

REQUEST FOR PROPOSALS

S2009.55

WEST GARDINER TRAVEL PLAZA
TRUCK STOP ELECTRIFICATION SYSTEM

TABLE OF CONTENTS

	<u>PAGE</u>
REQUEST FOR PROPOSALS	R - 1
INTRODUCTION	P - 1
ANTICIPATED SCHEDULE	P - 2
GENERAL SYSTEM REQUIREMENTS	P - 3
PROPOSAL SUBMISSION REQUIREMENTS	P - 4
MAINE TURNPIKE SPECIFICATIONS	SP - 1
APPEDIX A	
OFFER FORM	AP - A1
DISADVANTAGE/WOMEN BUSINESS ENTERPRISE UTILIZATION BID PROPOSAL	AP - A4
SAMPLE CONTRACT AGREEMENT	AP – A5
SAMPLE CONTRACT BOND	AP – A7
SAMPLE FINAL LIEN AND CLAIM WAIVER AND AFFIDAVIT	AP – A8
APPEDIX B	
FEDERAL AND EPA REQUIREMENTS	AP – B1

MAINE TURNPIKE AUTHORITY

REQUEST FOR PROPOSALS

Sealed Proposals will be received by the Maine Turnpike Authority for:

CONTRACT S2009.55

WEST GARDINER TRAVEL PLAZA
TRUCK STOP ELECTRIFICATION SYSTEM

Dear Prospective Proposer:

The Maine Turnpike Authority is soliciting Proposals at the office of the Maine Turnpike Authority, 2360 Congress Street, Portland, ME until 1:00 pm, prevailing time as determined by the Authority on October 22, 2009 for the installation of a Truck Stop Electrification System for 30 trucks at the Authority's West Gardiner Service Plaza. The work consists of installing a truck electrification system for 30 truck parking spaces (parking lot being constructed by others) with a minimum of heating, ventilation and air conditioning to prevent engine idling by heavy duty diesel trucks at the Maine Turnpike West Gardiner Service Plaza. The work includes concrete foundations, furnishing and installing a truck electrification system, setting-up electrical and other utility services, and all other work incidental to and required for an operating truck electrification system.

The Maine Turnpike Authority has received funding for this Project under the American Recovery & Reinvestment Act of 2009 from the United States Environmental Protection Agency (EPA). The Contractor shall comply with the EPA and Federal requirements associated with this Project which are noted in the Contract.

This Project includes a wage determination developed by the State of Maine Department of Labor and also the Federal Davis – Bacon wage rates requirements.

The West Gardiner Service Plaza is located on Rt. 126 in West Gardiner, Maine off the Maine Turnpike (I-95) Exit 102 from the south, Maine Turnpike (I-95) Exit 103 from the north, or from I-295 Exit 51 from the south.

The work area is located at the south end of the existing truck parking area. R.J. Grondin & Sons of Gorham, Maine has been awarded Contract 2009.08 to construct the civil portion of the new truck parking area where the Truck Stop Electrification devices will be installed. They will begin work on or after September 21, 2009. R.J. Grondin & Sons will be installing all conduits beneath the pavement as part of their contract. The layout, size and type of conduits will be determined once the Authority has selected a TSE vendor. Installation of the conduits will begin in April 2010.

For general information regarding Proposals and Contracting procedures, contact Susan Danforth, Purchasing Manager, at (207) 871-7771 Ext. 105. **For Project specific information, fax all questions to Susan Danforth at 207-871-7739 by 5:00 p.m. October 13, 2009.** Responses will not be prepared for questions received by telephone. Proposers shall not contact

any other Authority staff or Consultants for clarification of Contract provisions, and the Authority will not be responsible for any interpretations so obtained.

The Contract and all work shall be governed by the Specifications entitled "State of Maine, Department of Transportation, Standard Specifications, Revision of December 2002", price \$13, (\$16 by mail) "Standard Details, Revision of December 2002" Copies and recent updates to this publications can be downloaded at: www.maine.gov/mdot/contractor-consultant-information/contractor_cons.php.

The Proposer to whom a Contract is awarded will be required to furnish a Surety Corporation Bond, satisfactory to the Authority, on the standard Contract Bond form of the Authority, for a sum not less than the Total Amount of the Contract. The Project does not require a field trailer or bid bond.

No pre-bid conference is scheduled for this Contract.

The Authority reserves the unqualified right to reject any or all Proposals. The Authority intends to enter negotiations with the proposer whose Proposal is determined, upon initial review, to present the best apparent value, based on the product and services proposed and the fee proposed. Selection of a proposer for negotiation in no way guarantees that the selected proposer will be awarded the Contract. The Authority reserves the right to discontinue negotiations with a proposer at any time and to initiate negotiations with any other proposer.

MAINE TURNPIKE AUTHORITY

Susan Danforth
Purchasing Manager
Maine Turnpike Authority

Portland, Maine

INTRODUCTION

Purpose:

The purpose of this Project is to install a truck stop electrification system (TSE) with heating, ventilation, air conditioning and power to provide an alternative to idling by heavy-duty long haul diesel trucks. This is part of a strategic plan to reduce nitrogen oxide (NOx) and fine particulate emissions (PM_{2.5}) caused by idling. Reducing idling will not only save drivers money in fuel costs and truck maintenance, but will improve the environment by saving fossil fuels and reduce air pollution while improving air quality.

General Description of Work

The West Gardiner Service Plaza is located on Rt. 126 in West Gardiner, Maine off the Maine Turnpike (I-95) Exit 102 from the south, Maine Turnpike (I-95) Exit 103 from the north, or from I-295 Exit 51 from the south. The existing service plaza currently has two vendors, HMS Host and CN Brown. Both facilities operate 24-hours per day, seven days per week. The work area is located at the south end of the existing truck parking area.

The Maine Turnpike has awarded Contract 2009.08 for work associated with expanding the existing truck parking lot at the West Gardiner Service Plaza to add an additional 36 truck parking spaces. R.J. Grondin & Sons from Gorham, Maine is the contractor. The work for Contract 2009.08 includes clearing, earthwork, installation of conduits and pull boxes, and paving. The installation of conduits shall not commence until after the selected S2009.55 Contractor (Truck Stop Electrification System) has had an opportunity to provide a plan noting the required conduit and pull box layout to the Authority.

The successful proposer shall enter into Contract S2009.55 with the Maine Turnpike Authority. This Contract shall consist of constructing a truck electrification system for 30 truck parking spaces with a minimum of heating, ventilation, air conditioning and power to prevent engine idling by heavy duty diesel trucks at the Maine Turnpike West Gardiner Service Plaza. The work includes furnishing and installing concrete foundations for TSE units and control panels, furnishing and installing wiring, (conduits provided by 2009.08 Contractor) furnishing and installing control panels, furnishing and installing truck electrification units, utility interface, and all other work incidental thereto in accordance with the signed Contract.

The Maine Turnpike Authority has received funding for these Projects under the American Recovery & Reinvestment Act of 2009 from the United States Environmental Protection Agency (EPA). The Contractor shall comply with the EPA and Federal requirements associated with this Project which are noted in the Contract.

ANTICIPATED SCHEDULE

Contract 2009.08 Construction of Truck Stop Electrification Truck Parking by adjacent contractor (R.J. Grondin & Sons of Gorham, Maine) - provided for information only

August 26, 2009	Advertise Notice to Contractors
September 1, 2009	Deadline for questions
September 8, 2009	Proposals due to MTA
September 9, 2009	MTA board action on Contract award--Awarded
September 21, 2009	Contract Start (on or after) for clearing and earthwork
April 30, 2010	Initiate installation of underground conduits and placement of hot bituminous pavement
July 1, 2010	Contract Completion

S2009.55 Truck Stop Electrification System (TSE System)

September 23, 2009	Advertise Notice to Contractors
October 13, 2009	Deadline for questions
October 22, 2009	Proposals due to MTA
December 4, 2009	MTA to select TSE System (Tentative Date Only – May be Extended by MTA at MTA’s Discretion – Later Dates May be Adjusted Accordingly)
January 10, 2010	Submission by selected TSE System of final site plan with conduit layout
April 15, 2010	Installation of Concrete Foundations Complete
July 1, 2010	Contract Complete & System Operational

GENERAL SYSTEM REQUIREMENTS

At a minimum, truck electrified parking shall allow a truck to shut-off its primary engine, and/or Auxiliary Power Unit (APU) and easily hookup to steam heating, ventilation, air conditioning for in-cab comfort, and in-cab power outlets for driver provided appliances, laptops, etc. External outlets (30 amp receptacle) for block heaters or to run APU are also required. Other amenities and enhancements such as internet and video service, cable TV, UV treated air, smoke detectors, surveillance, and other improvements will be considered.

Other than a vendor provided window adapter, the truck shall not require any modification or additional equipment to use the system, including but not limited to on-board inverters, equipment or interior cab wiring. Combination units with HVAC and shore power are acceptable. Given seasonal weather conditions of the proposed region, a robust HVAC is a required feature. Shore power only solutions will not be considered.

Other required system needs are:

- 1) Emergency shut-off for the TSE unit for the driver outside the cab (on tower/pedestal).
- 2) Low level lighting for driver interaction with TSE unit.
- 3) Ability to track usage of the TSE unit is required for reporting purposes. Occupancy sensors are not required but will be considered.

PROPOSAL SUBMISSION REQUIREMENTS

One (1) clearly labeled original and nine (9) copies of the Proposal are required.

All information pertaining to the applicants approach to meeting the requirements of the RFP shall be organized and presented in the applicant's RFP response as prescribed below.

In preparing the Proposal, the applicant shall provide a response so that it is apparent the applicant has a clear understanding of the scope of work and the key issues associated with performing the required services. In addition, applicant shall include statements covering the applicant's familiarity with the Project and describe unusual conditions or problems that the applicant believes may be encountered. The respondent's views on the challenges and opportunities of the tasks of this Project should be included in this section.

Describe in detail the work plan and mechanics of how the applicant will accomplish the tasks outlined. Special methods, techniques, or personnel required should be covered in detail. Respondents may expand on the generalized outline with specific details of how the tasks could be best accomplished, and, at the option of the respondent, propose additional and/or alternate methods aimed at improving the Project.

Applicants should clearly demonstrate how their understanding of the issues and approach to the Project make them well suited to conduct the work.

Applicants shall provide a response to all the items noted in the below outline.

RFP Response

Each Proposal shall include the following:

1) Section 1 - RFP Response Letter

- a) Not to exceed three (3) pages.
- b) Signed by an individual, or individuals, authorized to bind the applicant contractually.
- c) The name and address of the applicant and any team members.
- d) Name and brief qualifications of the Project Manager.
- e) That the RFP Response will remain valid for a period of 60 days from its submission date and thereafter until the applicant withdraws it, the date is extended in writing between the Authority and the applicant, or a Contract is executed.
- f) The name, title, address, and telephone number of one or more individuals who can respond to requests for additional information, as well as the names of any individual(s) other than the signatory(s) who are authorized to negotiate and execute a Contract on the applicant's behalf.

- 2) **Section 2 - Executive Summary** - Provide an executive summary of the proposed installation and operating procedure. Executive summary should be approximately two (2) pages in length.
- 3) **Section 3 –Qualifications and Ability to Contract**
 - a) Company History and Background
 - i) Note if the Proposer is an EPA Smartway approved vendor.
 - ii) Company history.
 - iii) Bonding capabilities.
 - iv) Discussion of any legal or civil actions taken against the Proposer.
 - v) Suspension or Debarment Status: If the firm, business, or person submitting an offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, State or local government, the Offeror shall include a letter with its offer setting forth the name and address of the government unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Failure to supply the letter or to disclose in the letter all pertinent information regarding a suspension or debarment shall result in rejection of the offer or cancellation of the Contract. The Authority also may exercise other remedies available by law.
 - b) References (Minimum of 3) and list of previous installations. Include contact information for reference (email and telephone numbers).
 - c) Include a signed statement, by an officer of the Company, certifying the following:
 - i) All information is truthful and accurate as of the date of the Proposal.
 - ii) The applicant knows of no legal, contractual, or financial impediment to entering into a Contract.
 - iii) The person signing is legally authorized by the applicant to represent the Company.
- 4) **Section 4 - Technical Proposal** - Items that the applicant does not propose to utilize or install shall be noted. If applicant has additional features or products, they should be included in this section and details should be provided as to why that feature would be to the benefit of this Project.
 - a) Driver interaction.
 - i) Emergency off switch for drivers on tower/pedestal (outside cab).
 - ii) Window adaptor.
 - (1) Discuss if onsite purchase required and how it will be accomplished.
 - (2) Universal?

- (3) Weight of window unit.
 - iii) Cable TV available? (optional).
 - iv) Internet available? (optional)
 - v) Number and Type of electrical outlets in and out of the truck cab.
 - vi) AC- provide BTU's and CFM's.
 - vii) Heat- provide BTU's and CFM's.
 - viii) CO and Smoke detectors provided? (optional).
 - ix) Explain in detail the installation directions for drivers that will be provided and why this TSE system is appropriate for West Gardiner, Maine.
- b) Payment options and methods.
- i) Point of Sale/Options to turn system on
 - (1) Are onsite personal required?
 - (2) Is there a Credit or Debit card payment device on the unit?
 - (3) Will system accept Fleet Cards? Which one(s)?
 - (4) Will the Vendor propose a business relationship with an existing onsite vendor (HMS Host or CN Brown) in order to pay for and turn system on? If so, please expand on this in Section 5 (b) if vendor proposes to establish a long-term relationship with an onsite company (HMS Host or CN Brown) to operate the system.
 - (5) Where would receipts be available?
- c) Driver assistance - how would installer propose that drivers receive assistance with installation or with any questions?
- d) Driver directions and promotion - what signage/directions does the proposer propose to install or utilize?
- e) Description of Unit and operating system.
- i) Please provide information on unit regarding custom parts and "off the shelf" parts.
 - ii) Software license - MTA will require a perpetual license to use the software in connection with the installation and will require that software be held in escrow, the terms of which license and escrow agreements, along with other matters relating to intellectual property, will be negotiated with the proposer once a proposer has been selected for negotiation.
 - iii) Are there any Proprietary issues MTA should be aware of? What are the existing patents or other intellectual property rights, either owned by applicant

or others, in the components of the system? What is the status of any patent applications related to any of these components?

- f) Conceptual Site Plan (MTA has provided an electronic file of the site plan). Conceptual design shall illustrate the following:
 - i) Site layout.
 - (1) Stall and island dimensions.
 - (2) Island dimensions.
 - ii) Provide details on needed electrical conduits as well as all other conduits below pavement required for the system to operate.
 - iii) Foundations and cabinets supports.
 - (1) Protection system.
 - iv) Cabinets (material, size, and locations).
 - (1) Truck cabinets.
 - (2) Electrical and communication service cabinets.
- g) Preliminary Project implementation plan.
 - i) Proposed schedule.
 - ii) Permits (state electrical permit, other).
 - iii) Construction plan.
 - (1) Subcontracting plan.
 - iv) Utility (Electrical, internet, and cable TV).
 - (1) Requirements.
 - v) Commissioning and Testing Plan.
- h) Flexibility of expanding system in future.
- i) System Extras.
 - i) Some examples.
 - (1) Internet.
 - (2) Video service.
 - (3) Cable TV.
 - (4) UV treated air.
 - (5) CO and/or smoke detectors.

- (6) Surveillance system.
- j) System Monitoring.
 - i) Site lighting.
 - ii) Video surveillance (web service or monitor in plaza).
 - iii) Identification of trucks idling (sensors).
 - iv) Presence detectors.
 - v) Provide details on how Usage reports will be provided.
- k) Maintenance Plan.
 - i) Issues with cold weather, snow, and ice conditions.
 - ii) Schedule of routine maintenance.
 - iii) Suggested maintenance plan.
 - iv) Provide details on Plans to train on-site and MTA personnel.

5) Section 5 - System and Project Costs

- a) Applicant shall include the following:
 - i) Cost to furnish and install system.
 - ii) Provide routine maintenance for one (1) year (under warrantee). Note requirement for warranty bond in Section 110.2, Bonding.
 - iii) Provide estimate of detailed cost per hour to run unit as proposed.
- b) Applicant may include a separate plan to operate and maintain the system with a long-term contractual arrangement including profit sharing with the Authority:
 - i) Proposed arrangement with existing onsite service plaza vendors (HMS Host, CN Brown), if needed.
 - ii) Proposed price structure and profit sharing with Authority.
 - iii) Describe how vendor proposes to price product (if operates).
 - iv) Estimate of detailed cost per hour to run unit including maintenance and typical repairs.
 - v) Propose Contract terms.
 - vi) Propose Contract duration.

6) Offer Form

7) Disadvantage/women Business Enterprise Proposed Utilization Form

MAINE TURNPIKE AUTHORITY

SPECIFICATIONS

All work shall be governed by the Maine Department of Transportation Standard Specifications except for that work amended by the following modifications, additions and deletions.

Plans

The drawings included in these Contract Documents, and referred to as the Plans, show the general character of the work to be done under this Contract. They bear the general title "Contract S2009.55, West Gardiner Truck Stop Electrification, Site Plan".

Electronic drawings of these Plans are included for the proposers use.

DIVISION 100 - GENERAL CONDITIONS

100.1 Replacement of Former Standard Specifications and Details

The following paragraphs are added:

The Maine Department of Transportation Standard Specifications Revisions of 2002 as modified herein is referenced and incorporated in all Maine Turnpike Authority Construction Contracts. These Maine Turnpike General Provisions replace all previous Maine Turnpike General Provisions and are additions and alterations to the Maine Department of Transportation Standard Specifications. Maine Department of Transportation Consolidated Special Provisions or corrections, additions, and revisions to their Standard Specifications are not referenced or incorporated unless specifically included in the Contract. Applicable MaineDOT December 28, 2004 Consolidated Special Provisions, corrections, additions, and revisions have been incorporated into this document.

All references to components or employees of the Maine Department of Transportation listed in Column A shall also refer to components or employees of the Maine Turnpike Authority in Column B unless otherwise stated.

<u>A</u>	<u>B</u>
Maine Department of Transportation Department Commissioner Contracts Engineer Contracts Section Chief Engineer Bureau of Project Development	Maine Turnpike Authority Authority Executive Director Purchasing Manager Purchasing Department Director of Engineering Maine Turnpike Authority

SECTION 101 – CONTRACT INTERPRETATION

101.2 Definition

The following definitions are added or revised:

Authority - The Maine Turnpike Authority, a body corporate and politic duly created and existing under and by virtue of an act of the Legislature of the State of Maine, Chapter 69 of the Private and Special Laws of 1941, as amended.

Award - The resolution of the Authority at an official meeting expressly authorizing the Executive Director or his designee to notify the successful Proposer that his/her Proposal has been accepted and that he/she is required to execute the Contract Agreement and to furnish satisfactory Bonds.

Geotechnical Information – Replace with the following: “Boring logs, soil reports, geotechnical design reports, ground penetrating radar evaluations, seismic refraction studies, and other records of subsurface conditions. For a related provision, see Subsection 104.3.14, Interpretation and Interpolation.

Holidays

Christmas Day 2009	12:01 p.m. preceding Thursday to 6:00 a.m. the following Tuesday.
New Year’s Day 2010	12:01 p.m. preceding Thursday to 6:00 a.m. the following Tuesday.
Martin Luther King Day	12:01 a.m. (Midnight) to 11:59 p.m. Martin Luther King Day.
President’s Day	12:01 a.m. (Midnight) preceding Friday to 12:01 p.m. following Tuesday.
Easter	12:01 a.m. (Midnight) preceding Friday to 12:01 p.m. following Monday.
Memorial Day	12:01 p.m. preceding Thursday to 6:00 a.m. following Tuesday.
Independence Day 2010 (Fourth of July)	12:00 p.m. (noon) preceding Thursday to 6:00 a.m. the following Tuesday.
Labor Day	12:01 p.m. preceding Thursday to 6:00 a.m. following Tuesday.
Columbus Day	12:01 a.m. (Midnight) preceding Friday to 12:01 p.m. following Tuesday.

Veterans' Day 12:01 a.m. (Midnight) to 11:59 p.m. Veterans' Day.

Thanksgiving Day 12:01 a.m. (Midnight) preceding Wednesday to 12:01 p.m. following Monday.

Project - The following sentence is added: All the work to be performed under the Contract.

Solicitation - Contract Proposal sent to a select list of Contractors. Solicitations do include a requirement for a bid guaranty (bid bond). Solicitations do not need Maine Turnpike Board Approval for an award.

Turnpike - The entire toll highway, including all approaches, bridges, interchanges, toll facilities, and structures owned by the Maine Turnpike Authority, and authorized by Chapter 69, Private and Special Laws of Maine, 1941, as amended, and located on properties held in the name of the Authority.

Working Day - The Contractor shall not work during the period from 1/2-hour after sunset to 1/2-hour before sunrise, unless otherwise approved by the Resident.

If, after approval, work is performed on a Saturday, Sunday, or a holiday, the day shall be considered a Working Day.

102.6 Bid Guaranty

Bid Guaranty (bid bond) is not required for this Proposal.

102.7.1 Location and Time

The first paragraph is deleted and replaced with the following:

Proposals will be received at the place and time stated in the Notice to Contractors, Solicitation, or Addendum as determined by the Authority. Proposals received after the time for opening of bids will be returned to the Proposer unopened. See also Subsection 102.11, Bid Responsiveness.

SECTION 103 - AWARD AND CONTRACTING

The Authority reserves the unqualified right to reject any or all Proposals. The Authority intends to negotiate with the proposer whose Proposal is determined by the Authority to be the best value. Best value shall be based on the product and services proposed and fee Proposal.

103.3.2 Notice of Determination

The first paragraph is deleted and replaced with the following:

If the Authority determines that a Proposer is “Not Qualified”, the Authority or its representative will notify the Proposer in writing of its determination. The notice will set forth the specific reasons therefore to the extent practical. Such reasons may include the following:

- N. Proposer has previously performed work for the State or for the Authority in an unsatisfactory manner;
- O. Proposer does not have the capacity to perform the required work in the opinion of the Authority;
- P. This Project combined with other projects committed to by the Proposer puts him in excess of his capacity in the opinion of the Authority;
- Q. Reasonable grounds for believing that the Proposer is interested in more than one Proposal for the work contemplated;
- R. Developments arise which, in the opinion of the Authority, adversely affect the Proposer's responsibility; and/or,
- S. Lack of qualifications as determined by the Authority.

The Maine Turnpike Authority Board or Executive Director must approve the Award of a Contract. Once approved, the Contractor will be provided with a “Notice of Award”. See Subsection 103.4.

103.3.3 Appeal

“Commissioner” is replaced with “Chief Operations Officer”.

The third and fourth paragraphs are deleted and replaced with the following:

Within 14 Days of Receipt of such information and arguments, the Chief Operations Officer will notify the Proposer in writing as to whether the decision of “Not Qualified” is upheld, modified, or reversed. The Chief Operations Officer’s decision is final.

After a final determination of “Not Qualified” the Proposer will be ineligible to bid on future MTA Contracts until the Proposer has been determined “qualified” by the Maine Turnpike.

103.4 Notice of Award

This Subsection is deleted and replaced with the following:

Within five days of the Maine Turnpike Authority Board or Executive Director approval of a Contract Award, the Authority will transmit to the successful Proposer a Notice of Award along with the Contract Documents for execution by the Contractor. The Authority has the option of notifying the successful Proposer that the above noted material is available at the Authority for the Contractor to pick up. The Contractor has 20 days following the Notice of Award to deliver to the Authority the signed Contract Documents, required bonds, insurance certificates, and other required information. Once these Documents are submitted to the Authority, the Authority will

execute the Contract. If the Authority does not execute the Contract within 30 days of receipt of all the proper requested information, the successful Proposer may withdraw its bid.

The following sentence is added:

The Maine Turnpike Authority will review the Proposals and determine if interviews are necessary or any further information is required.

103.5.4 Execution of Contract by Proposer

The first sentence is deleted and replaced with the following:

The properly completed and signed Contract Agreement form provided in the Contract Documents constitutes the Proposer's offer.

103.8 Execution of Contract by Department

This Subsection is deleted and replaced with the following:

The Contract will be awarded or Proposals rejected within sixty (60) days from the date of Proposal openings, except that by mutual written agreement between the Proposers and the Authority, the award may be withheld for any length of time.

The Contract shall not be binding until the Contract has been executed by the Authority, nor shall any work be performed on account of the proposed Contract until the Contract has been fully executed and delivered.

SECTION 104 - GENERAL RIGHTS AND RESPONSIBILITIES

104.2.1 Furnishing of Right-of-Way

The first sentence is deleted and replaced with the following:

The Maine Turnpike Authority has secured all necessary rights to real property within the Project limits shown on the Plans.

104.2.2 Furnishing of Permits

The following sentences are added:

The Contractor shall obtain all permits. If a performance bond is required by the Town or City it shall be the Contractor's responsibility to obtain the bond.

At a minimum, State Electrical permit is required from the State of Maine.

See related Subsection 105.8.2, Permit Requirements (Environment).

104.2.3 Authority of Project Manager and Resident

The following sentences are added:

The Resident is not responsible for supervising the construction work and is not responsible for monitoring jobsite safety.

The Resident is not authorized to increase the obligation of the Authority to the Contractor, except as specifically set forth in the Specifications.

104.3.5 Duties Regarding Inspection of Work

The following paragraphs are added at the end of Paragraph A. Safe Access:

The Contractor shall furnish the Resident with every reasonable facility for ascertaining whether or not the work is performed and the materials are furnished in accordance with the requirements and intent of the Contract. Such inspection may include mill, plant or shop inspection. If at any time before acceptance of the work, the Resident requests it in writing, the Contractor shall remove or uncover such portion of the finished work as directed. After examination, the Contractor shall restore said portions of the work to the standards required by the Specifications. Should the work exposed or examined meet the requirements of the Plans and Specifications, the uncovering or removing and the restoration of the uncovered work shall be paid for as Extra Work except that no such payment will be made in those cases for which such removal is required by the Plans and Specifications as a part of the work under the Project. Should the work not meet the requirements of the Plans and Specifications, the uncovering or removing and restoration shall be at the Contractor's own expense. Any work done or materials used without suitable supervision or inspection may be ordered to be removed and replaced by the Contractor without extra compensation.

No Work shall be done at night, on weekends, or legal holidays, without prior notice and approval of the Resident. No night work shall be done until the Contractor has provided an adequate and sufficient source of artificial light to permit examination by the Resident of the suitability of the materials being used and the quality and character of the workmanship.

104.3.8 Wage Rates and Labor Laws

This Project includes wage rates determination developed by the State of Maine Department of Labor and also the Federal Davis – Bacon wage rates requirements. The Contractor shall be required to use the higher of these two rates for each occupation.

Fair Minimum Wages

The hourly wage rate paid to laborers of the General Contractor and all Subcontractors shall not be less than the higher of: the prevailing hourly rate of wages for work of similar character in the State of Maine, as determined by the State of Maine Department of Labor for this Contract or the fair minimum hourly rates required by the federal Davis-Bacon Act, whichever wage rate. The fair minimum hourly rates determined by the State of Maine Department of Labor for this Contract and the federal Davis – Bacon wage rates are included as part of this Contract.

A copy of the Wage Determination(s) shall be provided by the Contractor to all Subcontractors on the Project. In addition, the Wage Determination(s) must be kept posted at the work site by the Contractor and by all Subcontractors at a prominent location, easily accessible by the workers. On a Project where there is no such location, a Contractor may comply with this requirement by providing each worker with a copy of the Wage Determination(s) within the first full day that the worker works on that Project. The Contractor must be able to document that each worker has received a copy of the Wage Determination(s).

Records

The Contractor and all Subcontractors shall keep an accurate record noting:

- The name and occupation of each and all laborers, workmen and mechanics employed by them and all independent Contractors working under Contract to them in connection to the Project;
- Number of hours worked;
- Title of the job;
- Hourly rate or other method of remuneration for the job; and,
- Actual wages or other compensation paid to each of the laborers, workmen, mechanics, and independent Contractors.

A copy of this record must be kept at the jobsite and shall be available at all reasonable hours to the inspection of the Bureau of Labor and/or the Maine Turnpike Authority, its officers and agents. These records must be preserved for a minimum of three years after the completion of the Contract.

A copy of each record must be filed monthly with the Maine Turnpike Authority. This information shall be sent directly to the Maine Turnpike Authority, Director of Engineering and Building Maintenance, Attention: Wage Rate Records, 2360 Congress Street, Portland, ME 04102. The records shall note the Maine Turnpike Contract Number.

The Contractor and all Subcontractors are subject to penalties described in Title 26, Chapter 15 of the Maine Revised Statutes Annotated, for any violations of the Fair Minimum Wage Rates Policy for the State of Maine.

104.3.8 Wage Rates and Labor Laws

The fair minimum hourly rates determined by the State of Maine Department of Labor for this Contract will be issued by Addenda.

DAVIS BACON WAGE RATES

GENERAL DECISION: ME20080009 07/24/2009 ME9

Date: July 24, 2009

General Decision Number: ME20080009 07/24/2009

Superseded General Decision Number: ME20070009

State: Maine

Construction Type: Highway

Counties: Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Waldo and York Counties in Maine.

HIGHWAY CONSTRUCTION PROJECTS excluding major bridging (for example: bascule, suspension and spandrel arch bridges; those bridging waters presently navigating or to be navigatable; and those involving marine construction in any degree); tunnels, building structures in rest area projects and railroad construction.

Modification Number	Publication Date
0	02/08/2008
1	06/06/2008
2	07/25/2008
3	06/12/2009
4	07/24/2009

ENGI0004-015 04/01/2009

	Rates	Fringes
Power equipment operators:		
Pavers.....	\$ 18.53	9.06
Rollers.....	\$ 18.53	9.06

* SUME2000-008 10/24/2000		
	Rates	Fringes
CARPENTER.....	\$ 11.60	1.51
Ironworkers:		
Structural.....	\$ 12.03	1.58
Laborers:		
Drillers.....	\$ 10.00	2.50
Flaggers.....	\$ 7.25	
Guardrail Installers.....	\$ 7.92	
Landscape.....	\$ 7.87	.16
Line Stripper.....	\$ 8.69	.23
Pipelayers.....	\$ 9.21	2.31
Rakers.....	\$ 9.00	1.51
Sign Erectors.....	\$ 10.00	
Unskilled.....	\$ 8.66	1.38

Wheelman.....	\$ 8.50	.43	Power equipment operators:
Backhoes.....	\$ 11.87	2.05	
Bulldozers.....	\$ 12.33	2.88	
Cranes.....	\$ 14.06	1.75	
Excavators.....	\$ 12.38	2.48	
Graders.....	\$ 13.06	3.73	
Loaders.....	\$ 11.41	2.87	
Mechanics.....	\$ 13.18	2.57	
Truck drivers:			
Dump.....	\$ 9.35	3.10	
Tri axle.....	\$ 8.70	1.18	
Two axle.....	\$ 8.56	2.19	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

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)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

104.4.6 Utility Coordination

This Subsection is amended by the addition of the following:

The following utilities are provided for information:

Electric - Central Maine Power (CMP)
Telephone - Fairpoint Communications
Cable TV - Time Warner Cable

The Contractor shall allow access to the Verizon Cell Tower throughout the length of this Contract.

104.4.7 Cooperation With Other Contractors

The Contractor shall note that other contracts will be (or has been) awarded for work adjacent to this Contract and these shall be considered adjacent Contracts. The Contractor shall cooperate with other Contractors and the Resident so that all work can be completed in a safe and timely manner. The Resident may direct the Contractor to revise the work or schedule based on work that is ongoing in the adjacent contract. The Contractor's Superintendent or Project Manager shall attend coordination meetings with the Resident and the adjacent Contractors at least once every two weeks. All Contractors bear the full responsibility of cooperation and coordination with each other in the planning and scheduling of construction activity. The Resident's responsibility for coordination is limited to the timely dissemination of all schedules and information submitted by adjacent Contractors. Neither the Resident, nor the Maine Turnpike Authority, shall bear any responsibility for costs resulting from a Contractor's failure to submit all information as required. Issues and concerns not presented for review and discussion at joint Contractor meetings will not later be cause for claims. This cooperation shall be completed at no additional cost to the Authority.

All work associated with this Contract, and the work associated with the construction of the truck parking area, are considered adjacent contracts.

SECTION 105 - GENERAL SCOPE OF WORK

Scope of Section

The last paragraph is deleted and replaced with the following:

The Maine Turnpike Authority has received funding for this Project under the American Recovery & Reinvestment Act of 2009 from the United States Environmental Protection Agency (EPA). The Contractor shall comply with the EPA and Federal requirements associated with this Project noted in Appendix A.

105.2.3 Joint Duty Regarding Safety

This Subsection is amended by the addition of the following:

Nothing in the foregoing paragraphs shall be construed as relieving the Contractor from full responsibility for safe prosecution of the work at all times. The Resident is not responsible for jobsite safety.

The following Subsection is added:

105.2.4.1 Lockout/Tagout Procedures

Prior to the start of work, the Contractor and the Maine Turnpike Authority shall exchange and review the other party's Lockout/Tagout Procedures for the control of hazardous energy. If the Lockout/Tagout Procedures are similar and neither party has concerns, the two parties shall agree to abide by the procedures of the other party. Only the authorized individual who locked or tagged-out a circuit or piece of equipment is permitted to remove the lockout/tagout, except as provided for in the respective Lockout/Tagout Procedures.

Should either the Contractor or the Maine Turnpike Authority have concerns with the other party's Lockout/Tagout Procedures, the Safety Officers of the Contractor and the Maine Turnpike Authority shall meet, discuss and resolve the areas of concern. The Authority reserves the right to have the Contractor comply with the restrictions and prohibitions of the Maine Turnpike Authority's Lockout/Tagout Procedures if the Authority determines the Contractor's Lockout/Tagout Procedures are inadequate to protect the Authority's employees and patrons.

105.2.4 Compliance With Health and Safety Laws

The following sentence is added:

The Contractor shall provide the minimum number of porta-potties as specified in OSHA regulations, for all his construction employees at a location approved by the Resident.

105.6 Construction Surveying

This Subsection is deleted in its entirety and replaced with the following:

105.6.1 Department Provided Services

The Authority will provide the Contractor with the description and coordinates of vertical and horizontal control points, set by the Authority, within the Project Limits.

105.6.2 Contractor Provided Services

Utilizing the survey information and points provided by the Authority, described in Subsection 105.6.1, Authority Provided Services, the Contractor shall provide all additional survey layout necessary to complete the work. This may include, but not necessarily be limited to, reestablishing all points provided by the Authority, establishing additional control points, running axis lines, providing layout and maintenance of all other lines, grades, or points, and survey quality control to ensure conformance with the Contract. The Contractor is also responsible for providing construction centerline, or close reference points, for all Utility Facilities relocations and adjustments as necessary to complete the work. When the work is to connect with existing structures, the Contractor shall verify all dimensions before proceeding

with the work. The Contractor shall employ or retain competent engineering and/or surveying personnel to fulfill these responsibilities.

The Contractor must notify the Authority of any errors or inconsistencies regarding the data and layout provided by the Authority as provided by Subsection 104.3.3, Duty to Notify Department If Ambiguities Discovered.

105.6.2.1 Quality Control

The Contractor is responsible for all construction survey quality control. Construction survey quality control is generally defined as, first, performing initial field survey layout of the work and, second, performing an independent check of the initial layout using independent survey data to assure the accuracy of the initial layout; additional iterations or checks may be required if significant discrepancies are discovered in this process. Construction survey layout quality control also requires written documentation of the layout process such that the process can be followed and repeated, if necessary, by an independent survey crew.

105.6.3 Quality Assurance

It is the Authority's prerogative to perform construction survey quality assurance. Construction survey quality assurance may, or may not, be performed by the Authority. Construction survey quality assurance is generally defined as an independent check of the construction survey quality control. The construction survey quality assurance process may involve physically checking the Contractor's construction survey layout using independent survey data, or may simply involve reviewing the construction survey quality control written documentation. If the Authority elects to physically check the Contractor's survey layout, the Contractor's designated surveyor may be required to be present. The Authority will provide a minimum notice of 48-hours to the Contractor, whenever possible, if the Contractor's designated surveyor's presence is required. Any errors discovered through the quality assurance process shall be corrected by the Contractor, at no additional cost to the Authority

The following submissions are required:

- Project master schedule
- Updated schedules as required
- Shop Drawings
- Spill Prevention Control and Countermeasure (SPCC) Plan

105.7.4 Submittal Requirements

The second paragraph is deleted and replaced with the following:

For the first and subsequent submittals, the Contractor shall submit a minimum of seven (7) sets of drawings to the Resident on the size sheets required unless otherwise directed by the Resident.

As-built drawings including a wiring plan prior to final acceptance. Three (3) sets are required.

Operation and Maintenance manuals, three (3) sets for all system install components shall be submitted prior to final acceptance.

105.8.1 Temporary Soil Erosion and Water Pollution Control

This Subsection in the General Provisions is deleted and replaced with the following:

The Contractor shall certify in writing to the Resident that an On-Site Responsible Party (OSRP) has been trained and is knowledgeable in erosion and sediment control (ECS) through the MaineDEP's Non-Point Source Training Center, or an equivalent program, or is licensed in the State of Maine as a Professional Engineer, Landscape Architect, or Soil Scientist.

Spill Prevention Control and Countermeasure (SPCC) Plan

Any areas where petroleum products, oils or non-petroleum hazardous materials are handled or stored will require a Spill Prevention Control and Countermeasure (SPCC) Plan. The Plan will be submitted to the Resident before construction begins. The Plan shall provide the following information at a minimum:

1. The name and emergency response numbers (telephone number, cellular phone and pager numbers, if applicable) of the Contractor's representative responsible for spill prevention and response;
2. Description of handling or storage location noting setbacks from water bodies where relevant. Significant sand and gravel aquifers and other sensitive resources must be avoided wherever possible;
3. Description of storage and containment facilities;
4. Description of equipment and/or materials used to prevent discharges (including sorbent materials);
5. Preventative measures to minimize the possibility of a spill; and,
6. Contingency plan if spill should occur.

The approved plan must be posted at the Project site. All personnel working in the area are required to read and be familiar with the plan.

There shall be no separate payment for preparation of a SPCC Plan acceptable to the Resident and preparation shall be incidental to the work.

Notification of Authority of Hazardous Material Spills

In addition to MaineDEP reporting requirements for spills greater than five (5) gallons, the Contractor shall notify the on-site Resident Inspector. The on-site Resident Inspector shall notify the Maine Turnpike Radio Room at 207-871-7701. When the on-site Resident Inspector is not available, the Contractor shall notify the Maine Turnpike Radio Room directly at 207-871-7701.

In addition to MaineDEP reporting requirements for all spills where any stream or water body is threatened, the Contractor shall notify the on-site Resident Inspector. The on-site Resident Inspector shall notify the Maine Turnpike Radio Room at 207-871-7701. When the on-site Resident Inspector is not available, the Contractor shall notify the Maine Turnpike Radio Room directly at 207-871-7701.

These notification procedures shall be incorporated into the Spill Prevention Control and Countermeasure (SPCC) Plan.

Responsibility for Control and Cleanup of Hazardous Material Spills

The Contractor shall be responsible to control spills and properly cleanup, containerize, and dispose of petroleum and/or other hazardous material waste that results from the actions and/or equipment of the Contractor or his employees, subcontractors, and suppliers.

The Contractor shall also be responsible for all direct and indirect costs associated with the control of spills and proper cleanup, containerization, and disposal of petroleum and/or other hazardous material waste that results from the actions and/or equipment of the Contractor or his employees, subcontractors, and suppliers.

The following Subsections are added:

105.8.1.1 Environmental Standards

The Project will be performed in accordance with the MaineDOT Best Management Practices (BMP) latest issue. The Contractor shall fully comply with all erosion and sedimentation control requirements outlined in the BMP's or contained herein. Non-compliance with these requirements as determined by the Resident shall result in a financial penalty of \$1,000 per day, per violation. Any fines assessed to the Maine Turnpike Authority as a result of the Contractor's non-compliance shall be paid by the Contractor. If the Contractor fails to pay, the cost of the fine will be deducted from monies due, or which may become due, to the Contractor under this Contract.

In the event of conflict between these Specifications and other erosion and pollution control laws, rules or regulations of other Federal, State and local agencies, the more restrictive law, rules or regulations shall apply.

The standards as described below shall be met on the Project:

105.8.1.11 Water Pollution Control Requirements

(a) General

1. The Contractor must comply with the applicable Federal, State and local laws and regulations relating to prevention and abatement of water pollution.
2. Except as allowed by an approved permit or otherwise authorized by the Authority in writing, pollutants containing construction debris including excavated material, aggregate, residue from cleaning, sandblasting or painting, cement mixtures, chemicals, fuels, lubricants, bitumens, raw sewage, wood

chips, and other debris shall not be discharged into water bodies, wetlands or natural or manmade channels leading thereto and such materials shall not be located alongside water bodies, wetlands, or such channels such that it will be washed away by high water runoff.

The following Subsections are added:

105.10.2 Requirements Applicable to all Contracts

The following is added after Paragraph (A), Maine Code of Fair Practice and Affirmative Action, Paragraph 4).

The Maine Turnpike Authority is an equal opportunity employer and as such requires all Contractors to pursue in good faith affirmative action programs.

THEREFORE;

The Contractor hereby agrees to the following requirements:

1. The Contractor will pursue an affirmative action program which includes procedures designed to increase the numbers of minorities, women, and handicapped at all levels and in all segments of the workforce where imbalances exist. Such a program should include an assessment of the existing situation, and the development of realistic goals for necessary actions. These goals and related procedures and timetables should not require rigid quotas but are commitments which the Contractor should make every good faith effort to achieve.
2. In connection with Contracts in excess of \$250,000, the Contractor will insure contractually that all Subcontractors shall also pursue an affirmative action program meeting the above requirements. The Contractor shall also ensure contractually that all Subcontractors with Contracts in excess of \$50,000 pursue an affirmative action program meeting the above requirements.
3. An affirmative action program will provide that no Contractor and/or Subcontractor will discriminate against an employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap unless based upon a bona fide occupational qualification. Such action shall include, but not necessarily be limited to, the following; employment, upgrading, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay and compensation, and selection for training and apprenticeship.

Paragraph (D), Prevention of Sexual Harassment, is deleted and replaced with the following:

Contractors are responsible, under Maine State Law, for ensuring and maintaining a work environment that is free from sexual harassment. The Contractor shall comply with all relevant provisions of Maine State Law in regard to sexual harassment including, but not necessarily limited to, 5 MRSA 4572, 26 MRSA 806-807 and the regulations of the Maine Human Rights Commission.

Subsections 105.10.2 (E), DBE Reporting Requirements, and (F), Certification of Continuing EEO Efforts, are deleted and not replaced.

SECTION 106 – QUALITY

106.3.4 Storage

This Subsection is amended by the addition of the following:

The Contractor shall be responsible for the security of all storage areas. Materials and supplies that are stolen, damaged or otherwise made unacceptable while in storage shall be replaced in kind at the Contractor's own expense.

SECTION 107 – TIME

107.1 Contract Time and Contract Completion Date

This Subsection is amended by the addition of the following:

Work on the site shall commence on or before December 18, 2009 at the discretion of the Authority, and all work shall be completed on or before July 1, 2010.

The following Subsection is added:

107.4.7 Limitations of Operations

The Contractor shall minimize impacts to the existing truck parking area. All truck parking spaces and travel lanes shall be accessible to the traveling public during the life of the Contract.

107.7.2 Schedule of Liquidated Damages

The table of liquidated damages is deleted and replaced with the following:

Original Contract Amount From More Than	Original Contract Amount up to and Including	Amount of Liquidated Damages per Calendar Day
\$0	\$100,000	\$100
\$100,000	\$300,000	\$200
\$300,000	\$500,000	\$400
\$500,000	\$1,000,000	\$575
\$1,000,000	\$2,000,000	\$750
\$2,000,000	\$4,000,000	\$900
\$4,000,000	and more	\$1,875

This Subsection is amended by the addition of the following:

At the option of the Authority, the Contractor may be held responsible for all costs incurred by the Authority which are due to any work that remains incomplete after the time specified for the completion of the Contract, in addition to the daily calendar day charge.

SECTION 108 - PAYMENT

108.2.1 Generation of Progress Payment Estimates

The first paragraph is deleted and replaced with the following:

Progress payments will be made based on an MTA accepted schedule of values submitted by the Contractor to the MTA on a monthly basis.

108.2.2 Payment

The first two sentences are deleted and replaced with the following:

The Maine Turnpike Authority will make payment within 30 days of Contractor and MTA concurrence of progress payment.

The Maine Turnpike Authority will make 100% payment to the Contractor within 30 days of Contractor and Authority concurrence on final acceptance.

108.6 Taxes, Fees, Allowances, and Notices

This Subsection is amended by the addition of the following:

The Maine Turnpike Authority, an agency of the State of Maine, is exempt from payment of sales tax, under the present Maine Sales Tax Law, on any property purchased by it at retail for consumption. The Maine Tax Bureau has interpreted this to mean that all materials purchased by the Contractor which ultimately remain the property of the Maine Turnpike Authority, even though in a changed form, are not subject to the sales tax.

108.8 Final Payment

This Subsection is amended by the addition of the following:

Before final payment is made, the Contractor shall furnish to the Authority, on the forms prescribed (Sheet F-1), a sworn affidavit to the effect that no claims are pending. If such affidavit that claims have been paid cannot be given because of a dispute as to the amount or legality of such claim, the Contractor's affidavit shall clearly set out the facts as to the name, address, amount and nature of the dispute. The Authority will review the matter and will make payment that the Authority deems is appropriate to the Contractor.

SECTION 110 - INDEMNIFICATIONS, BONDING AND INSURANCE

This Section of the Maine Department of Transportation Standard Specifications is deleted and replaced by the following:

Scope of Section - This Section contains general requirements for indemnification, bonding, and insurance by the Contractor.

110.1 Indemnification - The Contractor agrees to indemnify, defend, and hold harmless the Department and its officers, directors, employees, agents and consultants from and against all claims, actions, torts, costs, losses, and damages, including but not limited to claims for bodily injury (including sickness, disease, or death), property damage, and claims of infringement of patents or other intellectual property rights arising out of or relating to this Contract or the performance of work by the Contractor and its Subcontractors, subconsultants, Engineers, suppliers, any individuals or entities directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excepting only claims directly and solely caused by the negligence of the Department. Damages covered include, but are not limited to, all Dispute resolution costs including court costs, attorney's fees, and the fees of Engineers and consultants, arbitrators, and other professionals related to Dispute defense and preparation.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor, subconsultant, Engineer, supplier, or other individual or entity under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

110.2 Bonding

110.2.1 Bonds

Surety Corporation Bond

The proposer to whom the Contract is awarded shall furnish a satisfactory to the Authority, on the form of the Contract Bond bound herewith, as security for the faithful performance of the work. The Contract Bond must be executed or countersigned on the part of such Surety by the Resident Agent of the Surety for the State of Maine.

The Bond shall be in an amount not less than the Total Amount bid in the Proposal and shall be maintained by the Contractor until the final payment under the Contract is made. In the event of insolvency of the Surety, the Contractor shall forthwith furnish and maintain as above provided, other security satisfactory to the Authority.

If the Contractor is unable to continue the work, then the completion of the Contract shall be the sole responsibility of the Surety. The Surety shall assume the role of and become the Contractor. Work shall not commence until the Authority has approved, in writing, the Subcontractors employed by the Surety. All work to complete the Contract will be paid for at Contract bid prices as shown on the Proposal bid sheets. All payments made by the Authority will be paid directly to the Surety who in turn will then pay the Subcontractors and suppliers. Regardless of the amounts previously paid to the Contractor as Progress Estimates for work reported to have been put in place by the Contractor or his Subcontractors, the full Scope of the

Contract Work shall be completed by the Surety and its designates for compensation not to exceed the Contract Price less the aggregate of prior payments to the Contractor.

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time of performance, quality, warranties, and the Department's self-help remedy provided in Section 112.1, Default, to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by these bonds, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-day period constitutes the Surety's waiver of any right to deny or contest payment and the Surety's acknowledgment that the claim is valid and undisputed.

If the Surety becomes financially insolvent or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified of such change.

For a related provision, see Section 106.9.4, Other Warranty Provisions.

Warranty Bond

The Contractor shall provide a signed, valid, and enforceable Performance, Warranty, or Maintenance Bond complying with the Contract, to the MTA at Final Acceptance.

The Bond shall be in the full amount for all parts of the TSE system, made payable to the Maine Turnpike Authority.

The Contractor shall pay all premiums and take all other actions necessary to keep said Bond in effect for the duration of the one (1) year warranty period. Warranty period starts at MTA final acceptance of the Project. If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new Bonds complying with this Subsection and within 10 Days of the date the Contractor is notified or becomes aware of such change.

All Bonds shall be procured from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Business Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

By issuing a Bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time for performance, quality, warranties, and the MTA's self help remedy as provided in Subsection 112.1, Default, to the same extent as if all terms of the Contract are contained in the Bond(s). The terms and conditions of the warranty bond will be based on the Proposers Maintenance Plan accepted by the MTA and included in the final contract.

Regarding claims related to any obligations covered by the bond, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-day period constitutes the Surety's waiver of any right to deny or contest payment and the Surety's acknowledgment that the claim is valid and undisputed.

110.3 Insurance

The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Department of Business Regulation, and Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

Each policy shall be signed by the President and Secretary of the insurance company and shall be countersigned by a licensed Resident Agent of the State of Maine as an authorized representative of the company.

Before work is commenced pursuant to the Agreement, the Contractor shall file with the Authority a Certificate of Insurance, executed by an insurance company or companies satisfactory to the Authority and licensed or approved by the State of Maine Department of Business Regulation, Bureau of Insurance to do business in the State of Maine, stating that the Contractor carries insurance in accordance with the requirements of the Contract.

If at any time, any of the said policies shall be or become unsatisfactory to the Authority, the Contractor shall promptly obtain new and satisfactory policies and furnish certificates therefore as required above. All policies shall contain a valid provision or endorsement providing that the insurance company will notify the Authority in writing at least thirty (30) days prior to the termination of any policy or before any changes are made in any policies. The policy shall also indicate which exclusions have been deleted and any additional coverage.

Neither approval by the Authority, nor a failure to disapprove insurance furnished by a Contractor, shall release the Contractor of full responsibility for liability, damages and accidents as set forth herein.

No separate payment shall be made for any insurance that the Contractor may be required to carry, but all costs thereof shall be included in the prices bid for the various items scheduled in the Proposal.

The following Subsection is added:

110.3.05 Umbrella Liability

An Umbrella Liability Policy in excess of Employer's Liability, General Liability, and Automobile Liability shall be provided with a limit of \$1,000,000.

110.3.1 Workers' Compensation

For all operations performed by the Contractor and any Subcontractor, the Contractor and each Subcontractor shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers' coverage.

110.3.2 Commercial General Liability

With respect to all operations performed by the Contractor and any Subcontractors, the Contractor and any Subcontractors shall carry commercial general liability insurance in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the Aggregate. The coverage must include products, completed operations, and Contractual liability coverage, and Insurance Services Office (ISO) form #CG25031185 or equivalent. The Contractual liability insurance shall cover the Contractor's obligations to indemnify the Authority as provided in this Contract including Section 110.1 - Indemnification. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the work involves such exposures.

110.3.3 Automobile Liability

The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be \$1,000,000.00 per occurrence.

110.3.4 Professional Liability

The first sentence is deleted and replaced with the following:

Contractors who engage in design work, preliminary engineering work and environmental consulting work for the Authority shall maintain a Professional Liability policy for errors and omissions with a minimum limit of liability of \$5,000,000. The Authority reserves the right to require increased insurance limits for certain major Projects.

110.3.8 Administrative & General Provisions

A. Additional Insured - Each policy with the exception of Workers' Compensation and Professional Liability insurance shall name the Authority as an additional named insured. The Maine Turnpike Authority Contract Number shall be clearly stated on each policy.

B. Defense of Claims - Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify, and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even if groundless.

C. Primary Insurance - The insurance coverage provided by the Contractor shall be primary insurance with respect to the State, its officers, agents, and employees. Any insurance or self-

insurance maintained by the State for its officers, agents, and employees is in excess of the Agent's insurance and shall not contribute with it.

D. Reporting - Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the State, its officers, agents, and employees.

E. Separate Application - The insurance provided by the Contractor shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

SECTION 111 - RESOLUTION OF DISPUTES

111.1.2 Escalation Process

This Subsection is deleted and replaced with the following:

To resolve Issues and Disputes, the Contractor and the Maine Turnpike Authority will develop a Decision Matrix at the preconstruction or partnering meeting. If an issue is not resolved, the matter becomes a Dispute and is eligible for settlement by an Alternate Dispute Resolution (ADR) process as outlined in this Section. Either the Authority or the Contractor may request an ADR process. If a Contractor is dissatisfied with an ADR recommendation, the decision may be appealed to the MTA Executive Director. A decision by the MTA Executive Director may be appealed to either Mediation or Arbitration. All costs of ADR, including Neutral Evaluations, Dispute Review Boards (DRBs), Mediation or Arbitration shall be shared equally.

Alternative Dispute Resolution

Preliminary ADR:

The purpose of the optional use of ADR is to assist the consenting parties to resolve disputes in a manner that complies with the Contract that is fair, impartial, less expensive, faster and less formal than litigation. A Project issue becomes a Dispute eligible for ADR only when mutually acceptable resolution can not be achieved within the Decision Matrix-prescribed time period at the level of the Authority's Chief Operating Officer (COO), and the Contractor Principal.

The Contractor and the Authority shall select a mutually acceptable form of Preliminary ADR from the following options, with the preference expressed in the order of listing.

1. **NEUTRAL EVALUATION:** Jointly selected by the disputing parties, the Neutral would conduct a third party, neutral investigation of both sides of the dispute, resulting in the submission of a Report of Recommended Settlement to the disputing parties.
2. **DISPUTE REVIEW BOARD (DRB):** The parties would jointly select two to three mutually acceptable experts who would hear and weigh a presentation of positions and evidence by the parties; resulting in the issuance by the DRB of a Recommended Settlement of the matter.

Recommendations by either a Neutral or a DRB will be non-binding unless the parties mutually agree in writing at the time of process selection that such recommendations will be binding.

Appeal to the Executive Director:

If either party rejects a recommendation resulting from ADR, the Dispute may be appealed to the Executive Director of the Authority. Once a dispute has been submitted to ADR, no party shall discuss the elements of the dispute with the Executive Director.

Final ADR - Mediation or Arbitration:

At the request of the Contractor, appeal decisions rendered by the Executive Director may be appealed by the Contractor to a Final ADR process of either Mediation or Arbitration. The costs of Mediation or Arbitration shall be borne equally by the Contractor and the Authority. Decisions by either a Mediator or an Arbitrator(s) will be non-binding unless the parties mutually agree in writing at the time of process selection that such recommendations will be binding.

NOTE: It is the intent of this Specification to retain maximum flexibility for the specific procedures for either Preliminary or Final Alternative Dispute Resolution. The processes shall follow the guidelines of construction industry ADR practices in general. The Authority and the Contractor will contribute equal input to the selection of location, methods, experts and timing of such processes. When a Dispute Review Board is utilized, the Authority and the Contractor shall have equal veto power in the selection of DRB composition.

111.1.8 Commissioner Communications Before Appeal

This Subsection is deleted and not replaced.

111.2 Project Level Negotiation to 111.6 Judicial Review

These Subsections (inclusive) are deleted and not replaced.

SPECIAL PROVISION

SECTION 203

EXCAVATION AND EMBANKMENT

203.11 Construction of Earth Embankment - Layer Method

The second, third, and fourth paragraphs are deleted and replaced with the following:

The Contractor shall comply with the following for all back fill of excavations.

Layers shall be placed in lifts not to exceed eight inches after compaction. Gravel shall be compacted using vibratory compaction equipment to 98 percent of the material's maximum dry density as determined by ASTM D-1557. The compacted material shall appear firm and stable. Strict moisture control shall be utilized by the Contractor when using a cohesive fill material and the moisture content of the compacted material should not exceed four percent above the material's optimum moisture content.

SPECIAL PROVISION
SECTION 502
STRUCTURAL CONCRETE

502.01 Description

The following sentences are added:

Concrete Foundations for the Truck Stop Electrification System shall conform to the following minimum requirements:

Foundations shall be designed by the Contractor and submitted to the MTA for approval.

All concrete shall be Class A (min 4350 psi).

All reinforcing steel shall be epoxy coated and shall have a minimum of two inches of cover.

All foundation edges shall be chamfered.

All exposed concrete shall be treated with a clear protective coating. Protective coating shall be Stand Off SLX100 Water and Oil Repellant as manufactured by ProSoCo, Inc. or an approved equal.

SPECIAL PROVISION

SECTION 652

MAINTENANCE OF TRAFFIC

(General)

652.2.5 Safety Vests

This Subsection is amended by the addition of the following:

All jobsite personnel shall wear a safety vest labeled as ANSI 107-2004 standard performance for Class 2 risk exposures. This requirement also applies to truck drivers and equipment operators when out of an enclosed cab.

PART III – APPENDIX A

OFFER FORM

REQUEST FOR PROPOSALS
S2009.55

WEST GARDINER TRAVEL PLAZA
TRUCK STOP ELECTRIFICATION

TO MAINE TURNPIKE AUTHORITY:

The work consists of constructing a truck electrification system for 30 truck parking spaces (constructed by others) with a minimum of heating, ventilation and air conditioning to prevent engine idling by heavy duty diesel trucks at the Maine Turnpike West Gardiner Service Plaza. The work includes concrete foundations, furnishing and installing a truck electrification system and all other work incidental thereto in accordance with the Plans and Specifications.

The West Gardiner Service Plaza is located off the Maine Turnpike Exit 102 in the Town of West Gardiner, Maine. The work area is located at the south end of the existing truck parking area.

This Work will be done under a Contract known as Contract S2009.55 according to the Plans and Specifications agreed to and accepted by the Maine Turnpike Authority and the Proposer.

After entering into a Contract with the Authority, the undersigned will give the required bond with good security conditioned for the faithful performance of said Work for the consideration named and with the further condition that the Maine Turnpike Authority shall be saved harmless from any and all damages that might accrue to any person, persons or property by reason of the carrying out of said Work, or any part thereof, or by reason of negligence of the undersigned, or any person or persons under his employment and engaged in said Work.

Acknowledgment is hereby made of the following Addenda received since issuance of the Plans and Specifications: _____

It is agreed that time is of the essence of this Contract and that I (we) will, in the event of my (our) failure to complete the Work within the time limit named above, pay to Maine Turnpike Authority liquidated damages in the amount or amounts stated in the Specifications.

The undersigned is an Individual/Partnership/Corporation under the laws of the State of _____, having principal office at _____, thereunto duly authorized.

_____ (SEAL)

_____ (SEAL)

*Affix Corporate Seal
or Power of Attorney
Where Applicable*

_____ (SEAL)

By: _____

Its: _____

Information below to be typed or printed where applicable:

INDIVIDUAL:

_____	_____
(Name)	(Address)

PARTNERSHIP - Name and Address of General Partners:

_____	_____
(Name)	(Address)

_____	_____
(Name)	(Address)

_____	_____
(Name)	(Address)

_____	_____
(Name)	(Address)

INCORPORATED COMPANY:

_____	_____
(President)	(Address)

_____	_____
(Vice-President)	(Address)

_____	_____
(Secretary)	(Address)

_____	_____
(Treasurer)	(Address)

DISADVANTAGE/WOMEN BUSINESS ENTERPRISE

PROPOSED UTILIZATION FORM

This bid assurance identifies the certified D/WBE firms which the Proposer intends to use in meeting the D/WBE goal of this Project.

Proposers who do not comply accordingly will find their bid rejected.

D/WBE 5.45% Goal

CONTRACTOR: _____ TELEPHONE: _____

CONTACT PERSON: _____ FAX: _____

EMAIL: _____

BID PRICE: \$ _____ BID DATE: ____/____/____

PROJECT LOCATION: _____

TOTAL DBE _____ % PARTICIPATION FOR THIS SUBMISSION

W B E•	D B E•	Non- DBE	Firm Name	Item Number or Description of Work	Quantity	Cost per Unit/Item	Actual \$-Value
TOTAL							

Contractors must make a good faith effort to include Certified DBE firms in all aspects of the Project. If no DBE firms are to be part of this Project, a detailed explanation is required. Attach supporting evidence to the maximum participation of DBEs on this Project. This is a requirement. This evidence must include name of firm(s) contacted, date contacted, and outcome of solicitation.

*Signature _____ Date: _____

*Signature indicates statement of intended utilization is accurate and reflects the Proposer’s good faith efforts.

Contractor to Submit a schedule of Value for Work as Proposed.

MAINE TURNPIKE AUTHORITY

MAINE TURNPIKE

YORK TO AUGUSTA

SAMPLE CONTRACT AGREEMENT

This Agreement made and entered into between the Maine Turnpike Authority, and sometimes termed the "Authority", and _____

_____ herein termed the "Contractor":

WITNESSETH: That the Authority and the Contractor, in consideration of the premises and of the mutual covenants, considerations and agreements herein contained, agree as follows:

FIRST: The parties hereto mutually agree that the documents attached hereto and herein incorporated and made a part hereof collectively evidencing and constituting the entire Contract to the same extent as if herein written in full, are the Notice to Contractors, the Accepted Proposal, (ATTACH FINAL ACCEPTED PROPOSAL) the Specifications, the Plans, this Agreement, the Contract Bond and all Addenda to the Contract Documents duly issued and herewith enumerated:

SECOND: The Contractor for and in consideration of certain payments to be made as hereafter specified, hereby covenants and agrees to perform and execute all of the provisions of this Contract and of all documents and parts attached hereto and made a part thereof, and at his own cost and expense to furnish and perform everything necessary and required to construct and complete, ready for its intended purpose, in accordance with the Contract and such instructions as the Engineer may give, acceptable to the Authority, in the times provided, all of the Work covered and included under Contract No. _____ covering _____ as herein described.

THIRD: In consideration of the performance by the Contractor of his covenants and agreements as herein set forth, the Authority hereby covenants and agrees to pay the Contractor according to the Schedule of Prices set forth in the Proposal with additions and deductions as elsewhere herein provided in the times and in the manner stated in the Specifications. This Agreement shall insure to the benefit of, and shall be binding upon the parties hereto, and upon their respective successors and assigns; but neither party hereto shall assign or transfer his interest herein in whole or in part without the consent of the other, except as herein provided.

IN WITNESS WHEREOF the parties to this Agreement have executed the same in quintuplicate.

AUTHORITY -

MAINE TURNPIKE AUTHORITY

By: _____

Title: Executive Director

Date of Signature: _____

ATTEST:

Secretary

CONTRACTOR -

CONTRACTOR

By: _____

Title: _____

Date of Signature: _____

WITNESS:

SAMPLE CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS that _____
of _____ in the County of _____ and State of _____
as Principal, and _____ a Corporation duly organized under
the laws of the State of _____ and having a usual place of business in _____

As Surety, are held and firmly bound unto the Maine Turnpike Authority in the sum of _____ Dollars (\$_____.____),
to be paid to said Maine Turnpike Authority, or its successors, for which payment, well and truly
to be made, we bind ourselves, our heirs, executors, successors and assigns jointly and severally
by these presents.

The condition of this obligation is such that the Principal, designated as Contractor in the
foregoing Contract No. _____ shall faithfully perform the Contract on his part and
satisfy all claims and demands incurred for the same and shall pay all bills for labor, material,
equipment and all other items contracted for, or used by him, in connection with the Work
contemplated by said Contract, and shall fully reimburse the Obligee for all outlay and expense
which the Obligee may incur in making good any default of said Principal, then this Obligation
shall be null and void; otherwise it shall remain in full force and effect.

Signed and sealed this _____ day of _____, A.D., 200__

Witnesses:

CONTRACTOR

_____ (SEAL)

SURETY

_____ (SEAL)

(Surety must attach copy of Power of Attorney showing authority of Office or Agent to execute bonds)

SAMPLE FINAL LIEN AND CLAIM WAIVER AND AFFIDAVIT

Upon receipt of the sum of _____, which sum represents the total amount paid, including the current payment for work done and materials supplied for Project No. _____, in _____, Maine, under the undersigned's Contract with the Maine Turnpike Authority.

The undersigned, on oath, states that the Final Payment of _____ is the final payment for all work, labor, materials, services and miscellaneous (all of which are hereinafter referred to as "Work Items") supplied to the said Project through _____ and that no additional sum is claimed by the undersigned respecting said Project.

The undersigned, on oath, states that all persons and firms who supplied Work Items to the undersigned in connection with said Project have been fully paid by the undersigned for such Work Items or that such payment will be fully effected immediately upon receipt of this payment.

In consideration of the payment herewith made, the undersigned does fully and finally release and hold harmless the Maine Turnpike Authority, and its Surety, if any, from any and all claims, liens or right to claim or lien, arising out of this Project under any applicable bond, law or statute.

It is understood that this Affidavit is submitted to assure the Owner and others that all liens and claims relating to the Work Items furnished by the undersigned are paid.

(Contractor)

By: _____

Title: _____

State of MAINE

County of _____

I, _____, hereby certify on behalf of _____
(Company Officer) (Company Name)

its _____, being first duly sworn and stated that the foregoing representations are
(Title)

are true and correct upon his own knowledge and that the foregoing is his free act and deed in said capacity and the free act and deed of the above-named _____.
(Company Name)

The above-named, _____, personally appeared before me this ____ day of _____ and swears that this is his free act and deed.

(SEAL)

Notary Public

My Commission Expires: _____

PART IV – APPENDIX B
FEDERAL AND EPA REQUIREMENTS

SUSPENSION AND DEBARMENT

Contractor shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Contractor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transaction" includes a term or condition requiring compliance with Subpart C.

By signing and delivering a bid, the Proposer certifies compliance with the above note requirement.

STATE AGENCIES AND POLITICAL SUBDIVISIONS

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) contractor shall comply with the requirements set forth therein. Regulations issued under RCRA Section 6002 apply to any acquisition of an item on an EPA designated list of items where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

INSPECTOR GENERAL REVIEWS

In addition to the access to records provisions of 2 CFR 215.53 or 40 CFR 31.42, and in accordance with the provisions of section 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the contractor agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the contractor or any of its subcontractors or sub grantees, that pertain to, and involve transactions relating to, the procurement contract, subcontract, grant or sub grant; and (2) interview any officer or employee of the contractor or subcontractor regarding such transactions.

The Contractor is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

The Contractor should be aware that the findings of any review, along with any audits, conducted by an inspector general of a Federal department or executive Agency and concerning funds awarded under ARRA shall be posted on the inspector general's website and linked to www.recovery.gov, except that information that is protected from disclosure under sections 552 and 552a of title 5, United States Code may be redacted from the posted version.

RETENTION OF RECORDS

Contractor must retain all records required to be kept by this contract, including but not limited to this appendix, for a period of three years after final payment and must make these records available to the Authority or the EPA upon request.

REPORTING REQUIREMENTS

The Maine Turnpike Authority will be required to submit reports to the EPA on financial and technical aspects of this Project and this Project is also subject to reporting requirements under the American Recovery and Reinvestment Act of 2009 and 2 CFR 176.50. Contractor agree to cooperate with the Authority in supplying all records necessary to meet reporting and other compliance requirements to which the Authority is required to comply.

PROTECTION OF WHISTLEBLOWERS

In accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (Act), recipient agrees that employees of non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

REQUIRED USE OF AMERICAN-IRON, STEEL, AND MANUFACTURED GOODS

Section 1605 of the Recovery Act (Division A, Title XVI, Subtitle D, §1605) states that none of the funds made available under the Recovery Act may be used for a Project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the Project are produced in the United States.

For the purposes of this Buy American term and condition as applied to diesel emissions reduction Projects conducted pursuant to DERA. EPA has determined that this term and condition applies to Projects involving the construction, alteration, maintenance or repair of Truck Stop Electrification (TSE) facilities and Projects for the construction, alteration, maintenance or repair of heavy generators (such as those used in public energy production) which are considered to be public works when a governmental entity is conducting the Project.

If a recipient encounters a unique situation that presents uncertainties regarding Buy American applicability, the recipient must discuss the situation with EPA before procuring iron, steel, or manufactured goods for the Project.

Required use of American Iron, Steel, and Manufactured Goods (not covered under International agreements) – Section 1605 of the American Recovery and Reinvestment Act of 2009.

The following award term applies to Projects for the construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements:

(a) **Definitions.** As used in this award term and condition - "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the Project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable accepted materials or indicate "none"]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b) (2) of this term and condition if the Federal government determines that-

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the Project is unreasonable when the cumulative cost of such material will increase the cost of the overall Project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b) (3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- 9B) Unit of Measure;

- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the Project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or

manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a Project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a Project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of Measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

Required use of American Iron, Steel, and Manufactured Goods (covered under International agreements) – Section 1605 of the American Recovery and Reinvestment Act of 2009.

The following award term applies to Projects for the construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements:

(a) **Definitions.** As used in this award term and condition - "Designated Country"—

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

"Designated country iron, steel, and/or manufactured goods" --

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has-been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

"Domestic iron, steel, and/or manufactured good" –

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it "vas transf0111ed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

"Foreign iron, steel, and/or manufactured good" means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured goods.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State,

regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) This award term and condition implements

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the Project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the Project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to Projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

(3) The requirement in paragraph (b) (2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable accepted materials or indicate "none"]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b) (3) of this award term and condition if the Federal government determines that

(i) The cost of domestic iron, steel, and/or manufactured goods would be immeasurable. The cost of domestic iron, steel, and/or manufactured goods used in the Project is immeasurable when the cumulative cost of such material will increase the overall cost of the Project by more than 25 percent;

(ii) The iron, steel, and/or manufactured goods is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy America Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of Measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

- (F) Location of the Project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.
- (iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a Project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal government determines after funds have been obligated for a Project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.
- (d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of Measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

CIVIL RIGHTS

Recipients and sub recipients of Recovery Act funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on recipients and sub recipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

Contractor agrees to comply with all applicable civil rights laws and regulations and, if requested, to cooperate fully with the Maine Turnpike Authority's to assist its own compliance with civil rights laws and regulations.

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE

Contractor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33. The Fair Share goals for this contract, in accordance with 40 CFR Part 33, are as follows:

MBE: COMBINED 1.11%

WBE: COMBINED 4.34%

By submitting a bid for this contract, the contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as the Maine Turnpike Authority.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the prime contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or Proposals for a minimum of 30 calendar days before the bid or Proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBE's when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS

The contractor agrees to cooperate fully with the Maine Turnpike Authority in order to satisfy the requirements of the EPA's equal opportunity and non-discrimination requirements, including but not limited to compliance with the contract administration provisions of 40 CFR, Section 33.302, as follows ("recipient" as used in this section means "the Authority"):

- (a) The prime contractor agrees to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- (b) Recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.
- (d) The prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.
- (e) The prime contractor must provide EPA Form 6100-2--DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.
- (f) Prime contractor must require its DBE subcontractors to complete EPA Form 6100-3--DBE Program Subcontractor Performance Form. Prime contractor must include all completed forms as part of the prime contractor's bid or Proposal package.
- (g) Prime contractor must complete and submit EPA Form 6100-4--DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or Proposal package.
- (h) Copies of EPA Form 6100-2--DBE Program Subcontractor Participation Form, EPA Form 6100-3--DBE Program Subcontractor Performance Form and EPA Form 6100-

4--DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

EQUAL OPPORTUNITY CLAUSE

The 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 40 CFR Part 33 in the award and administration this contract. 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 other legally available remedies.

During the performance of this contract, the contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR 60), including but not limited to the following requirements:

- (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 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, 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 procedures 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 subcontractor 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 provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor 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.

DAVIS-BACON AND COPELAND ACT CLAUSE

The Contractor will comply with the Copeland Act, 18 U.S.C. 874 and the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), as supplemented in Department of Labor regulations (29 CFR Parts 3 and 5), included but not limited to the following requirements:

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), 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 regulations issued 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 equivalents 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 (a)(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 § 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 paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The contractor will ensure that

the name of the MTA employee responsible for monitoring compliance with the Davis-Bacon Act (which name will be supplied by the MTA) will be included on the poster.

(ii)(A) 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 EPA Award Official 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 EPA Award Official 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 to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 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 EPA Award Official or will notify the EPA Award Official 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 MTA do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the EPA Award Official shall refer the questions, including the views of all interested parties and the recommendation of the EPA Award Official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the EPA Award Official or will notify the EPA Award Official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, 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 MTA, upon written request of the EPA Award Official or 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 Davis-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 subcontractor 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 the work, all or part of the wages required by the contract, the EPA 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 section 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 cost 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 (MTA, which will maintain the records on behalf of the EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under *29 CFR 5.5(a) (3)(i)*, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the MTA, for transmission to the EPA, if requested by the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor

to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the MTA.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor 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 provided under § 5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or 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 (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor 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 subcontractor shall make the records required under paragraph (a) (3) (i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor 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, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 subcontractor'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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor 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 subcontractors), the MTA, the EPA, 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.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act including but not limited to the following requirements:

(1) Overtime requirements. No contractor or subcontractor 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 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) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such

contractor and subcontractor 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) of this section, 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) of this section.

(3) Withholding for unpaid wages and liquidated damages. The MTA, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor 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 subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

(5) Any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

COMPLIANCE VERIFICATION

- (1) The contractor shall allow the MTA to periodically interview a sufficient number of employees entitled to Davis Bacon prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a) (6), all interviews must be conducted in confidence. The MTA will use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (2) The MTA shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis Bacon posed by contractors or subcontractors

- and the duration of the contract or subcontract. At a minimum, the MTA must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The MTA must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis Bacon. The MTA shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (3) The MTA shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The MTA shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the MTA must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The MTA must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis Bacon. In addition, during the examinations the MTA shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (4) The MTA shall periodically review contractors and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (5) The MTA must immediately report potential violations of the Davis Bacon prevailing wage requirements to the EPA and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

INTELLECTUAL PROPERTY

Rights to inventions made under this contract are subject to federal patent and licensing regulations which are codified at 37 CFR Part 401. Pursuant to the Bayh-Dole Act (35 USC 200-212), the EPA retains the right to a worldwide, nonexclusive, irrevocable, paid license to practice the invention "elected by" the managing and operating contractor, as defined in the Act. Contractor furthermore understands and agrees that the EPA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the copyright in any work developed under this contract.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the contractor will be deemed to have stipulated as follows:

- (1) That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et. Seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15), is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (2) That the contractor agrees to comply and remain in compliance with all the requirements of the Clean Air Act, including but not limited to section 306 (42 U.S.C. 1857(h)) thereof, and the Federal Water Pollution Control Act, including but not limited to section 508 (33 U.S.C. 1368) thereof, and all regulations and guidelines listed there under.
- (3) That the contractor shall promptly notify the Maine Turnpike Authority of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- (4) That the contractor agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract and further agrees to take such action as the Authority may direct as a means of enforcing such requirements.

ENERGY POLICY AND CONSERVATION ACT

Contractor agrees to comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the state of Maine's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).