completion of the Phase II effort, and only if they agree to reimburse the prior participating communities for their share of the cost.

Phase II costs for the City of Biddeford are broken down by task in the Table below. The minimum level of Phase II effort required to submit an appeal requires completion of Task 5 and Task 6. The total estimated Phase II cost for Task 5 and Task 6 is $20,000. The City may choose to approve Phase I and only the Phase II tasks required for appeal submission at this time. Optional Task 7 may be approved later when specific transects for additional analysis and an associated cost estimate can be defined. In order for any additional Task 7 work to be included in the appeal submission we do require that the Task 7 is defined and authorized with at least 60 days remaining in the statutory appeal period. Otherwise, additional Task 7 analysis and revisions will require a LOMR application following the effective date of the new FIRM.

Task 8 will be completed following the appeal submission and completed within the timeframe imposed by FEMA with any requests for additional information that FEMA may make. The scope of work and estimated cost for Task 8 will be determined after we receive requests for additional information from FEMA and will not be initiated without prior authorization from the City.

Phase I Estimated Project Costs by Task (Total Cost for All Participating Communities)		
Task	**Task Description**	**Estimated Cost**
Task 1	Topographic-Bathymetric Digital Elevation Data	$15,000
Task 2	Develop ADCIRC+SWAN Model for Southern Maine	$113,000
	High Performance Computing (HPC)	$25,000
Task 3	Determine the 1% Annual Chance TWL and Associated Wave Conditions	$42,000
Task 4	Phase I Reporting and Documentation	$15,000
	Phase I Total Estimated Cost	$210,000
Phase II Estimated Project Costs by Task for Community-Specific Appeal (City of Biddeford)		
Task 5	Transect-Based Analysis and Mapping for Up To Four (4) Transects	$12,000
Task 6	Appeal Documentation Preparation	$8,000
Task 7	Transect-Based Analysis for Additional FEMA Transects	TBD
Task 8	Appeal Follow-Up & Responses with FEMA and Town, As-Necessary	TBD
	Phase II Total (Task 5 & 6 Only) Estimated Cost	$20,000

These estimates are based on our understanding of the level of effort required for each task and our experience on similar appeal efforts. Although our best efforts will be made to complete the work within the estimated costs, please be aware that the flood map appeals require a number of iterative steps, where the required level of effort depends on the outcome of a previous step, and with the uncertain nature of numerical modeling, it is possible to encounter abnormal problems with model stability and validation that can require additional unforeseen efforts. Because of this, we cannot be completely certain beforehand, precisely what additional or revised analyses may be required or the associated level of effort will be. Furthermore, we recommend that Town consider adding a 10% to 20% contingency to their FEMA appeal budget to cover unforeseen conditions or additional efforts necessary to complete the appeal process. If we do encounter such difficulties during the course of the work, we will immediately notify the City of these difficulties and/or unforeseen conditions and provide an estimate for additional efforts that might be required.

Although some level of reduction in flood elevations and flood zones are typically obtained through FEMA appeals, we cannot guarantee that our review and additional modeling will show that FEMA has significantly over-estimated the flood hazards and that an appeal could effectively reduce the flood zones and base flood elevations. Albeit unlikely, it is possible that our review and additional analysis may show little difference from FEMA's assessment of the flood hazard, or even that FEMA has under-estimated the flood hazard for part or all of the Town. In the latter cases, it is possible that appeal submission may not be advantageous to Town and the Town may choose not to submit the appeal. Regardless of appeal submittal, the proposed effort will provide more up-to-date and accurate flood hazard information for the City, even if it does not result in revised FIRMs.

We are prepared to begin Phase I as soon as we receive a notice to proceed. We expect Phase I will be completed within 12 weeks. After completion of Phase I and if the appeal period has not started at that time, we recommend waiting to proceed with Phase II until FEMA has completed the public notice process, initiating the statutory 90-day appeal period. We recommend waiting, because on previous occasions, we have seen FEMA make changes to the preliminary FIRMS between their time of official release and the start of the appeal period. Based on our experience with previous FIRM updates in Maine, and information provided by FEMA at recent Consultation Coordination Officer (CCO) meetings in York County, we expect FEMA will initiate the statutory 90-day appeal period sometime in November of 2017, and end sometime during February of 2018. Although it is possible that FEMA may start the appeal period earlier[4]. If authorized, we will complete Phase II Task 5 and Task 6 before the end of the appeal period. Time permitting, Task 7 may be fully or partially completed prior to the end of the appeal period, or it may be completed following the appeal period. Timing and subsequent cost estimates for Task 8 will depend on the amount of time FEMA takes to review the appeal and any responses we may have to their requests for information. Based on prior experience, we anticipate Task 8 will be completed within 6 months to 1 year after the initial appeal submission.

ORGANIZATION

Nathan Dill, P.E. will be serving as project manager for this project and will be your primary contact at Ransom. Nathan will be assisted by Kevin Trainor, P.E. If Nathan or Kevin are not available, please feel free to contact Peter Sherr, P.E., Senior Project Manager or Nick Sabatine, P.G., Office Manager in their absence.

[4] According to 44 CFR Vol 1. Part 67.4: In order to initiate the 90-day appeal period, FEMA must first notify the Town Chief Executive by certified mail, publish public notices at least twice in a local newspaper within 10 days following the certified notice to the town, and publish public notice in the federal register.

BILLING AND PAYMENT OPTIONS

Ransom will send invoices electronically to the email address you provide. If you prefer to receive paper invoices by mail, please check the “Opt Out” option below.

Send invoices to the following email address(es): ______________________________

____

☐ I wish to opt out of electronic invoicing. Please mail invoices to this address:

Street/P.O. Box: ______________________________

City/State/Zip: ______________________________

For billing questions, please provide a telephone number to contact you: (   ) ______________

You may also choose to pay invoices via Discover, Visa, Mastercard, or American Express. To do so, please provide the following information.

CREDIT CARD PAYMENT OPTION: (Check one) ☐ Visa ☐ MasterCard ☐ AmEx ☐ Discover

Card Number: ______________________ Expiration Date: __________ CVV Code ____________
3-digit code on back: M/C, Visa, Discover
4-digit code on front of Amex

Print Name as it appears on card:

____

Billing Address: ______________________________

____
Street City/State Zip

____
Cardholder’s Signature

NOTE: If the credit card payment option is selected, the retainer amount will be charged to card upon receipt of signed agreement. Balance owing will be charged either: (a) monthly, if time-and-materials billing applies; or (b) at project completion, if lump-sum fee applies.

Mr. Greg Tansley, City Planner
City of Biddeford, Maine

AUTHORIZATION

Prior to initiation of project work, we will need to receive an executed copy of this proposal, which will serve as our authorization to proceed. Ransom's *Fee Schedule* and *Terms and Conditions* are attached to this Scope of Work as Attachments A and B, respectively, and are hereby incorporated by reference as if fully stated herein.

We would like to thank you again for the opportunity to submit this scope of work and cost estimate. If you have any questions regarding this proposal, please contact either of the undersigned.

Sincerely,

RANSOM CONSULTING, INC.

Nathan Dill

Nathan Dill, P.E.
Project Manager/Modeling Specialist

P. J. Sherr

Peter Sherr, P.E.
Senior Project Manager

Nicholas Sabatine, P.G.
Vice President

APPROVED AND ACCEPTED BY THE CITY OF BIDDEFORD, MAINE:

Signature: ____

Name (print or type): ______________________________________

Title: ______________________________ Date: ________________

ATTACHMENT A

Fee Schedule

Appeal Assistance for 2017 preliminary Flood Insurance Rate Maps
City of Biddeford, Maine

RANSOM Consulting, Inc.

Consulting Engineers and Scientists

Fee Schedule 2017

PROFESSIONAL SERVICES	Hourly[1] Rate ($)
Principal	175-210
Licensed Site/Environmental Professional	160-210
Professional Engineer/Professional Geologist	115-210
Senior Project Manager/Specialist	140-195
Project Manager	115-155
Associate Project Manager	95-110
Project Engineer/Geologist/Hydrogeologist/Scientist	75-105
GIS Specialist/CAD	70-100
Administrative	65

EMERGENCY RESPONSE SERVICES

Overtime rates (1.5 times hourly rate) will apply for emergency response services performed between 5:00 p.m. and 7:00 a.m. Monday through Friday, and all day Saturday. Premium rates (2.0 times hourly rate) will apply for emergency response services performed on Sundays and Holidays.

LITIGATION SUPPORT

Expert testimony will be billed at two times the standard fee schedule hourly rate.
Depositions will be billed at one and a half times the standard fee schedule hourly rate.

PROJECT SUBCONTRACTORS, MATERIALS, AND EXPENDABLE SUPPLIES

Handling charges will be added on all project supplies and services procured from outside vendors.

VEHICLES, MILEAGE

Vehicle	$125.00/day
Mileage (company or personal vehicle)	IRS Prevailing Rate

EQUIPMENT RENTAL

Air Flow Meter	$25/each	Photoionization Detector (PID)	$110/day
Generator	$50/day	Pump, Bladder	$160/day
Stainless Steel Hand Auger	$20/day	Pump, Peristaltic	$35/day
Hydrolab Water Quality Meter	$115/day	Purging Pump	$40/day
Low Flow Sampling Equipment	$175/day	Redi Flow 2 Submersible Pump	$50/day
Metal Detector	$25/day	Survey Equipment (Basic)	$45/day
Meter Rental (DO, pH, Cond., Temp)	$30/day	Survey Equipment (Total Station)	$75/day
Oil/Water Interface Probe	$50/day	Water Level Indicator	$40/day

[1] *These hourly rates are firm through December 31, 2017*

ATTACHMENT B

Terms and Conditions

Appeal Assistance for 2017 preliminary Flood Insurance Rate Maps
City of Biddeford, Maine

RANSOM CONSULTING, INC.

TERMS AND CONDITIONS

Ransom Consulting, Inc. (the "Company") shall perform the services described in the attached Work Scope on behalf of the “Client” at a charge pursuant to either the fixed cost enumerated in the Work Scope or at the rates set forth in the attached Fee Schedule for time and materials and under the conditions and circumstances set forth below:

1. **Billings/Payment:**
Invoices for the Company's services shall be submitted, at the Company's option, either upon completion of such services or at the end of each calendar month. All such invoices shall be payable within thirty (30) days, the outstanding balance shall bear interest at the rate of one and one-half (1.5%) percent per month from date of original billing or at the highest interest rate permitted by law, whichever is less. The Client shall pay any service, sales or similar tax imposed upon the Company's services. It is further understood and agreed that if the Client fails to pay any invoice due to the Company within thirty (30) days after the date thereof, then the Company, without waiving any other claim or right against the Client, and without liability whatsoever to the Client, may terminate its performance hereunder. In the event of such termination, the Client agrees to promptly pay the Company for all services rendered through the date of termination. Such payment shall include: (a) full payment of all outstanding invoices, plus interest as stated above, plus (b) full payment of a final invoice for all work performed from the date of the last invoice outstanding through the date of termination. All amounts shall be paid in full, with interest as stated above, within ten (10) days after receipt by the Client of the final invoice. In the event that the Company places any invoice which is unpaid after the due date with an agency or an attorney for collection, the Client shall pay all costs and expenses of such collection, including without limitation attorney's fees and court costs, if any.

2. **Limitations:**
The Client recognizes that the Company's services are solely for the benefit of the Client and these services will include judgments based upon limited data rather than upon scientific fact. The Client understands that the Company may be required to make judgments or decisions based upon information provided by the Client or its contractors, and agrees that the Company may rely on such information in performing services under this Agreement. The Client understands and agrees that the services rendered by the Company shall be advisory only, and that the Client retains all decision-making responsibility with respect to all projects in which the Company participates. The Company shall perform its services in accordance with generally accepted practices and the Company shall be responsible solely for its own negligence. Any delayed use of the results of the Company's services will require updates. THE SERVICES OF THE COMPANY SHALL BE RENDERED WITHOUT ANY WARRANTY, EXPRESSED OR IMPLIED. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF SERVICES PERFORMED HEREUNDER BY THE COMPANY, ITS AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF THE COMPANY TO THE CLIENT OR ANY OTHER PERSON NOT A PARTY TO THIS AGREEMENT ARISING OUT OF ANY SERVICES PROVIDED BY THE COMPANY HEREUNDER SHALL NOT EXCEED THE AGGREGATE SUM OF COMPANY INVOICES SUBMITTED TO THE CLIENT FOR SERVICES PERFORMED HEREUNDER.

   The Client agrees to notify all contractors and/or subcontractors who may perform work in connection with any report or study prepared by the Company of the above limitations on the Company's liability for errors, omissions or professional negligence, and to require, as a condition precedent of their performing work, a like limitation of liability as against the Company. In the event that the Client fails to obtain a like limitation of liability, any liability of the Company to such contractor or subcontractor arising out of alleged error, omissions or professional negligence shall be allocated between the Client and the Company in such a manner that the aggregate liability of the Company to all parties, including the Client, shall not exceed the aggregate amount of invoices submitted hereunder. In the event that the Client makes a claim against the Company, at law or otherwise, for any alleged error, omission or act arising out of the performance of the Company's services, and the Client fails to prove such claim upon final adjudication, then the Client shall pay all costs incurred by the Company in defending itself against such claim, including, without limitation, attorney's fees and costs and fees and expenses of experts. In no event may the Client bring any claim, action or proceeding arising out of the services provided by the Company hereunder more than two (2) years after the date such services were provided.

   Without limiting the generality of the above limitations on liability of the Company, the Company will not be liable for damage or injury arising from damage to or interference with subterranean structures (including without limitation, pipes, tanks, telephone cables, etc.) which are not called to the Company's attention and not correctly shown on the plans furnished by the Client in connection with work performed under this Work Scope.

3. **Right of Entry:**
The Client hereby authorizes the Company, or represents and warrants that authorization has been duly granted to the Company (if the project location is not owned by the Client), its agents, staff, consultants and contractors or subcontractors, to enter upon the project location for the purpose of performing and with the right to perform all acts, studies and research, including without limitation, the making of test borings and other soil and water samplings, pursuant to the Work Scope. The Client hereby recognizes that the use of exploration equipment may unavoidably affect, alter or damage the terrain and affect vegetation, building, structures and equipment, in, at or upon the area being studied. The Client will not hold the Company liable or responsible for any such reasonable effect, alteration or damage. The Client agrees to pay the Company an additional fee for any services performed at the Client's request to restore the condition of the area being studied.

4. **On-Site Services:**
Any services or monitoring provided by the Company at a site during project construction, remedial action or other site activities are not intended to include review of the adequacy of any contractor's health and safety measures in, on or near the construction site and will not relieve any contractor of its responsibilities for performing the work in accordance with applicable laws and regulations and with the plans and specifications. The Company and the Client agree that the contractor will be solely and completely responsible for working conditions on the job site, including health and safety of all persons and property during the performance of the work, and compliance with OSHA, NIOSH, U.S. EPA, and other applicable regulations.

5. **Licensed Site Professional Services:**
If any of the services to be performed under the Work Scope relate to sites in Massachusetts, the following provisions will apply:

In the event that any employee or subcontractor of the Company acts as a licensed site professional ("LSP"), as defined in the Massachusetts Contingency Plan (310 CMR 40.0000), the Client acknowledges that (a) any opinions rendered by the LSP will reflect the LSP's independent professional judgment based upon the studies, investigations, tests, analyses, level of supervision or other services that the LSP determines to be necessary or appropriate in order to establish a basis for such opinions, (b) other professionals and the Massachusetts Department of Environmental Protection ("MA DEP") may have legitimate differences of opinion regarding various aspects of an environmental site assessment or remediation and (c) the MA DEP may require additional assessment and/or remediation services, even though the Company's services have been performed competently and in accordance with the standard of care set forth in the Massachusetts Contingency Plan, as in effect at the time of the Company's original provision of services. The Client agrees to cooperate with the LSP and the MA DEP in obtaining all additional services or information deemed necessary by the LSP or the MA DEP. If the Company and the Client are unable to reach mutual agreement on the terms under which the services or information will be obtained, the Company may terminate its services upon giving written notice to the Client, and the Client will pay the Company for all services and expenses through the date of termination in accordance with this Agreement.

In addition, the Client recognizes that the MA DEP may at any time audit all or part of the LSP's services or the assessment or remediation in which the LSP participated. The Client acknowledges that such an audit is not an indication that the services were deficient or failed to comply with the Massachusetts Contingency Plan as in effect at the time the Company originally provided its services. The Company shall be entitled to additional compensation for any time spent and to reimbursement for any expenses incurred in responding to any MA DEP audit (in accordance with the Company's fee schedule then in effect).

6. **Indemnification:**
The Client acknowledges that the Company has not generated or released and is not otherwise responsible, in whole or in part, for the presence of any oil, hazardous materials, pollutants, asbestos or other potentially dangerous substance at the site identified in the Work Scope. Therefore, the Client agrees to defend and save the Company, its officers, employees and subcontractors harmless from all liability, losses, damages, claims, demands and suits, including expenses of suit and reasonable attorneys' fees, arising from personal injuries, disease or death, property loss or damage, natural resource damages, injuries to others (including personnel of the Client and of the Company, its contractors and subcontractors performing work hereunder), or from air, water or soil pollution or environmental contamination arising out of or in any manner connected with or related to the performance of this Work Scope, except if such injury, loss or damage shall be caused solely by the gross negligence or willful misconduct of the Company, its employees, agents or representatives.

7. **Duty of the Client:**
It shall be the duty of the Client to advise the Company promptly of any known or reasonably knowable oil or hazardous materials or any condition existing in, on or near the premises upon which work is to be performed by the Company's employees or subcontractors that presents a potential or possible health hazard or nuisance. If the Client fails to advise the Company or, notwithstanding such advice, unanticipated occurrences of such substances or conditions are discovered during the course of the work, and such discovery in the judgment of the Company results in or may result in injury or a

health risk to persons, whether the Company's personnel, the Client's personnel or others, the Client agrees that it shall assume full responsibility and liability for any resulting personal injury, including disease, medical expenses and/or death, property damage or economic loss, including consequential damages.

8. Changes in Work Scope:

If any unforeseen hazardous materials or other unforeseen conditions are encountered during execution of the work which, in the judgment of the Company, significantly affect or may affect the work or the recommended Work Scope, the Company will notify the Client as soon as practicable. In such event, the Client and the Company agree to pursue one of the following: (1) if practicable, in the judgment of the Company, complete the original Work Scope; (2) modify the Work Scope and budget estimate to include study of the previously unforeseen conditions, with this Agreement being amended accordingly and in writing; or (3) terminate the Work Scope. In the event of termination, the Client agrees to pay the Company in full for all work completed and fees due until written termination notice has been received by the Company and to pay all costs incurred by the Company prior to and in connection with discontinuing the work hereunder, such as completion of files and preparation of a written report to the Client of findings to date of termination and all costs associated with subcontract termination. The Client also acknowledges that the Company may be required by statute, regulation or court order to report the finding of oil or hazardous materials or certain other matters to state or federal authorities.

9. Confidentiality:

The Company will not disclose information about its services, its reports or information which the Client has provided to the Company and designated as confidential, without the Client's prior consent, except to the extent necessary (a) for the Company to perform its services, (b) to comply with professional standards to protect public health, safety and the environment or (c) to comply with court orders, laws, governmental regulations and other legal requirements. Information generally available to the public, technical information the Company may have developed independently and information the Company acquires from third parties without any breach of duty will not be considered confidential. If by order of court, statute or regulation ("orders"), the Company is required to disclose information in its possession, it shall give the Client prompt notice of such facts. Thereafter, the Company may, without liability to the Client or others, comply with such orders. If any claims are asserted against the Company because of its compliance, the Client will hold the Company harmless from such claims and any reasonable expenses incurred, provided that the Company's disclosure is made under a reasonable bona fide belief, or on advice of counsel, that disclosure is required by such orders.

10. Opinions of Probable Clean-up and Disposal Costs:

The Company may give opinions of probable clean-up and disposal costs as part of the Work Scope. These opinions may also involve approximate quantity estimates. The Client understands and agrees that quantity estimates are estimates only, and are not accurate enough for clean-up and disposal bids. The Company does not guarantee or warrant the accuracy of estimates of probable clean-up and disposal costs as compared to bids of Contractors, or compared to actual clean-up and disposal costs.

11. Documents:

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the Company shall remain the property of the Company. The Client agrees that all reports and other work furnished to the Client or its agents, shall be utilized by the Client solely for the purposes of the contemplated project. Any documents prepared by the Company which are not paid for by the Client, shall be returned upon demand and shall not be used by the Client for any purpose whatsoever. The Company will retain all pertinent records relating to performed services for a period of two (2) years following submission of the report or any other period mandated by law, during which period the records will be made available to the Client at the Company's Office at all reasonable times. Copies will be prepared by the Company for the Client for reasonable cost of reproduction.

12. Disposal of Contaminated Material:

The Client agrees that the Company is not, and has no responsibility as, a handler, generator, owner, operator, treater, storer, transporter or disposer of oil, hazardous material or toxic substances found or identified at a site except as relates to laboratory samples. With the exception of laboratory samples, the Company does not arrange directly or indirectly for the transport, disposal, storage or treatment of any material, including oil or hazardous waste. Arrangements for the handling, removal, treatment, storage, transportation and disposal of oil, hazardous material or constituents found or identified at the site will be undertaken by others.

13. Samples:

The Client will pay all costs associated with the storage, transport and disposal of samples. All samples of soil, water, waste, stock or other materials collected from the site will be disposed of sixty (60) days after completion of laboratory testing unless the Client makes other arrangements at the time it accepts the Company's proposal or unless applicable law requires their retention, in which event the Client will pay an additional fee for storage as determined by the Company.

14. Public Liability:

Company represents and warrants that its staff are protected by Worker's Compensation insurance with statutory limits; and that Company has such coverage under Public Liability and Property Damage insurance policies which Company deems adequate. Certificates for all such policies of insurance shall be provided to Client upon written request. Only within and only to the extent of the limits and conditions of such insurance, Company agrees to indemnify and save Client harmless from any claims, demands, suits, or liabilities arising from any negligent acts by Company, its agents, staff, contractors or consultants employed or engaged by it. In no event shall Company be liable or responsible for any loss, damage, or liability, including but not limited to fire and explosion, beyond the amounts, limits, and conditions of such insurance, or if such loss, damage, or liability is excluded from such coverage of such insurance.

15. Reliance:

The Client recognizes that the services and the contents of any project reports and associated documents provided to the Client by the Company are solely for the benefit of the Client and its heirs, successors and permitted assigns whose reliance thereon is not independent of Client's. The contents of any project reports and associated documents, including but not limited to any opinions and recommendations embodied therein, are not to be quoted or otherwise referenced to nor furnished to any other person, and no other personal shall be entitled to rely thereon, without the Company's prior written consent. The Company and the Client agree that such consent will be given by the Company only upon its receipt of (i) additional consideration in an amount sufficient in its sole discretion to compensate the Company for its additional exposure, and (ii) the written agreement of the third party seeking to rely upon the contents of any project reports and associated documents accepting the entire contents of this Agreement, including the specified Work Scope, the Terms and Conditions, and any additional limitations included within the body of the applicable reports and/or documents upon which reliance is sought. Notwithstanding the foregoing, the Company may withhold its consent for any reason or no reason in its sole discretion.

16. General:

In an effort to resolve any conflicts that arise during the Project or following the completion of the Project, the Client and the Company agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and the Company further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

The Work Scope, Fee Schedule and these Terms and Conditions constitute the entire agreement of the parties and there is no other agreement relating to the services to be rendered by the Company that is not expressed herein. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without regard to its principles of conflicts of laws.

Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its employees, agents (including without limitation, any subcontractors) and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed or like document.

If any of these Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform these conditions and to replace any such invalid or unenforceable provision with a valid and enforceable provision as close in meaning as possible to the intention of the stricken provision.

Ransom Consulting, Inc. is an Equal Opportunity Employer.

2017.104 IN BOARD OF CITY COUNCIL..SEPTEMBER 19, 2017

BE IT ORDERED, that the City Manager be authorized to sign a contract with Gale Associates, Inc. for airport planning and engineering services for the Biddeford Municipal Airport for a 5-year term (from mid-2018 to mid-2023). The consultants would focus on projects that are eligible for Federal and State grants covering 95% of the cost. The project costs that are eligible for grants also include the consultant's fees.

NOTE: At their August 17, 2017 meeting, the Airport Commission reviewed the RFQ's for an Airport Consulting Firm and have recommended Gale Associates, Inc.

AIRPORT GENERAL CONSULTANT AGREEMENT (AGCA)

by and between

CITY OF BIDDEFORD
205 Main Street, P.O. Box 586
Biddeford, ME 04005

and

GALE ASSOCIATES, INC.
163 Libbey Parkway
Weymouth, MA 02189

for

PLANNING AND ENGINEERING SERVICES

at

B19

Biddeford Municipal Airport

August 2017

AIRPORT GENERAL CONSULTANT AGREEMENT (AGCA)

(Airport Use Only)	
Airport Name: Biddeford Municipal Airport	Maximum AGCA Value: $3,000,000
Agreement Begin Date: April 30, 2018	Ordering Period Begin Date: April 30, 2018
Agreement End Date: April 30, 2023	Ordering Period End Date: April 30, 2022

This Airport General Consultant Agreement (hereinafter referred to as "AGCA") is entered into by and between **City of Biddeford** (hereinafter referred to as **"**Airport**"**), **205 Main Street, P.O. Box 586, Biddeford, ME 04005** and **Gale Associates, Inc.** (hereinafter referred to as "Consultant")**,** with its principal place of business located at **163 Libbey Parkway, P.O. Box 890189, Weymouth, MA 02189,** hereinafter referred to as the "Parties".

The following attachments are hereby incorporated into this agreement:

☒ **Appendix A – FAA Provisions**

☒ **Appendix B – MaineDOT Airport Consultant General Conditions**

☒ **Appendix C – Consultant Insurance Certificate(s)**

The Airport and the Consultant, in consideration of the mutual promises set forth in this Agreement, hereby agree as follows:

A. Purpose

AGCA's are ordering agreements which provide for an undefined quantity of consultant services. AGCA's are typically limited by a maximum total value and cover a specific period of time.

B. The Scope of Work

For the term of this AGCA, the Consultant agrees to provide Planning and Engineering services as defined in the Airport's RFQ. These services will be performed in accordance with the individual Project Contract(s), and the most current version of the Airport Consultant General Conditions.

C. Time

(1) Ordering Period - The Ordering Period of this AGCA begins on the date the Airport executes the agreement and ends on the date stated above.
(2) Project Contracts – Work ordered through individual Projects Contracts must be within the:
  (a) Ordering period of this AGCA and completed prior to the AGCA expiration date.
  (b) Scope of the services in this AGCA.
(3) Work Completion - When ordering work prior to the last day of the AGCA ordering period, both the Airport and the Consultant understand that the work must be completed in accordance with the project schedule. Under no circumstances will that schedule extend any later than the AGCA expiration date stated above without written FAA approval.

D. Financial Package Preparation and Evaluation

At the time a Consultant enters into an AGCA, said Consultant shall prepare a financial package to be submitted to the Airport for evaluation. This financial package must be submitted to the Airport on an annual basis for the term of the AGCA.

The financial package should include the following items:

(1) Financial statements for the immediate preceding accounting year as audited by a licensed independent public accountant in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA). Any management letters prepared by the licensed independent public accountant as part of the audit should be included; or

(2) An audit report on the consultant's overhead for the preceding accounting year, prepared by a licensed independent public accountant, based on an audit made in accordance with (1) Government Auditing Standards issued by the U.S. Comptroller General and (2) the cost principles of Part 31 of the Federal Acquisition Regulations (48 CFR). This requirement does not apply to consultants who have not completed their first accounting year. The report should include:

   (a) The auditor's opinion on the overhead and a detailed overhead schedule for which the audit opinion is given, including the overhead rates and the base upon which the rate is applied. The rate for Home Office Overhead should be included and a separate Field Overhead Rate should also be included if field operations are an offered client service or if the consultant has been selected for a service involving field services.

   (b) The auditor's opinion on the ability of the accounting system to accumulate, allocate, and segregate direct and indirect costs.

The Airport will evaluate the financial package and advise the Consultant on the following:

(1) When financial statements are included in the package, the Airport will describe any concerns regarding the financial capabilities of the consultant.

(2) Whether the overhead audit is acceptable as a basis for supporting the utilization of the overhead rates proposed in contract negotiations; or

(3) If the audit is not acceptable, the Airport will describe the efforts necessary to obtain an acceptable overhead rate.

(4) Whether the consultant's accounting system has the ability to accumulate, allocate, and segregate allowable direct and indirect costs for billing purposes.

E. Insurance

Consultant must submit to the Airport, a current Certificate of Insurance that is in compliance with the Airport Consultant General Conditions and continue to do so on an annual basis through the term of the AGCA.

Project Contract.

As needs develop, the Airport shall assign specific tasks to the Consultant through a "Project Contract." The Project Contract shall include: project description, scope of work, list of key personnel and proposed schedule of milestones and budget.

A. Proposals

The proposal must demonstrate the Consultant's understanding of the proposed work and detail the Consultant's proposed approach to the work. Price proposal elements should be provided for each corresponding technical proposal task and include:

(1) Direct labor expenses for each employee and their respective classification of labor. These rates must be supported by a certified payroll signed by an authorized financial representative from the Consultant's firm.
(2) Proposed Overhead rates.
(3) Itemized direct non-salary expenses.
(4) Fixed Fee/Profit.
(5) Total proposed price.
(6) Subconsultant Proposal(s)

If a Subconsultant will be performing work on a project, the Prime Consultant must submit the Subconsultant's Proposal as supporting documentation.

Best and Final Offer. If the Airport and the Consultant cannot agree on an acceptable level of effort and price to perform the work, the Airport shall request a Best and Final Offer (BAFO). If the BAFO is unacceptable, then the negotiation should be terminated, and the Airport will initiate negotiations with the next most qualified selected Consultant.

B. Compensation

(1) Compensation for Project Contracts under this AGCA shall be negotiated and set forth in the Project Contract.
(2) The combined values of project contracts cannot exceed the maximum value of the AGCA.

C. AGCA Modifications

An AGCA cannot be modified for time or dollar value without written approval from the Airport and FAA. Once an AGCA has reached its expiration period, or its total dollar value, the consultant may no longer be eligible for any additional project contracts under the AGCA umbrella.

D. Representations

By signing below, the Consultant hereby represents that to the best of the Consultant's knowledge and belief:

(1) All of the material statements, representations, covenants, and/or certifications provided during the selection process and included in this AGCA are complete and accurate.
(2) Work under this AGCA will not be reimbursed without a fully executed Project Contract (signed first by the Consultant and then by the Airport).
(3) Work performed outside the contract date of this AGCA shall not be reimbursed by the Airport.
(4) The Consultant knows of no legal, contractual, or financial impediment to entering into this AGCA.
(4) The person signing below is legally authorized by the Consultant to sign this AGCA on behalf of the Consultant and to legally bind the Consultant to the terms of the AGCA.

In Witness Whereof, the Consultant, for itself, its successors and assigns, hereby execute two (2) originals of this AGCA and binds itself to all covenants, terms, and obligations contained in this AGCA. The effective date of this AGCA will be on the date last signed below by an authorized Airport representative.

Gale Associates, Inc.	**Biddeford Municipal Airport**
By: ______________________	By: ______________________
Jon F. Lindberg, Principal	James A. Bennett, City Manager
August 28, 2017	______________________
(Date)	*(Date)*

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

FEDERAL AVIATION ADMINISTRATION (FAA)

Appendix A

Procurement and Contracting Under AIP

Contents

Procurements made under the AIP must comply with required Federal provisions established by various laws and statutes. The requirements for the provisions will vary depending on the type and size of the procurement action. Typically, procurement actions under the AIP fall within three categories: (1) Construction Development, (2) Equipment Acquisitions, and (3) Professional Services (A/E) Contracting. Application of a certain provision also depends on established contract dollar thresholds. Note that additional provisions are required in each category of Sponsor contracts if several contract dollar thresholds are exceeded. These additional provisions are listed following the general provisions that apply to each category of contract.

On this page ...

Construction Contracts

Provisions for all Construction Contracts

Buy American Preference - Title 49 U.S.C., Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30 Veteran's Preference (MS Word) - Title 49 U.S.C 47112

Additional Provisions for Construction Contracts Exceeding $2,000

Davis Bacon Labor Provisions (MS Word) - 29 CFR Part 5 http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

Procurement and Contracting Under AIP - Federal Contract Provisions

Additional Provisions for Construction Contracts Exceeding $10,000

Equal Opportunity Clause (MS Word) - 41 CFR Part 60-1.4 Certification of Non-Segregated Facilities (MS Word) - 41 CFR Part 60-1.8 Notice of Requirement for Affirmative Action (MS Word) - 41 CFR Part 60-4.2 Equal Employment Opportunity Specification (MS Word) - 41 CFR Part 60-4.3 Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Construction Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29

Additional Provisions for Construction Contracts Exceeding $100,000

Contract Workhours and Safety Standards Act Requirements (MS Word) - 29 CFR Part 5 Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(i)(12)

Equipment Contracts

Provisions for all Equipment Contracts

Buy American Preference - Title 49 U.S.C, Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for Equipment Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Equipment Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR

Part 29 **Additional Provisions for Equipment Contracts Exceeding $100,000**

Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(0(12)

Professional Services (A/E) Contracts Provisions for all A/E Contractshttp://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
Procurement and Contracting Under AIP - Federal Contract Provisions

Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for A/E Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36 **Additional Provisions for A/E Contracts**

Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29 http://www.faa.gov/airports/aip/procurement/federal contractprovisions/

Guidance for Buy American on Airport Improvement Program (AIP) or American Recovery and Reinvestment Act (ARRA) projects.

In accepting AIP or ARRA funding, grant recipients are certifying that they will not acquire (or permit any contractor or Sub-contractor) to use any steel or manufactured products produced outside the United States on any portion of the project for which funds are provided, unless otherwise approved by the FAA. Therefore, for the AIP or ARRA funded portion of a project, grant recipients must either:

1. Certify, in writing, all products are wholly produced in the US of US materials, or
2. Request a waiver to use non-US produced products, or
3. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.

The AIP funded portion of a project includes the grant recipient's local share.

Types of Waivers

There are four types of waivers to Buy American:

1. Public interest waiver;
2. Insufficient quantity AND quality for ARRA (AIP projects allow waivers for insufficient quantity OR quality);
3. 60% or more of the components and subcomponents in the facility or equipment are of US origin and final assembly is in the US; or
4. Applying Buy American increases the cost of the overall project by more than 25%.

Many pieces of equipment are constructed with some non-US produced components or subcomponents. Therefore, it is expected that the majority of grants will have waivers issued unless the project is constructed of materials that already have a nationwide waiver.

Nationwide Waiver

Much of the equipment that is frequently used on AIP or ARRA projects has been reviewed by FAA Headquarters and a nationwide waiver has been issued. The Nationwide Buy American conformance list is posted on the www.faa.gov website at the following address:

> http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/ by clicking the tab, "Equipment Meeting Buy American Requirements"

If the equipment is on the nationwide waiver list, no additional waiver is required.

Who can Issue Waivers

Only FAA headquarters may issue waivers for reasons 1 and 2. FAA field offices (Regional Offices and/or Airports District Offices) may issue waivers for reasons 3 and 4.

For block grant state projects, the FAA must issue the waivers. Block grant states are not allowed to issue a waiver.

Defining the Project, Facility and Equipment, and Final Assembly Location in the 60%/US final assembly waiver

The waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States." The correct application of the terms is discussed below.

Project
The **"Project"** is generally the project that is being bid. The "Project" does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.

Facility or Equipment
- For a building, the portion of the building that is being funded under the AIP or ARRA grant is the "**facility**" listed in the waiver.

- For other projects, the bid items as described in the latest edition of FAA Advisory Circular 5370-10 will generally be the "**equipment**" referred to in the waiver except for airfield electrical equipment.

- For airfield electrical equipment, the "L-" items listed in the Addendum to FAA Advisory Circular 5345-53C, latest edition will generally be the "**equipment**" referred to in the waiver.

- For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the "**equipment**."

Final Assembly Location and Labor Exclusion
Final assembly is the substantial transformation of the various components and subcomponents into the equipment. For a building, the final assembly is actual construction of the building.

- For any project other than a building project, the final assembly location is the location where the equipment is assembled, **not the project site itself**.

- For a building, the final assembly location is the airport building site.

In any calculation of Buy American percentage, the labor for the final assembly is excluded. This is because the Buy American statute is based on the cost of materials and equipment, not labor. For a building, this means that only the costs of the materials as they are delivered to the airport site are considered when calculating US and non-US component and subcomponent costs. For equipment, the costs of the final assembly at the manufacturing site are excluded.

<u>Common Materials that are waived or excluded from Buy American - Cement, Concrete, Asphalt and Steel</u>

Cement and concrete is excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American.)

Asphalt and other petroleum products are waived as an excepted item under AMS Guidance T3.6.4.1.e: Foreign Acquisition - Definitions identifying Asphalt as a petroleum product.

Steel is specifically identified in the statute. Therefore, all rebar and discrete, identifiable steel components must be manufactured in the United States.

<u>FAA Waiver</u>

After the FAA has determined that the final assembly location is in the US and the percent of US components and subcomponents is above 60%, a waiver may be issued. **The waiver is for the single project - not a nationwide waiver**.

<u>What Information is required to Issue a Waiver (AIP and ARRA) and for the Federal Register Notice (ARRA)</u>

For waiver type 3, a waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States."

Grant recipients must request waivers from FAA in writing, with sufficient supporting information. Grant recipients are responsible for ensuring their waiver request is complete and accurate using project specific information provided directly by the contractor or the contractor's supplier.

The FAA will conduct its review and approval based on the information provided by the grant recipient.

The information that must be provided for either equipment or for a building:

- Project Number
- Project Name
- Airport Name
- Total Project Cost
- Total Equipment or Bid Item Cost for which the waiver is being requested
- Total Equipment or Bid Item Cost excluding labor for final assembly.

For equipment, the following additional information is required:

- The equipment or bid item for which the waiver is being requested
- The manufacturer and country of origin of the equipment or bid item.
- The location of the final assembly of the equipment or bid item (not the airport site)

- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested

- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

For a building, the following additional information is required:

- The building (called the facility in the Buy American statute) for which the waiver is being requested
- The manufacturer and country of origin of the US and non-US materials that will be used in the building,
- For a building, the location of the final assembly is the airport site
- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

Grant recipients are urged to submit waiver requests as early as possible.

Waivers that are issued on ARRA projects must be included in a Federal Register notice, which will generally be published on a quarterly basis.

***Sample Letter of Approval of Waiver*:**

When FAA is satisfied that a waiver may be issued based on the 60%/US final assembly criteria, a letter must be written to the airport sponsor approving the waiver. The text of the letter follows.

A copy of the letter must be forwarded to APP-500 along with a copy of the supporting documentation that was submitted by the airport for the waiver. The information used in the letter will be the basis of the Federal Register notice. The Federal Register notice may include copies of the waiver letters or will be a tabular listing of the waivers. Therefore, regions must forward both a *.pdf copy of the signed letter and an editable copy of the letter.

> XXXX Airport
> AIP-Project No. X-XX-XXXX-XX
> Project Name
> Waiver of Buy American Requirements
>
> I have reviewed the request for Waiver of Buy American Requirement submitted XXX for the use of XXXXX equipment on the subject project. The information submitted by the airport for:
>
> Item for which waiver is being issued: i.e L-831 Transformers
> Manufacturer:
> Final Assembly Location:

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Percent US Components and Subcomponents:

The information submitted satisfies the requirement for waiver of the requirements of the Buy American per 49 USC Section 50101 based on over 60% of the cost of components and subcomponents to be used in the project being produced in the United States.

The waiver is hereby approved for use on this AIP grant project.

Common Misconceptions

- Belief that if a manufacturer is "FAA-certified" that Buy America has been satisfied. This is not true. The FAA certification certifies that technical standards have been met. However, FAA-certified equipment manufactured outside the U.S. does not meet Buy America provisions of the AIP unless a waiver has been issued.

- Misconception that the North America Free Trade Act (NAFTA) exempts equipment manufactured in Mexico or Canada from "Buy America" requirements. This is not true for AIP or ARRA projects.

Text of Buy American statute from 49 United States Code §50101

§ 50101. Buying goods produced in the United States

(a)Preference.- The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106 (k), 44502 (a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b)Waiver.- The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1)applying subsection (a) would be inconsistent with the public interest;

(2)the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3)when procuring a facility or equipment under section 44502 (a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title—

(A)the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B)final assembly of the facility or equipment has occurred in the United States; or

(4)including domestic material will increase the cost of the overall project by more than 25 percent.

(c)Labor Costs.- In this _, labor costs involved in final assembly are not included in calculating the cost of components.

The most recent list of manufacturer's equipment that meets the Buy American Requirements (as determined by HQ) can be found on the FAA website under "Procurement and Contracting under AIP".

Foreign Object Debris (FOD) Detection Equipment Request for Qualifications

The Federal Aviation Administration recently published a notice in the Federal Register requesting information from manufacturers of FOD Detection Systems (Federal Register Vol. 75, No. 150 / Thursday, August 5, 2010 / Notices Page 47344). In order for FAA to determine whether AIP grant funds can be used for a manufacturer's FOD Detection equipment, FAA must determine whether the equipment meets the requirements of 49 USC §50101, Buy American Preferences.

Under 49 USC §50101(b)(3), the Secretary of Transportation may waive the Buy American preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. The Secretary has delegated this authority to the Federal Aviation Administration.

On September 30, 2009, FAA published Advisory Circular (AC) 150/5220-24, Airport Foreign Object Debris (FOD) Detection Equipment. The AC specified the requirements for FOD detection equipment at airports. A link to the Advisory Circular is here: http://www.faa.gov/airports/resources/advisory_circulars/

If FAA cannot find that there are enough USA manufacturers of FOD detection equipment to produce FOD detection equipment in sufficient and reasonable amounts, it will issue a nationwide waiver to the foreign manufacturers of FOD detection equipment that it has identified as being capable of meeting the AC requirements.

To make this determination, manufacturers of FOD detection equipment, both domestic and foreign, are requested to complete the form indicated here and prepare a letter of technical certification, and email them to Nancy.S.Williams@faa.gov by September 15, 2010.

The form "percent calculation.xls" is a spreadsheet that is filled out by the manufacturer. Using the complete FOD detection system as the Level 0 product, the manufacturer must complete the breakdown through Level 2 indicating the costs of the items and placing them in the column for either US product or non-US product. The costs listed are for materials only, no costs of labor, installation, assembly at the final manufacturing site, overhead, profit or other non-product costs may be included.

On the form, the manufacturer must indicate the city and state where the FOD detection system is manufactured. If the computer system that is used to record the data and receive the signals is a commercial off-the shelf computer system, it should not be included in the percent calculation list, however an explanatory note must be included with the form.

The second required submittal is a certification prepared by the manufacturer on the manufacturer's letterhead that the equipment listed meets the requirements of the AC. The Required Capabilities listed in the AC must be met, however the recommended capabilities that are listed in Section 3.2 c.(1)(b), Section 3.2 (c)(2) and Section 3.2 (c)(3) are not required to be included in the certification. The letter must specify whether the certification is for continuous inspection or mobile detection. The letter must be signed by a legally-responsible member of the manufacturer who can attest to the technical capabilities of the equipment.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8822.

Company

Date:

Point of Contact (Provide address, telephone, fax, e-mail)

PRODUCT STRUCTURE Multi-Level Bill of Materials through level 2 only

Item:
FAA Item Number

Total Material Cost
US Content, % [1]
Other, %________

Address of Final Assembly Location:

						US Origin*		Other	
Level (0, 1, 2)	Part Number	Description[2]	Quantity Per Unit	Unit of Measure	Price/Unit of Measure	Price/Unit of Measure	Cost/Each	Price/Unit of Measure	Cost/Each

1. Attach Certificate of Origin, US Customs Form 434
2. Items Listed in Federal Acquisition Regulation Part 25.104 may be counted as US Origin, however should include note stating that item is exempt in 25.104

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Sub-contracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a sub-contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies,
and/or
b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Application

Required in all contracts and sub-contracts

Reference

49 CFR Part 21
AC 150/5100-15

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Application
Incorporate in all contracts funded under AIP

Reference
Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, “Disclosure of Lobby Activities,” in accordance with its instructions.

Application
Required in all contracts and sub-contracts

Reference
49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)
FAA Order 5100.38

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each Sub-contractor under this prime contract for satisfactory performance of its contract no later than ***[specify number]*** days from the receipt of each payment the prime contractor receives from ***[Name of recipient].*** The prime contractor agrees further to return retainage payments to each Sub-contractor within [specify the same number as above] days after the Sub-contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the ***[Name of Recipient].*** This clause applies to both DBE and non-DBE Sub-contractors.

Application
The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29. Recipients should refer to the language included their approved DBE program

Reference
49 CFR Part 26

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

Application
The regulation does not prescribe the language for the requirement. The above clause represents sample language that meets the intent of 49 CFR Part 18.36(i)(13)

Reference
49 CFR Part
18.36 Public
Law 94-163

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their Sub-contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Application

The FAA does not prescribe the exact language to be incorporated. The above clause represents sample language that addresses the requirements of 49 CFR Part 18.36(i)(1). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms. Grantees should consult with their legal counsel to develop the appropriate clause that meets the minimum requirements of 49 CFR Part 18.36.

This provision is required in all contracts that exceed the simplified acquisition threshold, presently set at $100,000.

Reference
49 CFR Part 18.36

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

The contractor or Sub-contractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of theUnitedStates Trade Representative (USTR);

b. has not knowingly entered into any contract or sub-contract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor sub-contracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or sub-contractor who is unable to certify to the above. If the contractor knowingly procures or sub-contracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier sub-contracts. The contractor may rely on the certification of a prospective sub-contractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a Sub-contractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Sub-contractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or Sub-contractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or sub-contract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Application
Incorporate into all contracts funded by AIP.

Reference
49 CFR Part 30.13
FAA Order 5100.38

VETERAN'S PREFERENCE

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

Application
Incorporate into all construction contracts financed under the AIP program.

Reference
Title 49 U.S.C. 47112(c)
Advisory Circular 150/5100-6d

DAVIS BACON REQUIREMENTS

1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its Sub-contractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2 Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any Sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph 5.5(a)(3)(i) above. This information may be submitted in any form desired. Optional Form

WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all Sub-contractors.

(B)Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or Sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1)That the payroll for the payroll period contains the information required to be maintained under paragraph (3)(i) above and that such information is correct and complete;

(2)That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3)That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C)The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D)The falsification of any of the above certifications may subject the contractor or Sub-contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or Sub-contractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or Sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance With Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or Sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the Sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any Sub-contractor or lower tier Sub-contractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a Sub-contractor as provided in 29 CFR 5.12.

8. Compliance With Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its Sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Application
Incorporate into all construction contracts and subcontracts that exceed $2,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

EQUAL EMPLOYMENT OPPORTUNITY - 41 CFR PART 60-1.4(b)

During the performance of this contract, the contractor agrees as follows:

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

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Sub-contractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however,* that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000

Reference
Executive Order 11246
41 CFR Part 60 -1.4
AC 150/5100-15, Para. 22.a.

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR

PART 60-1.8 Notice to Prospective Federally Assisted Construction

Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving federally-assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective Sub-contractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Sub-contractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving subcontract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective Sub-contractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed Sub-contractors for specific time periods) she or he will obtain identical certifications from proposed Sub-contractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

Application

Incorporate in all construction contracts and subcontracts that exceed $10,000. The notices should be placed within the solicitation for proposals. The actual certification should be incorporated in the contract agreement.

Reference

Executive Order 11246
41 CFR Part 60 -1.8

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)

Goals for female participation in each trade (6.9%)

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project, for the sole purpose of meeting the contractor's goals, shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director, OFCCP, within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Sub-contractor; employer identification number of the Sub-contractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is [insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any].

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This notice should be placed within the solicitation for proposals. The goals for minority participation are dependent upon the Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA). Refer to Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table listed all EA and SMSA and their associated minority goals. The 6.9% for female participation represents a national goal.

Reference
Executive Order 11246
41 CFR Parts 60 - 4

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any Sub-contractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Sub-contractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Sub-contractors toward a goal in an approved Plan does not excuse any covered contractor's or Sub-contractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement

contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Sub-contractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10.The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11.The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13.The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14.The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This provision shall be included in the solicitation and the contract agreement.

Reference
Executive Order 11246
41 CFR Parts 60 – 4.3 AC
150/5100-15, Para. 22.c.

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

e.The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Application
Incorporate into all procurement contracts that funded by AIP funds that exceed $10,000.

Reference
49 CFR Part 18.36(i)(2)
FAA Order 5100.38

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Application
Incorporate into all contracts that exceed $25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.

Reference
49 CFR Part 29 FAA
Order 5100.38

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 29 CFR PART 5

1. Overtime Requirements.
No contractor or Sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.
In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any Sub-contractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and Sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.
The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or Sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Sub-contractors.
The contractor or Sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the Sub-contractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any Sub-contractor or lower tier Sub-contractor with the clauses set forth in paragraphs 1 through 4 of this section.

Application
Incorporate into all construction contracts and subcontracts that exceed $100,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and Sub-contractors agree:

a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued hereunder;

c. That, as a condition for the award of this contract, the contractor or Sub-contractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

d. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

Application

Incorporate in all contracts and subcontracts that exceed $100,000.

Reference

49 CFR Part 18.36(i)(12) Section 306 of the Clean Air Act Section 508 of the Clean Water Act

<u>MaineDOT Airport Consultant General Conditions</u>

Appendix B

BIDDEFORD MUNICIPAL AIRPORT

(Airport)

AIRPORT CONSULTANT GENERAL CONDITIONS

May 3, 2012

TABLE OF CONTENTS

Agreement

The Consultant shall furnish or provide the services necessary to complete the Project in accordance with these Airport Consultant General Conditions ("**ACGC**") and the Sponsor's requirements, as outlined in the Airport General Consultant Agreement ("**AGCA**") and Airport Project Contract.

General Provisions

Representation by Sponsor

By executing the AGCA or an Airport Project Contract, the Sponsor's signatory represents that, to the best of their knowledge, the Consultant (or any of its representatives) has not been required, as a condition of obtaining or carrying out the AGCA or Airport Project Contracts to:

a. employ or retain any firm or person; or
b. pay or agree to pay any firm, person or organization any fee, contribution, donation, or consideration of any kind.

Representations by Consultant

By signing the AGCA and/or an Airport Project Contract(s), the signatory represents that they are a duly authorized representative of the Consultant firm and represents that neither they nor the Consultant firm has (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Consultant) to solicit or secure the AGCA and related contracts; (b) agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or; (c) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the AGCA, Airport Project Contract and any related contracts.

By signing the AGCA and/or an Airport Project Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
b. Have not within three (3) years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
    i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract,
    ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
iv. have not within a three (3) year period preceding this application or proposal had one or more Federal, State or Local government transactions terminated for cause or default.

In addition, the Consultant will not hire any material or service providers who are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state, federal, or local agency.

Priority of Conflicting Contract Documents

If the Consultant discovers any error, omissions, conflict, or discrepancy related to the Contract Documents that may significantly affect the cost, quality, conformity, or timeliness of the work, the consultant must notify the Sponsor. The Parties agree that the following components of the contract documents shall control in the following descending order of priority:

Modification to the Airport Project Contract
Airport Project Contract and Appendices
Modifications to the Airport General Consultant Agreement
Airport General Consultant Agreement and Appendices
Airport Consultant General Conditions

General Scope of Work

The Airport Project Contracts are to be considered federally funded, unless expressly stated otherwise in the Contract Documents. As a Federally funded Contract, it is governed by all Federal requirements set forth in these ACGC and all related appendices.

Standards

All work, to the extent applicable, shall conform to the appropriate, related, current editions of the following publications, including, but not limited to:

Maine Department of Transportation

a. Standard Details and Supplemental Standard Details
b. Standard Specifications with Interim Specifications
c. Outline of the Department's latest Project Development Process
d. CADD Standards
e. Bridge Design Manual
f. Highway Design Guide
g. Survey Manual
h. MaineDOT Right-of-way Policies and Procedures
i. MaineDOT Utilities Policies and Procedures
j. MaineDOT Construction Manual
k. MaineDOT Best Management Practices for Erosion and Sediment Control
l. MaineDOT Format for Bridge Soils Reports
m. MaineDOT Format for Highway Soils Reports

AASHTO

a. A Policy on Geometric Design of Highways and Streets
b. LRFD Bridge Design Standards with Interim Specifications
c. Standard Specifications for Highway Bridges with Interim Specifications
d. Other Applicable AASHTO Standards and Guide Specifications

Highway Research Board

a. Highway Capacity Manual, SR 209

U.S. Department of Transportation

a. Pertinent Federal-Aid Policy Guides
b. Rules and Regulations, Federal Highway Administration
c. Manual on Uniform Traffic Control Devices for Streets and Highways
d. Roadside Design Guide
e. American Railway Engineering and Maintenance Association (AREMA) Manual
f. FHWA Right-of-Way Project Development Guide
g. Federal Aviation Administration Advisory Circulars
h. Federal Aviation Administration AIP Handbook

Exceptions to the referenced design standards must be approved in writing by the Sponsor.

Owner Responsibilities

No Personal Liability

The Sponsor's employees and other representatives act solely as representatives of the Sponsor when conducting and exercising authority granted to them under the AGCA and/or Airport Project Contract. Such persons have no liability either personally or as Sponsor employees to consultant for the implementation of the Airport Project Contract or AGCA.

Project Identification Numbers

All contract documents initiated by the Sponsor will reference the related Airport Improvement Project Number (AIPN) or State Aid Project Improvement Project Number (SAIPN). This number along with the State PIN should be referenced on all related invoicing and correspondence to the Sponsor.

Inform Consultant about Project Requirements

The Sponsor shall provide all relevant criteria and information pertaining to Sponsor's requirements for the Project which may include the following:

a. Property descriptions.
b. Zoning, deed and other land use restrictions.
c. Property, boundary, easement, right-of-way and other special surveys or data.
d. Planning Studies.
e. Explorations of subsurface conditions, drawings of physical conditions, hydrographic surveys at or contiguous to the site.
f. Environmental Assessments and other relevant environmental or cultural studies.
g. Data or consultations as required for the Project.

Accuracy

The Consultant is responsible for reviewing all, reports, data, and information provided by the Sponsor and notifying the Sponsor of any error, omissions, conflict, or discrepancy.

Advise Consultant of Services of Other Consultants

The Sponsor shall advise the Consultant of the identity and scope of services of any independent Consultants employed by Sponsor providing services on the Project. The Sponsor’s Project Manager will be responsible for coordinating the efforts of Consultants under contract with the Sponsor.

Consultant Responsibilities

Project Records

All project records, whether printed or electronic, made by the Consultant and Sub-consultant(s), or furnished to the Consultant by the Sponsor shall, upon completion of the work contemplated under the Airport Project Contract, be filed with the Sponsor. The Consultant and Sub-consultant(s) shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred under the Airport Project Contract and shall make such materials available at their respective offices at all reasonable times during the Airport Project Contract period and for three (3) years from the date of final payment under the Airport Project Contract. The Consultant and Sub-consultant(s), shall allow inspection and audit of pertinent documents by the Sponsor or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested, at no cost to the Sponsor.

The Consultant shall keep records in such form as may be easily audited and in accordance with 48 CFR, Part 31 - Contract Cost Principles and Procedures. The employee's salary record shall show time spent on the work. Audits shall be performed and issued in accordance with Generally Accepted Government Auditing Standards (GAGAS) as promulgated by the Comptroller General of the United States of America.

The Consultant shall retain all records in accordance with 49 CFR §18 which shall contain documentation of project progress, as well as, dates of all meetings, plan submissions, agreements, etc. with agencies or persons other than those of the Consultant.

Invoice Documentation

Records of Consultant's costs pertinent to Consultant's compensation under an Airport Project Contract shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Consultant's charges and upon Sponsor's timely request, copies of such records shall be made available to the Sponsor at its facility. Records shall be available for review by the Sponsor for a period of three (3) years following final payment.

Ownership of Documents

The Sponsor acknowledges the Consultant's plans and specifications as instruments of professional service.

All original data furnished to the Consultant by the Sponsor shall be returned to the Sponsor in good order.

All plans, specifications and exhibits prepared or obtained under the terms of the Airport Project Contract shall be delivered to and become the sole property of the Sponsor upon completion of the work. Consultant shall be entitled to maintain a copy of all such documents for its business files for a period of three (3) years from the date of final payment.

If the Sponsor alters the Consultant's plans, specifications, and/or exhibits or uses said plans, specifications, and/or exhibits for purposes other than their original intended use, the Consultant shall not be held liable.

Endorsed and Sealed

All plans, specifications, estimates, and data prepared by the Consultant shall be signed and sealed with a State of Maine seal by the Consultant's Licensed Professional Engineer, Landscape Architect, Geologist, Site Evaluator, Surveyor, Soil Scientist, Master Plumber or other professional, as applicable under Maine State Law.

Utility Coordination

The Consultant shall make every reasonable effort to minimize the impact to existing utilities and also minimize lengths of relocated or proposed additional utilities.

Sub-consultants and Outside Associates and Consultants

A Consultant may not enter into a subcontract with a party unless that party is specifically identified in the Airport Project Contract as a Sub-consultant. The Consultant must first notify the Sponsor's Project Manager; or designee before retaining other Sub-consultants. The Sponsor retains the right to reject the Sub-consultant, if the Sponsor has concerns about the Sub-consultant's ability to perform the services described.

Consultant's Duties Regarding Sub-consultant(s)
The Consultant is responsible for:

a. Assuring that its Sub-consultant(s) has sufficient skill and experience to perform the work properly, and
b. Coordinating and managing its Sub-consultant(s) to achieve the intent of the Contract.

Claims
The Consultant agrees not to bring any claims for damages sought by its Sub-consultant(s) against the Sponsor and hereby indemnifies and holds the Sponsor harmless against any claims arising from failure by the Consultant to coordinate and manage its Sub-consultant(s) and from any and all claims or liabilities arising from work performed by the Sub-consultant. Subcontracting does not alter the Consultant's obligations under an AGCA or Airport Project Contract.

Flow Down
All subcontracts of the Consultant, and all lower tier subcontracts, shall contain the required FAA contract provisions and all applicable provisions of the Contract and these ACGCs.

No Third Party Beneficiaries
The Consultant and the Sponsor agree that the AGCA and/or Airport Project Contract are not intended to create any third-party beneficiaries or to authorize anyone not a party to the AGCA or Airport Project Contract to maintain an action under said ACGCA or Airport Project Contract provisions.

Accuracy

The Consultant shall be responsible for the services rendered, the professional quality, technical accuracy, and the coordination of all documents, designs, drawings, specifications, and other services furnished by the Consultant and Sub-consultant(s) under an Airport Project Contract. The Sponsor shall not be responsible for discovering deficiencies in the work product or professional services, but will notify the Consultant if a deficiency is discovered.

Standard of Care
Consultant represents that it has the requisite skills, expertise and licensing to perform all contract work using the accepted standards of care in the Consultant's profession or occupation.

Redesign Responsibility for Errors and Omissions
Upon request, the Consultant agrees to correct any errors, or omissions caused by the fault or negligence of Consultant and Sub-consultant(s) in work required under an Airport Project Contract without undue delay and without cost to the Sponsor.

Electronic Exchange of CADD Data

The Consultant must follow the most recent version of the Sponsor's specifications for required electronic (computer) data, at the time of Airport Project Contract execution, as it relates to engineering design project deliverables in effect. Consultants wishing to perform professional engineering services for Sponsor are required to deliver electronic data as specified in said document. The specification also requires Consultants to accept and utilize pertinent electronic input data as provided by Sponsor. It is the responsibility of the Consultant to translate this data into other formats required for use in their design software. A copy of this specification may be obtained from the Sponsor or designee.

Progress Reports

Prior to the start of work, the Consultant shall furnish the Sponsor with a proposed progress schedule in the Sponsor's standard format. The Consultant will outline the various phases of work that will need to be completed in order to meet the schedule set forth by the Sponsor.

During the course of the project, the Consultant shall submit to the Sponsor, a Monthly Project Status Report of accomplishments from the preceding month. The progress report shall be used to keep team members and the Contract Administrator informed about project status and issues. Information will include:

a. A written statement describing the work accomplished during the period and to date.
b. An estimate of the percentage of work completed within the specified services.
c. An estimate of the effort needed to complete the specified services.
d. The percentage of contract time elapsed and the percentage of contract amount expended (including contract modifications.).
e. Contract Modifications to date and anticipated contract modifications.
f. Any information needed from Sponsor to complete the project and avoid delays.
g. An explanation if the percent completion does not agree with the agreement time elapsed.

h. The Consultant's action plan to remedy and address any non-conforming or unacceptable work submitted to Sponsor.
i. Document anticipated problems and possible solutions.
j. The Consultant will keep the Sponsor informed as to changes in rates and key personnel.

These progress reports shall be submitted to Sponsor on a **monthly basis** regardless of whether or not payments are due. Failure to submit could result in non-payment of the invoice, or a determination for cause of default, and shall be recorded in the Consultant's Performance Evaluation. If work is temporarily delayed, the Consultant may suspend submittal of the monthly progress reports with written approval from Sponsor. The Consultant shall be responsible for addressing any action that may be required to keep the project on schedule.

Sponsor shall have a period of fifteen (15) business days after receipt of the submissions to complete the review and make any necessary comments. Following the review, the Consultant will make any revisions and corrections requested by Sponsor.

Equal Opportunity & Civil Rights

Requirements Applicable to Federally Funded Contracts

Projects shall be considered federally funded, unless the Airport Project Contract states otherwise. By signing the AGCA and/or Airport Project Contract, the Consultant certifies to all of the provisions contained in Appendix A – which is made a part of these ACGCs with the exception that the word "Consultant" should be substituted for the word "Contractor." This Appendix contains provisions that are required in all federally funded contracts. Unless expressly otherwise provided, the Consultant must comply with all provisions contained in said Appendix A.

DBE Compliance

The Consultant shall ensure that Disadvantaged Business Enterprises (DBEs), as defined, have the maximum opportunity to participate in the performance of the Airport Project Contract. In this regard, the Consultant shall analyze documented efforts to incorporate Disadvantaged MaineDOT certified firms into the Sponsor's federally funded programs. If the Sponsor has established an annual goal for DBE utilization, this annual goal shall be specified in the Airport Project Contract.

If, upon analysis of documented efforts, the Sponsor determines that the annual goal is not being met, then the Sponsor may establish specific contractual goals which would be announced in the Request for Proposal.

The Consultant shall check with the Maine Department of Transportation's Civil Rights Office DBE, OJT, and Civil Rights Office we site at www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php, to confirm that the business enterprise it plans to utilize as a DBE has valid, current DBE certification

Sponsor is currently operating under a race neutral goal but does reserve the ability to place race conscious goals on a contract specific basis if it determines that the current DBE goal is not being met pursuant to Federal Regulations 49 CFR 26.51.

If DBE attainment goals are required on a specific contract by the Sponsor, the Consultant shall not perform within its own organization, or assign to any other business, activity designated for the DBE's without the written consent from the DBE and the Sponsor. Any action taken by the Consultant in regards to this section shall be approved by the Sponsor.

The Consultant shall verify and submit to the Sponsor the following:

a. A DBE Proposed Utilization Plan – this document will be furnished when the Consultant submits a successful proposal; it reflects the firm's efforts to mainstream DBE firms into their project team, and must be approved by the Sponsor's Civil Rights Office prior to award of the contract.

b. Final Goal Verification forms – this will be submitted with the Consultant's final invoice. The Consultant will report on their efforts to utilize DBE firms, and the percentage of the project value paid to the DBE's as compared with the commitments made in the DBE Proposed Utilization Plan. The Sponsor reserves the right to withhold payment of the final invoice until this documentation is received.

Additional Services and Schedule

Additional Services

All requests for additional services must be submitted in writing to the Project Manager or Project Manager's Designee outlining both the scope and cost. The Sponsor will issue a written modification after both Sponsor and Consultant agree on the services to be performed and the cost of same. The Consultant shall not proceed with the work until a written modification has been executed by the Sponsor.

Time

Schedule
The Consultant shall perform its work in accordance within the timeframes set forth in the AGCA and the Airport Project Contract.

Extensions
If during the process of the work it is necessary to change or extend a date because of circumstances beyond the Consultant's control, then a request in writing shall be made to the Sponsor within ten (10) days of when the Consultant realized a change or extension was required. This request will include an estimate of any additional cost, if applicable. Any requests of this type will also be noted in the Monthly Project Status Report.

Late Delivery
If the Consultant fails to perform work within the timeframes indicated in the Airport Project Contract, including any pre-approved time extensions by the Sponsor, for reasons unrelated to performance by the Sponsor, and the Sponsor reasonably determines that such failure causes a financial impact on the Sponsor, such failure shall be recorded in the consultant's performance evaluation and used as part of the Sponsor's selection process for future projects.

Compensation and Payments

Invoicing

The Consultant will be paid in accordance with the payment method agreed upon in the Airport Project Contract.

Submission of Invoices
Invoices shall:

1. Reference the AIPN or SAIPN along with the State PIN.
2. Be submitted monthly by the Consultant to the Sponsor's Project Manager, or his/her designee.
    a. Be submitted in a form acceptable to the Sponsor, accompanied by the progress report, and supporting documentation (e.g. receipts for direct expenses), and any information required in accordance with FAA and MaineDOT guidelines.

The Sponsor will not be required to make any payments until these documents are received, reviewed and accepted.

Payment of Invoices
Payment for services shall be made in accordance with the terms negotiated in the Airport Project Contract and deemed eligible per 48 CFR Part 31. Invoicing will be based upon the certified payroll for costs incurred during the previous period, plus reimbursement for out-of-pocket expenses. Requests for reimbursement of out-of-pocket expenses must be accompanied by receipts. When applicable, these progressive or "progress" payments shall include a proportionate amount of the fixed fee.

The Sponsor's review, approval, acceptance of, or payment for, services provided under an Airport Project Contract shall not be construed to operate as a waiver of any rights, claim or damage, under the Contract, or of any cause of action arising out of the contractual performance.

Semifinal Estimate
When 80% to 90% of the total cost estimate (including modifications) has been expended under the Airport Project Contract, the Consultant shall develop a detailed estimate of the dollar amount and work hours necessary to complete the work, including an explanation of where and why any overruns are anticipated to occur. If the Sponsor is satisfied that sufficient justification exists, a contract modification with a revised maximum amount may be approved.

Final Invoice
The Consultant must make a notation on the final invoice stating it is the "Final Invoice".

Payment

Upon the Sponsor's receipt and acceptance of all required deliverables and services, including but not limited to plans, reports, and documents, the Sponsor will pay the total cost as defined in the Airport Project Contract, less previous payments to the Consultant. This payment shall constitute payment in full for all acceptable work performed under the Airport Project Contract.

In the event of any termination as outlined within these ACGCs, Consultant shall be entitled to invoice the Sponsor and shall be paid, for all acceptable work performed, in accordance with said section, through the effective date of termination.

In the event that an Airport Project Contract is terminated for reasons other than indicated above, without completion of the services as specified in the Airport Project Contract, the total cost of the work completed plus, when applicable, a percentage of the Fixed Fee proportional to the amount of work completed shall constitute payment in full for the Airport Project Contract.

Maximum Amount Payable
The total estimated cost of the project shall be stipulated in the Airport Project Contract. The amount must not be exceeded without a written contract modification between the Consultant and the Sponsor. The work is to be completed as economically as possible and will be subject to review by the Sponsor.

Maximum Reimbursement
The Sponsor follows MaineDOT's policy regarding salary limits and the Consultant and Sub-consultants are required to conform to these limits. Waiver of these limits must be made in writing using the Sponsor's Wage Waiver Request Form.

No Inflation Adjustments/Interest
No payments due the Consultant shall be adjusted for inflation. No interest shall be due or payable on any payment due the Consultant, regardless of any statement on the billing invoice.

Direct Expenses
Direct expenses as defined by 48 CFR Part 31; such as telephone, tolls, reproduction costs and approved Sub-consultant(s) costs shall be billed at actual cost; mileage and per diem will be billed in accordance with the guidance set for the below. Sponsor does not allow any mark-up on direct expenses and Sub-consultant costs.

Reproduction of plans for submittal to the Sponsor shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense.

The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the State of Maine. This information can be found at http://www.maine.gov/mdot/cpo/index.shtml, under "Quick Links" and "Doing Business with MaineDOT".

Amounts Due the Sponsor

The Sponsor may deduct sums otherwise due the Consultant for actions inconsistent with the contract requirements. Where the sums to be deducted are more than the funds otherwise due the Consultant, the Consultant shall remit all amounts due the within thirty (30) days of demand by the Sponsor.

The Sponsor reserves the right to be reimbursed by the Consultant for the following:

1. Payment(s) made for work that fails to meet professional standards of construction engineering and inspection**;** or
2. Overpayments or incorrect payments identified by audit findings; or
3. Costs that due to actions by the Consultant, are found to be ineligible for Federal/State funding.

These reimbursements may be recovered through an action in law, or equitable or through equitable rights of set-off. The Sponsor shall promptly notify the Consultant of any such claim for reimbursement and give the Consultant full opportunity to defend itself.

Set-Off Rights

The Sponsor shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to the option to withhold for the purposes of set-off any monies due to the Sponsor under this Contract up to any amounts due and owing to the Sponsor with regard to this contract, any other Contract with Sponsor, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Sponsor for any other contract.

Indemnity, Insurance Waiver of Subrogation

This Section contains general requirements for indemnification and insurance by the Consultant.

Indemnification

Consultant agrees to indemnify, defend, and hold harmless the Sponsor and its officers, agents and employees from any and all claims, damages, debts, demands, suits, actions, reasonable attorney fees, court costs, arbitration or other dispute resolution costs, expenses and any liabilities of every kind or nature attributable to, resulting from, or arising out of any negligent or intentional act, error, omission or breach of contract by the Consultant or Sub-consultant(s) in the performance and furnishing of services under the AGCA and/or Airport Project Contract.

This indemnification provision shall survive any termination or expiration of the GCA and/or Project Contract.

Insurance

Procured Insurance
All insurance coverage must be provided by an insurance company or companies licensed or approved to do business in the State of Maine by the Maine Bureau of Insurance. Consultant and Sub-consultant(s) shall pay all premiums and take all other actions necessary to keep required insurances in effect during such times as the AGCA and/or Airport Project Contract obligations exist. Certificates of Insurance shall be provided to the Sponsor upon execution of an AGCA or Stand-Alone Airport Project Contract and on an annual basis thereafter. A Consultant may request a waiver for insurances that may not be applicable for the work to be performed; these requests shall be submitted to the Sponsor's Request for Insurance Waiver Form.

Additional Insured
The Sponsor shall be included as an additional insured on Commercial General Liability insurance policies carried by both the Consultant and Sub-consultant(s) that are applicable to the Project.

Nothing in these General Conditions constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Sponsor, or its officers, agents or employees, and shall not constitute a waiver of other privileges or immunities that may be available to the Sponsor.

Certificates of Insurance to Sponsor
Consultant shall deliver to Sponsor a signed, valid certificates of insurance proving the coverage required by this agreement, the AGCA and/or the Airport Project Contract. Such certificates shall be furnished prior to commencement of Consultant services and whenever said policies are renewed thereafter during the period of the AGCA and/or Airport Project Contract.

Commercial General Liability Insurance
The Consultant and Sub-consultant(s) shall purchase and maintain a policy of Commercial General Liability or other coverage affording equal or greater protection as determined by the Sponsor, in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. Such policy shall include products and completed operations as well as contractual liability coverage.

When the work to be performed entails the use of barges, tug boats, work boats, supply boats, etc., Protection and Indemnity coverage shall be provided at the limits called for under Commercial General Liability insurance.

Professional Liability
The Consultant and Sub-consultant(s) shall purchase and maintain a Professional Liability insurance policy for errors and omissions that provides minimum liability coverage of $1,000,000.00 per claim and annual aggregate. This policy shall cover negligent acts, errors or omissions by the Consultant and Sub-consultant(s) engaged by Consultant and other any person or entity for whom the Consultant is legally liable arising out of the rendition of services pursuant to the AGCA and/or Airport Project Contract. The Sponsor reserves the right to adjust liability coverage on a project-by-project basis as it deems appropriate.

Automobile Liability
The Consultant and Sub-consultant(s) shall carry Automobile Liability insurance covering the operation of all motor vehicles including any which are rented, leased, borrowed or otherwise used in connection with the project. The limit of liability under this section shall be $1,000,000 per occurrence.

Workers' Compensation Insurance
Consultant and Sub-consultant(s) shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board, all in accordance with the requirements of the laws of the State of Maine. When maritime exposures exist, coverage should be arranged to include United States Long Shore and Harbor Workers coverage.

When Required:

Pollution Liability
In the event that any disruption, handling, abatement, remediation, encapsulation, removal, transport, or disposal of contaminated or hazardous material is required, the Consultant or its Sub-consultant shall secure a Pollution Liability policy in addition to any other coverages required. The insurance shall be provided on an occurrence based policy and shall remain in effect for the duration of the Project. Minimum acceptable limit is $1,000,000 per occurrence.

Railroad Protective Liability
When working adjacent to a railroad, the Consultant and its Sub-consultants shall carry Railroad Protective Liability Insurance, as required by the Railroad.

Claims

Each insurance policy shall include a provision requiring the insurer to investigate and defend all named insured's against any and all claims for death, bodily injury or property damage, even if groundless.

Compliance

The Consultant shall be in compliance with this section provided they:

a. Procure coverage under one policy of insurance covering all risks arising out of performance of the Airport Project Contracts; or
b. Procure separate insurance policies to cover all risks arising out of performance of the Airport Project Contract. In either case, a Certificate of Insurance must be filed for each policy indicating that all required insurance has been obtained.
c. Agree to provide, upon request, a copy of their insurance policy.

Default, Termination or Suspension

Grounds for Default

The Consultant is in default of the Airport Project Contract if the Consultant:

a. Fails to promptly begin the work under the Airport Project Contract after being authorized to proceed; or
b. Fails to perform the work with sufficient labor, equipment, or materials to assure the timely completion of the work; or
c. Fails to meet standards of performance as outlined in this document; or
d. Discontinues the performance of the work without Sponsor approval; or
e. Continues to perform work outside the contract period or after receipt of instructions from the Sponsor directing that work be stopped; or
f. Fails to resume work that has been suspended as required by the Airport Project Contract; or
g. Becomes insolvent or is declared bankrupt or files for bankruptcy; or
h. Allows any final judgment to stand against the Consultant unsatisfied for a period of ten (10) days; or
i. Makes an assignment for the benefit of creditors without authorization by the Sponsor; or
j. In any other manner, fails to perform the work in Substantial Conformity with any material provision of the AGCA and/or Airport Project Contract; or
k. Fails to comply with these ACGCs and related Appendices.

Notice of Default / Cure

Except as otherwise provided in these ACGCs, upon the occurrence of a default, the Sponsor will give a written Notice of Default to the Consultant and elect its remedies as set forth below. Any delay by the Sponsor in providing a written Notice of Default shall in no way constitute a waiver by the Sponsor of any provision of the AGCA and/or Airport Project Contract. If the Sponsor determines the default is not curable, the Notice of Default shall also include the date of termination.

Termination

The Sponsor may, by written order to the Consultant, terminate the AGCA and/or Airport Project Contract as provided in this section. Termination of the AGCA and/or Airport Project Contract or portion thereof shall not relieve the Consultant of its contractual responsibilities for the work completed prior to termination.

For Cause
The Sponsor may terminate the AGCA and/or the Airport Project Contract for cause due to the occurrence of one or more of the events of default set out in this section if the Consultant fails to effect a timely cure of all defaults identified in the Notice of Default within the fourteen (14) days from the date of the Notice (the "Cure Period"). The Sponsor, in its sole discretion, may extend the Cure Period if the Consultant has initiated good faith efforts to cure said default(s) and requires a reasonable amount of additional time to complete the cure. If the Consultant fails to cure the default(s) specified in the Notice of Default within the Cure Period or any extensions thereof, the Sponsor may immediately terminate the AGCA and/or Airport Project Contract for cause by written Notice of Termination for Cause. In this event, any or all Consultant products are the sole property of the Sponsor, and the Sponsor may enter into an agreement with another entity for the completion of the Work, or use such other methods as in the opinion of the Sponsor are required for the completion of the intent of the Airport Project Contract in an acceptable and timely manner.

The Sponsor shall pay for all accepted items of work performed prior to the date of termination at prices determined by the Sponsor. The Consultant shall make all project records available to the Sponsor upon request regarding payment under this section. All costs and charges incurred by the Sponsor, together with the cost of completing the work specified in the Airport Project Contract, shall be deducted from amounts otherwise due the Consultant. If such expenses exceed the sum that would have been payable under the AGCA and/or Airport Project Contract, then the Consultant is liable and shall pay to the Sponsor the amount of such excess within thirty (30) days of the delivery of a statement setting forth such expenses to the Consultant, as applicable.

If the Consultant files for bankruptcy at any time before expiration of the AGCA and/or Airport Project Contract, then the Consultant agrees, if requested by the Sponsor and within thirty (30) days of such request, to take all actions necessary or convenient to reject or accept the AGCA and/or Airport Project Contract under the executory contract provisions of the federal bankruptcy code. Upon termination for cause, the Sponsor may, at its discretion, terminate the AGCA and/or Airport Project Contract.

For Convenience
The Sponsor may terminate the AGCA and/or Airport Project Contract for convenience or for any reason that is in the best interest of the Sponsor. Terminations for reasons beyond the control of the Consultant are terminations for convenience. The Sponsor shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Sponsor shall pay for all accepted items of work as of the date of termination at agreed upon prices. The Consultant shall make all project records available to the Sponsor upon request regarding payment under this section. Acceptable materials, obtained by the Consultant for the work but which have not been incorporated therein, may at the option of the Sponsor be purchased from the Consultant at actual cost and shall be delivered by the Consultant to a prescribed location or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination for Convenience from the Sponsor, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Airport Project Contract to the Project Manager within sixty (60) days of the effective termination date. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, Sub-consultant(s) costs not otherwise paid for, idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the Airport Project Contract, and any other cost or damage item for which the Consultant reasonably believes reimbursement should be made. In no event, however, shall loss of anticipated profits be considered as part of any settlement.

The Sponsor shall respond in writing to such claim within sixty (60) days of receipt.

Right to Suspend Work

The Sponsor has the right to suspend any or all work at any time for any reason as it deems necessary. Consultant may receive payment for the portion of services completed through the date of suspension.

Copyright and Licenses

Requirements for Registration of Designers

Design of services under an Airport Project Contract regulated by Maine State Law shall be done or reviewed, approved and stamped by an employee of Consultant or Sub-consultant(s) who performed or supervised preparation of same and who has the appropriate registration or license governing the scope of services in the Airport Project Contract.

Patents and Copyrights

Data, and publication rights to any documents, produced under the terms of an AGCA and/or Airport Project Contract are reserved by the Sponsor. The Consultant shall not copyright the material produced under the terms of the AGCA and/or Airport Project Contract without written approval of the Sponsor, except to the extent necessary to protect its rights pursuant to the following paragraph.

The parties to an AGCA and/or Airport Project Contract mutually agree that, if patentable discoveries, intellectual property and software, or inventions should result from work described therein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to the Sponsor and the United States Government an irrevocable, nonexclusive, nontransferable, and royalty free license to use any such invention in the future on any project.

The Consultant shall indemnify and hold harmless the Sponsor and any affected third party or political subdivision from all claims of infringement that arise from use of any patented or copyrighted items provided by the Consultant.

Claims and Disputes

General

To preserve any claim arising out of the AGCA and/or the Airport Project Contract, the parties shall comply with and exhaust all provisions of this Section. Unless otherwise agreed in writing, the Consultant shall continue to perform its services during any dispute resolution process. If the Consultant continues to perform, the Airport shall continue to make payments in accordance with the AGCA and/or Airport Project Contract of amounts not in dispute.

Negotiation with Sponsor
The Consultant shall promptly notify the Sponsor, or their designee, in writing of disputes that could significantly affect scope, schedule or compensation. After such notice, the Consultant and the Sponsor shall promptly negotiate in good faith to resolve the dispute. The Sponsor will promptly issue a decision.

Dispute Resolution
If the parties are unable to resolve the dispute through mediation, the parties may agree to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or seek judicial review through a civil action commenced in the Superior Court of Maine, in the county of the Sponsor's choice.

Miscellaneous Provisions

Environmental

Historic and Archeological Considerations
Unless otherwise expressly provided in the Contract, the Consultant may assume that the Project has no effect upon any site of historic or archaeological significance, as identified by the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974.

If the Consultant discovers any object of potential archaeological, paleontologic, or other historic interest, all work that could disturb said object shall immediately cease and shall not be resumed until an investigation of the object and related deposits have been completed and the removal of articles of interest has been accomplished. Should such a deposit be discovered, the Consultant shall immediately notify the Sponsor or its designee. The first indication of archaeological deposits may be the burial grounds or campsites of Native Americans that reveal the bones of the dead and people’s implements. The first indications of paleontologic deposits may be the exposure of marine fossils or shells found mainly in clay deposits. Indications of deposits of more recent historic interest may be the exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.

The Consultant is hereby notified of a Maine statute, 27 MRSA §371, which states that artifacts, specimens, and material which are public property by virtue of having been found on, in, or beneath State controlled lands, and places ownership of the same in the State of Maine.

Hazardous Environmental Condition
The Sponsor shall give prompt written notice whenever it observes or otherwise becomes aware of a hazardous environmental condition that affects the Project.

If a Consultant or Sub-consultant(s) suspects that a Hazardous Environmental Condition exists, Consultant or Sub-consultant(s) shall <u>immediately</u> notify the Sponsor or its designee. This notice requirement does not create a duty or obligation for the Consultant to discover any such condition unless that duty is established by the Airport Project Contract.

Laws and Regulations

All work shall conform to <u>all</u> applicable laws and regulations of the federal government and the State of Maine.

Entire Agreement/Binding Effect/Modification/Assignment

The Sponsor and the Consultant including their partners, successors, executors, administrators and legal representatives of Sponsor and Consultant (and to the extent permitted by the AGCA, the assigns of Sponsor and Consultant) are hereby bound to each other with respect to all covenants, agreements and obligations of the AGCA and/or Airport Project Contract.

Neither Sponsor nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the AGCA and/or Airport Project Contract without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written Consent To An Assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the AGCA and/or Airport Project Contract.

a. Unless expressly provided otherwise in the AGCA and/or Airport Project Contract:

    i. Nothing in the AGCA and/or Airport Project Contract shall be construed to create, impose, or give rise to any duty owed by Sponsor or Consultant to any Contractor, Contractor's Sub-contractor/Sub-consultant(s), supplier, other individual or entity for or employee of any of them.

    ii. All duties and responsibilities undertaken pursuant to the AGCA and/or Airport Project Contract shall be for the sole and exclusive benefit of Sponsor and Consultant and not for the benefit of any other party.

b. No changes are to be made in the AGCA or Airport Project Contract unless they are in writing and agreed upon by both parties.

Severability

The invalidity or unenforceability of any particular provision or part thereof of this agreement shall not affect the remainder of said provision or any other provisions, and this agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Non-Waiver

If the Sponsor fails or refuses to enforce any provision in the GCA and/or Project Contract that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the GCA and/or Project Contract.

Force Majeure

The Sponsor may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Sponsor may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

No Waiver

If the Sponsor fails or refuses to enforce any provision in the AGCA and/or Airport Project Contract that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the AGCA and/or Airport Project Contract.

Conflict of Interest

A person or entity entering into an AGCA and/or Airport Project Contract may not have any financial or other interest, other than the performance of the AGCA and/or Airport Project Contract, in the project or in its outcome. This prohibition includes, without limitation, (a) any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the AGCA and/or Airport Project Contract; (b) any agreement providing incentives or guarantees of future work on the project or related matters; and (c) any interest in real property acquired for the project unless such real property interest is openly disclosed to the Sponsor before the person or entity entered into the Airport Project Contract.

a. This section prohibits all conflicts of interest both at the time the contracting party enters into an AGCA and/or Airport Project Contract and during the life of an AGCA and/or Airport Project Contract.
b. This section prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. The Sponsor may waive this prohibition or impose curative modifications on the scope of any AGCA or Airport Project Contract between the person or entity and the Sponsor to eliminate the conflict or the appearance of a conflict.
c. A Consultant involved in the preparation of information that shall be used or considered in evaluations under the National Environmental Policy Act shall, by virtue of signing the AGCA and/or Airport Project Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest which, under applicable law, would prohibit the selection of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.
d. All determinations made under this section shall be left at the sole discretion of the Sponsor.

Abbreviations / Definitions

Abbreviations

Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Airport Project Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AASHTO	American Association of State Highway and Transportation Officials
AGCA	Airport General Consultant Agreement
AIP	Airport Improvement Program
BAFO	Best and Final Offer
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
MaineDOT	Maine Department of Transportation
MRSA	Maine Revised Statutes Annotated
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
OSHA	Occupational Safety and Health Administration
PIN	Project Identification Number
P.L.	Public Law
QBS	Qualifications Based Selection
RFP	Request for Proposal
RFQ	Request for Qualifications
SAIP	State Aid Improvement
USC	United States Code

Definitions

Airport Consultant General Conditions (ACGC). General terms, conditions, and procedures that govern how the work will be performed or furnished by Consultant with respect to any Project. ACGC normally apply to all contracts of the issuing Sponsor. These are different from Special Provisions which would only apply to an individual contract for a specific type of work.

Airport General Consultant Agreement (AGCA). The AGCA is an agreement that places the Consultant "on call" for a specific service, for a specified ordering period, up to a maximum dollar amount. The AGCA does not obligate Sponsor to acquire services from a selected firm, nor does it specify overhead rates, unit price or amounts. These are specific to the individual Airport Project Contracts negotiated under the AGCA.

Airport Project Contract (APC). A written binding agreement between the Sponsor and the Consultant relating to a specific task or project with a defined scope of work and compensation negotiated pursuant to the Airport General Conditions. Airport Project Contracts can be "stand-alone" or negotiated under the umbrella of a general multi-year Airport General Consultant Agreement (AGCA).

Airport Improvement Project Numbers (AIPN). A number assigned by FAA that identifies the project.

As-Built Drawings. The drawings as issued for construction on which the construction contractor upon completion of the work has shown changes due to contract modifications (Change Orders and Supplemental Agreements), actual site conditions, and other information which Sponsor considers to be significant.

Brooks Act. The law that establishes federally mandated procedures for the Qualifications Based Acquisition (QBA) of consultant services. It outlines requirements and procedures for awarding Professional Architect & Engineering contracts.

Consultant. An individual or firm under contract to provide non-construction professional services for the Sponsor.

Cost Plus Fixed Fee. A cost reimbursement payment method. The Consultant is reimbursed for the actual, supportable, cost incurred including salaries, overhead, and direct expenses. In addition the Consultant is paid an agreed-upon amount for a fixed fee (profit), based on the actual scope of work, including degree of risk, relative difficulty, size of job, and period of performance. This type of payment is suitable when the scope of work is fairly well defined.

Detailed Scope of Services or Work. A clear, accurate, and detailed description of; the technical requirements for the services to be rendered, how the work must be conducted, how achievements will be assessed, and the obligations of both the Consultant and Sponsor.

Deliverables. Something of value that a Consultant delivers to the Sponsor in exchange for consideration from the Sponsor pursuant to the terms of an AGCA or an Airport Project Contract.

Direct Expenses. Direct expenses as defined by 48 CFR Chapter 1, Part 31; such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the State of Maine. This information can be found at http://www.maine.gov/osc/travel/.htm. Reproduction of plans for submittal to the Sponsor shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense. Sponsor does not allow any mark-up on direct expenses and Sub-consultant costs.

Effective Date of an Airport General Consultant Agreement or Airport Project Contract. The date indicated in the Agreement or Contract on which it becomes effective, but if no such effective date is indicated, it means the date on which the Agreement or Contract is signed by the last of the two (2) parties to sign.

Final Audit. The audit performed by the Sponsor after the expiration of a contract. The main purpose of the audit is to review final invoicing and determine the project's actual indirect cost rate for final payment.

Hourly Rate. The negotiated hourly rate accepted by the Airport for performance of work for the duration of the Contract as outlined in said Contract.

Indirect Expense. An expense that is incurred for an entire business enterprise as a unit that cannot be traced directly to a project.

Lump Sum. A negotiated payment method. It provides for a price; which included all salaries, overhead, profit, and other project expenses, that is not subject to any adjustments because of cost changes the Consultant might encounter in the performance of the work. This method is used when the Scope of Work is clear and well defined, and the total cost can be estimated accurately.

Notice to Proceed. A written notice from the Sponsor to the Consultant stating the date the Consultant can begin work subject to the conditions of the contract. The performance time of the contract starts from the Notice to Proceed date.

Overhead Costs. (or indirect expenses) are costs that may benefit or are associated with two (2) or more business activities, but are not specifically allocated to a specific project. Overhead differs from general and administrative costs in that these costs can be associated with a unit based on benefit. Some examples of overhead costs are rent, depreciation, employee recruitment and training, and general or professional insurance policy costs.

Pre-execution Review. A financial review of a Consultant's accounting records which is conducted prior to contract execution. The review includes but is not limited to the verification of insurance, and the supportability of overhead rates, and payroll.

Project. Any unit of work or study for which a Consultant selection is made and a Contract entered into.

Project Manager. An employee of the Sponsor assigned the responsibility for managing project scope, budget, and schedule.

Proposal. An offer as part of a negotiation made by a Consultant to the Sponsor in reply to a Request for Proposal (RFP) which forms the technical and price basis when entering into a mutually binding contract.

Provisional Overhead Rate. The amount of compensation due to a Consultant for an initial period of time following the execution of a contract. This rate is typically increased or decreased as a result of the Sponsor's Final Audit.

Rates. The rate paid a Consultant for performance of work.

Request for Proposal (RFP). The Sponsor initiates a request to a Consultant or group of Consultants for a proposal or offer to perform a specific Scope of Work.

Request for Qualifications (RFQ). The Sponsor's request to the Consultant community requesting an outline of the firm's ability to provide Consultant and professional services in a particular area of need, discipline or service.

Special Provision. A provision unique to an agreement or contract which supersedes any inconsistent or conflicting clause in the ACGC. Special Provisions shall be identified in the AGCA or the Airport Project Contract.

Specifications. That segment of the contract documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship to be applied to the work and administration of same.

Sponsor. Airport owner or formally assigned entity who is responsible legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations that are contained in the AIP project applications and grant agreement forms.

State Aid Improvement Project Number (SAIPN). A number assigned by the State of Maine that identified state funded project (no federal funds).

Sub-consultant. Individual or entity having a contract with Consultant to furnish services with respect to this Project as Consultant's independent professional associate, Consultant, Sub-consultant, or vendor.

Substantial Completion. The time at which the work (or a specified portion thereof) has progressed to the point as determined by the Sponsor is sufficiently complete to be utilized for the purpose for which it is intended.

GENERAL CONSULTANT CONDITIONS

<u>Schedule of Exhibits (Appendices</u>)

APPENDIX A

A1 – Notice of Consultants Compliance with Title VI of the Civil Rights Act of 1964 for Federal Aid Contracts.

During the performance of an AGCA and/or Airport Project Contract, the Consultant, for itself its assignees and successors in interest (hereinafter referred to as the "Consultant") agree as follows:

a. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23, Code of Federal Regulations 710.405 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to the completion of the contract work, shall not discriminate on the ground of race, color or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontract, Including Procurements of Material and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of services, material or equipment, each potential Sub-consultant or supplier shall be notified by the Consultant of the Consultants obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, or national origin.

d. Information and Reports: The Consultant shall provide all information and reports required by the regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the state highway agency or the FHWA/FAA/FTA to be pertinent to ascertain compliance with such regulations, orders and instructions.

   Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the state highway agency or the FHWA/FAA/FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the state highway agency shall impose such contract sanctions as it or the FHWA/FAA/FTA may determine to be appropriate, including but not limited to:

i. withholding of payments to the Consultant until the Consultant complies and/or
ii. cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The Consultant shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant shall take action with respect to any subcontract or procurement as the state highway agency or the FHWA/FAA/FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in or is threatened with, litigation with a Sub-consultant or supplier as a result of such direction, the Consultant may request the state to enter into such litigation to protect the interests of the state; and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Maine Revised Statutes
Part 2: CIVIL SERVICE
Chapter 65: CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION HEADING: PL 1975, C. 153, §1 (NEW)

784. State action and contracts

1. **State action.** No agency or individual employee of the State or state related agencies will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on-the-job training programs. Similarly, no state or state related agency Contractor, Sub-contractor, or labor union or representative of the workers with which the contractor has an agreement, will discriminate unless based on a bona fide occupational qualification. State agencies or related agencies may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act or the Federal Civil Rights Act. Any state agency or related agency shall decline any job order carrying a specification or limitation as to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless it is related to a bonafide job requirement. [1985, c. 388, §2 (AMD).]
2. **Public contracts.** Every state or state related agency contract for public works or for services shall incorporate by reference the following provisions: "During the performance of this contract, the contractor agrees as follows.
    a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. [1985, c. 388, §2 (AMD).]
    b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. [1985, c. 388, §2 (AMD).]
    c. The contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment. [1975, c. 153, §1 (NEW).]
    d. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each Sub-contractor. [1975, c. 153, §1 (NEW).]
    e. Contractors and Sub-contractors with contracts in excess of $50,000 will also pursue in good faith affirmative action programs. [1991, c. 807, §1 (NEW).]
    f. [1991, c. 807, §1 (AMD).]SECTION HISTORY 1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). 1991, c. 807, §1 (AMD).

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A2 – Federal EEO and Civil Rights Requirements

Unless expressly otherwise provided in the Contract Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Contract Documents.

1. **Nondiscrimination & Civil Rights** - Title VI

The Consultant and its Sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Sponsor deems appropriate. The Consultant and Sub-consultants shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the “Required Contract Provisions, Federal Aid Construction Contracts”, and or FHWA-1273.

2. **Nondiscrimination and Affirmative Action - Executive Order 11246**

Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

The Consultant shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Consultant’s compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Consultant shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidations, and coercion at all sites, and in all facilities at which the Consultant’s employees are assigned to work. The Consultant, where possible, shall assign two or more women to each construction project. The Consultant shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Consultant’s obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Consultant or its union have employment opportunities available, and to maintain a record of the organization’s responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Consultant by the union or, if referred, not employed by the Consultant, this shall be documented in the file with the reason therefore, along with whatever additional actions the Consultant may have taken.

d. Provide immediate written notification to the Sponsor when the union(s) with which the Consultant has a collective bargaining agreement has not referred to the Consultant a minority person or woman sent by the Consultant, or when the Consultant has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Consultant's employment needs, especially those programs funded or approved by the Department of Labor. The Consultant shall provide notice of these programs to the sources compiled under B above.

f. Disseminate the Consultant's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Consultant in meeting its EEO obligation; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Forepersons, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Consultant's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Consultant's EEO policy with other Consultant's and Sub-consultants with whom the Consultant does or anticipates doing business.

i. Direct its recruitment efforts, both orally and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Consultant's recruitment area and employment needs. Not later that one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Consultant shall send written notification to organizations such as the above describing the openings, screenings, procedures, and test to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of a Consultant's workforce.

k. Validate all tests and other selection requirements.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Consultant's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Consultant's and suppliers, including circulation of solicitations to minority and female Consultant associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Consultant's EEO policies and affirmative action obligations.

3. **Disadvantaged Business Enterprise (DBE) Requirements**

The Sponsor has established an annual Disadvantaged Business Enterprise goal to be achieved through race neutral means. This goal shall adjust periodically and shall be provided by Supplemental Provision. Unless otherwise specifically provided in the Contract, there are no specific percentage requirements for use of DBEs for individual construction contracts.

The Consultant shall comply with all provisions of this section regarding DBE participation and the Sponsor's latest version of the Disadvantaged Business Enterprise Program Plan, said Plan being incorporated herein by reference. In the case of conflict between this Contract and said Plan, this Contract shall control. The Sponsor reserves the right to adjust DBE goals on a project-by-project basis by addendum.

DBE Program Requirements

Policy: It is the Sponsor's policy that DBEs as defined in 49 CFR Part 26 revised 2005, and referenced in the Transportation Equity Act for 21st Century of 1998, as amended from the Surface Transportation Uniform Relocation Assistance Act of 1987, and the Intermodal Surface Transportation Efficiency Act of 1991. The intent hereto remains to provide the maximum opportunity for DBEs to participate in the performance of contracts financed in whole or in part with federal funds.

The Sponsor and its Consultant shall not discriminate on the basis of race, color, national origin, ancestry, sex, age, or disability in the award and performance of DOT assisted contracts.

Disadvantaged Business Enterprises are those so certified by the Maine Department of Transportation's Civil Rights Office prior to bid opening date.

The Sponsor has determined that elements of a good faith effort to meet the contract goal include but are not limited to the following:

a. Whether the Consultant advertised in general circulation, trade association, and minority/women's-focus media concerning the sub-contracting opportunities;

b. Whether the Consultant provided written notice to a reasonable number of specific DBEs that their interest in the contract is being solicited;

c. Whether the Consultant followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;

d. Whether the Consultant selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals;

e. Whether the Consultant provided interested DBEs with adequate information about the plans, specification and requirements of the contract;

f. Whether the Consultant negotiated in good faith with interested DBEs, not rejecting the DBE as unqualified without sound reasons based on a thorough investigation of their capabilities;

g. Whether the Consultant made efforts to assist interested DBEs with other appropriate technical/financial assistance required by the Sponsor or Consultant;

h. Whether the Consultant effectively used the services of available minority/women's community organizations, minority/women's business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

Substitutions of DBEs: The following may be acceptable reasons for the Sponsor's approval of such a change order:

- The DBE defaults, voluntarily removes itself;
- The Sponsor deletes portions of the work to be performed by the DBE.

It is not intended that the ability to negotiate a more advantageous contract with another certified DBE or Sub-contractor be considered a valid basis for such a change in DBE utilization once the DBE has an executed signed subcontract.

Failure to carry out the terms of this Standard Specification shall be treated as a violation of this contract and shall result in contract sanctions which may include withholding of partial payments totaling the creditable dollars amount which would have been paid for said DBE participation, termination of this contract or other measures which may affect the ability of the Consultant to obtain Sponsor contracts.

Copies of the Maine Department of Transportation's list of certified consultants may be obtained from:

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, Maine 04333-0016
Tel. (207) 624-3066

or from their website at: www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php

APPENDIX B

Procurement and Contracting Under AIP - Federal Contract Provisions

Procurement and Contracting Under AIP

Contents **Federal Contract Provisions**

Procurements made under the AIP must comply with required Federal provisions established by various laws and statutes. The requirements for the provisions will vary depending on the type and size of the procurement action. Typically, procurement actions under the AIP fall within three categories: (1) Construction Development, (2) Equipment Acquisitions, and (3) Professional Services (A/E) Contracting. Application of a certain provision also depends on established contract dollar thresholds. Note that additional provisions are required in each category of Sponsor contracts if several contract dollar thresholds are exceeded. These additional provisions are listed following the general provisions that apply to each category of contract.

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Construction Contracts

Provisions for all Construction Contracts

Buy American Preference - Title 49 U.S.C., Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30 Veteran's Preference (MS Word) - Title 49 U.S.C 47112

Additional Provisions for Construction Contracts Exceeding $2,000

Davis Bacon Labor Provisions (MS Word) - 29 CFR Part 5

Procurement and Contracting Under AIP - Federal Contract Provisions

Additional Provisions for Construction Contracts Exceeding $10,000

Equal Opportunity Clause (MS Word) - 41 CFR Part 60-1.4 Certification of Non-Segregated Facilities (MS Word) - 41 CFR Part 60-1.8 Notice of Requirement for Affirmative Action (MS Word) - 41 CFR Part 60-4.2 Equal Employment Opportunity Specification (MS Word) - 41 CFR Part 60-4.3 Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Construction Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29

Additional Provisions for Construction Contracts Exceeding $100,000

Contract Workhours and Safety Standards Act Requirements (MS Word) - 29 CFR Part 5 Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(i)(12)

Equipment Contracts

Provisions for all Equipment Contracts

Buy American Preference - Title 49 U.S.C, Chapter 501 (Program Guidance Letter 10-02) (PDF) (posted 3/9/2010) Equipment Meeting Buy American Requirements (as of 8/6/2010) (MS Excel) (posted 8/10/2010) Foreign Object Debris (FOD) Detection Equipment Request for Qualifications (PDF) (posted 8/10/2010) Percent Calculation Worksheet (MS Excel) (posted 8/10/2010) Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Energy Conservation (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for Equipment Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36

Additional Provisions for Equipment Contracts Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR

Part 29 **Additional Provisions for Equipment Contracts Exceeding $100,000**

Clean Air and Water Pollution Control (MS Word) - 49 CFR Part 18.36(0(12)

Professional Services (A/E) Contracts Provisions for all A/E Contractshttp://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
Procurement and Contracting Under AIP - Federal Contract Provisions

Civil Rights Act of 1964, Title VI (MS Word) - Contractor Contractual Requirements - 49 CFR Part 21 Airport and Airway Improvement Act of 1982, Section 520 (MS Word) - Title 49 U.S.C. 47123 Disadvantaged Business Enterprise (MS Word) - 49 CFR Part 26 Lobbying and Influencing Federal Employees (MS Word) - 49 CFR Part 20 Access to Records and Reports (MS Word) - 49 CFR Part 18.36 Breach of Contract Terms (MS Word) - 49 CFR Part 18.36 Rights to Inventions (MS Word) - 49 CFR Part 18.36 Trade Restriction Clause (MS Word) - 49 CFR Part 30

Additional Provisions for A/E Contracts Exceeding $10,000

Termination of Contract (MS Word) - 49 CFR Part 18.36 **Additional Provisions for A/E Contracts**

Exceeding $25,000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (MS Word) - 49 CFR Part 29 http://www.faa.gov/airports/aip/procurement/federal contractprovisions/

Guidance for Buy American on Airport Improvement Program (AIP) or American Recovery and Reinvestment Act (ARRA) projects.

In accepting AIP or ARRA funding, grant recipients are certifying that they will not acquire (or permit any contractor or Sub-contractor) to use any steel or manufactured products produced outside the United States on any portion of the project for which funds are provided, unless otherwise approved by the FAA. Therefore, for the AIP or ARRA funded portion of a project, grant recipients must either:

1. Certify, in writing, all products are wholly produced in the US of US materials, or
2. Request a waiver to use non-US produced products, or
3. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.

The AIP funded portion of a project includes the grant recipient's local share.

Types of Waivers

There are four types of waivers to Buy American:

1. Public interest waiver;
2. Insufficient quantity AND quality for ARRA (AIP projects allow waivers for insufficient quantity OR quality);
3. 60% or more of the components and subcomponents in the facility or equipment are of US origin and final assembly is in the US; or
4. Applying Buy American increases the cost of the overall project by more than 25%.

Many pieces of equipment are constructed with some non-US produced components or subcomponents. Therefore, it is expected that the majority of grants will have waivers issued unless the project is constructed of materials that already have a nationwide waiver.

Nationwide Waiver

Much of the equipment that is frequently used on AIP or ARRA projects has been reviewed by FAA Headquarters and a nationwide waiver has been issued. The Nationwide Buy American conformance list is posted on the www.faa.gov website at the following address:

> http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/ by clicking the tab, "Equipment Meeting Buy American Requirements"

If the equipment is on the nationwide waiver list, no additional waiver is required.

Who can Issue Waivers

Only FAA headquarters may issue waivers for reasons 1 and 2. FAA field offices (Regional Offices and/or Airports District Offices) may issue waivers for reasons 3 and 4.

For block grant state projects, the FAA must issue the waivers. Block grant states are not allowed to issue a waiver.

Defining the Project, Facility and Equipment, and Final Assembly Location in the 60%/US final assembly waiver

The waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States." The correct application of the terms is discussed below.

Project
The **"Project"** is generally the project that is being bid. The "Project" does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.

Facility or Equipment
- For a building, the portion of the building that is being funded under the AIP or ARRA grant is the "**facility**" listed in the waiver.

- For other projects, the bid items as described in the latest edition of FAA Advisory Circular 5370-10 will generally be the "**equipment**" referred to in the waiver except for airfield electrical equipment.

- For airfield electrical equipment, the "L-" items listed in the Addendum to FAA Advisory Circular 5345-53C, latest edition will generally be the "**equipment**" referred to in the waiver.

- For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the "**equipment**."

Final Assembly Location and Labor Exclusion
Final assembly is the substantial transformation of the various components and subcomponents into the equipment. For a building, the final assembly is actual construction of the building.

- For any project other than a building project, the final assembly location is the location where the equipment is assembled, **not the project site itself**.

- For a building, the final assembly location is the airport building site.

In any calculation of Buy American percentage, the labor for the final assembly is excluded. This is because the Buy American statute is based on the cost of materials and equipment, not labor. For a building, this means that only the costs of the materials as they are delivered to the airport site are considered when calculating US and non-US component and subcomponent costs. For equipment, the costs of the final assembly at the manufacturing site are excluded.

Common Materials that are waived or excluded from Buy American - Cement, Concrete, Asphalt and Steel

Cement and concrete is excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American.)

Asphalt and other petroleum products are waived as an excepted item under AMS Guidance T3.6.4.1.e: Foreign Acquisition **-** Definitions identifying Asphalt as a petroleum product.

Steel is specifically identified in the statute. Therefore, all rebar and discrete, identifiable steel components must be manufactured in the United States.

FAA Waiver

After the FAA has determined that the final assembly location is in the US and the percent of US components and subcomponents is above 60%, a waiver may be issued. **The waiver is for the single project - not a nationwide waiver**.

What Information is required to Issue a Waiver (AIP and ARRA) and for the Federal Register Notice (ARRA)

For waiver type 3, a waiver can be considered if "at least 60% of the cost of the components and subcomponents in the **facility or equipment** are produced in the United States and the final assembly of the facility or equipment has occurred in the United States."

Grant recipients must request waivers from FAA in writing, with sufficient supporting information. Grant recipients are responsible for ensuring their waiver request is complete and accurate using project specific information provided directly by the contractor or the contractor's supplier.

The FAA will conduct its review and approval based on the information provided by the grant recipient.

The information that must be provided for either equipment or for a building:

- Project Number
- Project Name
- Airport Name
- Total Project Cost
- Total Equipment or Bid Item Cost for which the waiver is being requested
- Total Equipment or Bid Item Cost excluding labor for final assembly.

For equipment, the following additional information is required:

- The equipment or bid item for which the waiver is being requested
- The manufacturer and country of origin of the equipment or bid item.
- The location of the final assembly of the equipment or bid item (not the airport site)

- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

For a building, the following additional information is required:

- The building (called the facility in the Buy American statute) for which the waiver is being requested
- The manufacturer and country of origin of the US and non-US materials that will be used in the building,
- For a building, the location of the final assembly is the airport site
- The cost of the US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The cost of the non-US components and subcomponents for the equipment or bid item for which the waiver is being requested
- The resulting percent of US and non-US components

Grant recipients are urged to submit waiver requests as early as possible.

Waivers that are issued on ARRA projects must be included in a Federal Register notice, which will generally be published on a quarterly basis.

***Sample Letter of Approval of Waiver*:**

When FAA is satisfied that a waiver may be issued based on the 60%/US final assembly criteria, a letter must be written to the airport sponsor approving the waiver. The text of the letter follows.

A copy of the letter must be forwarded to APP-500 along with a copy of the supporting documentation that was submitted by the airport for the waiver. The information used in the letter will be the basis of the Federal Register notice. The Federal Register notice may include copies of the waiver letters or will be a tabular listing of the waivers. Therefore, regions must forward both a *.pdf copy of the signed letter and an editable copy of the letter.

XXXX Airport
AIP-Project No. X-XX-XXXX-XX
Project Name
Waiver of Buy American Requirements

I have reviewed the request for Waiver of Buy American Requirement submitted XXX for the use of XXXXX equipment on the subject project. The information submitted by the airport for:

Item for which waiver is being issued: i.e L-831 Transformers
Manufacturer:
Final Assembly Location:

Percent US Components and Subcomponents:

The information submitted satisfies the requirement for waiver of the requirements of the Buy American per 49 USC Section 50101 based on over 60% of the cost of components and subcomponents to be used in the project being produced in the United States.

The waiver is hereby approved for use on this AIP grant project.

Common Misconceptions

- Belief that if a manufacturer is "FAA-certified" that Buy America has been satisfied. This is not true. The FAA certification certifies that technical standards have been met. However, FAA-certified equipment manufactured outside the U.S. does not meet Buy America provisions of the AIP unless a waiver has been issued.

- Misconception that the North America Free Trade Act (NAFTA) exempts equipment manufactured in Mexico or Canada from "Buy America" requirements. This is not true for AIP or ARRA projects.

Text of Buy American statute from 49 United States Code §50101

§ 50101. Buying goods produced in the United States

(a)Preference.- The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106 (k), 44502 (a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b)Waiver.- The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) when procuring a facility or equipment under section 44502 (a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102 (e), 48106, 48107, and 48110) of this title—

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c)Labor Costs.- In this _, labor costs involved in final assembly are not included in calculating the cost of components.

The most recent list of manufacturer's equipment that meets the Buy American Requirements (as determined by HQ) can be found on the FAA website under "Procurement and Contracting under AIP".

Foreign Object Debris (FOD) Detection Equipment Request for Qualifications

The Federal Aviation Administration recently published a notice in the Federal Register requesting information from manufacturers of FOD Detection Systems (Federal Register Vol. 75, No. 150 / Thursday, August 5, 2010 / Notices Page 47344). In order for FAA to determine whether AIP grant funds can be used for a manufacturer's FOD Detection equipment, FAA must determine whether the equipment meets the requirements of 49 USC §50101, Buy American Preferences.

Under 49 USC §50101(b)(3), the Secretary of Transportation may waive the Buy American preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. The Secretary has delegated this authority to the Federal Aviation Administration.

On September 30, 2009, FAA published Advisory Circular (AC) 150/5220-24, Airport Foreign Object Debris (FOD) Detection Equipment. The AC specified the requirements for FOD detection equipment at airports. A link to the Advisory Circular is here: http://www.faa.gov/airports/resources/advisory_circulars/

If FAA cannot find that there are enough USA manufacturers of FOD detection equipment to produce FOD detection equipment in sufficient and reasonable amounts, it will issue a nationwide waiver to the foreign manufacturers of FOD detection equipment that it has identified as being capable of meeting the AC requirements.

To make this determination, manufacturers of FOD detection equipment, both domestic and foreign, are requested to complete the form indicated here and prepare a letter of technical certification, and email them to Nancy.S.Williams@faa.gov by September 15, 2010.

The form "percent calculation.xls" is a spreadsheet that is filled out by the manufacturer. Using the complete FOD detection system as the Level 0 product, the manufacturer must complete the breakdown through Level 2 indicating the costs of the items and placing them in the column for either US product or non-US product. The costs listed are for materials only, no costs of labor, installation, assembly at the final manufacturing site, overhead, profit or other non-product costs may be included.

On the form, the manufacturer must indicate the city and state where the FOD detection system is manufactured. If the computer system that is used to record the data and receive the signals is a commercial off-the shelf computer system, it should not be included in the percent calculation list, however an explanatory note must be included with the form.

The second required submittal is a certification prepared by the manufacturer on the manufacturer's letterhead that the equipment listed meets the requirements of the AC. The Required Capabilities listed in the AC must be met, however the recommended capabilities that are listed in Section 3.2 c.(1)(b), Section 3.2 (c)(2) and Section 3.2 (c)(3) are not required to be included in the certification. The letter must specify whether the certification is for continuous inspection or mobile detection. The letter must be signed by a legally-responsible member of the manufacturer who can attest to the technical capabilities of the equipment.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8822.

Company

Point of Contact (Provide address, telephone, fax, e-mail)

Date:

PRODUCT STRUCTURE Multi-Level Bill of Materials through level 2 only

Item:
FAA Item Number

Address of Final Assembly Location:

Total Material Cost
US Content, % [1]
Other, %_______

						US Origin*		Other	
Level (0, 1, 2)	Part Number	Description[2]	Quantity Per Unit	Unit of Measure	Price/Unit of Measure	Price/Unit of Measure	Cost/Each	Price/Unit of Measure	Cost/Each

1. Attach Certificate of Origin, US Customs Form 434
2. Items Listed in Federal Acquisition Regulation Part 25.104 may be counted as US Origin, however should include note stating that item is exempt in 25.104

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Sub-contracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a sub-contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies,
and/or
b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Application 119
Required in all contracts and sub-contracts

Reference
49 CFR Part 21
AC 150/5100-15

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Application
Incorporate in all contracts funded under AIP

Reference
Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

Application
Required in all contracts and sub-contracts

Reference
49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)
FAA Order 5100.38

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each Sub-contractor under this prime contract for satisfactory performance of its contract no later than ***[specify number]*** days from the receipt of each payment the prime contractor receives from ***[Name of recipient].*** The prime contractor agrees further to return retainage payments to each Sub-contractor within [specify the same number as above] days after the Sub-contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the ***[Name of Recipient].*** This clause applies to both DBE and non-DBE Sub-contractors.

Application
The contract assurance clause shall be incorporated verbatim. The prompt payment clause represents sample language that meets the requirements of 49 CFR Part 26.29. Recipients should refer to the language included their approved DBE program

Reference
49 CFR Part 26

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163)

Application
The regulation does not prescribe the language for the requirement. The above clause represents sample language that meets the intent of 49 CFR Part 18.36(i)(13)

Reference
49 CFR Part
18.36 Public
Law 94-163

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their Sub-contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Application

The FAA does not prescribe the exact language to be incorporated. The above clause represents sample language that addresses the requirements of 49 CFR Part 18.36(i)(1). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms. Grantees should consult with their legal counsel to develop the appropriate clause that meets the minimum requirements of 49 CFR Part 18.36.

This provision is required in all contracts that exceed the simplified acquisition threshold, presently set at $100,000.

Reference
49 CFR Part 18.36

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

Application
Incorporate into all procurement contracts that funded by AIP funds

Reference
49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

The contractor or Sub-contractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of theUnitedStates Trade Representative (USTR);

b. has not knowingly entered into any contract or sub-contract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor sub-contracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or sub-contractor who is unable to certify to the above. If the contractor knowingly procures or sub-contracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier sub-contracts. The contractor may rely on the certification of a prospective sub-contractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a Sub-contractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Sub-contractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or Sub-contractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or sub-contract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Application
Incorporate into all contracts funded by AIP.

Reference
49 CFR Part 30.13
FAA Order 5100.38

VETERAN'S PREFERENCE

In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

Application
Incorporate into all construction contracts financed under the AIP program.

Reference
Title 49 U.S.C. 47112(c)
Advisory Circular 150/5100-6d

DAVIS BACON REQUIREMENTS

1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its Sub-contractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2 Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any Sub-contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph 5.5(a)(3)(i) above. This information may be submitted in any form desired. Optional Form

WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all Sub-contractors.

(B)Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or Sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1)That the payroll for the payroll period contains the information required to be maintained under paragraph (3)(i) above and that such information is correct and complete;

(2)That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3)That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C)The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D)The falsification of any of the above certifications may subject the contractor or Sub-contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or Sub-contractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or Sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance With Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or Sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the Sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor 128 shall be responsible for the compliance by any Sub-contractor or lower tier Sub-contractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a Sub-contractor as provided in 29 CFR 5.12.

8. Compliance With Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its Sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Application
Incorporate into all construction contracts and subcontracts that exceed $2,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

EQUAL EMPLOYMENT OPPORTUNITY - 41 CFR PART 60-1.4(b)

During the performance of this contract, the contractor agrees as follows:

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

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Sub-contractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: *Provided, however,* that in the event a contractor becomes involved in, or is threatened with, litigation with a Sub-contractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000

Reference
Executive Order 11246
41 CFR Part 60 -1.4
AC 150/5100-15, Para. 22.a.

CERTIFICATION OF NONSEGREGATED FACILITIES - 41 CFR

PART 60-1.8 Notice to Prospective Federally Assisted Construction

Contractors

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving federally-assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective Sub-contractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Sub-contractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving subcontract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective Sub-contractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION OF NONSEGREGATED FACILITIES

The federally-assisted construction contractor certifies that she or he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that she or he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that she or he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that she or he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where she or he has obtained identical certifications from proposed Sub-contractors for specific time periods) she or he will obtain identical certifications from proposed Sub-contractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that she or he will retain such certifications in his files.

Application

Incorporate in all construction contracts and subcontracts that exceed $10,000. The notices should be placed within the solicitation for proposals. The actual certification should be incorporated in the contract agreement.

Reference

Executive Order 11246
41 CFR Part 60 -1.8

AC 150/5100-15, Para. 22.b.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION - 41 CFR PART 60-2

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade (Vol. 45 Federal Register pg. 65984 10/3/80)

Goals for female participation in each trade (6.9%)

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project, for the sole purpose of meeting the contractor's goals, shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director, OFCCP, within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Sub-contractor; employer identification number of the Sub-contractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is [insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any].

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This notice should be placed within the solicitation for proposals. The goals for minority participation are dependent upon the Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA). Refer to Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table listed all EA and SMSA and their associated minority goals. The 6.9% for female participation represents a national goal.

Reference
Executive Order 11246
41 CFR Parts 60 - 4

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS - 41 CFR Part 60.4.3

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any Sub-contractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Sub-contractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Sub-contractors toward a goal in an approved Plan does not excuse any covered contractor's or Sub-contractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 18.7a through 18.7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained

from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Sub-contractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (18.7a through 18.7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 18.7a through 18.7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 18.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Application
Incorporate in all construction contracts and subcontracts that exceed $10,000. This provision shall be included in the solicitation and the contract agreement.

Reference
Executive Order 11246
41 CFR Parts 60 – 4.3 AC
150/5100-15, Para. 22.c.

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

e.The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Application
Incorporate into all procurement contracts that funded by AIP funds that exceed $10,000.

Reference
49 CFR Part 18.36(i)(2)
FAA Order 5100.38

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Application
Incorporate into all contracts that exceed $25,000, which funded under the AIP. Incorporate in all contracts for auditing services regardless of the contract amount.

Reference
49 CFR Part 29 FAA
Order 5100.38

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 29 CFR PART 5

1. Overtime Requirements.
No contractor or Sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.
In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any Sub-contractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and Sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.
The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or Sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Sub-contractors.
The contractor or Sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the Sub-contractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any Sub-contractor or lower tier Sub-contractor with the clauses set forth in paragraphs 1 through 4 of this section.

Application
Incorporate into all construction contracts and subcontracts that exceed $100,000 and are financed under the AIP program.

Reference
29 CFR Part 5.5
Advisory Circular 150/5100-6d

CLEAN AIR AND WATER POLLUTION CONTROL

Contractors and Sub-contractors agree:

a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution

Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued hereunder;

c. That, as a condition for the award of this contract, the contractor or Sub-contractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

d. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

Application
Incorporate in all contracts and subcontracts that exceed $100,000.

Reference
49 CFR Part 18.36(i)(12)
Section 306 of the Clean
Air Act Section 508 of the
Clean Water Act

<u>Consultant Insurance Certificate(s)</u>

Appendix C

GALEASS-01 DGHIGLIAZZA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Ames & Gough
859 Willard Street
Suite 320
Quincy, MA 02169

CONTACT NAME:
PHONE (A/C, No, Ext): (617) 328-6555
FAX (A/C, No): (617) 328-6888
E-MAIL ADDRESS: boston@amesgough.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : American Casualty Co of Reading, PA A(XV)	20427
INSURER B : Transportation Insurance Company A(XV)	20494
INSURER C : Continental Insurance Company A(XV)	35289
INSURER D : Lexington Insurance Company A, XV	19437
INSURER E :	
INSURER F :	

INSURED
Gale Associates, Inc.
15 Constitution Drive
Bedford, NH 03110-6042

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR			6020017533	05/01/2017	05/01/2018	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 4,000,000
	POLICY X PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$ 4,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO			6020017614	05/01/2017	05/01/2018	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	EXCESS LIAB CLAIMS-MADE			6020068143	05/01/2017	05/01/2018	AGGREGATE	$ 5,000,000
	DED X RETENTION $ 0							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N	N / A		620017578	05/01/2017	05/01/2018	E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Professional Liab			031711024	05/01/2017	05/01/2018	Per Claim	2,000,000
D				031711024	05/01/2017	05/01/2018	Aggregate	4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
All Coverages are in accordance with the policy terms and conditions.

CERTIFICATE HOLDER
City of Biddeford
205 Main Street
Biddeford, ME 04005

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

141

2017.107 IN BOARD OF CITY COUNCIL..SEPTEMBER 19, 2017

BE IT ORDERED, that the City Manager is authorized to enter into an agreement with Smith Marine, Inc of Marblehead, MA with terms favorable to the City in an amount not greater than $150,000 plus disposal at specified unit rates, for the clearing of identified debris in the Saco River. The clearing of debris shall be in accordance with the *Request for Bids - Saco River Marine Debris Cleanup Project* and other such terms required to successfully accomplish the debris removal project in anticipation of the USACE Dredging Project scheduled for November 2017.

BE IT FURTHER ORDERED that the City Manager be authorized to contract with a qualified project manager, at his discretion, to oversee all or a portion of the Marine Debris Cleanup Project at a rate no greater than $100/hr.

Saco River Marine Debris Cleanup Project shall be funded jointly between the City of Saco and the City of Biddeford. Additionally, Biddeford and Saco intend to pass along the cost of the cable removal portion to Central Maine Power Company for reimbursement. The funding source for the City of Biddeford shall be 22001-60974 Miscellaneous Reserve.

City of Biddeford
Chief Operating Officer/Technology Dept/IPP
P.O. Box 586 • 205 Main Street
Biddeford, ME 04005
Phone: (207) 571-0032 • Fax: (207) 571-0656

Briefing Memo

TO: Chairman John McCurry and Members of the Finance Committee

CC: James Bennett, City Manager
Cheryl Fournier, Finance Director
Greg Tansley, City Planner
Roby Fecteau, Code Enforcement Officer

FROM: Brian S. Phinney, COO/Technology/IPP

DATE: September 14, 2017

RE: Approval/Contract for Saco River Debris Clearing

The United States Army Corp of Engineers (USACE) intends to dredge the upper portion of the Saco River beginning in November of 2017. In preparation for this work, identified marine debris must be removed from the federal channel to prevent damage to the dredge equipment. A survey of the river conducted earlier this summer identified some 47 anomalies in addition to abandoned power cables reportedly dropped in the river under authorization by Central Maine Power Company.

The City of Biddeford and the City of Saco jointly prepared a Request for Bid (RFB) for the marine debris cleanup project. The RFB was posted on the city's website and published in the Journal Tribune. The RFB requested separate pricing for the marine debris cleanup portion and the cable removal portion with unit pricing for disposal.

The City received three bids ranging from $97,000 to $201,640 plus disposal. The bids were evaluated by a review team comprised of Biddeford and Saco employees and the Biddeford harbor master. The review team determined that all of the bidders were qualified to perform the work, however there was consensus that the low bidder, MAC Marine, did not have experience equivalent to the other two bidders. As the amount of disposal is unknown, uniform values were used to evaluate the bids. The uniform values included disposal of 30 tons of debris and 25 tires for the marine debris removal portion and 30 tons of cable and 10 tons of bulky waste for the cable removal portion. Applying these uniform values, the estimated totals are summarized on the next page. Based on this information, the selection team recommends the project be awarded to Smith Marine at a cost of $150,000 plus disposal at the unit rates listed in Smith's bid documents. The bid documents specify the requirement for a bid bond and performance bond with liquidated damages of $250/day. These requirements will be included in the agreement.

Additionally, the Order requests authorization to enter into an agreement with a qualified project manager should the city manager determine that all or a portion of the work requires specialized oversight due to such factors as personnel availability, staff experience, and the unique nature of the work.

Saco River Debris Cleanup Project

Phase I - Marine Debris			
Marine Debris	**Prock Marine**	**Smith Marine**	**MAC Marine**
Project Preparation & Admin	$ 4,600	$ 15,000	$ 3,000
Project Mobilization	$ 10,470	$ 20,000	$ 10,000
Marine Debris Cleanup Work	$ 56,000	$ 60,000	$ 41,600
Subcontractor Fees	$ 28,750	$ -	$ 21,500
Staging Area Cleanup and Restoration	$ 1,000	$ 5,000	$ 1,500
Subtotal Services	**$ 100,820**	**$ 100,000**	**$ 77,600**
Disposal Est - Wood (10 tons)	$ 1,000	$ 2,500	$ 1,250
Disposal Est - Metal (10 tons)	$ 1,000	$ 2,500	$ 1,250
Disposal Est Bulky Waste (10 Tons)	$ 1,000	$ 2,500	$ 1,250
Dispoal of Tires (25)	$ 250	$ 2,500	$ 1,375
Subtotal Disposal	**$ 3,250**	**$ 10,000**	**$ 5,125**
Phase I Estimated Total	**$ 104,070**	**$ 110,000**	**$ 82,725**

Phase II - Cable Removal			
Cable Removal	**Proc Marine**	**Smith Marine**	**MAC Marine**
Project Preparation & Admin	$ 4,600	$ 7,500	$ 1,500
Project Mobilization	$ 10,470	$ 7,500	$ 2,500
Marine Debris Cleanup Work	$ 56,000	$ 30,000	$ 10,400
Subcontractor Fees	$ 28,750	$ -	$ 3,500
Staging Area Cleanup and Restoration	$ 1,000	$ 5,000	$ 1,500
Subtotal Services	**$ 100,820**	**$ 50,000**	**$ 19,400**
Disposal Est Metal Debris (30 Tons)[1]	$ 7,500	$ 7,500	$ 3,750
Disposal Est Bulky Waste (10 tons)	$ 2,500	$ 2,500	$ 1,250
Subtotal Disposal	**$ 10,000**	**$ 10,000**	**$ 5,000**
Phase I Estimated Total	**$ 110,820**	**$ 60,000**	**$ 24,400**

Project Total w/o Disposal Est.	**$ 201,640.00**	**$ 150,000**	**$ 97,000**
Project Total w/ Disposal Est.[1]	**$ 214,890.00**	**$ 170,000**	**$ 107,125**

[1]The disposal pricing for Prock Marine is listed as $1/lb for cable disposal. The equates to $2,000 per ton. This unit rate is deemed to be too high. The disposal rate has been adjusted down to reflect a reasonable market rate in which the City would contract directly for disposal. Even with this adjustment Prock Marine is still $44,890 above the Smith proposal.

The proposed funding source for this project is Miscellaneous Reserve (22001-60974). The account currently carries a balance of $134,260. As stated above, the project cost will be shared between Biddeford sand Saco and the cable removal portion will be submitted to CMP for reimbursement.

Please note that this item has been placed on the September 19th City Council agenda for review and approval. The recommendation from the Finance Committee will to the Council.

Request for Bids

Saco River Marine Debris Cleanup Project

BIDDEFORD, MAINE

Prepared By:

The City of Biddeford
P.O. Box 586
Biddeford, ME 04005
Telephone: (207) 571-1622

Date of Issue: August 11, 2017

Table of Contents

Attachments:

1. ***Preliminary Report of Saco River Submerged Debris Investigation,*** Maine Coastal Mapping Initiative, June 2016
2. ***Environmental Assessment Finding of No Significant Impact, and Section 404(b)(1) Evaluation for Maintenance Dredging, Saco River Biddeford and Saco, Maine,*** US Army Corps of Engineers, New England District, March 2016

INVITATION TO BID

The City of Biddeford will receive sealed bids for the Saco River Marine Debris Cleanup Project 2017 until 2:00 p.m. prevailing local time September 1, 2017 at Biddeford City Hall, 205 Main Street, Biddeford, Maine 04005. Bid documents shall be in clearly marked sealed envelopes Saco River Marine Debris Cleanup Project 2017, all bids will be opened and read aloud in the Economic Development Office.

Final completion of the Saco River Marine Debris Cleanup Project and associated work on this project shall be by October 31, 2017. The work to be performed under this Contract includes but is not limited to the cleanup, demolition, removal, reduction and disposal of marine debris located in the Federal Navigation Project (FNP) and within eight (8) feet on either side of the FNP from just above Cow Island to Cataract Falls and Factory Island.

The contract shall include all work provided in the Project Specifications including identification and removal of all previously identified and unidentified marine debris including wood, trees, tires, metal objects, cables and other unidentified marine debris. The Bidding Documents are identified as Saco River Marine Debris Cleanup Project 2017, including project research prepared by the Maine Coastal Mapping Initiative (MCMI) [Appendix A] and the US Army Corps of Engineers New England District [Appendix B].

A copy of the Contract Documents for the work may be examined at the Economic Development Office 205 Main Street, Biddeford, ME 04005. A copy of the contract documents may be obtained from the Economic Development Office or by following the link to this RFB on the City of Biddeford's website at www.biddefordmaine.org/rfb. Questions and clarification requests must be submitted through the RFB webpage portal for this RFB (www.biddefordmaine.org/rfb) no later than Tuesday August 22, 2017.

To be considered a responsive Bidder, the Contractor must register through the online portal for the RFB prior to Friday August 25, 2017. Failure to register prior to the specified date and time shall result in bid disqualification.

Bid Bond

A certified check or bank draft payable to the OWNER or a satisfactory Bid Bond executed by the Bidder and a Surety Company in the amount equal to five percent (5%) of the Bid shall be submitted with each bid. No bid may be withdrawn for at least 60 days after receipt of bids unless released by the OWNER.

Disclaimer

Any awarded contract is expected to be funded by the City. The successful bidder must furnish within 10 calendar days after the Notice of Award the required number of copies of the signed Agreement, plus a 100% Performance Bond and a 100% Payment Bond, and a complete list of sub-bidders and begin execution of this contract within 10 calendar days following the Notice to Proceed.

The City of Biddeford reserves the right to reject any or all Bids, to waive any technical or legal deficiencies, and to accept any Bid that it may deem to be in the best interests of the City.

PROJECT SPECIFICATIONS

Project Overview

The City of Biddeford is preparing for a United States Army Corps of Engineers (USACE) federal maintenance dredge of the Federal Navigation Project (FNP) in the Saco River. The USACE intends to dredge the upper reach of the FNP in early November 2017. In order for USACE to mobilize resources to accomplish this work, the municipality is required to remove all known marine debris located in the FNP and turning basin in preparation for the maintenance dredge at the upper reach (westerly end) of the tidal portion of the Saco River.

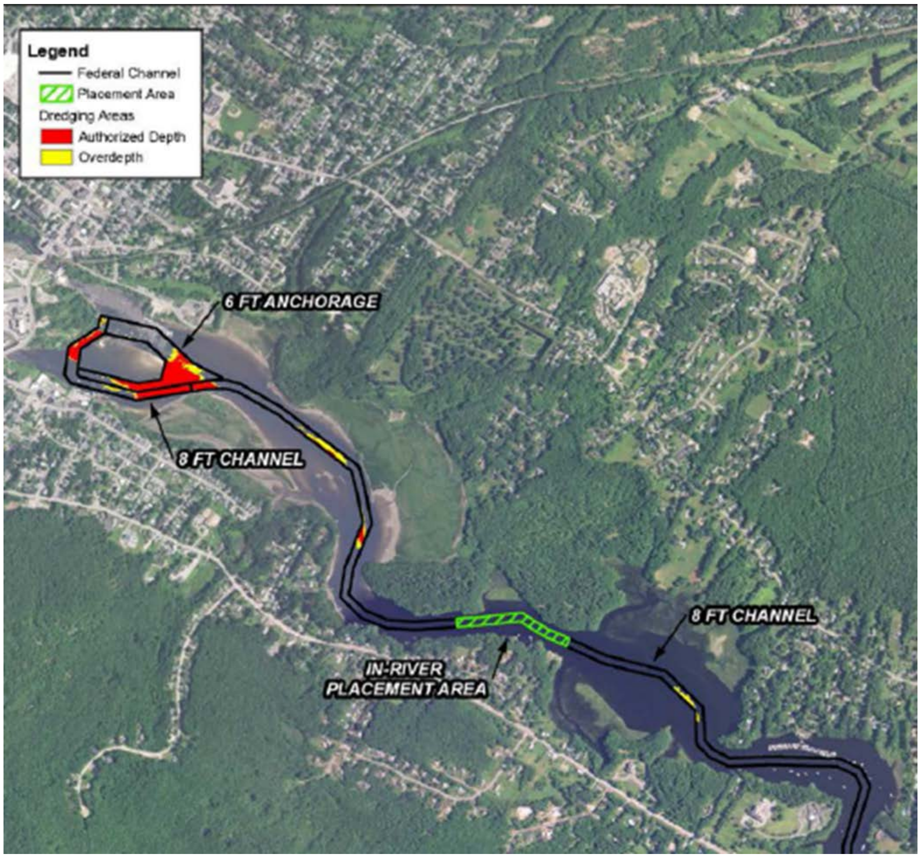

Figure 1 USACE Dredge Plan for Upper Reach of the Saco River

In May 2016, The Maine Coastal Mapping Initiative (MCMI) conducted hydrographic surveying within the navigable waters of the Saco River between Camp Ellis and the Biddeford/Saco area located approximately 5 miles upstream. This investigation was conducted to help characterize the distribution and nature of submerged debris as well as provide up-to-date, high resolution bathymetric data in the vicinity of the USACE dredge area in the upper reach of the Saco River. A combination of video and multibeam echosounder (MBES) data analysis resulted in the delineation of 47 anomaly areas suspected or confirmed to contain submerged debris. Video recordings in 10 select areas (4 camera drops and 6 camera tows) confirmed the presence of submerged debris comprised of timber, metal, tires, and various forms of unknown composition. Although the presence of submerged debris was confirmed in these areas, it should be noted that the 47 anomalies delineated in the MCMI report represent the most distinct areas suspected to contain submerged debris and may not represent 100% of submerged debris actually present within the focus area outlined in the report. In addition, the largest anomaly polygons represent areas that contain multiple irregular shaped or overlapping anomalies that could not be delineated as individual entities. Specifically, anomalies A04 and A35 contain attributes consisted with known or suspected hazards such as submerged metal cabling thought to be decommissioned in the late 1960's and was cut off towers and allowed to drop into the Saco River.

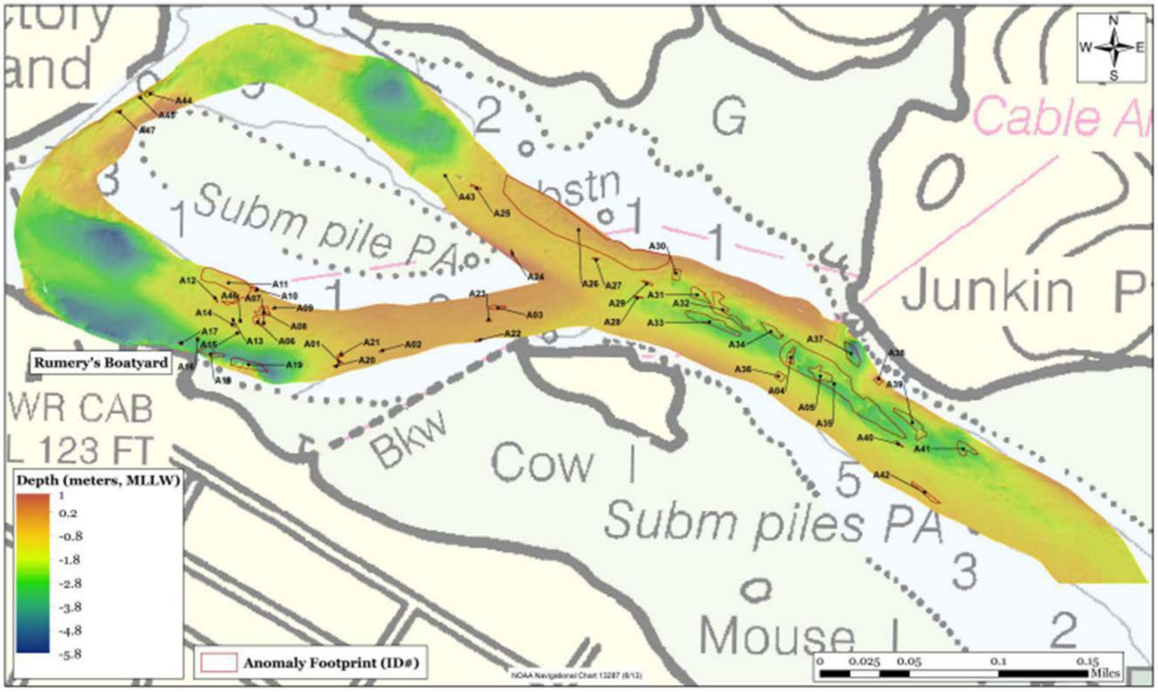

Figure 2 MCMI Identification of 47 Anomalies for Removal/Cleanup

In order to comply with USACE project preparation requirements, the area from just above Cow Island to Factory Island and the basin must be cleared of all marine debris located within the FNP and eight feet (8') on either side of the FNP **by October 31, 2017**. All known moorings in the mooring field will be removed prior to the commencement of the marine debris cleanup project. It is possible that derelict moorings exist within the designated cleanup area. Bidders are strongly encouraged to review the following documents prior to preparing and submitting their bid package for consideration:

1. *Preliminary Report of Saco River Submerged Debris Investigation*, Maine Coastal Mapping Initiative, June 2016

2. *Environmental Assessment Finding of No Significant Impact, and Section 404(b)(1) Evaluation for Maintenance Dredging, Saco River Biddeford and Saco, Maine*, US Army Corps of Engineers, New England District, March 2016

These documents may be found on the City's website at www.biddefordmaine.org/rfp.

Scope of Work

This project involves safely removing and properly disposing of all marine debris, including all cables located at A05 and A35 in the MCMI report, in the FNP and within 8' on either side of the FNP at the upper reach of the Saco River. The work to be undertaken includes, but is not limited to:

1. Coordinate with all state and federal agencies on required project permitting.
2. Coordinate with City of Biddeford and City of Saco Harbormasters.
3. Manage all project mobilization and demobilization activities.
4. Provide all equipment and resources necessary to complete the job on time and on-budget.
5. Identify and coordinate on-shore project staging and debris removal site(s) with public or private landowners.
6. Coordinate access, egress and traffic control, if required, at project staging and debris removal site(s) with the Biddeford Police Department and/or the Saco Police Department.
7. Cleanup and restoration of staging and debris removal site(s) upon project completion.
8. All debris shall be processed in accordance with local, state and federal law, standards and regulations.
9. Disposal and/or recycling of all debris must be performed in accordance with all applicable state, federal and local laws, standards and regulations.

Bid Requirements

Bidders must provide the following documents in order to be considered for this project:

1. Signed Experience Statement (see attachment)
2. Project Plan and Timeline for cleanup and disposal of all items NOT including any cables associated with anomalies A05 and A35 identified in the MCMI report.
3. Firm Fixed Price Project Bid for cleanup and disposal of all items NOT including any cables.
4. Project Plan and Timeline for removal and disposal of ALL CABLES ONLY.
5. Firm Fixed Price Project Bid for the removal and disposal of ALL CABLES ONLY
6. Bid Bond
7. Identify the intended nature and form of the Performance and Payment bonds due within 10-days of notice of award.
8. Certification that evidence of insurance will be provided for all parties associated with the project, including subcontractors, each listing the City of Biddeford as additionally insured.
9. Project pricing (see Project Bids section)

If divers are required for this project, contractors are required to provide proof of full compliance with applicable state commercial diving standards, OSHA directives, and OSHA commercial diving standards including but not limited to 29 CFR Part 1910, Subpart T, and 29 CFR Part 1926, subparts O and Y.

Submission Requirements

To be considered for this project, bidders must submit three (3) complete copies of all required documents in 8.5” by 11” (3 ring binder) format by 2PM on Friday, September 1, 2017 at the Economic Development located at 205 Main Street, Biddeford, Maine.

Bidders Conference

The City will host a non-mandatory Bidders Conference on Friday, August 25, 2017 at 1PM at Biddeford City Hall in the 2nd Floor Conference Room to answer any questions and clarify the requirements of the project.

Bidders are required to contact Christine Ohman at 571-1622 or christine.ohman@biddefordmaine.org by Wednesday, August 23rd at 4PM to register for the conference.

Evaluation Criteria

The successful Bid will be selected based upon the best response offered to the City. Bidders may be requested to give an oral presentation after the submission of responses, should the City find it necessary to determine which is the best received.

Criteria	Points Assigned
Qualifications	20
Experience/Past Performance	20
Available Resources	15
Subcontractor Participation	10
Project Plan and Timeline	15
References	10
Project Price	10
Total Points	**100**

Incurred Expenses

The City is not responsible for any expenses, which the bidders may incur in the preparation and submittal of bids requested by this RFB, including but not limited to: costs with travel associated with preparing bids, attending the Bidders Conference, accommodations, interviews, or presentation of bids.

Project Dates

The successful bidder will be notified by email on or before 1:00 PM on September 15, 2017.

Bidders must execute the Contracting Documents on or before 9:00 AM on September 29, 2017.

The successful bidder must be prepared to begin the project on or before 9AM on October 6, 2017.

The project must be completed on or before 12:00 PM on Tuesday, October 31, 2017. For the purpose of this RFB, “project completion” shall mean the successful completion of all debris removal activities including but not limited to the removal or relocation of barges, tugs, etc., used in the removal project so that the FNP is clear and fully accessible for dredging activity

EXPERIENCE STATEMENT

All questions must be answered with clear and comprehensive data. There is no page limit. This statement must be notarized.

l. Name of Bidder.

2. Permanent Main Office address.

3. When organized.

4. Where incorporated.

5. How many years have you been engaged in the contracting business under your present firm name? Also state names and dates of previous firm names, if any.

6. State work of a similar nature to that stated in the Bid Proposal, including references that will assist the Owner to judge experience, skill and business standing:

7. Contracts on hand. (Schedule these, showing gross amount of each contract and the approximate anticipated dates of completion.)

8. General character of work performed by your company.

9. In the last 10 years have you ever failed to complete any work awarded to you?___(Yes) ___(No) If so, where and why?

10. In the last 10 years have you ever defaulted on a contract? ___(Yes) ___(No). If so, where and why?

11. List recently executed contracts in excess of $50,000 gross value by your company, stating approximate cost for each, and the month and year completed.

12. List your major equipment <u>available for this contract</u>.

13. List your key personnel such as Project Superintendent and foremen available for this contract.

14. List any subcontractors whom you would expect to use and the general components of the Project (e.g. divers, debris removal, etc.) for which they will be responsible. Indicate other projects on which the proposed subcontractor has worked with you.

15. Name and address of banking institutions with whom you do business.

Do you grant the City of Biddeford permission to contact this (these) institutions? ___(Yes) ___(No)

Dated at ____________________ this _______________ day of ______________, 20____

____
(Name of Bidder)

By_______________________________________

State of ________________S Title____
County of _______________)
_______________________ being duly sworn, deposes and says that he is
of _______________________________________ and that the answers to the foregoing
(Name of Organization)
questions and all statements contained therein are true and correct.
Sworn to before me this ________________ day of _______________________, 20___.

____

(Notary Public) My commission expires_______________________.

PROJECT BIDS

The City requires that project bids be provided under two (2) separate project categories:

1. General marine debris cleanup and disposal and;
2. Decommissioned cables cleanup and disposal.

Pricing for each project category must include the following information:

1. Project preparation/project management/administrative activities
2. Project mobilization/demobilization
3. Marine debris cleanup work
4. Disposal work
    a. Subcontractor(s) fees (if applicable)
    b. Disposal fees
5. Staging, area cleanup, and site restoration
6. Total project bid

Project bids for each project category must be Firm Fixed Price.

BID BOND

Bidders are required to provide a Bid Bond as a component of the Bid Package. Bidders may use their own Bid Bond forms, however the document must contain the following information in order to be considered complete.

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

BID
Bid Due Date:
Project (Brief Description Including Location):

BOND
Bond Number:
Date (Not later than Bid due date):
Penal sum ______________________________ ______________________________
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER	SURETY
______________________________ (Seal)	______________________________ (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: ______________________________	By: ______________________________
Signature and Title	Signature and Title (Attach Power of Attorney)
Attest: ______________________________	Attest: ______________________________
Signature and Title	Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:
   - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
   - 3.2. All Bids are rejected by Owner, or

3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

PERFORMANCE BOND

Bidders are NOT required to provide a Performance Bond as a component of the Bid Package. Bidders may use their own Bid Bond forms, however the document must contain the following information in order to be considered complete and be provided within 10-days of Notice of Award.

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONTRACT
Date:
Amount:
Description (Name and Location):

BOND
Bond Number:
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
Company:

Signature: ______________________ (Seal)
Name and Title:

(Space is provided below for signatures of additional parties, if required.)

SURETY

______________________ (Seal)
Surety's Name and Corporate Seal

By: ______________________
Signature and Title
(Attach Power of Attorney)

Attest: ______________________
Signature and Title

CONTRACTOR AS PRINCIPAL
Company:

Signature: ______________________ (Seal)
Name and Title:

SURETY

______________________ (Seal)
Surety's Name and Corporate Seal

By: ______________________
Signature and Title
(Attach Power of Attorney)

Attest: ______________________
Signature and Title:

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.

3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:

3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and

3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and

3.3. Owner has agreed to pay the Balance of the Contract Price to:

1. Surety in accordance with the terms of the Contract;

2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or

2. Deny liability in whole or in part and notify Owner citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities

of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.

12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

BID – CONTRACT

PROJECT IDENTIFICATION: **Saco River Marine Debris Cleanup Project 2017**

THIS BID IS SUBMITTED TO: City of Biddeford, Maine

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents, to complete all work as specified or indicated in the Contract Documents for the Contract Price, and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain open for sixty (60) days after the Bid opening. BIDDER will sign the Agreement and submit the contract security and other documents required by the contract Documents within ten (10) days after the date of OWNER'S Notice of Award.

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

   (a) BIDDER has examined copies of all the Contract Documents and the following addenda:

      1. *Preliminary Report of Saco River Submerged Debris Investigation*, June 2016, Maine Coastal Mapping Initiative
      2. *Environmental Assessment Finding of No Significant Impact, and Section 404(b)(1) Evaluation for Maintenance Dredging, Saco River Saco & Biddeford, Maine*, March 2016, US Army Corps of Engineers, New England District

   (receipt of all which is hereby acknowledged) and also copies of the Invitation to Bid and the Instructions for Bidders;

   (b) BIDDER has examined the site and locality where the work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the work and has made such independent investigation as BID

   c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other BIDDER or over OWNER.

4. BIDDER agrees that the work will be completed and ready for final payment by **October 31, 2017**. (See Agreement - Article 3.) The City may adjust the Contract Time for seasonal delays.

5. BIDDER agrees to pay Owner five hundred dollars ($500.00) for each day that expires after the time specified for substantial completion until the work is substantially complete. (See Agreement-Article 3.)

Respectfully submitted,

By: ____

Name and Title: __________________________________

For: ____

(Seal if by a Corporation)

Address: ______________________________________

____

____

BIDDER will complete the work for the following prices: [*add pricing page*]

BID CONTRACT

PROJECT IDENTIFICATION: **Saco River Marine Debris Cleanup Project 2017**

THIS BID IS SUBMITTED TO: City of Biddeford, Maine

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents, to complete all work as specified or indicated in the Contract Documents for the Contract Price, and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

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   1. *Preliminary Report of Saco River Submerged Debris Investigation*, June 2016, Maine Coastal Mapping Initiative
   2. *Environmental Assessment Finding of No Significant Impact, and Section 404(b)(1) Evaluation for Maintenance Dredging, Saco River Saco & Biddeford, Maine*, March 2016, US Army Corps of Engineers, New England District

   (receipt of all which is hereby acknowledged) and also copies of the Invitation to Bid and the Instructions for Bidders;

   (b) BIDDER has examined the site and locality where the work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the work and has made such independent investigation as BID

   c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other BIDDER or over OWNER.

4. BIDDER agrees that the work will be completed and ready for final payment by **October 31, 2017**. (See Agreement - Article 3.) The City may adjust the Contract Time for seasonal delays.

5. BIDDER agrees to pay Owner five hundred dollars ($500.00) for each day that expires after the time specified for substantial completion until the work is substantially complete. (See Agreement-Article 3.)

Respectfully submitted,

By: Theodore Proch

Name and Title: Theodore Proch President

For: Proch Marine Company

(Seal if by a Corporation)

Address: Proch Marine Company
67 Front Street
Rockland, Maine 04841

BIDDER will complete the work for the following prices: [*add pricing page*]

Proch acknowledges Addendum dated August 29, 2017

PROCK MARINE COMPANY

67 Front Street • Rockland, Maine 04841
TEL: 207.594.9565 • FAX: 207.594.9566
www.prockmarinecompany.com

MINUTES OF THE SPECIAL MEETING OF SHAREHOLDERS AND
BOARD OF DIRECTORS
PROCK MARINE COMPANY

A special meeting of the Shareholders and Board of Directors of Prock Marine Company was held August 31, 2017 at the company office in Rockland, Maine. The following Directors and Shareholders were present:

Theodore Prock, President
Kevin Prock, Vice President
Eric Prock, Secretary

The President then stated that this meeting was called at the request of the Directors and Shareholders to consider the following business:

1. Resolved: That Theodore Prock is authorized, on behalf of Prock Marine Company, to sign all papers and documents for the "Saco River Marine Debris Cleanup Project 2017."

On motion duly made and seconded, the above resolve was adopted by unanimous vote. There being no further business, the meeting was adjourned.

A true record, which records are in my legal custody.

Theodore Prock

Theodore Prock, President

State of Maine, County of Knox

Personally appeared Theodore Prock, President of Prock Marine Company (a Corporation), and made oath that he is the custodian of the corporation records that the foregoing is a true copy of that portion of the records to which it relates.

Before me Patricia F Robinson

Patricia F. Robinson
My Commission Expires 08/16/2020

Randy Prock
PRESIDENT
Kevin Prock
VICE PRESIDENT
Theodore Prock
TREASURER
Eric Prock
SECRETARY

SACO RIVER MARINE DEBRIS CLEANUP PROJECT
BID PRICING SHEET

GENERAL MARINE DEBRIS CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration		$ 4,600.—
Project Mobilization/Demobilization		$ 10,470.00
Marine Debris Cleanup Work		$ 56,000.00
Disposal Work		
a. Subcontractor(s) fees		$ 28,750.00
Disposal Fees		
b. Wood Debris (specify unit of measure)[1]	Unit: Ton	$ 100.00
c. Metal Debris (specify unit of measure)[1]	Unit: TON	$ 100.00
d. Bulky Waste (specify unit of measure)[1]	Unit: Ton	$ 100.00
e. Tires	Unit: Each	$ 10.00
Staging area cleanup and disposal site restoration		$ 1,000.00
TOTAL PROJECT BID		$ 101,130.00

[1] The unit identified should match the unit measured by the disposal facility in order to directly apply the specified unit to the disposal facility acceptance records in order to calculate disposal cost. For example, if disposal of metal debris is based on tons, the unit specified should be "ton". If disposal of wood debris is based on cubic yards, the unit specified should be "cuyd".

DECOMMISSIONED CABLES CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration	$ 4600.00
Project Mobilization/Demobilization	$ 10,470.00
Marine Debris Cleanup Work	$ 56,000.00
Disposal Work	
a. Subcontractor(s) fees	$ 28,750.00
Disposal Fees	
b. Metal Debris $ per cubic yard OR PER LB (disposal slips)	$ 1.00 lb
c. Bulky Waste $ per cubic yard (estimated or converted from disposal weight slips)	$ 100.00 C.Y
Staging area cleanup and disposal site restoration	$ 1,000.00
TOTAL PROJECT BID	$ 100,921.00

BID BOND

Bidders are required to provide a Bid Bond as a component of the Bid Package. Bidders may use their own Bid Bond forms, however the document must contain the following information in order to be considered complete.

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address):
PROCK MARINE COMPANY
67 FRONT STREET
ROCKLAND, ME 04841

SURETY (Name and Address of Principal Place of Business):
BERKLEY INSURANCE COMPANY
475 STEAMBOAT ROAD
GREENWICH, CT 06830

OWNER (Name and Address):
CITY OF BIDDEFORD
PO BOX 586, 205 MAIN STREET
BIDDEFORD, ME 04005

BID

Bid Due Date: SEPTEMBER 1, 2017

Project (Brief Description Including Location): SACO RIVER MARINE DEBRIS CLEANUP PROJECT 2017

BOND

Bond Number: PROCK84

Date (Not later than Bid due date): AUGUST 29, 2017

Penal sum FIVE PERCENT OF ATTACHED BID (Words) **5%** (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER	SURETY
PROCK MARINE COMPANY (Seal)	BERKLEY INSURANCE COMPANY (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: Charles Prock President	By: Nancy L. Castonguay
Signature and Title	Signature and Title NANCY L. CASTONGUAY, ATTORNEY-IN-FACT (Attach Power of Attorney)
Attest: Stephen Russell Project Manager	WITNESS: ~~Attest~~
Signature and Title	Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:
   - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
   - 3.2. All Bids are rejected by Owner, or

3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

No. BI-322c

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Nancy L. Castonguay; Robert E. Shaw, Jr.; Heidi Rodzen; Joline L. Binette; or Melanie A. Bonnevie of Skillings - Shaw & Associates, Inc. of Lewiston, ME* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.$100,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety Group, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 27th day of April, 2016.

Attest: Berkley Insurance Company

(Seal) By ______ By ______

Ira S. Lederman, Senior Vice President & Secretary

Jeffrey M. Hafter, Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 27th day of April, 2016, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Senior Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

Maria C. Rundbaken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 29TH day of AUGUST 2017.

(Seal) ______

Andrew M. Tuma

WARNING – Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and **verification instructions** (on reverse) must be in blue ink.

EXPERIENCE STATEMENT

All questions must be answered with clear and comprehensive data. There is no page limit. This statement must be notarized.

1. Name of Bidder. Prock marine Company
2. Permanent Main Office address. 67 Front street Rockland, ME. 04841
3. When organized. 1963
4. Where incorporated. Maine
5. How many years have you been engaged in the contracting business under your present firm name? Also state names and dates of previous firm names, if any. 50 +
6. State work of a similar nature to that stated in the Bid Proposal, including references that will assist the Owner to judge experience, skill and business standing: see attached
7. Contracts on hand. (Schedule these, showing gross amount of each contract and the approximate anticipated dates of completion.) see attached
8. General character of work performed by your company. marine Construction - Build ramps, floats, docks, bridges, dredging and shore stabilization.
9. In the last 10 years have you ever failed to complete any work awarded to you? __ (Yes) _(No) If so, where and why?
10. In the last 10 years have you ever defaulted on a contract? __ (Yes) X (No). If so, where and why?
11. List recently executed contracts in excess of $50,000 gross value by your company, stating approximate cost for each, and the month and year completed. see attached
12. List your major equipment available for this contract. see attached
13. List your key personnel such as Project Superintendent and foremen available for this contract. see attached
14. List any subcontractors whom you would expect to use and the general components of the Project (e.g. divers, debris removal, etc.) for which they will be responsible. Indicate other projects on which the proposed subcontractor has worked with you. see attached
15. Name and address of banking institutions with whom you do business. Camden National 300 Main St, Rockland, Maine 04841

Do you grant the City of Biddeford permission to contact this (these) institutions? X (Yes) __ (No)

Dated at Rockland, ME this 31st day of August, 2017

Prock marine Company
(Name of Bidder)

By Theodore Prock

State of Maine __ S Title President

County of Knox __)

Theodore Prock being duly sworn, deposes and says that he is of Prock marine Company and that the answers to the foregoing
(Name of Organization)

questions and all statements contained therein are true and correct.

Sworn to before me this 31st day of August, 2017.

Patricia F. Robinson Patricia F Robinson

(Notary Public) My commission expires 08-16-2020

PROCK MARINE COMPANY
Experience Statement

#6. **Dredging Projects**

ACOE – Sagamore Creek
Contact: Bill Phelan (978)935-6283

Royal River Boat Yard
Contact: Alan Dugas (2074)846-9577

Yarmouth Boat
Contact: Steve Arnold (207)846-9050

Marine Construction Projects

Baker Design Consultants
Contact: Barney Baker (207)846-9724

Town of Harpswell – Remove collapsed wharf from ocean bottom
Contact: Kristi Eiane (207)833-5771

More upon request

#12. Major Equipment

Tug Dorothy L
Tug Cedonia Crosby
Tug Alton A
Tug Marie
Barge 3 w/ 150 ton crane
Barge 5 w/100 ton crane
Barge 7 w/100 ton crane
Barge 9 w/150 ton crane

#13. Key Personnel

Project Manager – Steve Durrell – 35 years
Superintendent – Kendall Jackson – 30 years
Superintendent – Ernie McDonald – 30 years
Superintendent – Derek Prock – 10 years
Superintendent – Shawn Kirkpatrick – 25 years
Project Engineer PE – Ken Knauer – 20 years

#14. Subcontractors

Pepperrell Cove Marine – divers
Sprague Energy
Harpswell Salvage
Dolphin Marine
U.S. Coast Guard – Portsmouth, NH
U.S. Coast Guard – South Portland, ME

PROCK MARINE COMPANY

AUGUST 26, 2017

	PROJECT	CONTRACT	EST COMPLETION DATE
16-30	USCG	589,850	Oct-17
16-48	WAHWA FAMILY	135,485	Nov-17
16-52	SPRAGUE - S PTLD	526,088	Dec-17
16-55	CAMDEN HARBOR PROPERTIES	151,000	Sep-17
17-02	YANKEE MARINE	164,000	Jan-18
17-08	FRENCHBORO TOWN DOCK	151,380	Sep-17
17-17	KNIGHT MARINE SERVICE	32,865	Sep-17
17-27	USCG - WATERFRONT	4,547,000	Aug-18
17-28	MANCHESTER BY THE SEA	986,576	Jan-18
17-29	JEWL	5,142	Oct-17
17-30	SUNSET ROCK	45,318	Oct-17
17-31	CREIGHTON	18,521	Oct-17
17-32	MCFADDEN	16,909	Oct-17
17-33	HAHN/CROSBY	12,848	Oct-17
17-34	WOOD	5,377	Oct-17
17-35	MANCHESTER MARINE	165,500	Jan-18
17-39	RADLOFF	22,150	Oct-17
17-40	BILL WHITMAN	250,000	Oct-17
17-42	SAIL POWER & STEAM MUSEUM	48,760	Nov-17
17-43	D.R. CARON EXCAVATION	25,680	Sep-17
17-44	COUSINS ISLAND	52,580	Sep-17
17-45	PIKE BARTLETT	51,048	Sep-17
		8,004,077	

PROCK MARINE COMPANY
2017 COMPLETED PROJECTS
AS OF 8/31/17

Job #	Project	Revenue	Cost	Completion Date
14-70	MDOT - THOMASTON	$ 4,320,424.00	$ 3,851,787.00	Jun-17
16-08	MDOT WINCHES	$ 223,000.00	$ 78,898.00	Feb-17
16-26	DYSART'S	$ 458,250.00	$ 336,491.00	Jan-17
16-40	TERRY WATKINSON	$ 60,415.00	$ 46,075.00	May-17
16-41	JAMIE SAPOCH	$ 99,160.00	$ 57,448.00	May-17
16-46	DAVID MARLOW	$ 125,720.00	$ 89,581.00	May-17
16-50	SAGAMORE CREEK ACOE	$ 512,970.00	$ 380,789.00	Mar-17
17-05	LOU SESTO	$ 51,750.00	$ 21,498.00	Jul-17
17-07	DOLPHIN MARINE	$ 182,009.00	$ 216,410.00	Aug-17
17-11	ELLEN SIMMONS	$ 199,427.00	$ 141,193.00	Aug-17
17-13	KAZILIONIS	$ 61,580.00	$ 18,450.00	May-17
17-14	JOHN REED	$ 81,395.00	$ 17,216.00	Jul-17
17-19	DYSARTS - BREAKWATER 2	$ 173,433.00	$ 55,822.00	May-17
17-23	LAURIE WOOD	$ 59,300.00	$ 37,980.00	Aug-17

PROCK MARINE COMPANY

An Equal Opportunity Employer

67 Front Street, Rockland, ME 04841
Tel: 207.594.9565 Fax: 207.594.9566

prock@prockmarinecompany.com
www.prockmarinecompany.com

Company Profile

DUNS#	019061118
Legal Business	PROCK MARINE COMPANY
Business Types	Contracts and Grants, For-Profit Organization, S Corporation
Socioeconomic Status	Small Business
NAICS Codes	237- Heavy & Civil Engineering Construction 237990 – Other Heavy and Civil Engineering Construction
SAM	019061118 / OHKM2
Email	prock@prockmarinecompany.com
Phone	(207) 594-9565
Fax	(207) 594-9566
Company Officers	Theodore Prock, President Kevin Prock, Vice President Eric Prock, Secretary Derek Prock, Treasurer
Project Managers	Steve Durrell, Project Manager/Estimator Ken Knauer, Project Manager/Engineer Gary Neville, Project Manager/Estimator Devin Prock, Project Manager/Safety Manager

General Decision Number: ME170018 01/06/2017 ME18

Superseded General Decision Number: ME20160018

State: Maine

Construction Type: Heavy

County: Cumberland County in Maine.

HEAVY CONSTRUCTION PROJECTS including Water and Sewer Lines

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017

* ELEC0567-005 10/01/2016

	Rates	Fringes
ELECTRICIAN........................	$ 30.07	16.25

LAB00976-004 07/01/2016

	Rates	Fringes
LABORER (CONCRETE WORKER)........	$ 19.96	16.62

SUME2011-013 03/16/2011

	Rates	Fringes
CARPENTER, Includes Form Work....	$ 18.00	1.94
CONCRETE FINISHER................	$ 17.29	2.51
IRONWORKER, Reinforcing..........	$ 20.00	0.00
LABORER: Asphalt Raker..........	$ 16.93	1.91
LABORER: Common or General......	$ 13.56	1.99
LABORER: Landscape..............	$ 15.00	0.58
LABORER: Pipelayer..............	$ 14.42	2.38

LABORER: Flagger	$ 12.43	0.95
LABORER: Wheelman	$ 18.74	2.86
OPERATOR: Asphalt Paver	$ 18.16	2.30
OPERATOR: Asphalt Roller	$ 15.70	1.62
OPERATOR: Backhoe	$ 22.22	6.48
OPERATOR: Bulldozer	$ 20.43	6.13
OPERATOR: Crane	$ 22.60	9.29
OPERATOR: Drill	$ 17.09	3.79
OPERATOR: Excavator	$ 19.88	5.06
OPERATOR: Loader	$ 16.93	3.51
OPERATOR: Mechanic	$ 24.35	6.66
OPERATOR: Roller	$ 15.99	6.31
TRUCK DRIVER: Low Bed Truck	$ 16.43	3.07
TRUCK DRIVER	$ 14.67	2.04

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

EXPERIENCE STATEMENT

All questions must be answered with clear and comprehensive data. There is no page limit. This statement must be notarized.

1. Name of Bidder. SMITH MARINE, INC

2. Permanent Main Office address. P.O. BOX 381, 16 ANDERSON ST, STE 201 MARBLEHEAD, MA 01945

3. When organized.
2003

4. Where incorporated.
MASSACHUSETTS

5. How many years have you been engaged in the contracting business under your present firm name? Also state names and dates of previous firm names, if any. 14 YEARS

6. State work of a similar nature to that stated in the Bid Proposal, including references that will assist the Owner to judge experience, skill and business standing: SEE ATTACHED STATEMENT

7. Contracts on hand. (Schedule these, showing gross amount of each contract and the approximate anticipated dates of completion.) SEE ATTACHED STATEMENT

8. General character of work performed by your company. MARINE CONSTRUCTION

9. In the last 10 years have you ever failed to complete any work awarded to you?___(Yes) X(No) If so, where and why?

10. In the last 10 years have you ever defaulted on a contract? ___(Yes) X(No). If so, where and why?

11. List recently executed contracts in excess of $50,000 gross value by your company, stating approximate cost for each, and the month and year completed. SEE ATTACHED STATEMENT

12. List your major equipment available for this contract. SEE ATTACHED STATEMENT

13. List your key personnel such as Project Superintendent and foremen available for this contract.
SEE ATTACHED STATEMENT

14. List any subcontractors whom you would expect to use and the general components of the Project (e.g. divers, debris removal, etc.) for which they will be responsible. Indicate other projects on which the proposed subcontractor has worked with you. SEE ATTACHED STATEMENT

15. Name and address of banking institutions with whom you do business. GEORGETOWN BANK, 1 PORTSMOUTH AVE, SUITE #1, STRATHAM NH 03885

Do you grant the City of Biddeford permission to contact this (these) institutions? ✓(Yes) ___(No)

Dated at 2:15 PM this 5th day of SEPTEMBER, 2017

SMITH MARINE, INC
(Name of Bidder)

By [signature]

State of MA S Title SR. VICE PRESIDENT

County of Essex)

Matthew Placke being duly sworn, deposes and says that he is of Smith Marine Inc. and that the answers to the foregoing
(Name of Organization)

questions and all statements contained therein are true and correct.

Sworn to before me this 6th day of September 2017

[signature]
(Notary Public)

My commission expires 8/24/23

PAUL E. DUBE
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
August 24, 2023

SMITH MARINE, INC.

SACO RIVER MARINE DEBRIS CLEANUP PROJECT
BID PRICING SHEET

GENERAL MARINE DEBRIS CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration		$ 15,000.00
Project Mobilization/Demobilization		$ 20,000.00
Marine Debris Cleanup Work		$ 60,000.00
Disposal Work		
a. Subcontractor(s) fees		$ 0
Disposal Fees		
b. Wood Debris (specify unit of measure)[1]	5 TON @ 250 Unit: TON	$ 1,250.00
c. Metal Debris (specify unit of measure)[1]	5 TON @ 250 Unit: TON	$ 1,250.00
d. Bulky Waste (specify unit of measure)[1]	5 TON @ 250 Unit: TON	$ 1,250.00
e. Tires	10 @ 100 Unit: Each	$ 1,000.00
Staging area cleanup and disposal site restoration		$ 5,000.00
TOTAL PROJECT BID		$ 104,750.00

[1]The unit identified should match the unit measured by the disposal facility in order to directly apply the specified unit to the disposal facility acceptance records in order to calculate disposal cost. For example, if disposal of metal debris is based on tons, the unit specified should be "ton". If disposal of wood debris is based on cubic yards, the unit specified should be "cuyd".

SMITH MARINE, INC.

DECOMMISSIONED CABLES CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration	$ 7500.00
Project Mobilization/Demobilization	$ 7500.00
Marine Debris Cleanup Work	$ 30,000.00
Disposal Work	
a. Subcontractor(s) fees	$ 0
Disposal Fees	
3" CABLE, 24#/ft, 2400 LF ∴ 57,600# @ 250/TON b. Metal Debris $ per cubic yard OR PER LB (disposal slips)	$ 7,200.00
c. Bulky Waste $ per cubic yard (estimated or converted from disposal weight slips) EST. 6TON	$ 1,500.00
Staging area cleanup and disposal site restoration	$ 5,000.00
TOTAL PROJECT BID	$ 58,700.00

BID BOND

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

CONTRACTOR:
(Name, legal status and address)
Smith Marine, Inc.

16 Anderson Street, Suite 201
Marblehead, MA 01945

SURETY:
(Name, legal status and principal place of business)

Boston Indemnity Company, Inc.
4 High Street, Suite 206
North Andover, MA 01845

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)
City of Biddeford

ME

BOND AMOUNT: $ Five Percent of the Attached bid (5%)

PROJECT:
(Name, location or address, and Project number, if any)
Saco River Marine Debris Cleanup Project 2017

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 6th day of **September, 2017**

Smith Marine, Inc.
(Principal) *(Seal)*

(Witness)

Sr VICE PRESIDENT
(Title)

Boston Indemnity Company, Inc.
(Surety) *(Seal)*

(Witness)

(Title) **Paul A. Patalano, Attorney-In-Fact**

POWER OF ATTORNEY

BG- 301926

Boston Indemnity Company, Inc.

KNOW ALL MEN BY THESE PRESENTS, that **BOSTON INDEMNITY COMPANY, INC.**, a South Dakota Corporation, with its principal office in North Andover, MA, does hereby constitute and appoint:

James J. Axon, David A. Boutiette, Michael F. Carney, Richard F. Caruso, Adam W. DeSanctis, Michael T. Gilbert, Bryan F. Juwa, Gregory D. Juwa, Wilder Parks Jr., Paul A. Patalano

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **BOSTON INDEMNITY COMPANY, INC.**, on the 3rd day of November, 2015 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or othe person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or othe writings obligatory in nature of a bond not to exceed $2,500,000.00, Two Million Five Hundred Thousan dollars which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of suc documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regular elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may I revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney grante and the signature of the Secretary & CEO, and the seal of the Company may be affixed by facsimile to any certificate of any such power and ar such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed ar sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid ar binding on the Company.

IN WITNESS THEREOF, **BOSTON INDEMNITY COMPANY, INC.**, has caused this instrument to be signed by its President, and it Corporate Seal to be affixed this 19th day of November, 2015.

BOSTON INDEMNITY COMPANY, INC. A SOUTH DAKOTA INSURANCE COMPANY

BOSTON INDEMNITY COMPANY, INC.

BY ____________________
Matthew J. Semeraro
President & COO

ACKNOWLEDGEMENT

On this 19th day of November, 2015, before me, personally came Matthew J. Semeraro to me known, who being duly sworn, did depose and say that he is the President of **BOSTON INDEMNITY COMPANY, INC.**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

LEIGH ANNE HAYNIE
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
March 11, 2022

BY ____________________
Leigh Anne Haynie
Notary Public

CERTIFICATE

I, the undersigned, Secretary & CEO of **BOSTON INDEMNITY COMPANY, INC.**, A South Dakota Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Florham Park, NJ this 6th Day of September 20 17.

BOSTON INDEMNITY COMPANY, INC. A SOUTH DAKOTA INSURANCE COMPANY

BY ____________________
Phillip S. Tobey
Secretary & CEO

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance m containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Technical and Management Proposal

Saco River Marine Debris Cleanup Project

Waterways

Submitted to:

The City of Biddeford, ME
P.O. Box 586
Biddeford, ME 04005

Submitted by:

Matthew Plauche
Sr. Vice President, Business Development
Smith Marine, Inc.
PO Box 381
Marblehead, MA 01945

WBE Certified
Supplier Diversity Office

DBE Certified
Supplier Diversity Office

Contents

WBE Certified Supplier Diversity Office

DBE Certified Supplier Diversity Office

INTRODUCTION TO Smith Marine, Inc.

Profile

Incorporated in January 2003, SMI is a Woman Owned Small Business based out of Marblehead, MA. SMI is a self-performing contractor that works throughout the Northeast area under primary NAICS Codes 237990, 532411, 483211, 561990, 483113, 237310 and 488320. Our services include heavy civil and marine construction and ancillary marine support services.

Since our inception in 2003, SMI has completed over 400 projects for a diverse group of clients, many of whom are repeat customers. Our contract values to date exceed $20M. SMI works as a Prime Contractor and a Subcontractor to selective contractors and agencies alike. SMI's client base includes federal, state and local agencies, private commercial entities and general contractors.

SMI Summary

Year Established: **2003**

Business Category: **WBE/DBE/WOSB**

No. of Full-Time Personnel: **12**

Primary NAICS Codes: **237990, 532411**

Service Area: **New England, NY, NJ, VA**

Equipment Fleet Value: **$5M**

Bonding: **$5M Single / $7.5M Aggregate**

Insurance: **$1M / $2M / $10M Umbrella**

People

Understanding that people are our critical resource, we maintain a consistent staff of trained personnel including superintendents, laborers, operators, and Marine professionals. Our fundamental belief is that the most valuable employees endeavor to be challenged to higher levels of performance. These employees maintain a great sense of personal pride in their accomplishments.

Contacts

Robin Smith, CEO
PO Box 381
Marblehead, MA 01945
T. 781-631-4800
F. 781-631-4801
C. 781-910-0501
robin@smithmarineinc.com

Andrew Smith, President
PO Box 381
Marblehead, MA 01945
T. 781-631-4800
F. 781-631-4801
C. 781-983-6900
andy@smithmarineinc.com

Matthew Plauche, Sr. Vice President
PO Box 381
Marblehead, MA 01945
T. 781-631-4800
F. 781-631-4801
C. 978-375-4129
matt@smithmarineinc.com

Our Experience

With a variety of projects, SMI has established itself as an experienced marine contractor. We have demonstrated our ability to execute projects regardless of size or complexity. By self-performing most our work we gain better control of production and safety, both key to a successful project. SMI has proven self-performing experience for the work related to this Request for Proposal:

- Marine Site Work
- Dredging
- Construction services
- Tug and Towing services
- Barge Solutions
- Diving Inspection and repair
- Marine Salvage

In addition, our experience with State and Federal Regulating Agencies in the New England and Mid-Atlantic Regions provides a clear understanding of permitting requirements and expectations.

Service Geography

From the northernmost reaches of Maine to Charleston, SC., Smith Marine has completed projects throughout the northeast. With our principal office located in Marblehead MA, we can service the Site 17 Project site using our internal labor and equipment resources. Due to our local presence, we can quickly mobilize to sites within the entire New England and Mid-Atlantic Regions.

CAPABILITIES

Execution

The SMI Team is a group of seasoned Marine professionals who believe that there is a better approach to the complex marine construction. By clearly defining the project intent, a more objective approach can be implemented. On every project, we challenge ourselves to identify value-engineering initiatives that lower cost, compress schedule, and provide the most practical solution.

Our approach includes self-execution of the majority share of work and utilizing key subcontractors to capitalize on their abilities and resources to provide best value to the Prime Contractor. This allows us to have a higher level of project control while enabling us to utilize our specialty subcontractors as necessary, in the most efficient manner as they support us on multiple phases of the project. We recognize that administrating a structured project management program, from planning through commissioning, is fundamental to good execution.

Construction Capabilities

Marine Construction

SMI has recently completed it's support of the Site 19 Sediment Dredging project at the Newport Naval Station and has also completed many dredging and construction projects for the USACE-NEA as well as public and private entities. SMI has constructed several marine pier, gangway and float facilities including design build projects.

SMI RECENTLY COMPLETED FEDERAL PROJECTS

Project	Client	Owner	Contract Value	Reference
Site 19 Remedial Dredge	RCD-Tetratech	USN-NAVFAC	$3,700,000	Jeff Dulgarian / 401-601-8238
Cohasset Dredge	H2H Associates	USACE-NAE	$61,000	Jennifer Popp / 631-300-6733
PNSY Berth 12 Drilling	Geologic Inc.	UNS-NAVFAC	$130,000	Scott Canning / 508-922-8376
Duxbury Dredge	Cashman	USACE-NAE	$150,000	Corey Welch / 617-692-0992

PAST EXPERIENCE

Project	Client	Owner	Contract Value	Reference
East Providence Drilling	NE Boring Contractors	Global Petroleum	$18,000	Gary Twombly / 508-584-8201
Providence River Borings	S.W. Cole Engineer	National Grid	$52,000	Chad Michaud / 603-620-0417
DFSP Newington NH, Drilling	Geologic, Inc.	Global Petroleum	$35,000	Scott Canning / 508-922-8376
MASSDOT Bridge rehab	NEL Corp	MASSDOT	$38,000	Mike Galasso / 978-777-2085

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Supplier Diversity Office

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Supplier Diversity Office

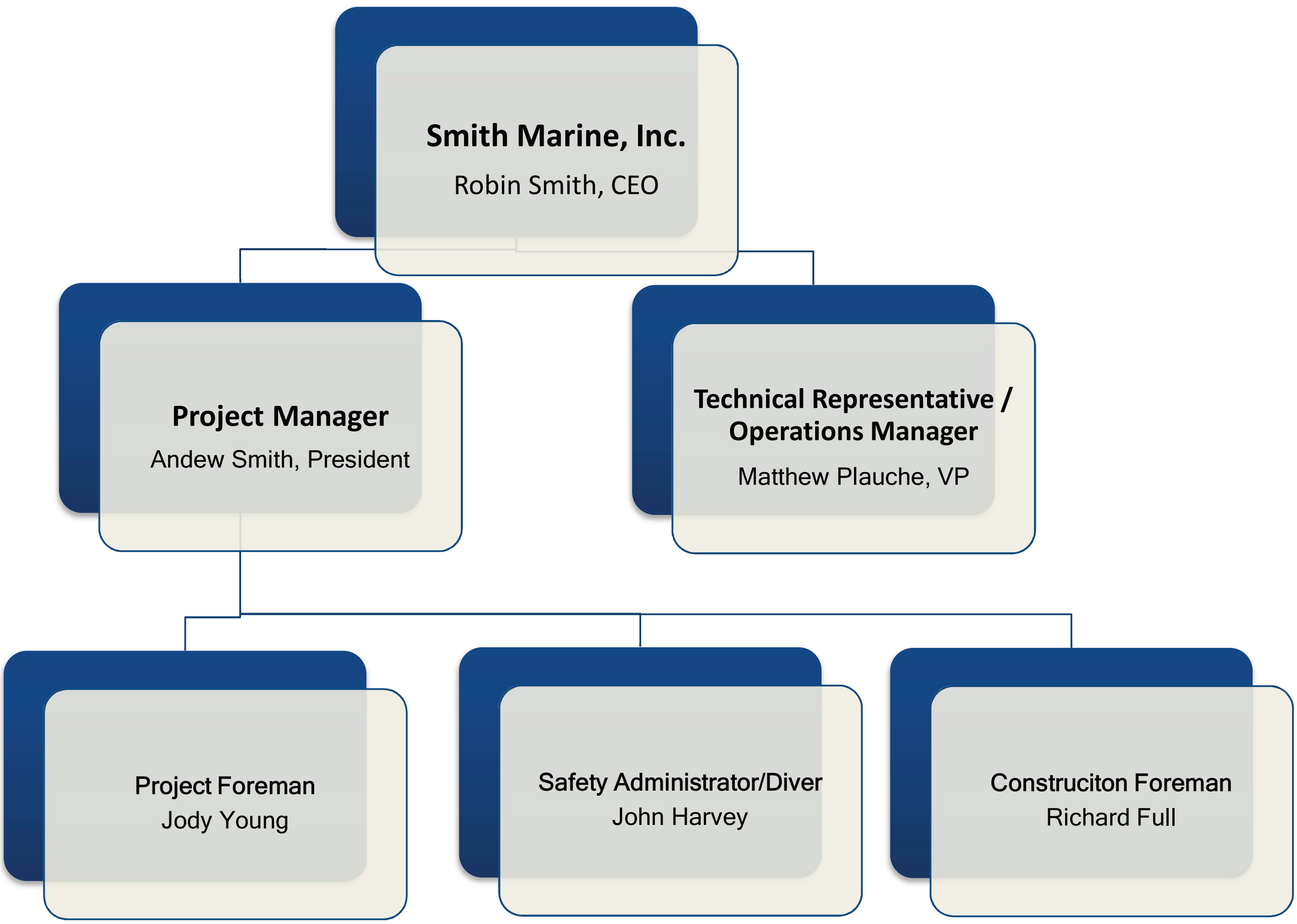
PROJECT STAFF RESOURCES QUALIFICATIONS

Project Staffing and Responsibilities

The key roles for SMI personnel with construction responsibilities are discussed in the following subsections contain resumes of key SMI personnel with primary responsibilities for this project.

Lines of Authority

SMI's project team organization chart to deliver this project is presented below. Our flexible team approach allows us to execute multiple concurrent, staged activities, with the same high quality each time.



SMI has structured our project management organization and processes to meet project requirements related to schedule, documentation, and reporting, while accomplishing the work in a quality and timely manner. The lines of authority are designed to facilitate open communications while maintaining a clear and consistent voice when interacting with the City of Biddeford, ME, Subcontractors and other various agencies and stakeholders on the project.

As a Marine contractor, SMI's role will be to coordinate with the owners representative and other stakeholders as required, manage the logistical requirements, oversee Marine Safety, and successfully execute this project in accordance with the RFP and subsequent work plans to be developed.

Key SMI personnel include Matthew Plauche, Technical Operations Manager, Andrew Smith, Project Manager (PM), Jody Young is our Project Foreman, Richard Full is our Construction Foreman and John Harvey will be the Safety Administrator/Diver for this project.

Technical Operations Manager

Matthew Plauche will be the primary administrative point of contact and shall serve as the Technical Operations Manager. Mr. Plauche has over 32 years of professional commercial marine experience, with 20 years in Project Management positions. Mr. Plauche has extensive experience managing large-scale private and government projects including hazardous waste remediation, marine and shore-side construction, site development, excavation, and demolition. Mr. Plauche will be responsible for collaboration, technical support and logistics for the project.

Project Manager

Andrew Smith shall serve as the Project Manager. Mr. Smith has over 20 years of marine construction experience, with 18 years in the Project Manager role. Mr. Smith has extensive experience managing large-scale private and government projects including hazardous waste remediation, marine and shore-side construction, site development, excavation, and demolition. Mr. Smith is responsible for supervising all project management activities including project planning, construction administration, engineering oversight, cost tracking, health and safety and quality control.

Company Safety Administrator/Diver

John Harvey is the SMI Safety Administrator and will oversee the Company HASP, weekly safety meetings and the OSHA compliance and reporting. Mr. Harvey will also serve as the lead diver for the project.

Project Foreman

Jody Young will serve as our Foreman. Mr. Young has 10 years construction experience on multiple types of construction projects including numerous marine projects, environmental cleanup, site development, waterborne drilling, demolition and is also our Senior Licensed Boat Operator. Mr. Young will be responsible for logistics and daily inspections and operations for the project. The Foreman reports to and receives authority directly from the SMI Project Manager.

Project Construction Foreman

Richard Full has over 20 years as a Construction Superintendent. Mr. Full's vast marine experience on foundations, excavation, form work and timber structures experience on multiple types of vessels and barges including numerous marine projects, environmental cleanup, site development, waterborne drilling and demolition. Mr. Full is also a Class1A Hoisting Engineer. The Foreman reports to and receives authority directly from the SMI Project Foreman.

Resumes

Resumes and documentation for the Smith Marine Personnel will be provided up request.

Lower Tier Subcontractors

None Anticipated

Overall Project Description:

Summary:

SMI has recently updated and re-developed its equipment and capabilities, and has taken the role of contracting to the next level. We are actively reviewing bid opportunities, and feel that the Saco River Marine Debris Cleanup Project fits well within our capabilities and can self-perform with our own equipment and Personnel.

Pending contract award, SMI equipment and personnel are available 24/7 subject to location and prior commitments. SMI pledges to supply, deliver, operate and maintain stable, safe and efficient scope of service for the following:

- Marine-related metalwork fabrication and repair, including but not limited to welding or otherwise fabricating davits, winches, booms, steel barges, gangways and other marine-related woodwork and metalwork.

- Marine salvage, repair and dive inspections, including but not limited to vessel salvage, repair of moorings, removal and installation of pilings and the removal of underwater debris, rigging, etc.

- Repair of any pier components including, but not limited to: decking, ladders, stringers, etc.

- Installation, removal, and maintenance of piers, floats, gangways and barges including, but not limited to, seasonal removal and placement of floats, gangways, and barges or removal and/or storage for storm events

- Installation, maintenance, and repair of moorings, buoys, and utility markers

- Water transport of supplies and equipment, including but not limited to vessel operations for transporting heavy supplies, personnel or equipment to DCR locations requiring access by water, such as the Boston Harbor Islands, Hingham piers, and other DCR locations.

- Towing of disabled boats, etc., in support of DCR maintenance and operations statewide, including the Boston Harbor Islands and other DCR locations within Boston Harbor

- Other unspecified marine-related services, including all supplies and equipment related to services listed above.

SMI crew will maintain daily equipment inspections and reports, safety briefings and job log sheets and will provide copies to The City of Biddeford, ME and others as necessary. All SMI crew have had USCG/DOT physicals, OSHA 10 Construction training, OSHA 40 Hazwoper training, and 8-hour refresher. Work Plan, Health and Safety Plan and other pertinent project plans will be made available after contract award.

A complete description of SMI Equipment is provided in Appendix A.

Proposed Equipment List:

The following table provides a list of equipment SMI anticipates using throughout the contract period.

Equipment Type	Purpose / Intended Use
80'x28'x4' Shallow draft crane barge, 35 Ton crawler crane	Diving platform, Debris Handling, Debris storage.
65'x18'x6' 500HP Tug Boat	Mobilization of barge, fuel storage.
SMI Leader-Heavy Work/safety boat	Mobilization – Setup of Barge
	General Support

Proposed Schedule:

- Bid date, September 6, 2017
- Award – September 15, 2017
- Mobilization – Approximately October 6, 2017
- Base contract Completion – NLT October 31, 2017

80'x28'x4' SPUD / DECK BARGE
"SMI 8028"

INLAND SPUD/DECK CONSTRUCTION BARGE "SMI 8028"

Vessel Particulars: ON 1137783 , Gross/Net Tonnage 75, Deck Capacity 150 Tons
LOA 80', Beam 28', Depth 4', Draft Min 1'6"-Max 3'
(4) 16" Internal Flush Spud wells, 18' Moon well for drilling, (2) 14"x 50' Manual Steel Spuds.
10Kw generator, fuel cell, storage/work box
Office & Storage/workshop with power and LED deck lighting
(15) Compartments, (2) longitudinal bulkheads, (4) transverse Bulkhead
Double Raked , Tire fendering. Low profile catamaran design ideal for shallow work.
Equipped with American 597C; 35 Ton crawler crane, crane mats, Certified Rigging.
Built 2002, recent drydock & update 2016

CONTACT US TODAY FOR RATES AND AVAILABILITY
Visit our website, www.smithmarineinc.com, to see our tugs, barges, cranes, marine access and construction equipment and services.

WBE Certified Supplier Diversity Office

DBE Certified Supplier Diversity Office

Smith Marine, Inc.
PO Box 381
Marblehead, MA 01945
Phone: 781-631-4800
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info@smithmarineinc.com
www.smithmarineinc.com

WBE Certified Supplier Diversity Office

DBE Certified Supplier Diversity Office

65'X18'X6' STEEL HULL HARBOR/COASTWISE UTILITY TUG "TOWLINE"

Smith Marine, Inc., offers the "TOWLINE", a 65' Steel hull, former U. S. Coast Guard Ice Breaking Tugboat as a harbor, coastwise and near coastal Ice Breaking, Utility and Fire-Fighting platform.

Vessel is equipped with the following:

- *CAT D375 Marine propulsion, 500 HP, (2) CAT C 311, 30 KW service generators*
- *Capable of breaking up to 16" of fresh water ice*
- *1000 GPM Fire Pump with 4" monitor, multiple hose manifold— **AFFF** capable*
- *State of the art marine electronics package with redundancy*
- *Radial davit with 2000 lbs capacity for ROV and hoisting operations.*
- *Articulating 8000# A-frame / Hydraulic deck winches (Optional)*
- *Dive ladder and diving deck support*
- *450 Sq. ft. clear deck area, able to customize to project specific needs*
- *300 Sq. ft. below deck research/storage area for equipment, buoys, and gear*
- *Heat, A/C, DVD-TV, CD Stereo (Satellite Data/Phone/Fax/TV Optional)*
- *Max speed 10.5 Knots / Cruising range 3600 nautical miles at 7 knots*
- *Full survival equipment / Liferaft / Survival Suits/ EPIRB / Vessel Tender*
- *Smith Marine's Vessels are outfitted and maintained to exceed USCG Safety standards*

Vessel rates include licensed Captain and crew, fuel and insurance.

Long term options are available at discounted rates.

Visit our website, www.smithmarineinc.com, to see our motorized and truckable barges and other marine access and support equipment and services.

WBE Certified Supplier Diversity Office

DBE Certified Supplier Diversity Office

Smith Marine, Inc.
PO Box 381
Marblehead, MA 01945
Phone: 781-631-4800
Fax: 781-631-4801
E-mail: info@smithmarineinc.com
www.smithmarineinc.com

23'X8'8" ALUMINUM HULL DIVE / UTILITY LANDING CRAFT VESSEL AVAILABLE FOR LEASE OR CHARTER

Smith Marine, Inc., offers the "SMI LEADER", a new custom 23' Aluminum hull, Dive/Utility Landing Craft.

Vessel is equipped with the following:

- *Yamaha 250 HP, Four Stroke outboard*
- *Center Console with full windshield, leaning post*
- *77 Gallons Fuel capacity*
- *Bow drop door for Beach Landing, Environmental Recovery, Diving Operations*
- *3000 lb. Deck payload*
- *8'6" Clear inside deck width*
- *Multiple Equipment Tie-downs*
- *New Garmin GPS Chart-plotter, Depth sounder, VHF*
- *Flood Lights, Deck Lights*
- *Push Knees*
- *Removable Tow Post*
- *Optional Radial davit in any of four corner moon-well*
- *Optional A-Frame forward*
- *Max speed 40 Knots*
- *USCG Safety Package*

Vessel rates include licensed Captain and insurance.
Long term options are available at discounted rates.
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MAC Marine and Charters LLC

Michael Chasse: President

60 Bayview Rd

Saco, Me. 04072

To: The City of Biddeford/Saco

As a resident of Saco, growing up in Biddeford, and being a new business owner of our family's Marston's Marina, I have a vested interest in the success of this cleanup project. Our family has lived on the Saco River for more than 60 years and we want to continue to see it thrive.

Being a small local business owner myself, if awarded this bid, I will utilize all local sub-contractors and businesses to fulfill and complete this job. Preliminary arrangements have already been made with the local transfer station and disposal sites.

Commercial Diving is my passion. I am motivated to be a part in this project and help the city in completing this project. I spent two days diving the cleanup coordinates and have found substantially more anomalies than the 47 listed on the preliminary report. My Bid includes the 47 listed as well as any other debris that has landed in the area that is too large for the dredge to handle.

I have the capabilities, abilities and support to complete this job that is satisfactory for the city. If desired, I can also log all debris removal in high resolution video and sound.

Thank you,

Michael Chasse

Michael Chasse

EXPERIENCE STATEMENT

All questions must be answered with clear and comprehensive data. There is no page limit. This statement must be notarized.

1. Name of Bidder, Michael Chasse / Mac Marine and Charters LLC

2. Permanent Main Office address: 60 Bayview Rd. Saco, Maine 04072

3. When organized: 2014

4. Where incorporated. Florida

5. How many years have you been engaged in the contracting business under your present firm name? Also state names and dates of previous firm names, if any. Since Inception

6. State work of a similar nature to that stated in the Bid Proposal, including references that will assist the Owner to judge experience, skill and business standing: Dive Salvage, Oil Rig Construction / Demolition, US Coast Guard Master Capt., ADC certified OSHA Diver, Certified in Underwater Welding to include cutting and burning. Assist Marston's Marina in setting up and season end Breakdown, Including mooring maintenance and dive work. I was involved with UESI commercial diving on a Florida Power and Light underwater utilities project were we probed for , recovered and raised the electrical underwater Main line then assisted in the splicing and returning of cable to bottom of intracoastal waterway.

7. Contracts on hand. (None at this time.)

8. General character of work performed by your company. Marine Salvage, All types of commercial diving services including lifting and removal/installation of moorings, raising of accidental boat sinkings using underwater lift bags, teamed with dewatering pumps, underwater video, NDT non destructive testing, hull surveys, propeller removal, underwater excavation, pile jetting/driving,

9. In the last 10 years have you ever failed to complete any work awarded to you?___(Yes) X (No) If so, where and why?

10. In the last 10 years håve you ever defaulted on a contract? (Yes) X (No). If so, where and why?

11. List recently executed contracts in excess of $50,000 gross value by your company, stating approximate cost for each, and the month and year completed. N/A

12. List your major equipment <u>available for this contract</u>. Surface supplied diving equipment, Dive support vessels, Lift barge, Winch boat, Equipment barge, excavator, Dump Truck and work floats as needed, underwater chain saw and venturi dredge.

13. List your key personnel such as Project Superintendent and foremen available for this contract. Administrative Manager: Gary Marston, Diver/Tender: Tom McNally, Captain: Jarrod McKenzie, Rigger: Tom Walsh, Laborer: Demitrios Katrones, Laborer:Greg Viola

14.. List any subcontractors whom you would expect to use and the general components of the Project (e.g. divers, debris removal, etc.) for which they will be responsible. Indicate other projects on which the proposed subcontractor has worked with you. Construction Divers Inc. – Divers, Stuart Marine – Barge rental / Debris removal, Southern Maine / Parts and Service, Big Rock Excavation/Debris Hauling and Transport, Marstons Marina / Boat Ramp and forklift services.

15.Name and address of banking institutions with whom you do business. Key Bank, Bank of America, Ocean Communities FCU, all located in Saco.

Do you grant the City of Biddeford permission to contact this (these) institutions? X**(Yes)** (No)

Dated at Bank of America this 6 day of September, 2017

Michael Chasse
(Name of Bidder)

By Michael Chasse

State of Maine S Title Owner

County of York) being duly sworn, deposes and says that he is of

Mac Marine and that the answers to the foregoing

Experience Statement

(Name of Organization) questions and

all statements contained therein are true and correct.

Sworn to before me this 6th day of September 20 17.

(Notary Public)

My commission expires April 7, 2018. Public)

PATRICIA HAYES
NOTARY
PUBLIC
STATE OF MAINE

Project Plan - Saco River Tide Water Marine Debris Cleanup Project 2017

#	What	Who	Start	Finish	Comments
1	Submit experience Statement	Mike and Gary	Sept 5th		
2	Submit Bids and Bond	Mike	Sept 5th		
3	Follow-up on Bid Process	Gary and Mike	TBD	TBD	
4	Project Management and Administration	Gary and Mike	16-Sep		Ongoing
5	Project Mobilization - Initial dive Search and Confirmation of findings	Mike & Crew	18-Sep	19-Sep	
6	Contact City Management about any findings that might impact the project	Gary and Mike / City Mgt	20-Sep	21-Sep	
7	Review/Update Project Plan based on findings	Gary and Mike	25-Sep	27-Sep	Ongoing
8	Project Work Area Setup - Floats, Work Boats and Barge	Mike & Crew	16-Sep	19-Sep	Adjust as required
9	Identify and Setup staging areas for Disposal	Mike & Crew	17-Sep	2-Oct	TBD - eg. City of Biddeford, Saco, Contractor etc.
10	Identify Proper Disposal Business / Locations	Mike & Crew	16-Sep	16-Sep	TBD - eg. City of Biddeford, Saco, Marston's Marina etc.
11	City Review/Update Project Plan based on findings	Gary and Mike	25-Sep	26-Sep	Ongoing / determine if other meetings are needed with City
12	Marine Debris Cleanup Work - Metal	Mike & Crew	22-Sep	23-Oct	
13	Review/Update Project Plan based on findings	Gary and Mike	9-Oct	11-Oct	Ongoing
14	Marine Debris Cleanup Work - Bulky Waste	Mike & Crew	22-Sep	23-Oct	
16	Marine Debris Cleanup Work - Tires	Mike & Crew	22-Sep	23-Oct	
18	Marine Debris Cleanup Work - Wire	Mike & Crew	24-Oct	31-Oct	See Bid #2
19	Review/Update Project Plan based on findings	Gary and Mike	23-Oct	24-Oct	Ongoing
21	Project Demobilization	Mike & Crew		31-Oct	

SACO RIVER MARINE DEBRIS CLEANUP PROJECT
BID PRICING SHEET

GENERAL MARINE DEBRIS CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration		$ 3,000
Project Mobilization/Demobilization		$ 10,000
Marine Debris Cleanup Work		$ 41,600
Disposal Work		
a. Subcontractor(s) fees		$ 21,500
Disposal Fees		
b. Wood Debris (specify unit of measure)[1]	Unit: TON	$ 125.00
c. Metal Debris (specify unit of measure)[1]	Unit: TON	$ 125.00
d. Bulky Waste (specify unit of measure)[1]	Unit: TON	$ 125.00
e. Tires	Unit: Each	$ 35-55 depending on size
Staging area cleanup and disposal site restoration		$ 1500.00
TOTAL PROJECT BID		$ 77,600 plus disposal slips

[1]The unit identified should match the unit measured by the disposal facility in order to directly apply the specified unit to the disposal facility acceptance records in order to calculate disposal cost. For example, if disposal of metal debris is based on tons, the unit specified should be "ton". If disposal of wood debris is based on cubic yards, the unit specified should be "cuyd".

DECOMMISSIONED CABLES CLEANUP AND DISPOSAL

Price for each project category must include the following information:

Project Preparation/Project Management/Project Administration	$ 1,500
Project Mobilization/Demobilization	$ 2,500
Marine Debris Cleanup Work	$ 10,400
Disposal Work	
a. Subcontractor(s) fees	$ 3,500
Disposal Fees	
b. Metal Debris $ per cubic yard OR PER LB (disposal slips)	$ 125 Per Ton
c. Bulky Waste $ per cubic yard (estimated or converted from disposal weight slips)	$ 125 Per Ton
Staging area cleanup and disposal site restoration	$ 1,500
TOTAL PROJECT BID	$ 19,400 plus disposal slips