

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 24, 1974

To _____
From Maurice F. Williams, Commissioner

Dept. _____
Dept. Finance and Administration

Subject Revision of Section 48 - Manual of Financial Procedure - Contracts for Special Services

In connection with Executive Order No. 24 there is attached hereto a copy of a revision of Section 48 of the Manual of Financial Procedures.

It has been reproduced in the new format that will be used in future revisions of Manual sections.

The major change in procedure occurs in Item 11 of Rider B. The wording has been revised to include the language set forth in Item 8 of the Implementation Guidelines attached to Executive Order No. 24.

There are minor procedural changes involved in the processing of Small Contracts.

With respect to Large Contract procedures, Steps 7 through 18 have been eliminated. Procedures set forth in Steps 6 through 34 pertaining to Small Contracts have been substituted therefor.

EXHIBIT 48-A replaces the two sample forms included in the previous revision of Section 48.

Since there were only 5 pages of the "R-11-7-73" revision which could be salvaged, the entire Section has been reproduced.

For those agencies having Special Services contract/s still in effect under the procedures set forth in previous revisions of Section 48, please retain them until the contract/s thereunder have been completed or terminated.

Otherwise the superseded Section/s should be removed from your Manual binder and replaced with the "R-4-24-74" revision.

For agencies which do not have Manual binders, please retain the "R-4-24-74" revision of Section 48, intact, until new Manual binders are distributed.

Extra copies of the "R-4-24-74" revision of Section 48 of the Manual of Financial Procedures are available. Please address your request for additional copies to this office.

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MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

The purpose of this Section is to establish minimum standards for contracts with management consultants, research organizations, firms providing employee training programs, data processing software firms, and similar service contracts which are not provided for elsewhere. Excluded from this Section are those services provided for under Maine Revised Statutes, Title 5 Section 1812 - window cleaning services, elevator repair and maintenance services, laundry service, linen supply service, dry cleaning service, janitor service, floor maintenance service, rubbish and garbage disposal service, tree surgeon service, all types of office machine repair and maintenance service, exterminator service, refrigerator repair and maintenance service and oil burner repair and maintenance service when any such service is performed by an independent contractor. Also excluded from this Section is the procurement of engineers, architects and similar services related to construction work under the Department of Transportation and the Bureau of Public Improvements. The standards established herein are the basic minimum and many contracts will require special provisions in addition to those covered in this Section. Contract administration and management requires a high level of skill and knowledge of administrative practices. This Section is intended to establish uniform basic standards which should be implemented by assigning State contract managers and administrators at the Department level who have the requisite training and experience in this field.

48.1
PURPOSE

Contracts for special services are separated into 3 classes based upon the maximum total dollar amount that is anticipated will be paid for the services rendered. This maximum amount includes any additional work which may be contracted for, commonly known as "Phase II", "Phase III", etc.

48.2
CLASSES
OF
CONTRACTS

For those contracts for recurring services such as the fee to be paid to a dentist for dental examinations the maximum amount is the amount provided for in the contract for payments during one fiscal year.

Based upon the anticipated maximum amount of the proposed contract, it will be covered by one of the three following classes:

<u>CLASS</u>	<u>ANTICIPATED AMOUNT</u>	<u>SUBSECTION</u>
Informal	Less than \$600	48.3
Small	\$600 to \$7,500	48.4
Large	Over \$7,500	48.5

After reviewing this portion of the Manual of Financial Procedures, the reader who contemplates securing contractual special services for the State should determine the class of contract involved according to the above schedule. The next step is to refer to the specific subsection where details of the contractual procedures are set forth.

If the contractual service is being procured under a federally funded program or other specially funded arrangement and the sponsor of the program requires a prescribed form of contract and procedures, or if it is deemed to be in the best interest of the State and the requesting agency, a waiver of the provisions of this Section may be granted. The procedure for waivers is as follows:

1. Forward one copy of the form of contract, procedural manual, regulations, etc., to the State Controller with a memorandum (in duplicate) requesting a waiver. If the waiver is requested for more than one contract, the memorandum should indicate the estimated number of contracts and the estimated dollar volume to be awarded each year. ✓
2. The Director of Central Computer Services, the State Budget Officer, the State Purchasing Agent and the State Controller, acting in the capacity of a Contract Review Committee, will review the material submitted. ✓
3. If the Committee approves the alternate procedures, the duplicate of your memorandum will be returned indicating its approval of your request. The original will be placed in a permanent file in the PreAudit Division of the Bureau of Accounts and Control. ✓



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

This class of contracts provides for obtaining and paying for special services without the necessity of a written agreement. However, if in the judgment of the Department involved, a written contract is desired, and the amount is less than \$600, Subsection 48.4 prescribes the procedure to be followed.

48.3
INFORMAL
CONTRACTS

This simplified procedure may be used, for example, when a management consultant is engaged for a few days to review a specific operation in a State agency and it is not anticipated that he will be engaged again during the current fiscal year for more than \$600 total. The following sets forth the required procedure:

1. Determine that a need exists for contractual services and sufficient funds are available.
2. Select a contractor giving due consideration to interested and qualified businesses and organizations, their proposals, fees to be charged, knowledge and experience and other relevant factors. The work should be awarded to the contractor with the lowest total cost consistent with the quality of services required.
3. Discuss the scope of the work to be accomplished and reach an agreement with the contractor regarding the fee to be paid including such items as reimbursement for travel and other costs. It is the responsibility of the Department head to satisfy himself that the agreed cost is competitive and not excessive when compared with similar services procured from other business firms or organizations. The Department head is also responsible for ascertaining that the agreement does not result in an employer/employee relationship with the contractor.
4. When the work is completed or at monthly intervals if the work extends over a period of time, request that the contractor submit a bill using his usual invoice forms or his letterhead if he has no other forms. Do not prepare the invoice yourself or use your Departmental stationery for this purpose. This is the contractor's responsibility.
5. Examine the invoice for completeness. If the description of the work is vague, such as "Per Agreement - \$500.00", you should return the invoice to the contractor and request that a new invoice be prepared. A complete itemized description of the work performed, dates, rates charged, travel costs, etc. is required.
6. Separate the duplicate of the invoice from the original.
7. Identify the duplicate copy as such if the contractor has neglected to do so.
8. Verify the contractor's computations.
9. Obtain approval, on the original invoice, as to prices charged and receipt of the services billed from the employee authorizing the expenditure.
10. Arrange for correction of any errors or adjustment of any differences noted.
11. Deduct allowable cash discounts, if any.

continued on Page 3



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

12. Code the original invoice with the appropriate account, activity and character and object code numbers and indicate the amount to be paid to the contractor.
13. Obtain approval for the amount to be paid and the signature of the Department head, or his authorized representative, on the face of the original invoice.
14. Enter the contractor's name and the approved amount of the original invoice in the voucher register or the encumbrance record of the affected account.
15. Reduce the unencumbered allotment balance of the affected account by the approved amount of the original invoice.
16. Promptly mail the completed invoice to the Bureau of Accounts and Control at the State Office Building in Augusta for preaudit and payment.
17. Complete and file the retained duplicate invoice in accordance with local procedure.

This procedure may be used whenever casual, intermittent or other irregular special services are purchased, provided the anticipated payment to the same contractor by the same Department does not exceed \$600 during the fiscal year.

This class of contracts is provided for procuring special services when the anticipated maximum contract amount is over \$600, but under \$7,500. See Subsection 48.7 for a form of model contract and explanation of Riders A and B to be used as a guide. The following sets forth the required procedure:

1. Determine that a need exists for contractual services and that sufficient financing is available.
2. Prepare the Request for Proposals (RFP) or Invitation for Bids (IFB). See Subsection 48.9.
3. Determine whether payment will be based on the unit price method or the lump sum method. See Model Contract, Rider B, Section 1, Options A and B. If the contract is for a definable study or project and adequate competition for the work is obtained, payment should be on the lump sum method (Option B). If it is for recurring services, with a volume that cannot be precisely predicted, the unit price method would be proper. In this case, the contract shall provide for a maximum amount which can be amended later, if circumstances warrant it. It is important to note that the lump sum method may not be used unless formal bids or proposals are received from at least 3 interested and qualified suppliers, if available.
4. Prepare Prenotification form and submit with a Request for Proposal or Invitation for Bids to the Contract Review Committee, in care of the State Controller, State Office Building, Augusta. Prenotification forms are available at the office of the State Controller. Approval to continue must be received before further action is taken. See EXHIBIT 48-A for a sample of (Prenotification form) "NOTIFICATION OF INTENT TO CONTRACT FOR SPECIAL SERVICES" following the last page of this Section.

continued on Page 4

48.3
INFORMAL
CONTRACTS

concluded

48.4
SMALL
CONTRACTS



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

5. Contact several suppliers of the service required and make the RFP or IFB forms available to them, as well as such other information as may be needed. Special efforts should be made to contact any Maine firms who are interested and qualified to perform the services desired.
- Request that the suppliers contacted make a proposal or offer a bid to perform the service required. Every supplier should be given equal treatment.
- Suppliers should be notified that sealed bids or proposals are to be submitted in the number specified in the RFP and will be accepted until 10:30 A.M., local time, at the Bureau of Purchases, Room 309, State Office Building, Augusta, Maine, 04330 for opening on (Date), 197 .
6. Sealed bids or proposals will be opened publicly by the Bureau of Purchases and forwarded to the originating agency. Information submitted by suppliers regarding their financial capabilities will be treated confidentially and not made available for public inspection.
7. Evaluate the bids or proposals. It is suggested that a committee of 3 to 5 persons who are knowledgeable of the proposed contractual work perform this function. Their recommendation should be submitted to the authorized representative of the Department responsible for the awarding of the contract. Any answer given to bidders or suppliers relating to clarification or additional information should be in writing and copies sent to all bidders or suppliers.
8. Review Rider A of the contract and make any changes necessary based upon negotiations with the selected supplier.
9. If the account to be charged is subject to the Preamble of an Appropriations Act whereby encumbrances may be carried forward only once into a new fiscal year, be sure to include a termination date in Rider B, Optional Section 12. The date selected should be no later than June 30 of the fiscal year following the fiscal year in which the encumbrance is first recorded.
10. Complete the remaining blank items in the contract form except: Encumbrance Number, Contract Date, and Approval as to Form.

If the contract is with an individual doing business under a style or designation other than his own such as: John Jones d/b/a Coastal Consulting Co., be sure to include the company or trade name. The Employer Identification number is required. Every firm or organization has one. It is the number used to identify State and Federal payroll tax returns and other returns.

If the supplier is a sole proprietorship, with no employees, insert the supplier's Social Security number in the E.I. Number space. All corporations, partnerships, organizations, etc. have E.I. numbers assigned by the Internal Revenue Service. Do not insert Social Security Numbers of the company president, partners, treasurers, etc. Use the Social Security number ONLY IF THE SUPPLIER IS AN INDIVIDUAL AND HE HAS NO EMPLOYEES WORKING FOR HIM.

48.4
SMALL
CONTRACTS

continued on Page 5



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

11. Have the Department head and the selected supplier sign and date the original and three copies of the contract. If a contract number is used by the Department it should be assigned at this time and inserted, in the space provided, on the original and the three copies.
12. Promptly forward the original and two copies of the contract with original signatures to the Assistant or Deputy Attorney General for your Department for approval as to form. All three copies will be returned to you after approval by the Attorney General's Department.
13. Forward the original and two copies of the contract, with justification information indicating the reason the contractor was selected, to the Contract Review Committee. Their approval of the contract will be indicated on the original and both copies. The approved original and copies will be forwarded directly to the Bureau of Accounts and Control. Disapproved contracts will be returned to the originating Department with a memorandum indicating the cause/s for rejection.
14. Upon receipt of the approved original and copies, the Bureau of Accounts and Control will review them, and if in order, the original will be assigned an encumbrance number. The copies will be approved by the State Controller and returned to the originating Department.
15. Notify the successful supplier of the proposed award following approval of the Office of the Attorney General, the Contract Review Committee and the State Controller. If Governor and Executive Council approval is required, it should be obtained prior to notification of the successful supplier.
16. The contract will be encumbered for the maximum amount or the lump-sum contract amount depending upon whether payment Option A or B was selected. If the funds are not available, a copy of the Federal grant award should be submitted in order that an Accounts Receivable may be established. At this point the Bureau of Accounts and Control will issue and forward to the contracting Department a copy of a Miscellaneous Encumbrance Record form indicating the encumbrance number and the amount encumbered. An appropriate entry should be made in the voucher register or encumbrance record of the affected account.
17. Insert the contract number and encumbrance number on the remaining copies of the contract based upon the Miscellaneous Encumbrance Record received from the Bureau of Accounts and Control.
18. Provide the contractor with one or more signed copies of the contract based upon his needs.
19. At periodic intervals (usually one month), request the contractor to prepare an invoice in duplicate if he has not already done so. Do not prepare the invoice yourself or use your Departmental stationery for this purpose. This is the contractor's responsibility.
20. Examine the invoice for completeness. If it is a unit price contract under Option A, there should be a complete itemized detail of the work performed and the rates charged, services described, etc. shall conform to the contract. If it is a lump sum contract, the invoice should clearly indicate payment due, retainage, etc. If you are not sure what format should be followed see Bureau of Public Improvements Form 17A-61 for an example. If the invoice is not properly prepared, return it to the contractor and request a corrected one. See EXHIBIT 48-A for a sample of Form 17A-61 following the last page of this Section.

48.4
SMALL
CONTRACTS

continued on Page 6



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

21. Separate the duplicate of the invoice from the original.
22. Identify the duplicate as such if the contractor has neglected to do so.
23. Verify the contractor's computations.
24. Prepare and process a partial delivery receiving report for the portion of the contract that is covered by the invoice. The person identified as the State Contract Administrator in the contract shall be the Receiving Official. Instructions for the preparation of partial delivery receiving reports may be found in Subsection 41.6 of this Manual. The references there to purchase orders include contracts for special services.
25. Post the information on the partial delivery receiving report to the Miscellaneous Encumbrance Record.
26. Compute the unliquidated balance of the Miscellaneous Encumbrance Record and insert the resulting figures in the column provided.
27. Staple the original of the partial delivery report to the original invoice.
28. Code the original invoice with the account number (Item #1 at the top of the first page of the contract). Add applicable activity, character and object numbers and indicate the amount to be paid to the contractor. If the invoice is the final payment, it and the receiving report should be clearly marked "FINAL PAYMENT".
29. Obtain approval of the amount to be paid and the signature of the Department head or his authorized representative on the face of the original invoice.
30. Enter the contractor's name and the approved amount of the invoice as an expenditure in the voucher register or the encumbrance of the affected account.
31. Promptly forward the original invoice, with partial delivery report attached, to the Bureau of Accounts and Control.
32. Staple the duplicate of the invoice and partial delivery report together and file in accordance with local procedure.
33. When subsequent invoices are received, process them in the manner described in Steps 19 through 32.
34. If there is any retainage, it should be paid by invoice after the final contract services are accepted and approved.

Additional steps will be necessary if the contract is amended. In this event, the proposed amendment should be processed by the Contract Review Committee, the Bureau of Accounts and Control and the Department of Attorney General in the same manner as the original contract. Instead of a Miscellaneous Encumbrance Record a purchase order adjustment will be issued if the contract amount is revised. Approved increases or decreases in the unliquidated balance should be posted to your Miscellaneous Encumbrance Record.

48.4
SMALL
CONTRACTS

concluded



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

This class of contracts is provided for procuring special services when the anticipated maximum contract amount will exceed \$7,500.00. See Section 48.7 for a form of model contract and explanation of Riders A and B to be used as a guide. The following sets forth the required procedure:

48.5
LARGE
CONTRACTS

1. Determine that a need exists for contractual services and that sufficient financing is available.
2. Prepare the Request for Proposals (RFP) or Invitation for Bids (IFB). See Subsection 48.9.
3. Determine whether payment will be based on the unit price method or the lump sum method. See Model Contract, Rider B, Section 1, Options A and B. If the contract is for a definable study or project and adequate competition for the work is obtained, payment should be on the lump sum method (Option B). If it is for recurring services, with a volume that cannot be precisely predicted, the unit price method would be proper. In this case, the contract shall provide for a maximum amount which can be amended later, if circumstances warrant it. It is important to note that the lump sum method may not be used unless formal bids or proposals are received from at least 3 interested and qualified suppliers, if available.
4. Prepare Prenotification form and submit with a Request for Proposal or Invitation for Bids to the Contract Review Committee, in care of the State Controller, State Office Building, Augusta. Prenotification forms are available at the office of the State Controller. Approval to continue must be received before further action is taken. See EXHIBIT 48-A for a sample of (Prenotification form) "NOTIFICATION OF INTENT TO CONTRACT FOR SPECIAL SERVICES" following the last page of this Section.
5. Place a legal advertisement in the State paper (The Daily Kennebec Journal) and, if desired, in other Maine newspapers. The ad shall appear for a minimum of 3 consecutive days. If the contract amount exceeds \$250,000, the ad shall appear for a minimum of 7 consecutive days in at least two daily newspapers including the State paper. It will be the responsibility of the Department requesting services to insure that a minimum of five suppliers are contacted and requested to propose. Lists of prospective suppliers will be maintained by the Contract Review Committee and information is available from that source. A suggested sample is as follows:

STATE OF MAINE

Invitation for Bids (Request for Proposals)

Sealed bids (proposals) for furnishing all qualified personnel, facilities, materials and services for (Title of Project, etc.) will be received in the number specified in the RFP and will be accepted until 10:30 A.M. local time at the Bureau of Purchases, Room 309, State Office Building, Augusta, Maine 04330 for opening on (Date) 197___. Bidding (proposal) materials may be obtained from the Department of (name) _____, (Name of Contract Administrator), Telephone Number _____, Room No. _____, (address) _____. The bids will be publicly opened and read (proposals will be publicly opened and made available for inspection) at the time and place specified above.



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

If desired, the ad may contain additional information. The opening date specified must conform to the following schedule. The day count will commence with the first appearance of the ad.

48.5
LARGE
CONTRACTS

SCHEDULE OF OPENING DATES

<u>NUMBER OF DAYS</u>	<u>CONTRACT SIZE</u>
10	Under \$ 20,000
20	\$20,000 to \$ 50,000
30	Over \$50,000 but Under \$250,000
45	\$250,000 and Over

These are the minimum advertising requirements and may be exceeded if desired.

6. Take the same steps that relate to the processing of small contracts as are set forth in Steps 6 through 34 in Subsection 48.4.
7. In the event that sufficient time for the procedure in preceding Step 5 above is not available for any reason, such as time requirements imposed by the Legislature or Federal Government, the following procedure is required:
 - A. Obtain approval from the Contract Review Committee.
 - B. Follow all of the other procedures except preadvertising.
 - C. Contact as many suppliers as possible of the service required by telephone, telegram, etc. and request a bid or proposal. Other steps as outlined in the Manual of Financial Procedures, Subsection 48.5 should be followed.
 - D. Within 7 days after the award of the contract, insert a legal advertisement, substantially as follows, in the State paper (The Daily Kennebec Journal). The ad shall appear for a minimum of 3 days.

STATE OF MAINENotice of Contract Award

A contract which was not advertised for bids or proposals was awarded on (Date) to (Name and Address of Contractor) for the performance of (Description of Services) for an amount not to exceed (\$Amount). A copy of this contract is available for public inspection at the Department of (Name), (building), (city), (Maine), (zip code).

Signed: _____

Date: _____, 197_

Additional steps will be necessary if the contract is amended. In this event, the proposed amendment should be processed by the Contract Review Committee, the Bureau of Accounts and Control and the Department of Attorney General in the same manner as the original contract. Instead of a Miscellaneous Encumbrance Record a purchase order adjustment will be issued if the contract amount is revised. Approved increases or decreases in the unliquidated balance should be posted to your Miscellaneous Encumbrance Record.

concluded



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

Some contracts may take the form of multi-year agreements. This is particularly true when a project or study is to be performed in phases over several years. They are generally identified as Phase I, Phase II, etc. contracts.

48.6
PHASED
CONTRACTS

Services of this nature should be procured in the same manner as described in this Manual for other contracts for special services. The bids should be solicited on the basis of the entire job even though funds for only the first phase are available.

In the contract, Rider B, Section 1, where the contract sum is mentioned add the following provision, "of which \$ ___ is hereby authorized". Insert the amount which is currently available; this will also be the amount encumbered by the Bureau of Accounts and Control. Both the contract sum and the authorized amount must appear in Rider B, Section 1. The contract sum is considered the maximum amount for advertising purposes, etc. As additional funds become available, a contract amendment must be prepared to increase the authorized contract amount. These amendments are processed and numbered (appropriation number, encumbrance number, etc.) in the same manner as the original contract.

Insert in Rider B a provision, such as the following, to make this financing arrangement clear to all parties involved:

"Section number ____ . PAYMENT OF COMPENSATION. It is understood and agreed by the parties hereto that the payment of compensation specified in this agreement, or any renewal or extension thereof, is dependent upon and subject to the allocation or appropriation of funds to the Department for the purposes set forth in this agreement."

concluded

See Page 10 - Subsection 48.7, for Model Contract procedure.



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

Set forth below is a sample form of model contract with typical provisions. The first page of the agreement lists the various riders which are incorporated by reference. In this case two riders are used, but additional riders such as a Rider C to list key personnel who are considered essential to the performance of the work can be added if necessary.

MODEL 48.7 CONTRACT

Rider A is self-explanatory. See Page 11 of this Section.

Rider B includes both required and optional provisions. Two sections numbered 1 are presented, but only one should be used (see Subsections 48.4 and 48.5). Sections number 1 through 22 are required contract provisions. See Pages 11 through 14 of this Section.

Contracts which cannot be prepared by using the Model Contract should be brought to the attention of the Contract Review Committee. This is accomplished by contacting the State Controller who is the Committee's Secretary.

Note: Please use letter size paper (8 1/2" x 11") and do not use unusual binders and covers which will not fit letter size filing cabinets.

STANDARD AGREEMENT

- 1. Appropriation Number
2. Dollar Amount
3. Termination Date
4. Contract Number
*5. Encumbrance Number
*6. Date Received

THIS AGREEMENT, made this day of , 197 , by and between the State of Maine, Department of , hereinafter called "Department" and , hereinafter called "Contractor".

The type of organization of the Contractor is: (Check applicable provision):

- 1. An individual doing business as
2. A partnership.
3. A corporation.
4. Other: (Specify)

The principal office of the Contractor is located at (No., Street, City, State, ZIP)

The Employer Identification number of the Contractor is

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Contractor hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and, in consultation with the Department, perform the services, study or project described in Rider A. The following riders are hereby incorporated into this contract by reference:

- Rider A - Specifications of Work to be Performed.
Rider B - Payment and Other Provisions.

IN WITNESS WHEREOF, the Department and the Contractor, by their representatives duly authorized, have executed this agreement in (duplicate) (triplicate) (etc.) originals as of the day and year first above written.

(Department Name)
By: (Authorized Signature)
(Typed Name and Title)

Approved as to Form:

(Contractor Name)
By: (Authorized Signature)
(Typed Name and Title)

, 197
Attorney General



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

RIDER ASpecifications of Work to be Performed

***The Department will insert here the work schedule from the proposal received from the successful supplier, modified as necessary, or a detailed comprehensive description of the scope of the work to be performed by the supplier. Use additional pages if necessary. AVOID VAGUE AND OBSCURE DESCRIPTIONS - BE SPECIFIC.

***If there is a contract product such as a movie, study, chart, map, or report, a contract provision is required that the title page or block bear a legend substantially as follows: "The preparation of this (report, map, etc.) was financially assisted by the State of Maine, Department of _____; Appropriation Account Number _____; (through a Federal grant from the U. S. Department of _____).

RIDER BPayment and Other Provisions

1. (Option A - Unit Price) CONTRACT PRICES. Payments to the Contractor by the Department shall not exceed a total of \$(amount in figures) (amount in words) and shall be based upon the following schedule:

<u>Description of Services</u>	<u>Unit</u>	<u>Unit Price</u>
--------------------------------	-------------	-------------------

- | | | |
|------|---|--|
| A. | (List types of services such as Engineer, Systems Analyst, and the price | |
| B. | information. Include provision for travel reimbursement, if any. Do not | |
| C. | provide for any advance payments to be made upon signing of the contract, | |
| D. | etc.) | |
| Etc. | | |

1. (Option B - Lump Sum) CONTRACT SUM. The Department shall pay the Contractor for the performance of the contract in current funds the sum of \$(amount in figures) (amount in words). Progress payments on account of the contract shall be made each month as follows: 90% of the value of the work performed as certified by the Contract Administrator. The remaining 10% shall be paid after the final contract products are delivered to the Department and accepted by the Department, in writing.

2. INVOICES AND PAYMENTS. Payment shall be made by the Department within 15 days after receipt of an approved itemized invoice submitted by the Contractor upon his usual billing forms or business letterhead.

3. BENEFITS AND DEDUCTIONS. The Contractor understands and agrees that he 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 Taxation, copies of which returns will be furnished to the Contractor for his Income Tax records.
(Note: Use only if contractor is an individual.)

4. INDEPENDENT CAPACITY. The parties hereto agree that the Contractor, and any agents and employees of the Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

continued on Page 12

48.7
MODEL
CONTRACT

RIDER A

RIDER B

continued on
Page 12



MANUAL OF FINANCIAL PROCEDURES

SUBJECT CONTRACTS FOR SPECIAL SERVICES

5. CONTRACT ADMINISTRATOR. All invoices, progress reports, correspondence, and related sub-missions from the Contractor shall be directed to:

Name: _____
Title: _____
Address: _____

;who is designated as the Contract Administrator on behalf of the Department for this contract.

6. DEPARTMENT'S REPRESENTATIVE. The Contract Administrator shall be the Department's representative during the period of this agreement. He has authority to stop the work if necessary to insure its proper execution. He shall certify to the Department when payments under the contract are due and the amounts to be paid. He shall make decisions on all claims of the Contractor, subject to the approval of the Head of the Department.

7. CHANGES IN THE WORK. The Department may order changes in the work, the contract sum being adjusted accordingly. All such orders and adjustments shall be in writing. Claims by the Contractor for extra cost must be made in writing and signed by the Contract Administrator before executing the work involved.

8. PERIOD OF PERFORMANCE. The Contractor shall: (Check applicable provision)

- A. Work when called by the Department.
B. Use due diligence to complete the work within a reasonable time.
C. Complete the work no later than
D. If the work is not completed by, Contractor shall pay Department as follows (insert provision for damages)

9. SUBCONTRACTS. Unless provided for in this contract, no contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the consent, guidance and approval of the Contract Administrator. Any subcontract hereunder entered into subsequent to the execution of the contract must be 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 his employees assigned for services thereunder.

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

11. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment relating to this agreement because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap, unless related to a bona fide occupational qualification. The Contractor will take affirmative action to insure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. 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 will, in all solicitations or advertising for employees placed by or on behalf of the Contractor relating to this agreement, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, or physical handicap.

48.7
MODEL CONTRACT

RIDER B
continued on Page 13



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

11. EQUAL EMPLOYMENT OPPORTUNITY - concluded

- c. The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performance of this contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.
- d. The Contractor will cause the foregoing provisions to be inserted in any subcontracts for any work covered by this agreement 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. The Contractor, or any sub-contractor holding a contract directly under the Contractor, shall, to the maximum feasible, list all suitable employment openings with the Maine Employment Security Commission. This provision shall not apply to employment openings which the Contractor, or any sub-contractor holding a contract under the Contractor, proposes to fill from within its own organization. Listing of such openings with the Employment Service Division of the Maine Employment Security Commission shall involve only the normal obligations which attach to such listings.

12. EMPLOYMENT AND PERSONNEL. The Contractor shall not engage on a full-time, part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of this agreement in the employ of any State Department or Agency, except regularly retired employees, without written consent of the public employer of such person. Further, the Contractor shall not engage on this project on a full-time, part-time or other basis during the period of this agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the Contract Review Committee.

13. 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 may arise therefrom directly or indirectly due to his employment by or financial interest in the Contractor or any affiliate of the Contractor. This provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. WARRANTY. The Contractor warrants that it has not employed or written any company or person, other than a bonafide employee working solely for the Contractor to solicit or secure this agreement, and that it has not paid, or agreed to pay any company or person, other than a bonafide 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 agreement. For breach of violation of this warranty, the Department shall have the right to annul this agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

15. ACCESS TO RECORDS. The Contractor shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to cost incurred under this agreement and to make such materials available at their offices at all reasonable times during the period of this agreement and for three years from the date of the expiration of this agreement, for inspection by the Department or any authorized representative of the State of Maine and copies thereof shall be furnished, if requested.

16. TERMINATION. The performance of work under the contract may be terminated by the Department in whole, or, from time to time, in part whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. 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 the contract modified accordingly. In any event, this contract shall terminate on _____, 19____.

48.7
MODEL
CONTRACT

RIDER B

continued
on Page 14

continued on Page 14

DEPARTMENT OF FINANCE & ADMINISTRATION

R-4-24-74



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

17. GOVERNMENTAL REQUIREMENTS. The Contractor warrants and represents that all governmental ordinances, laws and regulations shall be complied with.
18. INTERPRETATION AND PERFORMANCE. This agreement shall be governed by the laws of the State of Maine as to interpretation and performance.
19. OWNERSHIP. All notebooks, plans, working papers, or other work produced in the performance of this contract are the property of the Department and upon request shall be turned over to the Department.
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 and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract or based on any libelous or other unlawful matter contained in such data.
21. This contract is subject to the approval of the Maine Attorney General's Office, the Contract Review Committee and the State Controller before it can be considered as a valid, executionable document.
22. ENTIRE AGREEMENT. This contract contains the entire agreement of the parties, and neither party shall be bound by any statement or representation not contained herein.

MODEL 48.7
CONTRACT

RIDER B
concluded

The following provisions are optional and may be used when the Department involved considers them appropriate for a particular contract:

1. CONDUCT OF WORK. Unless otherwise provided herein, the Contractor with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing same to complete the work described in Rider A. In determining whether or not the Contractor has performed with due diligence hereunder, it is agreed and understood that the Contract Administrator may measure the amount and quality of the Contractor's effort against the representations made by the Contractor in the negotiation of this contract.
2. STANDARDS OF WORK. The Contractor agrees that the performance of work and services under this contract shall conform to high professional standards.
3. CORRECTION OF WORK. The Contractor shall correct or remedy any work not complying with the contract, and any defects in the work, due to workmanship or materials furnished by him, his suppliers, or his subcontractors, which appear within one year from the completion of the work.
4. FAILURE TO PROCEED OR PERFORM. If the Contractor fails to proceed with the work, with reasonable diligence, or fails to perform any term of the contract, then the Department, after 7 days written notice to the Contractor and his surety, if any, may proceed themselves with the work and may deduct the cost thereof from any payments due the Contractor; or the Department may terminate the contract, take possession of all work in progress, and appliances, and complete the work. If the expense exceeds the unpaid balance, the Contractor shall be liable for the difference.
5. PROTECTION OF WORK, PROPERTY AND PUBLIC. The Contractor shall adequately protect the work, adjacent property and the public and shall be responsible for any damage or injury due to his act or neglect.
6. OTHER CONTRACTORS. The Department has the right to let other contracts in connection with the work and the Contractor shall properly cooperate with any such contractors.

OPTIONAL 48.8
CONTRACT
PROVISIONS

continued on Page 15

DEPARTMENT OF FINANCE & ADMINISTRATION

R-4-24-74



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

7. SURETY BOND. The parties agree as follows: (Check applicable provision).
- ___ A. Contractor shall, prior to commencing the work, furnish the Department a payment and performance bond from a reputable insurance company, licensed to do business in the State; such bond to be conditioned upon satisfactory completion of the contract by the Contractor, and payment of all subcontractors, suppliers and employees.
- ___ B. No surety bond shall be furnished.
8. CONTRACTOR'S INSURANCE. Contractor shall carry workmen's compensation insurance and liability insurance protecting the Department and the Contractor from all claims because of bodily injury or death, and property damage, arising out of the work performed under this agreement whether such work is performed by the Contractor, a supplier, subcontractor or anyone directly or indirectly employed by any of them. Such liability insurance shall be an amount not less than what is commonly spoken of a "100,000/300,000/5,000". A copy of such policies, or a certificate from the insurer, verifying coverage, shall be furnished the Department before commencement of the work. In the event of a cancellation of any insurance coverage required herein, the Contractor shall notify the Contract Administrator forthwith of such cancellation.
9. PERMITS AND LICENSES. The Contractor shall pay for and furnish all permits, licenses, and other documents required by any governmental agency or department.
10. EARLY COMPLETION. If the work is completed before _____, the Department shall pay Contractor as follows (insert provision for early completion) _____.
11. ARBITRATION. The Department will decide any and all questions which may arise as to the quality and acceptability of the work and as to the manner of performance and rate of progress. The Department will decide all questions which may arise as to the interpretation of the terms of this agreement and the fulfillment of this contract on the part of the Contractor.
12. TERMINATION. Notwithstanding the other provisions of this agreement, this contract terminates on June 30, 19__ as a result of the operation of the Preamble of the Appropriation Act, Chapter __, Private and Special Laws of 19__.
13. OFFICIALS NOT TO BENEFIT. No member of the Legislature of the State of Maine or any individual employed by the State on a full time basis shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom directly or indirectly due to his ownership or stock or other interest in any firm or corporation; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. (For use in Federally funded contracts only).
14. KEY PERSONNEL. The personnel specified in Rider C to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contract Administrator 30 days in advance and shall submit justification, including proposed substitutions, in sufficient detail, to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without written consent of the Contract Administrator.
15. GRATUITIES.
- a. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the (Department Head) or his duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract; provided, that the existence of the facts upon which the (Department Head) or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

48.8
OPTIONAL
CONTRACT
PROVISIONS



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

15. GRATUITIES - concluded.

- b. In the event this contract is terminated as provided in paragraph a. hereof, the State shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount, as determined by (Department Head) or his duly appointed representative, which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- c. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

16. COLLECTION OF INFORMATION. The Contractor shall submit to the Contract Administrator for approval prior to use, copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structural interview and consultation" is defined as an interview or consultation which follows a pre-designed line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

17. COPYRIGHTS. No reports, maps or other documents of any kind or description, films or other materials of any kind or description produced in whole or in part under this agreement shall be the subject of application for copyrights, by or on behalf of the Contractor.

18. PUBLICATION RIGHTS. All property rights, including publication rights, in the interim, draft and final reports and other documentation, including machine readable media, produced by the Contractor in connection with the work provided for under this contract shall vest in the State. The Contractor shall not publish any of the results of the work without the written permission of the Contract Administrator.

19. CONFIDENTIALITY. Contractor shall instruct its employees to use the same degree of care to keep as confidential information concerning the business of the Department, its financial affairs, its relations with its employees, and others, as well as any other information which may be specifically classified as confidential by the State in writing to Contractor, as they use with similar information which Contractor regards as confidential, and the Contractor will have an appropriate agreement with its employees to that effect, provided, however, that the foregoing will not apply to:

- a. Information which the Department has released in writing from being maintained in confidence;
- b. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data are usually collected;
- c. Information which, after disclosure, becomes part of the public domain as above defined, through no act of Contractor.

20. INDEPENDENT AUDIT. The Contractor agrees to arrange for an audit of project cost and the submission of a report thereon to the Department before final disbursement of the contract sum is made. The auditors must be "independent auditors" and the fee for their services shall be paid by the Contractor.

- a. The Term "independent auditors" as used herein means an independent certified public accountant or independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States. This term also means full-time auditors employed by a State or local government audit organization which is independent of the Contractor's direction and control.

48.8
OPTIONAL
CONTRACT
PROVISIONS

continued on Page 17

DEPARTMENT OF FINANCE & ADMINISTRATION

R-4-24-74



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

21. OTHER. (Insert other provisions which may be required by an agency of the Federal government or other interested party.)

EXAMPLE:

It is understood by the parties hereto that all general and special conditions set forth in the proposal submitted by the Department to the United States Department of _____, dated the _____ day of _____, 19____, and the notification of discretionary grant award received therefrom and dated the _____ day of _____, 19____, are incorporated herein and made a part hereof, and are binding upon the parties hereto. It is further understood and agreed by the parties hereto that the performance of the Contractor under this agreement and the payment therefor by the Department shall be similarly subject to the provisions of said proposal and notification of grant award. It is further understood and agreed by the parties hereto that any and all amendments to said proposal and grant award shall be incorporated herein, and made a part hereof.

48.8
OPTIONAL
CONTRACT
PROVISIONS

concluded

Requests for Proposal shall be prepared for all contracts for special services. Mandatory requirements for the Request for Proposal are as follows:

Sealed Bids must be delivered to the State Purchasing Agent, State Office Building, Room #309, Augusta, Maine 04330 on or before _____ (Date) at _____ (Time). Sealed bids should be clearly identified "Sealed Bid to be opened only by the Bureau of Purchases."

Bids received after the date and time set in the proposal will not be considered.

The model State contract shall be included in the Request for Proposal and a statement to the effect that failure of the selected offeror to execute the contract will result in disqualification of the offeror.

A statement that the State has the right to reject any or all bids shall be included.

This section is intended to help you prepare a successful RFP or IFB. While it discusses RFP's most of the comments apply equally to IFB's also. No samples of forms are provided, but you may have some in your departmental files or obtain one from another State department or a Federal agency. Federal RFP's are noted for their completeness and suitability for this purpose.

If you have never prepared a RFP or if the proposed contract is going to involve a large sum of public funds (generally over \$50,000), it may be desirable to secure the services of a consultant for a few days to assist in the RFP preparation.

Since the final proposal -

1. reveals a plan of work that is to be paid for by a Department with public funds;
2. is usually in competition with other plans for similar work;
3. is going to be judged on technical quality, company capability, and price; and
4. represents the final and decisive effort by the proposer to obtain a particular contract

the RFP should be designed to make the proposals reflect these requirements.

48.9
REQUESTS
FOR
PROPOSALS

continued on Page 18

DEPARTMENT OF FINANCE & ADMINISTRATION

R-4-24-74



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

A good RFP includes many of the following items and such additional ones as may be desirable:

1. Date due.
2. Name, address and telephone number of Contract Administrator.
3. Where to send the proposal.
4. Number of copies.
5. Sample contract.
6. Complete description of the project and work desired.
7. Format in which the proposal should be prepared listing major sections such as:
 - a. Company history and management.
 - b. Project personnel, biographies, et..
 - c. Related company experience.
 - d. Financial capability.
 - e. Detailed plans of work execution.
 - f. Critical path or Gantt schedules.
 - g. Etc.
8. A table of evaluation giving the offeror the scale on which the proposals will be evaluated such as:
 - a. Creativity - 20%
 - b. Experience - 30%
 - c. Price - 30%
 - d. Understanding of project needs - 20%.

These are suggestions only and should be modified to reflect the actual needs of your department and the services to be provided.

The quality and completeness of the proposals received depends in large measure on how well you prepare the RFP.

48.9
REQUEST
FOR
PROPOSAL

concluded

END OF SECTION 48



MANUAL OF FINANCIAL PROCEDURES

SUBJECT

CONTRACTS FOR SPECIAL SERVICES

EXHIBIT 48-A

ACTUAL SIZE OF EACH FORM 8 1/2" x 11"

PRINTED ON WHITE PAPER

NOTIFICATION OF INTENT TO CONTRACT FOR SPECIAL SERVICES

AGENCY: _____

CONTACT NAME: _____ TELEPHONE NO.: _____

TYPE OF REQUEST:

- APPROVAL TO RELEASE RFP
- ASSISTANCE IN PREPARING RFP
- CONTRACT AMENDMENT
- APPROVAL TO WAIVER PROCEDURES

TYPE OF SERVICES TO BE PROVIDED BY CONTRACTOR: _____



DOCUMENTS ATTACHED:

- REQUEST FOR PROPOSAL
- CONTRACT AMENDMENT
- JUSTIFICATION FOR WAIVER OF PROCEDURES

BPI 17A-01
Rev. 4/30/71
Required in
Sextuplet

REQUISITION FOR PAYMENT

NO _____

CONTRACTOR _____ DATE _____

ADDRESS _____

PROJECT _____ NO _____

FROM		TO		
ITEMS	CONTRACT	PREVIOUS PAYMENTS	CURRENT ESTIMATE	BALANCE
Change Order No.				
Change Order No.				
Change Order No.				
Change Order No.				
Totals				
5% Retained				
Total Paid				
Payment Due				

Approved by _____
Owner

Contractor

Approved by _____
Bureau of Public Improvements

Certified by _____
Designer