

**15641.00 SANDY BAY TOWNSHIP**  
**12 GAUGE STEEL POLYMER COATED**  
**CULVERTS**

**Updated 10/18/2007**

**MAINTENANCE & OPERATIONS**

# **STATE PROJECT**

## BIDDING INSTRUCTIONS

1. Complete the bid forms with pen and ink.
2. The following are to be completed and returned with the bid:
  - a. A copy of the Notice to Contractors
  - b. A completed Appendix A “Schedule of Items”
  - c. Two (2) copies of the completed and signed “Contract To Purchase, Supplies, Materials and/or Pursuant to 23 MRSA § 52” form
  - d. The completed Contractor Information Sheet
3. For security and other reasons, all Bid Packages which are mailed to Maine Department of Transportation, 16 State House Station, Augusta, Maine 04330-0016, shall be provided in double (one envelope inside the other) envelopes. The *Inner Envelope* shall have the following information provided on it:

Bid Enclosed - Do Not Open

Title:

Town:

Date of Bid Opening:

Name of Contractor with mailing address and telephone number:

In Addition to the usual address information, the *Outer Envelope* should have written or typed on it:

Double Envelope: Bid Enclosed

Title:

Town:

Date of Bid Opening:

Name of Contractor:

Hand-carried Bids may be in one envelope, and should be marked with the following information:

Bid Enclosed: Do Not Open

Title:

Town:

Name of Contractor:

4. If a paper Bid is to be sent, Federal Express overnight delivery is suggested as the package is delivered directly to the DOT Headquarters Building in Augusta located at 24 Child Street in Augusta. Other means, such as U.S. Postal’s Service Express Mail has proven not to be reliable.

January 30, 2004  
Supercedes February 11, 2003

## NOTICE

**The Maine Department of Transportation is attempting to improve the way Bid Amendments/Addendums are handled, and allow for an electronic downloading of bid packages from our website, while continuing to maintain a planholders list.**

**Prospective bidders, subcontractors or suppliers who wish to download a copy of the bid package and receive a courtesy notification of project specific bid amendments, must provide an email address to Diane Barnes or Mike Babb at the MDOT Contracts mailbox at: [MDOT.contracts@maine.gov](mailto:MDOT.contracts@maine.gov). Each bid package will require a separate request.**

**Additionally, interested parties will be responsible for reviewing and retrieving the Bid Amendments in their bids using the Acknowledgement of bid Amendment Form.**

**The downloading of bid packages from the MDOT website is not the same as providing an electronic bid to the Department. Electronic bids must be submitted via <http://www.BIDX.com>. For information on electronic bidding contact Larry Childs at [Larry.Childs@maine.gov](mailto:Larry.Childs@maine.gov).**

## **NOTICE**

### Bidders:

Please use the attached “Request for Information” form when faxing questions and comments concerning specific Contracts that have been Advertised for Bid. Include additional numbered pages as required. Questions are to be faxed to the number listed in the Notice to Contractors. This is the only allowable mechanism for answering Project specific questions. Maine DOT will not be bound to any answers to Project specific questions received during the Bidding phase through other processes.



## **Vendor Registration**

Prospective Bidders must register as a vendor with the Department of Administrative & Financial Services if the vendor is awarded a contract. Vendors will not be able to receive payment without first being registered. Vendors/Contractors will find information and register through the following link –

<http://www.maine.gov/purchases/vendorinfo/vss.htm> .

## CONTRACTOR INFORMATION

\_\_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name and Title Printed)**

\_\_\_\_\_  
**(Contractor Name)**

\_\_\_\_\_  
**Vendor Customer Number**

### Mailing Address:

\_\_\_\_\_  
**Street/PO Box                      City                      State                      Zip**

\_\_\_\_\_  
**phone                      fax                      email**

**Sole Proprietorship - Partnership - (circle one)**

**Corporation – Company - Association - Estate - (circle one)**

**STATE OF MAINE DEPARTMENT OF TRANSPORTATION  
NOTICE TO CONTRACTORS**

Sealed Bids addressed to the Maine Department of Transportation, Augusta, Maine 04333 and endorsed on the wrapper "Bid for "STEEL POLYMER COATED CULVERTS" will be received from contractors at the Reception Desk, Maine DOT Building, Child Street, Augusta, Maine, until 11:00 o'clock A.M. (prevailing time) on **May 7, 2008**, and at that time and place publicly opened and read. **We now accept electronic bids for those bid packages posted on the bidx.com website. Electronic bids do not have to be accompanied by paper bids. Until further notice dual bids (one paper, one electronic) will be accepted, with the paper copy taking precedence.**

Description: **STEEL POLYMER COATED CULVERTS (as per Appendix A-Itemized List) PIN#15641.00**

Location: **Delivered to Jackman, Maine**

Outline of Work: **Supply Steel Polymer Coated Culverts for MaineDOT maintenance**

Bids (quotes) are requested

For general information regarding Bidding and Contracting procedures, contact Scott Bickford at (207)624-3410. Our webpage at <http://www.state.me.us/mdot/project/design/homepg.htm> contains a copy of the Plan Holders List, written portions of bid amendments, and bid results. For Project-specific information fax all questions to **Gail MacMunn** at (207)624-3431. Questions received after 12:00 noon of Friday prior to bid date will not be answered. **There will be no Bid Bond, Performance Bond or Payment Bond required.** Bidders shall not contact any other Departmental staff for clarification of Contract provisions, and the Department will not be responsible for any interpretations so obtained. Hearing impaired persons may call the Telecommunication Device for the Deaf at 888-516-9364.

Bid proposal packages are available at <http://www.maine.gov/mdot/comprehensive-list-projects/project-information.php> Bid proposal packages can also be obtained at no cost at the MaineDOT building in Augusta, Maine or by telephone at 207-624-3536 between the hours of 8:00 A.M. and 4:30 P.M.

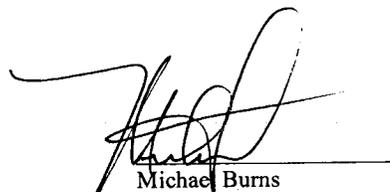
Each Bid must be made upon blank forms provided by the Department

This Contract is subject to all applicable Federal Laws.

All work shall be governed by "State of Maine, Department of Transportation, Standard Specifications, Revision of December 2002", price \$10 [\$13 by mail], and Standard Details, Revision of December 2002, price \$20 [\$25 by mail] Standard Detail updates can be found at <http://www.state.me.us/mdot/project/design/homepg.htm>

The right is hereby reserved to the MDOT to reject any or all Bids.

Augusta, Maine  
April 16, 2008

  
\_\_\_\_\_  
Michael Burns  
Assistant Director  
Maintenance and Operations

**SPECIAL PROVISION 102.7.3**  
**ACKNOWLEDGMENT OF BID AMENDMENTS**

With this form, the Bidder acknowledges its responsibility to check for all Amendments to the Bid Package. For each Project under Advertisement, Amendments are located at <http://www.maine.gov/mdot/comprehensive-list-projects/project-information.php> It is the responsibility of the Bidder to determine if there are Amendments to the Project, to download them, to incorporate them into their Bid Package, and to reference the Amendment number and the date on the form below. The Maine DOT will not post Bid Amendments any later than noon the day before Bid opening without individually notifying all the planholders.

Amendment Number	Date

The Contractor, for itself, its successors and assigns, hereby acknowledges that it has received all of the above referenced Amendments to the Bid Package.

**CONTRACTOR**

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of authorized representative

\_\_\_\_\_ (Name and Title Printed)

CONTRACT TO PURCHASE SUPPLIES, MATERIALS AND/OR  
EQUIPMENT FOR A SPECIFIC PROJECT  
PURSUANT TO 23 MRSA § 52

Pursuant to 23 M.R.S.A. §52, and in consideration of the mutual promises set forth in this Contract (hereinafter "Contract"), the State of Maine Department of Transportation ("Department" or "MaineDOT") with its principal office located at Child Street, Augusta, Maine, and a mailing address of 16 State House Station, Augusta, Maine 04333-0016, enters into this Contract with \_\_\_\_\_ ("Contractor"). The Contractor is, a corporation or other legal entity organized under the laws of the State of Maine \_\_\_\_\_ and its principal place of business is located at \_\_\_\_\_, with a mailing address of \_\_\_\_\_ and a telephone number as follows: \_\_\_\_\_.

The Vendor Customer Number of the Contractor is \_\_\_\_\_.

The following attachments are hereby incorporated into this Contract by reference:

- Appendix A – Description of Materials, Supplies, Equipment and Bid Price
- Appendix B – Special Provisions for Purchase of Project Materials

The Department and the Contractor, hereby agree as follows:

**A. Deliverables.**

The Contractor agrees to provide the following materials, supplies and/or equipment known as **POLYMER COATED CULVERTS** more specifically described in Appendix A, for use in Maine Department of Transportation Project Identification No. **15641.00 SANDY BAY TOWNSHIP.**

**B. Time.**

This Contract becomes effective on the date last signed below. The Contractor agrees to deliver said materials, supplies, or equipment on or before **JUNE 26, 2008.** This Contract expires December 31, 2008.

**C. Price.**

The prices given in **Appendix A** will be used as the basis for determining the original Contract amount.

**D. Contract Documents.**

This Contract may be amended, modified, or supplemented in writing only. If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy related to the Contract, the Contractor must notify MaineDOT of the ambiguity or waive claims resulting from any such ambiguity. In the case of ambiguity the following components of the Contract shall control in the following descending order of priority:

Contract  
Appendix B – Special Provisions for Purchase of Project Materials  
Appendix A - Description of Materials, Supplies, Equipment and Bid Price  
Any remaining appendices in alphabetical order.

It is agreed and understood that this Contract is comprised of, and will be governed by, the documents listed above.

**E. Certifications.**

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

1. All of the statements, representations, covenants, and/or certifications required or set forth in Appendix A are accurate as of the date of this Contract.
2. The Contractor certifies that it has not been debarred, suspended, declared ineligible or voluntarily excluded from contracts by the Federal Government or any state agency within the last 3 years.
3. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
4. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Title Printed)

**F. Award.**

Your offer is hereby accepted. The Contract amount is\_\_\_\_\_. This award consummates the Contract.

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
  
\_\_\_\_\_  
(Name and Title Printed)

CONTRACT TO PURCHASE SUPPLIES, MATERIALS AND/OR  
EQUIPMENT FOR A SPECIFIC PROJECT  
PURSUANT TO 23 MRSA § 52

Pursuant to 23 M.R.S.A. §52, and in consideration of the mutual promises set forth in this Contract (hereinafter "Contract"), the State of Maine Department of Transportation ("Department" or "MaineDOT") with its principal office located at Child Street, Augusta, Maine, and a mailing address of 16 State House Station, Augusta, Maine 04333-0016, enters into this Contract with \_\_\_\_\_ ("Contractor"). The Contractor is, a corporation or other legal entity organized under the laws of the State of Maine \_\_\_\_\_ and its principal place of business is located at \_\_\_\_\_, with a mailing address of \_\_\_\_\_ and a telephone number as follows: \_\_\_\_\_.

The Vendor Customer Number of the Contractor is \_\_\_\_\_.

The following attachments are hereby incorporated into this Contract by reference:

- Appendix A – Description of Materials, Supplies, Equipment and Bid Price
- Appendix B – Special Provisions for Purchase of Project Materials

The Department and the Contractor, hereby agree as follows:

**A. Deliverables.**

The Contractor agrees to provide the following materials, supplies and/or equipment known as **POLYMER COATED CULVERTS** more specifically described in Appendix A, for use in Maine Department of Transportation Project Identification No. **15641.00 SANDY BAY TOWNSHIP.**

**B. Time.**

This Contract becomes effective on the date last signed below. The Contractor agrees to deliver said materials, supplies, or equipment on or before **JUNE 26, 2008.** This Contract expires December 31, 2008.

**C. Price.**

The prices given in **Appendix A** will be used as the basis for determining the original Contract amount.

**D. Contract Documents.**

This Contract may be amended, modified, or supplemented in writing only. If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy related to the Contract, the Contractor must notify MaineDOT of the ambiguity or waive claims resulting from any such ambiguity. In the case of ambiguity the following components of the Contract shall control in the following descending order of priority:

Contract  
Appendix B – Special Provisions for Purchase of Project Materials  
Appendix A - Description of Materials, Supplies, Equipment and Bid Price  
Any remaining appendices in alphabetical order.

It is agreed and understood that this Contract is comprised of, and will be governed by, the documents listed above.

**E. Certifications.**

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

1. All of the statements, representations, covenants, and/or certifications required or set forth in Appendix A are accurate as of the date of this Contract.
2. The Contractor certifies that it has not been debarred, suspended, declared ineligible or voluntarily excluded from contracts by the Federal Government or any state agency within the last 3 years.
3. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
4. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Title Printed)

**F. Award.**

Your offer is hereby accepted. The Contract amount is\_\_\_\_\_. This award consummates the Contract.

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

Date

\_\_\_\_\_

\_\_\_\_\_

(Name and Title Printed)

CONTRACT TO PURCHASE SUPPLIES, MATERIALS AND/OR  
EQUIPMENT FOR A SPECIFIC PROJECT  
PURSUANT TO 23 MRSA § 52

Pursuant to 23 M.R.S.A. §52, and in consideration of the mutual promises set forth in this Contract (hereinafter "Contract"), the State of Maine Department of Transportation ("Department" or "MaineDOT") with its principal office located at Child Street, Augusta, Maine, and a mailing address of 16 State House Station, Augusta, Maine 04333-0016, enters into this Contract with ABC COMPANY ("Contractor"). The Contractor is, a corporation or other legal entity organized under the laws of the State of Maine \_\_\_\_\_ and its principal place of business is located at ABC STREET, TOWN, STATE, with a mailing address of ABC STREET, TOWN, STATE and a telephone number as follows: **207-999-9999**.

The Vendor Customer Number of the Contractor is VC000000000.

The following attachments are hereby incorporated into this Contract by reference:

- Appendix A – Description of Materials, Supplies, Equipment and Bid Price
- Appendix B – Special Provisions for Purchase of Project Materials

The Department and the Contractor, hereby agree as follows:

**A. Deliverables.**

The Contractor agrees to provide the following materials, supplies and/or equipment known as **POLYMER COATED CULVERTS** more specifically described in Appendix A, for use in Maine Department of Transportation Project Identification No. **15641.00 SANDY BAY TOWNSHIP.**

**B. Time.**

This Contract becomes effective on the date last signed below. The Contractor agrees to deliver said materials, supplies, or equipment on or before **JUNE 26, 2008**. This Contract expires December 31, 2008.

**C. Price.**

The prices given in **Appendix A** will be used as the basis for determining the original Contract amount.

**D. Contract Documents.**

This Contract may be amended, modified, or supplemented in writing only. If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy related to the Contract, the Contractor must notify MaineDOT of the ambiguity or waive claims resulting from any such ambiguity. In the case of ambiguity the following components of the Contract shall control in the following descending order of priority:

Contract  
Appendix B – Special Provisions for Purchase of Project Materials  
Appendix A - Description of Materials, Supplies, Equipment and Bid Price  
Any remaining appendices in alphabetical order.

It is agreed and understood that this Contract is comprised of, and will be governed by, the documents listed above.

**E. Certifications.**

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

1. All of the statements, representations, covenants, and/or certifications required or set forth in Appendix A are accurate as of the date of this Contract.
2. The Contractor certifies that it has not been debarred, suspended, declared ineligible or voluntarily excluded from contracts by the Federal Government or any state agency within the last 3 years.
3. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.
4. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby execute two duplicate originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

**(DATE HERE)**

\_\_\_\_\_  
Date

**CONTRACTOR  
(SIGN HERE)**

\_\_\_\_\_  
**(PRINT NAME & TITLE HERE)**

\_\_\_\_\_  
(Name and Title Printed)

**F. Award.**

Your offer is hereby accepted. The Contract amount is\_\_\_\_\_. This award consummates the Contract.

MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

Date

\_\_\_\_\_

\_\_\_\_\_

(Name and Title Printed)

SAMPLE

**APPENDIX A**  
**Description of Materials, Supplies Equipment and Bid Price**  
**SCHEDULE OF ITEMS**  
**BID PAGE**

The pipes must meet the requirements of State of Maine, Department of Transportation, Standard Specifications, Revision of December 2002 including, but not limited to Section 604 – Pipe Culverts and Storm Drains, Subsection 603.031 General, Option III and Section 707.07 Polymer Precoated, Galvanized Corrugated Steel Pipe and Standard Details Revision of December 2002 as updated through advertisement, Supplemental Specifications, Special Provisions, and Contract Agreement.

**Delivered to MaineDOT Maintenance Lot in Jackman, Maine**  
**PIN#15641.00**

		<b>Price/each</b>
<b>Structure #1</b>	<b>1 ea.</b>	<b>\$_____</b>
84"x 120' 12 gauge polymer coated CMP, ends cut to a 3:1, bottom 120' and top 78'		
<b>Structure #2</b>	<b>1 ea.</b>	<b>\$_____</b>
84"x130' 12 gauge polymer coated pipe, ends cut to a 3:1, bottom 130' and top 88'		
		<b>Grand total: \$_____</b>

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

**1. DEPARTMENT** The Department of Transportation of the State of Maine, as established by 23 MRSA §4202 et seq. for the administration of Highway, Bridge, and other public Works; acting through the Commissioner and his or her duly authorized representative.

**2. WARRANTY.** Contractor warrants:

- a That all articles and services to be supplied by it under this contract are fit and sufficient for the purpose intended and
- b That all articles and services covered by this contract will conform to the specifications, drawing samples, symbols or other description specified by the Department, and
- c That such articles are merchantable, good quality and free from defects whether patent or latent in material and workmanship, and
- d That all workmanship, materials and articles to be provided are of the best grade and quality, and
- e That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this contract or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within 1 year from the date of final acceptance of the work provided hereunder. The Department shall give written notice of observed defects with reasonable promptness.

All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current material safety data sheet for any hazardous chemical to their direct purchasers of that chemical.

The Contractor warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Contract and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

**3. TAXES.** Contractor agrees that, unless otherwise indicated in this Contract, the prices herein do not include federal, state or local sales, or use the tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Department as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Department and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Department.

**4. PACKING & SHIPMENT.** Deliveries shall be made as specified without charge for boxing, carting or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform with the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5. DELIVERY.** Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, The Department, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Department's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Department's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Department. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

**6. INSPECTION.** All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Department at its option may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Department may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%)

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

percent of the articles inspected are defective, unless Contractor agrees to reimburse the Department for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Department.

**7. BENEFITS AND DEDUCTIONS.** If the Contractor is an individual, the Contractor understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Contractor further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Contractor for his/her Income Tax records.

**8. INDEPENDENT CAPACITY.** In the performance of this Contract, the parties hereto agree that the Contractor, and any agents and employees of the Contractor shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

**9. DEPARTMENT'S REPRESENTATIVE.** The Contract Administrator shall be the Department's representative during the period of this Contract. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Contractor.

**10. CHANGES IN THE WORK.** The Department may order changes in the work, the Contract Amount being adjusted accordingly. The Department reserves the right to increase or decrease all or any portion of the work and the articles required to be provided by the bidding documents or this contract, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this contract. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this contract because of the inability of the parties to agree on an adjustment or adjustments. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the MaineDOT. Said amendment must be effective prior to execution of the work.

**11. SUB-CONTRACTS.** Unless provided for in this Contract, no arrangement shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the consent and approval of the Contract Administrator. Any sub-contract hereunder entered into subsequent to the execution of this Contract must be

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

annotated "approved" by the Contract Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Contractor and its employees assigned for services thereunder.

**12. SUBLETTING, ASSIGNMENT OR TRANSFER.** The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of Contract shall in any case release the Contractor of its liability under this Contract.

**13. EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; 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 setting forth the provisions of this nondiscrimination clause.

b. The Contractor shall, in all solicitations or advertising for employees placed by or on behalf of the Contractor relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Contractor shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor shall inform the Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

(Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Contractor shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**14. EMPLOYMENT AND PERSONNEL.** The Contractor shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Contract, any other personnel who are or have been at any time during the period of this Contract in the employ of any State Department or Agency, except regularly retired employees. Further, the Contractor shall not engage on this project on a full-time, part-time or other basis during the period of this Contract any retired employee of the Department who has not been retired for at least one year. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**15. STATE EMPLOYEES NOT TO BENEFIT.** No individual employed by the State at the time this Contract is executed or any time thereafter shall be admitted to any share or part of this Contract or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Contract is executed or any time thereafter shall be admitted to any share or part of this Contract or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Contractor or any affiliate of the Contractor. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

**16. ACCESS TO RECORDS.** The Contractor shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Contractor shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

**17. TERMINATION.** The performance of work under the Contract may be terminated by the Department in whole, or in part, whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department including but not limited to the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this contract, or
- d. If Contractor so fails to make progress as to endanger the performance of this contract in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the work under the Contract is terminated and the date on which such termination becomes effective. The Contract shall be equitably adjusted to compensate for such termination, and modified accordingly.

**18. GOVERNMENTAL REQUIREMENTS.** The Contractor warrants and represents that it will comply with all governmental ordinances, laws and regulations.

**19. GOVERNING LAW** . This Contract is pursuant to 23 M.R.S.A. §52, and shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

**20. STATE HELD HARMLESS.** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as “claims”) resulting from or arising out of the performance of this Contract by the Contractor, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as “person”) providing work, services, materials, equipment or supplies in connection with the performance of this Contract; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Contract; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Contract; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Contract; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department’s negligence or unlawful act, or (ii) action by the Contractor taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Contract.

**21. NOTICE OF CLAIMS.** The Contractor shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Contractor by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.

**22. LIABILITY INSURANCE.** The Contractor shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Contract with adequate liability coverage to protect itself and the Department from suits. Contractors insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement.

**23. NON-APPROPRIATION.** Notwithstanding any other provision of this Contract, if the State does not receive sufficient funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Contract.

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

**Special Provisions for Contract to Purchase Supplies, Materials or Equipment For The Department of Transportation for A Specific Project Pursuant to 23 MRSA § 52**

**25. INTEGRATION.** All terms of this Contract are to be interpreted in such a way as to be consistent at all times with the terms of Appendix B and any remaining appendices in alphabetical order.

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

**27. DEBARMENT, SUSPENSION, INELIGIBILITY, OR EXCLUSION.** By signing the Contract, the Contractor certifies that it has not been debarred, suspended, declared ineligible or voluntarily excluded from contracts by the Federal Government or any state agency within the last 3 years.

**28. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Contractor under this Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

**29. ENTIRE CONTRACT.** This document contains the entire Contract of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Contract that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Contract, or to exercise an option or election under the Contract, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the

**Special Provisions for Contract to Purchase Supplies, Materials or  
Equipment For The Department of Transportation for A Specific  
Project Pursuant to 23 MRSA § 52**

same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.