

MAINE STATE LEGISLATURE

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Request for Proposal # 200804194
State of Maine
Department of Economic and Community Development
Office of Innovation
Comprehensive Economic Development Evaluation

GENERAL INFORMATION

In December 2006, the Office of Program Evaluation and Government Accountability (OPEGA) issued a performance audit of economic development programs in Maine. This report was critical of the current evaluation methods for Maine's economic development portfolio and suggested that more in-depth evaluations would be appropriate. (See <http://maine.gov/legis/opega/Reports.html>.)

The 123rd Legislature subsequently passed Public Law 2007 Chapter 434 (LD 1163), "An Act to Implement the Recommendations of the Office of Program Evaluation and Government Accountability Regarding Economic Development in Maine." (See <http://janus.state.me.us/legis/ros/lom/LOM123rd/PUBLIC434.asp>.) This act had three tasks for the Department of Economic and Community Development:

1. To develop and submit to the Governor and the Legislature a plan for the comprehensive evaluation of state investments in economic development (5 MRSA §13056-A);
2. To develop a proposal to amend the statutory definition of "economic development incentive;" and
3. To work with the Maine Development Foundation (MDF) to prepare an inventory of all existing economic development activities that fit within the State's criteria for economic development.

As a result of this legislation, the Department of Economic and Community Development drafted a plan for the comprehensive evaluation of state investments in economic development (see Appendix 1), which is predicated upon a proposed new definition of "economic development incentive." The list of programs proposed to be included under this evaluation is the same as the inventory developed by MDF

(<http://www.mdf.org/mdf/pdf/EconDevProgweb.pdf>) and draws upon the research that MDF has conducted.

The plan describes the design framework for the evaluation, including a logic model for the system, the identification of appropriate metrics and indicators, and an implementation plan. The plan is based on the ongoing Comprehensive Research and Development Evaluation methodology. This R&D Evaluation has been conducted for the past seven years, and is considered to be a good model for Maine. (See <http://www.maineinnovation.com/mie/default.asp> for the past Innovation Indices and Evaluation reports.)

This winter, the legislature approved the plan, and appropriated \$150,000 for the project. The language of the appropriation says:

“The contractor shall determine the degree of effectiveness or lack of effectiveness of economic development programs and tax incentives including the extent to which each program has created new jobs or retained jobs and whether jobs would have been created or retained without the benefit of the programs. “

The legislature expects to receive a final report from the evaluation in March, 2009.

SCOPE OF WORK

This Request for Proposal is to competitively choose a research team to implement the Comprehensive Economic Development Evaluation Plan. Given the short time available for completing the evaluation, we will not be entertaining proposals for dramatically different research designs, although we would be interested in proposals which include ideas for enhanced analysis and reporting.

The successful bidder will:

1. Work with DECD and the other stakeholders to populate a database of all clients served in the past year, and to code these clients by programs used. Separately, there will be a database of communities served. The most cost-effective and time-saving solution will be to use the existing database format from the R&D evaluation.
2. Finalize the survey instruments to be used with private sector clients, including farmers, and a separate survey for communities. Again, the most cost-effective and time-saving solution is to use a subset of the existing web survey from the R&D evaluation. This will also facilitate consolidation of results.
3. Use the survey instruments to collect data from private sector clients and communities.
4. Use other data collection methods as appropriate, such as indicator analysis, and case studies, to collect data that can augment the survey data.
5. Analyze data and prepare a written report for DECD, the legislature and the Governor, including 150 bound copies. Prepare Powerpoint version for oral presentations to the Governor, at least one legislative committee and the

- stakeholders. Prepare a .pdf version of the report suitable for posting on the DECD website.
6. Provide DECD with feedback on the process with suggestions for improvement.

PROPOSAL SUBMITTAL INFORMATION

Five (5) copies of the proposal must be clearly marked and in a sealed envelope with the bidder's return address and the notation: **“OOI-DECD and Comprehensive Economic Development Evaluation RFP”** and delivered to the following address:

Division of Purchases
Burton M. Cross Building, 4th Floor
111 Sewall Street
9 State House Station
Augusta, ME 04333-0009

Proposals must be received no later than **2:00 p.m. local time July 7, 2008**. Please note that only proposals actually received at the Burton Cross Building, 4th Floor, 111 Sewall Street, Augusta, Maine prior to the stated time will be considered; bidders submitting proposals by mail are responsible for allowing adequate time for delivery; proposals post marked by due date only will not suffice. Faxed proposals will not be accepted. Proposals received after the 2:00 p.m. deadline shall be rejected. The State reserves the right to reject any or all proposals.

Proposals should describe the approach to implementing the evaluation plan, including data collection, case studies, indices, analysis of data and communications plan, and should include all elements of the scope of work. It should describe the project team, their experience and roles in the project, lay out an anticipated timeline, budget and identify project milestones.

Proposals will identify past experience in evaluation processes, as well as qualifications of the proposed team in economic development and survey and data collection. Additionally, one of the critical roles the evaluation team plays is presenting its interim findings and final report to stakeholders, news media, key policy makers, legislators and the Governor. The proposal should specifically identify past experience in similar presentations.

Please include at least three references, as well as evidence of similar work. The proposal cannot be more than 10 pages, including budget, timetable and milestones. Appendixes may be up to an additional 15 pages and should include abbreviated resumes of project team and their experience in preparing similar evaluations, samples of similar work including links to internet postings of articles if available, contact information and at least three references.

PROPOSAL EVALUATION

An Evaluation Committee will read and score each proposal on the basis of the following weighted criteria:

<u>Criteria</u>	<u>Weight %</u>
Cost of project	25%
Experience, including similar work, scholarly articles and experience in evaluation of economic development strategies and investments.	45%
Approach, milestones and deliverables	30%

The Department expects that the written proposals submitted will be the primary basis for determining the successful bidder. Following a preliminary review of all proposals submitted by the deadline, the Evaluation Committee may, at its discretion, interview those “Bidders” whose proposals have received the highest scores. The interview will be an opportunity for the “Bidders” to respond to the Committee’s questions and to clarify its proposal. It will not be an opportunity for the “Bidders” to submit new information not included in the original proposal submitted. If interviews of the top scoring “Bidders” are conducted, the Committee will conduct a post-interview review of the proposals using both the weighted criteria above and any further clarification as conveyed through the interview process.

METHOD OF AWARD

Proposals will be evaluated by an Ad Hoc Committee appointed specifically for this purpose.

After the initial scoring, interviews may be conducted with the top-rated bidders (finalists). The interview will provide an opportunity for finalists to present their proposals, and for the evaluation Committee to ask clarifying questions, no bidder will be allowed to revise their proposal. Initial scores may be adjusted in light of the interviews. The State of Maine reserves the right to reject any or all proposals, in whole or in part, received by reason of this proposal. The bidder whose proposal does not meet the mandatory minimum requirements will be considered non-compliant. After the evaluation of the proposals and selection of the successful bidder, all bidders will be notified in writing. The successful bidder shall commence work only after the transmittal of a fully executed contract and after receiving written notification to proceed.

The State reserves the right not to award a contract if it is determined that other options are more operationally effective or cost effective. The State of Maine also reserves the

right to award to a single contractor or multiple contractors, which ever is in the best interest of the State of Maine.

ACCEPTANCE OF STANDARD STATE OF MAINE CONTRACT TERMS

The successful bidder will be expected to enter into a Standard State of Maine Agreement to Purchases Services (BP54), a copy of which is attached to this Request for Proposals as Appendix 2. Submission of a proposal in response to this RFP will be understood as the bidder's acceptance of the standard contract's terms and conditions. A contract is not considered fully executed and valid before completing final approval and encumbrance.

TERMS OF CONTRACT

The contract term shall be for a period from August 1, 2008 to March 31, 2010.

WRITTEN QUESTIONS AND ANSWERS

Questions about this RFP must be directed in writing to Catherine Renault, Catherine.s.renault@maine.gov. The Department will respond in writing to all substantive questions received. The deadline for written questions is June 6, 2008.

CONFIDENTIALITY

The information contained in proposals submitted for the State's consideration will be held in confidence until all evaluations are concluded and the award notification has been made. At that time, the full content of the proposals becomes public record and is therefore available for public inspection upon request.

COST OF PREPARATION

Bidder assumes all cost of preparation of the proposal and any presentations necessary to the proposal process.

DEFINITION OF THE PARTIES

The State of Maine will here and after be referred to as the "Department". Respondents to the RFP will be referred to as "Bidders" and the bidder to whom the contract is awarded shall be referred to as the "Contractor".

DISCLOSURE OF DATA

According to State procurement law, the content of all proposals, correspondence, addenda, memoranda, working papers, or any other medium which discloses any aspect of the request for proposals process will be considered public information when the award decision is announced. This includes all proposals received in response to this RFP, both the selected proposal and the proposal(s) not selected, and includes information in those proposals which a bidder may consider to be proprietary in nature. Therefore, the State makes no representation that it can or will maintain in confidentiality of such information.

PROPOSAL UNDERSTANDING

By submitting a proposal, the bidder agrees and assures that the specifications are adequate, and the bidder accepts the terms and conditions herein. Any exceptions should be noted in the proposal. The State reserves the right to reject any or all proposals based on the exceptions presented, without obligation to communicate or negotiate with the bidder.

PROPOSAL VALIDITY

Unless specified otherwise, all proposals shall be valid for 90 days from the proposal due date.

REVISION OF REQUEST FOR PROPOSALS

The State alone may elect to amend this RFP prior to the proposal due date. If it is necessary to revise any part of this RFP, an amendment will be provided to all vendors of record. Acknowledgement of this receipt of all issued amendments is required in all proposals. In no case will the RFP be amended within seven (7) days of the proposal due date, unless the amendment includes an extension of time to allow seven days between the amendment and the proposal due date. The department will not be responsible for any additional costs incurred as a result of said changes in the RFP.

APPENDIX 1

Comprehensive Economic Development Evaluation Plan

January 2008

John Richardson
Commissioner

Maine Department of Economic and Community Development
59 State House Station
Augusta, ME 04333-0059



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1. Introduction

In December 2006, the Office of Program Evaluation and Government Accountability (OPEGA) issued a performance audit of economic development programs in Maine. This report was critical of the current evaluation methods for Maine's economic development portfolio and suggested that more in-depth evaluations would be appropriate.

The 123rd Legislature subsequently passed Public Law 2007 Chapter 434 (LD 1163), "An Act to Implement the Recommendations of the Office of Program Evaluation and Government Accountability Regarding Economic Development in Maine." This act had three tasks for the Department of Economic and Community Development:

1. To develop and submit to the Governor and the Legislature a plan for the comprehensive evaluation of state investments in economic development (5 MRSA §13056-A);
2. To develop a proposal to amend the statutory definition of "economic development incentive;" and
3. To work with the Maine Development Foundation (MDF) to prepare a portfolio of all existing economic development activities that fit within the State's criteria for economic development.

This document is the plan for the comprehensive evaluation of state investments in economic development, and is predicated upon a proposed new definition of "economic development incentive." The list of programs proposed to be included under this evaluation is the same as the portfolio developed by MDF and draws upon the research that MDF has conducted.

This document describes the design framework for the evaluation, including a logic model for the system, the identification of appropriate metrics and indicators, and an implementation plan. This document was developed by staff in the Department of Economic and Community Development with extensive experience in the evaluation of economic development programs. This plan, when approved, will form the basis for a competitive search for a contractor to conduct the ongoing annual evaluation.

The evaluation plan was developed using a four-part methodology. First, we identified the questions to be answered by the evaluation. Second, we drew a logic model of the entire portfolio to understand the mission and goals of all of the programs. Third, we described the metrics to measure the various aspects of the logic model and identified the indicators that would be used. Fourth, we designed an evaluation system to systematically collect data for the indicators. Finally, we described the analysis and reporting required to answer the questions posed. Each step is documented in the rest of this report:

- Questions to be Answered (**Section 2**)
- Logic Model (**Section 3**)
- Outcome Indicators (**Section 4**)
- Data Collection System (**Section 5**)
- Analysis and Reporting (**Section 6**).

2. Questions to be Answered

The central question to be answered by this evaluation is contained in the OPEGA report:

Are the economic development programs a cost-beneficial use of public funds and are they effectively meeting their intent?

However, the OPEGA report also states that, “it will be some time before Maine is in a position to truly design and manage its economic development programs as an investment portfolio from a cost-benefit perspective.” Instead, OPEGA suggested that policymakers need three types of information about our investment in economic development:

- The ability to monitor progress toward desired results;
- Coordination to minimize overlaps and gaps, and maximize synergies and efficiencies among programs; and
- Publicly accessible, understandable information about the programs including relevant, objective and verifiable data on program costs and performance.

This evaluation, therefore, seeks to provide answers to two specific questions:

1. What is the economic impact of the state’s annual investments in economic development programs?
2. Are the programs meeting their statutory intent?

With this information, combined with benchmarks set by the Department of Economic and Community Development for its programs, legislators will be able to monitor the progress of economic development programs, and to access performance data. The portfolio analysis which is contained under separate cover is intended to provide a baseline of the relationships among programs currently; the portfolio coordinator position outlined in Public Law 2007, Chapter 434 (LD 1163) will enable the legislature to monitor this on an ongoing basis.

3. Logic Model

3.1 Economic Development and Economic Growth

Economic development is the process of enhancing land, labor, capital and technology to improve the economy and global competitiveness of a locality, region, state or nation. Most governments engage in a variety of strategies to promote economic development to promote economic growth and improve the quality of life for their citizens. The three general strategies are: encourage the growth of new companies (**entrepreneurship**), support and retain existing companies (**retention**) and attract companies to move to the locality (**attraction**).

Entrepreneurship is critical to economic development for a simple reason: all net job growth in the U.S. economy since 1980 has come from new companies, while existing companies have been shedding jobs. Therefore, support for entrepreneurship is critical to ensuring that an economy has a steady supply of new entities and new products to replace those lost to global competition.

Retention is an attractive strategy for most states with its focus on keeping the jobs already existing in a region. Without retention programs, many companies are vulnerable to either moving out of state (or out of the country), or going out of business entirely.

Attraction is the most controversial economic development strategy because many view it as a “zero-sum game;” various states, regions and localities compete with each other to attract companies to choose their locations over others.

3.2 Logic Model of Economic Development Investments

We have identified six types of assistance that are offered in Maine to companies and communities—all support all three strategies to some extent. These types of assistance each have their own logic and rationale for government involvement:

Technical assistance is providing very specialized counseling and training on topics such as government procurement, exporting and manufacturing technologies. The rationale is that management, especially in small companies, has imperfect access to this information, and that it is in the best interests of the community as a whole for this knowledge to be shared. Ultimately, companies will benefit from the problem-solving aspects of this assistance and will increase revenues, exports, productivity, etc., and ultimately retain or add employees, promoting economic development.

Business assistance is similar to technical assistance except that the subject matter is general business management counseling and training. Again, imperfect information is the rationale

for the provision of this assistance, and increased revenues and employment is the desired outcome.

Access to capital encompasses debt, equity, grants, and tax credits, all of which are designed to help finance activities at companies that cannot otherwise be undertaken. The rationale is that capital markets are not perfect and some companies, especially those in rural areas and away from large financial markets, have limited access to well-priced capital. In addition, some expenditures, notably, research and development, are deemed to have a public benefit, and are therefore properly the province of government action. In all cases, the outcomes desired are the attraction of additional capital, increased revenues and retained or new employees.

Promotion is a different type of activity which focuses on developing the demand for a category of products. These activities are undertaken usually to support a broad class of products and services in a state or region. The outcomes desired are increased demand for products for individual companies within the category and increased revenues and employment.

Workforce development is the provision of specialized training for workers in order to increase the productivity of existing employees, or to provide new employees the specialized skills needed for a particular job or industry. Workforce development is seen as part of economic development because it is often offered to companies in order to retain workers through productivity gains. It is also used as a tool to attract a company to locate in a region by ensuring that a properly training workforce is available.

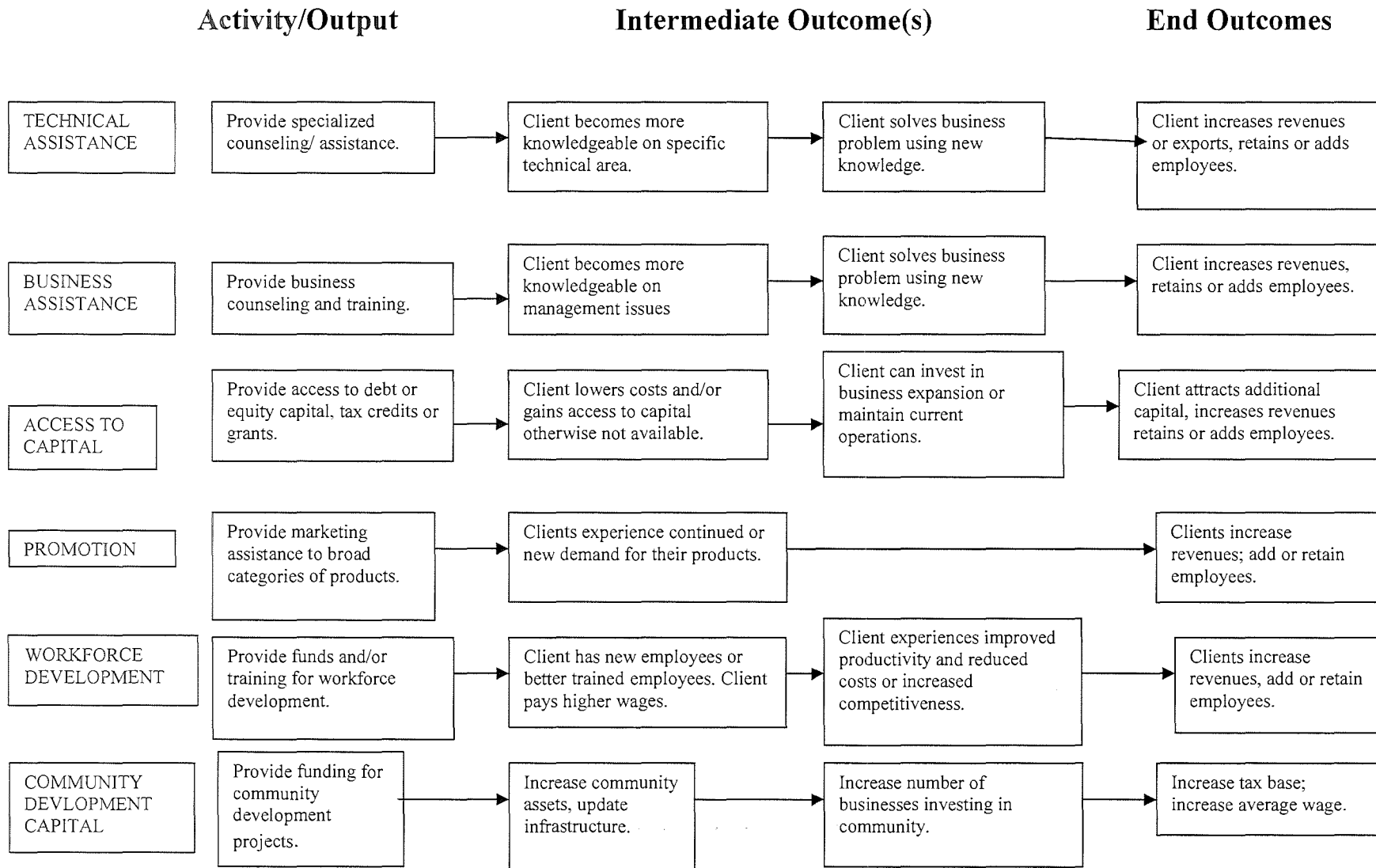
Community development is seen by many as a precursor to economic development. The funding of infrastructure improvements makes a community more attractive to businesses such as water and sewer services, transportation improvements, office or manufacturing parks and/or building, etc. These investments often lead to companies deciding to invest in a community, and either expanding their workforce or bring new jobs. The expanded or new company also expands the tax base of a community.

Each of these types of assistance is shown in Figure 1.

3.3 Programs to be Included in the Evaluation

An essential element of the evaluation plan is to decide which programs should be included. Using the discussion of economic development in **Sections 3.1** and **3.2**, we developed this definition of economic development incentives:

Figure 1. Logic Model for Economic and Community Development Programs



“Federal and state statutorily-defined programs whose purpose is to create, attract or retain business entities related to business development in Maine and are state funded to some extent (General Fund, Dedicated Revenue and tax expenditures).”

Note that this definition crosses the boundaries of a number of state agencies and that the programs which fit under this definition are not limited to DECD. **Appendix A** includes a complete list of all programs in Maine which we believe fit into this definition. This list is the same list that the Maine Development Foundation used to describe the economic development portfolio.

The legislation calling for this evaluation specifically exempts programs which are already covered under the Comprehensive R&D Evaluation or federally-mandated evaluations. Therefore, the programs covered by this evaluation are in the two left-hand columns of **Table 3.1**.

Table 3.1. Programs Covered by this Evaluation

DECD	Non DECD	R&D Evaluation	Federal Evaluation
Business Answers	Agricultural Development Grant Program	Maine Technology Institute – Seed Grants, Development Awards, Cluster Enhancement Awards, Phase 0 Awards, Accelerated Commercialization Fund	Community Development Block Grants
Employment Tax Increment Financing	Agricultural Marketing Loan Fund	High-Technology Investment Tax Credit	Community Enterprise Grant Program
Governor’s Training Initiative	Business Equipment Tax Exemption	Maine Biomedical Research Fund	Downtown Revitalization Grant Program
Loring Development Authority	Commercial Facilities Development Program	Marine Research Fund	Economic Development Program
Maine Attraction Film Incentive	Commercial Loan Insurance Program	Maine Seed Capital Tax Credits	Maine Manufacturing Extension Partnership
Maine International Trade Center	Credit for Rehabilitation of Historic Properties	Maine Economic Development Venture Capital Revolving Investment Fund	Maine Procurement Technical Assistance Center
Maine Made/Maine Products Marketing Program	Economic Recovery Loan Program	Research and Development Tax Credit	Maine Small Business Development Center
Maine Micro-enterprise Initiative Fund	Jobs and Investment Tax Credit	Sales Tax Exemption: Equipment and Machinery for Research	North Star Alliance Matching Fund (MTI)
Maine Tourism Marketing Partnership Fund	Linked Investment for Agriculture	SBIR/STTR Assistance	
Midcoast Regional Redevelopment Authority	Linked Investment for Commercial Enterprises	Super Research and Development Credit	
Municipal Tax Increment Financing	Maine Farms for the Future Grants	Technology Asset Fund	
Pine Tree Development Zones	Maine Quality Centers	Technology Centers	
	Linked Investment Program for Ag	(also in R&D Evaluation, but not in this portfolio:	
	Potato Marketing Improvement Fund	Maine Economic Improvement Fund, Maine Agricultural and Forestry Extension Service, Maine Patent Program,))	
	Regional Economic Development Revolving Loan Fund		
	Sales Tax Exemptions:		
	Commercial Agriculture and Commercial Fishing		
	Fuel and Electricity Used for Manufacturing		
	Manufacturing Machinery and Equipment		
	Products Used in Agriculture and Aquaculture Production and Bait		
	Shipbuilding Facility Credit		
	Speculative Buildings Program		

4. Outcome Indicators

We reviewed each of the programs included in this evaluation, taking into account the missions and purposes as specified in statute, or in some cases, gleaned from operational documents. This compilation was performed by the Maine Development Foundation and is contained in their portfolio report. For each program, we ascertained what outcomes were desired. A master list of all outcomes was compiled, and then consolidated. The final list of outcomes that covers all of the programs is shown below. Where programs have specialized or narrower versions of the general outcomes, we list them separately.

- Increase the number of companies/enterprises
 - New or retained agricultural and fishing enterprises, including potato farmers specifically
 - Businesses started or expanded, including shipbuilders with more than 6500 employees
 - New micro-enterprises; low and moderate income companies
- Increase the number of jobs created or retained
 - Jobs created or retained, including low and moderate income jobs, shipbuilding jobs
- Increase the competitiveness of companies/enterprises
 - Exports (dollars)
 - New revenues for commercial enterprises, agricultural enterprises including potato farmers, small or micro businesses
 - New capital raised
- Improve the quality of jobs as measured by average wages
- Increase community viability
 - New capital investment, including new investment in downtowns
 - Increased tax base

5. Data Collection Methods

A number of concerns enter into the design decisions for this evaluation. Foremost is the importance of identifying the economic impact of all of the economic development

programs taken as a whole. Since the R&D programs and the federal programs have mandated separate evaluations, we need to include their results, while maintaining the integrity of those evaluations. On the other hand, it is also important to respect the time of our clients and limit the amount of information that we request, and to ensure that they are not surveyed too often. Finally, we need to acknowledge that many clients use more than one program. Therefore, it is difficult to separate out the impacts of individual programs.

5.1 Recipients Database

Each year in May, all program managers whose programs are included in this evaluation, as well as all federal programs, will provide to the evaluator a list of all companies/enterprises and/or communities that have received assistance in the current fiscal year. The evaluator will combine these lists into a single database for companies/enterprises and a single database for communities. These databases shall include all contact information and should indicate which program(s) each recipient has used and in what time period. The company database shall also be merged with the comprehensive R&D evaluation database and coded with the appropriate R&D programs.

These databases shall be confidential and only the data obtained from them reported to the Governor and Legislature. It should be noted that tax information is inherently confidential and only limited information will be available, if any, about which companies have used the various tax credits. A legislative change can be made to direct Maine Revenue Service to release this information to DECD for the purpose of this evaluation.

5.2 Economic Development Index

The evaluation will use macro data as collected by the Maine Development Foundation for its annual Measures of Growth report to analyze state trends on the outcome indicators. These data will also be compared to at least 5 comparable states which will be selected by the evaluation team. The indicators will be:

- Personal Income
- Employment (average annual nonfarm wage and salary employment)
- International Exports
- New Business Starts

5.3 Private Company/Enterprise Survey

Each year the companies/enterprises identified in the master database will be surveyed via a web-based survey or other low-cost method. The survey will collect basic demographic data

and ask questions related to the outcomes identified in **Section 4**. All recipients who have received assistance in the past five years who are not covered by the R&D evaluation or a federal evaluation will be surveyed. The survey instrument is included in **Appendix B**.

Since almost all of the companies served by these programs are private, the financial information contained in the survey data is inherently company proprietary and confidential. Therefore, the data will not be revealed except in the aggregate. This is to maintain appropriate research confidentiality as well as to ensure that companies believe that their information is protected.

5.4 Community Survey

Each year, the communities that received assistance from the programs included in this evaluation, including the federal programs, will be surveyed via a web-based survey or other low-cost method. The survey will collect basic demographic data (e.g., population, tax base, percent of tax base related to businesses, etc.) and ask questions related to the outcomes identified in **Section 4**. All communities that have received assistance in the past five years will be surveyed.

Community data is inherently public and will not be closely held except to the extent that company confidential information is contained or implied in the responses.

5.5 Case Studies

From time to time, the evaluation contractor may wish to include case studies to complement and expand upon the data collected through the methods identified in **Sections 5.2 through 5.4**. This is a mechanism that could be used to evaluate the impact of programs such as tax credits that do not readily fit into the larger evaluation.

6. Analysis and Reporting

Each year in February, the Department of Economic and Community Development will report to the Governor and the legislature, specifically the Business, Research and Economic Development Committee, the results of this evaluation. The report should contain:

- Tabulations of all results from the surveys received;
- Data and graphs showing at least the past ten year's data for the macro indicators;
- Economic impact calculated by IMPLAN or a similar program based on the survey results.

The analysis should include a review of trend data, an explanation of how the results from the R&D and other federal evaluations relate to these results, and explanations of any anomalous results.

To the maximum extent possible, the analysis should endeavor to provide the results of this evaluation *and* the published results of the federal and R&D evaluations to obtain the results of the outcomes for the entire economic development team.

7. Implementation

The Department of Economic and Community Development estimates that this project will cost \$150,000. This would be used to pay an independent contractor with extensive experience in the evaluation of economic development programs. The contractor should be chosen through a Request for Proposal process and could be a multi-year contract (i.e. 5 years). This cost does not include the costs associated with any DECD personnel who might be required to oversee the evaluation project. In the first year, DECD anticipates that we will be able to accomplish the project management within existing resources, but we do not anticipate that this will be sustainable.

7.1 Evaluation Fund

As described in 5 MRSA §13056-C, the Maine Economic Development Evaluation Fund is established as a non-lapsing Other Special Revenue Fund. Annually, all programs included in the evaluation other than tax credits, will be assessed for an amount to contribute to the fund not to exceed 0.08% of the General Fund appropriations, special revenue funds received or general obligation bonds issued. Only programs with appropriations greater than \$250,000 shall be assessed.

Appendix C shows a draft of assessments for FY08 based upon this language. This analysis reveals that only ten programs meet this criteria and that they would have to be assessed at a rate 1.72% calculated on FY06 funding levels or 3.17% calculated on FY07 levels. We believe that this is an unrealistic assessment and that an alternative funding source needs to be found.

7.2 Legislative Corrections

If this evaluation plan is adopted, it eliminates the need for some existing reporting mechanisms, and provides better data than is currently available. We recommend that the following legislative adjustments be made to implement this single evaluation and to reflect the ongoing comprehensive R&D evaluation:

1. 5 MRSA 383 §13058, 5 Delete: “The Maine Small Business Commission, as established in section 13032, shall conduct the evaluation and review required by this section with respect to small business programs.” Insert reference to 5 MRSA §13056-A.
2. 5 MRSA 383 §13063-A. Delete 7, Goal and Evaluation
3. . 5 MRSA 383 §13063-O. Delete B.

4. 5 MRSA 383 §13070-J. Change Section 3 to reflect requirement to respond to survey (see 5 MRSA §13056-B, reporting requirements of recipients of economic development funding).
5. 5 MRSA 383 §13070-J. Delete 4.D.
6. 5 MRSA 383 §13070-J. Delete 4.E.
7. 5 MRSA 383 §13103. Section 2.G., take out requirement to report on number of new jobs created in the state and where.
8. 5 MRSA 407 §15301. Delete 10. Evaluation.
9. 7 MRSA 10 §309 Agricultural Development Grant Program: Replace requirement for annual review with requirement to report results from this evaluation.

In addition, 5 MRSA 383 §13056-C.3 should be amended to include the requirement for funds from special revenue accounts to be assessed as well.

Maine Revenue Services should be directed to provide DECD with a complete list of all taxpayers who take advantage of the tax credits in this evaluation in order for them to be included in the survey.

The definition of “economic development incentive” in 5 MRSA 383 §13070-J should be amended to be consistent with the definition offered on page 7 of this report and/or should include all programs listed in this portfolio.

Appendix A

Master List of Economic Development Incentives and Programs

Program Name	Description
Accelerated Commercialization Fund	Investments in MTI-funded companies to help bridge the gap between R&D and sales.
Agricultural Development Grant Program	The Agricultural Development Grants assist farmers in assessing market potential of new ideas, increasing market promotion of existing businesses, or improve the adoption of new technology on the farm.
Agricultural Marketing Loan Fund	This loan program offers a loan for either 75% or 90% of the total cost of a project for capital improvements for the business. At a 5% interest rate, this program can help save money for agricultural enterprises making improvements.
Business Answers	A program that provides quick access to information about local and state business assistance programs, Maine's regulatory requirements and a host of other business-related issues.
Business Equipment Tax Exemption	Qualified business equipment first subject to property tax assessment on or after April 1, 2008 will be exempt from property taxes. The State is required to reimburse municipalities for property revenue loss according to the following schedule: 100% in 2008, 90% in 2009, 80% in 2010, 70% in 2011, 60% in 2012, and for 2013 and subsequent years, 50%. Alternative reimbursement may be chosen by municipalities with business property exceeding 5% of total taxable value.
Cluster Enhancement Awards	Up to \$200,000 per project to industry-sponsored collaborative projects that stimulate and support growth of technology businesses and infrastructure. Rolling deadline. Match required.
Commercial Facilities Development Program	The Commercial Facilities Development Program provides financial resources to assist in the development of new commercial facilities and the acquisition and redevelopment of nonproductive commercial facilities for subsequent return to productive use through sale or lease. Under this program, the Maine Rural Development Authority can serve as lender, principal developer, partner or investor in the acquisition of property and redevelopment of existing commercial properties. Investments for the program are available up to \$500,000.
Commercial Loan Insurance Program	The Loan Insurance Program insures a portion of a loan made by a financial institution. The program is designed to help businesses in Maine access commercial credit, and is available for any prudent business activity.
Community Development Block Grants	Community Development Block Grants and loans provide funding and technical support for community projects that meet economic development objectives and lead to job creation or retention for Maine residents with low to moderate incomes. Funding is distributed to a number of state programs.
Community Enterprise Grant Program	The Community Enterprise Grant Program (CE) provides grant funds to assist in innovative solutions to problems faced by small or micro-businesses and to provide streetscapes in downtown areas and business façade improvements.
Credit for Rehabilitation of Historic Properties	A taxpayer that is a national historic landmark developer (person that owns 2 or more structures located in the Kennebec Arsenal District National Historic Landmark) is allowed a refundable credit. The credit is allowed only for tax years that begin on or after January 1, 2006 but before January 1, 2010. The credit may not exceed \$500,000 per year, and unused credit amounts may be carried forward only through the 2009 tax year.

Program Name	Description
Development Awards	Up to \$500,000 per project to support research and development of new products and services that lead to market, including prototype development and testing, patent applications, small scale manufacturing and scale up for manufacturing with limited production . Awarded three times per year. Match required.
Downtown Revitalization Grant Program	The Downtown Revitalization Program (DTR) provides funds for communities to implement comprehensive, integrated and innovative solutions to identified problems facing their downtown districts. These downtown revitalization projects must be part of a strategy that targets downtown service and business districts and will lead to future public and private investment.
Economic Development Program	The Economic Development Program provides gap funding in the form of grants and loans for communities to assist businesses in the creation/retention of quality jobs for low and moderate-income persons.
Economic Recovery Loan Program	This program offers financing to manufacturing, industrial, recreational or natural resource enterprises, located in the State and providing significant public benefit in relation to the amount of the loan, as determined by the authority. Loan proceeds may be used for any appropriate commercial purpose, as determined by the authority, including working capital and bridge loans pending other financing.
ETIF	For-profit, non-retail, non-utility businesses adding a minimum of five net new Maine jobs within a two-year period, may be eligible for Maine's Employment Tax Increment Financing. Under the ETIF program, businesses are reimbursed up to 80% of their new employees' Maine income tax withholdings for up to 10 years. To qualify, new employees must receive an annual income greater the county's average per-capita income, and be provided access to group health insurance and an Employee Retirement Income Security Act (ERISA)-qualified retirement program.
Governor's Training Initiative	The Governor's Training Initiative program develops and coordinates training for firms intending to expand or locate in Maine, reorganize a workplace to remain competitive, or upgrade worker skills. Eligible businesses may receive reimbursements for on-the-job training, competitive retooling, assessment, job-task analysis, workplace safety and literacy, specialized recruitment, high-performance skills, or customized technical training.
High-Technology Investment Tax Credit	The credit is based on the adjusted basis of eligible equipment. Limitations: the credit is based on the adjusted basis of eligible equipment. Limitations: the credit is limited to high-tech equipment purchased (or leased) by businesses engaged primarily in high-tech activities. The credit cannot reduce tax to an amount below the previous year's tax after credits. The credit cannot be carried back, but can be carried forward for up to five years.
Jobs and Investment Tax Credit	The credit is based on the federal credit amount, according to the Internal Revenue Code in effect as of December 31, 1985 , which is based on investment in qualified property. Limitations: the taxpayer must create at least 100 new jobs within two years from the date the qualified property was placed in service and invest at least \$5,000,000 in one year. The credit is limited to tax liability or \$500,000, whichever is less, and cannot be carried back, but can be carried forward up to seven years.
Linked Investment Program for Agriculture	This program is to help reduce borrower interest rate expenses on agricultural operating loans. Loans will be approved and made by lenders according to their own policies. The Maine State Treasurer will make a compensating deposit with the originating lender to provide interest rate saving as to the businesses on

Program Name	Description
	underlying loans.
Linked Investment Program for Commercial Enterprises	This program is to help reduce borrower interest rate expenses. Loans will be approved and made by lenders according to their own policies. The Maine State Treasurer will make a compensating deposit with the originating lender to provide interest rate saving as to the businesses on underlying loans. Applies to non-agricultural for-profit businesses located in Maine.
Loring Development Authority	The Loring Development Authority provides businesses with the comprehensive, professional assistance needed to address concerns and meet the due diligence and business research, development and operation requirements.
Maine Attraction Film Incentive Program	Two-part monetary benefit package for qualified companies conducting certified media production in Maine. Part one is a partial reimbursement of wages paid to employees working on a certified media production. Companies are reimbursed 12% of wages paid to employees who are Maine residents and 10% of wages paid to nonresidents. Part two is a credit for all Maine income taxes that would otherwise have been assessed against the income associated with the certified production.
Maine Biomedical Research Fund	Grants are available to eligible Maine institutions that conduct competitive, scientific biomedical research related to the biology, causes, diagnosis, treatment, control and prevention of physical and mental diseases or impairments afflicting humans.
Maine Economic Development Venture Capital Revolving Investment Program	This program is designed to allow the State to invest as an equal partner with others in eligible private venture capital funds to support emerging and early-growth businesses in Maine. It is intended to utilize experienced professional fund managers to increase the probability of successful investments and the success of recipient companies.
Maine Farms for the Future Grants	This program provides grants of technical assistance to farmers developing business plans, and funds to help implement those plans. Eligibility is limited to farmers who own at least 5 acres of land in active agricultural production.
Maine Technology Asset Fund	For fiscal years 2008-2009 with two award levels: Up to \$500,000 per project and greater than \$500,000 per project. Funds may be used for capital expenditures such as equipment and infrastructure, and should focus on opportunities for collaboration and commercialization, not just new research. Match required.
Maine International Trade Center	MITC is the state's leading source for global trade information. MITC offers global exposure to Maine's small and medium-sized businesses that want to succeed in international markets. MITC's highly skilled staff helps businesses with a range of issues and provides technical assistance, trade counseling, workshops and more.
Maine Made / Maine Products Marketing Program	The Maine Products Marketing Program builds recognition for hundreds of Maine made products, their producers, and Maine's industries in general. MPMP also provides marketing assistance and works to expand market opportunities for Maine's producers.

Program Name	Description
Maine Manufacturing Extension Partnership	The Maine MEP is a not for profit organization with a culture of innovation that leverages MEP resources in the application of new ideas to clients, products and processes. The Maine MEP is able to leverage a vast array of public and private resources and in turn makes these resources and services available to every manufacturing enterprise in the state. The Maine MEP is a part of a nationwide network of technical, manufacturing and business specialist linked together by the US. Department of Commerce and the National Institute of Standards and Technology. The program is a resource for manufacturers to transform from a traditional to world-class organization. The program provides affordable, innovative solutions to the problems encountered by today's manufacturing enterprises.
Maine Micro-Enterprise Initiative Fund	The Maine Microenterprise Initiative Fund is established as a nonlapsing fund and consists of money appropriated to it by the Legislature from the General Fund and eligible investment earnings from fund assets to encourage micro-enterprise growth in Maine.
Maine Patent Program	Helping Maine inventors and small businesses understand how to identify and protect their intellectual property. A resource for information and education on trademarks, copyrights, the patent process and other means of intellectual property protection. Inform what needs to be done to obtain and maintain legal rights in ideas, if possible, and to provide assistance with the patent process to those who qualify.
Maine Procurement Technical Assistance Center	The Maine PTAC is part of a nationwide network of Procurement Technical Assistance Centers, or PTAC's, that helps Maine small businesses obtain government contracts with the Department of Defense, other federal agencies, state and local governments and federal prime contractors.
Maine Quality Centers	Through its Community College System, Maine offers free training and education to qualified new and expanding businesses. Under the Maine Quality Centers program, businesses – or consortia of small businesses – creating a minimum of eight new full-time jobs are eligible for customized recruitment and guaranteed fast-track training designed to employer specifications.
Maine Seed Capital Tax Credit Program	This program is designed to encourage equity and near equity investments in young business ventures, directly and through private venture capital funds. FAME may authorize State income tax credits to investors for up to 60% of the cash equity they provide to eligible Maine businesses. Investments may be used for fixed assets, research or working capital.
Maine Small Business Development Centers (SBDC)	The Maine Small Business Development Centers' mission is to engage itself and others in development activities that contribute to the improvement of the economic climate for and the success of micro, small and technology-based businesses in the State of Maine. The Maine SBDC's focus is to assist in the creation, growth and the maintenance of viable micro, small and technology-based businesses and the jobs these businesses provide.
Maine Technology Centers	Each of Maine's seven targeted technology sectors has its own incubation center. The incubation centers provide critical early-stage technical, business, administrative, and financial resources and training for participating firms
Maine Tourism Marketing Partnership Program	Creation and implementation of programs designed to stimulate and expand the travel industry within the tourism regions while strengthening the State's image by coordinating the promotional efforts of private industry with those of the Office of Tourism. Also support development of special major events that attract visitors to Maine and provide impact on more than one region.

Program Name	Description
Marine Research Fund	Awards from \$25,000 up to \$500,000 are available to Maine's non-profit organizations, laboratories, state governmental and quasi-governmental agencies and academic institutions to fund infrastructure and equipment needed to conduct high-quality, scientifically rigorous marine research programs that will have positive economic impact on the state of Maine. Private Maine companies can collaborate with these institutions as partners in proposed projects.
Midcoast Regional Redevelopment Authority	The authority is entrusted with acquiring and managing the properties within the geographic boundaries of Brunswick Naval Air Station.
Municipal Tax Increment Financing	Maine municipalities may target some or all of the new property taxes from a commercial or industrial project within a designated district to assist in that project's financing.
North Star Alliance Cluster Award Matching Fund	Funds are available to eligible organizations in Maine's boatbuilding, composite materials and marine trade industries that win MTI cluster enhancement awards. Resources can be used to match up to 75% of an eligible MTI awardee's cluster enhancement award.
Phase 0 Awards	Up to \$5,000 to support competitive federal Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) proposal submissions from Maine applicants. Match required.
Pine Tree Development Zones	This program works with existing programs and enhances them for specific businesses that fit particular economic and geographic criteria. Benefits include a Corporate Income Tax Credit of up to 100% for first five years and up to 50% for the next five years, Insurance Premiums Tax Credits on the same schedule, Income Tax Reimbursement up to 80% for ten years (ETIF), Personal and Real Property Tax Exemption up to 100% for 10 years on new personal and real property, Property Tax Reimbursement up to 100% for 30 years, and reduced Electricity Rates.
Potato Marketing Improvement Fund	This fund provides financing to potato growers and packers to construct modern storages, modernize existing storages, and purchase packing lines as part of the industry's plan to improve the quality and marketing of Maine's potatoes.
Regional Economic Development Revolving Loan Program	This fund provides loan assistance to businesses trying to create or retain jobs.
Research Expense Tax Credit	The credit is based on a percentage of the federal Credit for Increasing Research Activities. Limitations: the credit is limited to 5% of the excess qualified research expenses over the previous three-year average plus 7.5% of the basic research payments under IRC § 41(e)(1)(A). The credit is further limited to 100% of the first \$25,000 in tax liability plus 75% of the tax liability in excess of \$25,000. The credit cannot be carried back, but can be carried forward for up to 15 years.
Sales Tax Exemptions (Commercial Agriculture and Commercial Fishing)	Sales tax is refunded to any person, association of persons, firm or corporation that purchases electricity, or that purchases or leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing or commercial aquacultural production.
Sales Tax Exemptions (Fuel and Electricity for Manufacturing)	Manufacturers are exempt from paying 95% of the sales tax on fuel and/or electricity used in the manufacturing operation.

Program Name	Description
Sales Tax Exemptions (Machinery and Equipment for Research)	Sales of machinery and equipment used by the purchaser directly and exclusively in research and development is eligible for a sales tax exemption.
Sales Tax Exemptions (Manufacturing Machinery and Equipment)	Sales of machinery and equipment used by the purchaser directly and primarily in the production of tangible personal property for later sale or use is eligible for a sales tax exemption. In addition, items consumed or destroyed directly or primarily in production, and repair and replacement parts for qualified production equipment are exempt from sales tax. Also, any manufacturer is exempt from paying 95% of the sales tax on fuel and/or electricity used in the manufacturing facility.
Sales Tax Exemptions (Products Used in Agricultural and Aquacultural Production, and Bait)	Sales tax exemption on sales of feed, hormones, pesticides, antibiotics and medicine for use in aquacultural production and sales of bait to commercial fishermen; sales of seed, fertilizers, defoliants and pesticides, including, but not limited to, rodenticides, insecticides, fungicides and weed killers, for use in the commercial production of an agricultural crop; sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides and litter for use in animal agricultural production. Animal agricultural production includes the raising and keeping of equines.
SBIR/STTR Assistance Program	Information and counseling to assist Maine small businesses to secure federal funds for small business for research and development of innovative products and services.
Seed Grant Program	Up to \$12,500 per project to support early product development, commercialization, or business planning and development. Awarded up to six times per year. Match required.
Shipbuilding Facility Credit	Tax credit for up to \$3 million annually in state income taxes deducted and withheld from employees of shipbuilding facilities with at least 6500 employees.
Speculative Buildings Program	The Speculative Buildings Program provides communities and their local development corporations with financial assistance in the form of loans for the construction and associated costs of speculative commercial and industrial buildings. Loans for the SB program are available up to \$500,000.
Super Research and Development Credit	The credit is based on qualified research payments exceeding 150% of the average for the three-year period prior to the effective date of the credit. Limitations: the credit is limited to 50% of the tax otherwise due after all other credits. Further, the credit cannot reduce tax liability below the amount due the previous year after credits. The credit cannot be carried back, but can be carried forward for up to five years.

Appendix B

Private Company/Enterprise Survey

20__ Company/Enterprise Survey

(Name of entity, address etc. will be captured by web survey system)

1. Indicate the type of entity you are responding for:
 - Corporation
 - Partnership
 - LLC
 - Sole Proprietorship
 - Farm
 - Not a business, but an individual (*If, go to Question #19.*)

2. Is your company/enterprise still in business today?
 - Yes
 - No (*if no, go to Question #19*)

3. In the last completed fiscal year, has your company/enterprise
 - Been acquired? Yes No
 - Purchased other companies? Yes No
 - Had an Initial Public Offering (IPO)? Yes No
 - Had other change in organizational structure? If so, explain:

4. Where is your company's headquarters located?
 - City _____
 - County _____
 - State/Province _____
 - Country _____

5. Does your company operate in any locations beyond your headquarters?
 - Yes
 - No

6. How many locations/establishments/places of business does your company currently have in Maine? _____

7. How many locations/establishments/places of business does your company currently have outside of Maine, but in the U.S.? _____

8. How many locations/establishments/places of business does your company currently have outside the U.S.?

9. What year was your company first organized? _____

10. Employees, Wages and Salaries:
 - a. How many employees did your company have last month, including the owner (including yourself if individual or sole proprietorship)? _____
 - b. How many employees did your company have twelve months ago, including the owner (including yourself if individual or sole proprietorship)? _____
 - c. What was the total dollar value of wages and salaries paid to your employees (excluding the employer share of benefits in the last full fiscal year)? \$ _____

11. What were your company's total revenues in the last completed fiscal year from all sources? \$ _____

12. What were your company's total revenues from customers outside of the US? \$ _____

13. What were your company's total revenues in the year prior to the last completed fiscal year? \$ _____

14. How much corporate income tax did your company pay to the State of Maine for the last tax year? \$ _____

15. Did you receive any new debt financing in the last completed fiscal year?
 - Yes
 - No (*if no, go to Question #17*)

16. Please indicate the dollar amount from each source of all new debt financing you received in the last completed fiscal year.

Bank		\$ _____
Small Business Administration Guaranteed Loans	\$ _____	
FAME loans		\$ _____
Friends and Family	\$ _____	
Other		\$ _____

17. Did you receive any new equity funding in the last completed fiscal year?

- Yes
- No (*if no, go to Question #19*)

18. Please indicate the dollar amount from each source of new equity financing you have received in the last completed fiscal year.

Venture capital firms		\$ _____
State Seed Capital Funds (e.g. SEGF)		\$ _____
Angel Investors		\$ _____
Friends and Family	\$ _____	
Other		\$ _____

19. Considering all of the State assistance you received in the last completed fiscal year, how important has this assistance been?

- Critically important
- Very important
- Frequently important
- Occasionally important
- Not important

20. Considering all of the state assistance you received in the last completed fiscal year, how satisfied have you been?

- Very satisfied
- Satisfied
- Somewhat satisfied
- Unsatisfied
- Very unsatisfied

21. If you have additional comments, please enter them here:

APPENDIX 2 SAMPLE CONTRACT

Page 1 of _____

Agreement No: _____

STATE OF MAINE
DEPARTMENT OF _____
Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, _____, hereinafter called "Department," and _____, located at _____, telephone number _____, hereinafter called "Provider", for the period of _____ to _____.

The Employer Identification Number of the Provider is _____

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Exceptions
- Rider D - Additional Requirements*
- Rider G - Rider G – Provision of Contract Services by Foreign Nationals or Work Performed Abroad

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in _____ original copies.

DEPARTMENT OF _____

By: _____
Name and Title, Department Representative

And

COMPANY NAME: _____

By: _____
Name and Title, Provider Representative

Approved: _____
Chair, State Purchases Review Committee

Total Agreement Amount: \$ _____

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____
2. **INVOICES AND PAYMENTS** _____ The Department will pay the provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider 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 Provider 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 Provider for his/her Income Tax records.

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

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

6. **AGREEMENT ADMINISTRATOR** _____ All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: _____
Title: _____
Address: _____

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. 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 State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

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

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement 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 Provider 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, or 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 Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, 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 Provider 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

Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (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 Provider 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 Provider shall cause the foregoing provisions to be inserted in any subcontract 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.

11. **EMPLOYMENT AND PERSONNEL** The Provider 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 Agreement, any other 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 the written consent of the State Purchases Review Committee. Further, the Provider 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 State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract 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.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement 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 Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract 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.

13. **WARRANTY** The Provider 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 Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider 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.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

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

17. **GOVERNING LAW** This Agreement 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 Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider 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 Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the 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 Agreement; (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 Agreement; (iii) Claims arising out of a libelous or

other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; 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 Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

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

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider 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 Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement 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 Agreement.

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

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court

order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The 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 Agreement.

26. **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 Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, 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.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement 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 Agreement 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 Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the 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 Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

RIDER G
PROVISION OF CONTRACT SERVICES BY FOREIGN NATIONALS OR WORK
PERFORMED ABROAD

The Maine Legislature has asked the Division of Purchases¹ to determine the country where contracted services will be performed.

The following contract/amendment has been executed with the State of Maine.

1	Division of Purchases Contract Reference
2	Contractor Name
< highlight and enter the Name of the Contractor >	
3	Brief Contract Service Description
< highlight and enter a Brief Description of the Service Provided >	

So that we may comply with the Legislature's request, please provide responses to the following questions. To successfully complete the questionnaire be alert for follow-up entries if certain responses are made. Please show your responses in the spaces provided. You may mark any box with using your computer, keyboard & mouse. Highlight the box () with your cursor and type a lowercase "x." If additional entries are needed, type to the right of the mark (>) shown in questions 1 and 3.

1. Will any of the services described in the contract's scope of work be performed outside of the United States of America?

- No. *Go to Q.3.*
 Yes. *If "Yes," show in what country(ies) below and Continue w/Q.2 and Q3.*
 >

2. If you responded "Yes," above, who will perform any of the services described in the contract's scope of work?

- Citizens of the USA living abroad. Foreign nationals.

3. In what US state or foreign country is your firm incorporated?

>

Name of the Person Submitting the Information	Voice Phone Number

Thank you for completing this information. You may send the completed form by email to the Division of Purchases [Jerry.Nault@maine.gov] or return it by telephone facsimile [207/287-6578] in addition to a response by regular post [9 State House Station, Augusta, ME 04333-0009].

Notification of Changes to the Information

A provision of the Resolve requires service providers to notify the Division of Purchases of any changes to this information. That notification may be sent to the address shown above and should reference the Purchases File Number.

¹ Resolve, Chapter 16, First Special Session-2005.